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DAVIS COUNTY, UTAH RECORDER
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AMENDMENT

TO THE

DECLARATION

OF

COVENANTS, CONDITIONS AND
RESTRICTIONS

OF

CLEARWATER COVE

A PLANNED RESIDENTIAL UNIT DEVELOPMENT

March 2021

**AMENDMENT
TO THE
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
CLEARWATER COVE
A PLANNED RESIDENTIAL UNIT DEVELOPMENT**

This Amendment to the Declaration of Covenants, Conditions and Restrictions of Clearwater Cove ("2021 Amendment") is made and executed on the date shown below after a vote of approval by the members of Clearwater Cove Homeowners Association ("Association" or "Clearwater Cove"), a Utah nonprofit corporation.

RECITALS

WHEREAS, the Declaration of Covenants, Conditions and Restrictions of Clearwater Cove ("Declaration") was recorded in the office of the Davis County Recorder on May 21, 2002, as entry number 175534; and

WHEREAS, the Declaration, the Articles of Incorporation of Clearwater Cove Homeowners Association ("Articles"), and any amendment to the Declaration or Articles shall collectively be referred to as the "Governing Documents" herein; and

WHEREAS, the practice of the Association since its creation has been to insure all Living Units under a master insurance policy purchased by the Association and paid for as a common expense. The actual practice of the Association for many years has not been consistent with the terms of the Declaration, Article IX, which states that each owner is to provide the insurance for their Living Unit. The 2021 Amendment has been adopted for the purpose of making the language of the Declaration consistent with the practice of the Association and to clarify that the Association is obligated to purchase a master insurance policy to insure all Living Units.

WHEREAS, the members of the Association desire to adopt this 2021 Amendment and record the same against the real property located in Davis County, Utah, known as Clearwater Cove Subdivision and more fully described on Exhibit "A" attached hereto; and

NOW THEREFORE, to accomplish the Owners' objectives, the following 2021 Amendment is adopted. If there is any conflict between this 2021 Amendment and any provision of the Governing Documents, this 2021 Amendment shall prevail. This 2021 Amendment shall become effective upon recording. The words defined in Article I of the Declaration shall have the same meaning when used herein unless the context clearly requires a different meaning. The Restated Declaration and the Governing Documents are amended as follows:

ARTICLE I INSURANCE

- 1.1 **Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the insurance coverage provided herein by companies licensed to do business in the State of Utah.
- 1.2 **Clearwater Cove Subject to Insurance Provisions of the Community Association Act.** As authorized by U.C.A. 57-8a-402(4)(a) of the Community Association Act ("Act"), the Lot Owners at Clearwater Cove hereby subject the Association and the Lots and Living Units within Clearwater Cove to the provisions of the Act wherein the Association shall maintain property insurance on the physical structure of all Living Units, garages, attached dwellings (Buildings), and Common Areas in the Property, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, as provided in U.C.A. 57-8a-403(1)(a). The Association hereby incorporates the provisions of the Act as set forth in U.C.A. 57-8a-401 through 407. The Association shall determine the amount of the Association's insurance deductible as in the Board's opinion is consistent with good business practice.
- 1.3 **Owner's Personal Insurance.** The Association shall not be responsible for nor purchase insurance coverage on the contents of the Living Units except as such coverage is provided by the Act. Each Owner is required to obtain insurance (renter's or Living Unit Owner's coverage) for their own protection and benefit and as a requirement of any loan they may have on their Living Unit, which Owner's insurance is for the purpose of insuring the Owner's personal property, the Owner's share of any Association deductible for which the Owner may be responsible, and for any other insurable event or item not covered under the provisions of the Association's insurance policy as provided in the Act. The Association shall not be required to monitor or verify that Owners have purchased an individual insurance policy to insure against the liabilities described herein.
- 1.4 **Primary Coverage and Deductible.** If a loss occurs that is covered by the Association's property insurance policy and a Owner's property insurance policy, the Association's policy provides primary insurance coverage and the Owner is responsible for the Association's policy deductible, as set forth in U.C.A. 57-8a-405.
- 1.5 **Notice by Association to Lot Owners.** The Association shall provide fair and reasonable notice to each Owner of the Owner's obligation under the preceding subsection for the Association's policy deductible and of any change in the amount of the deductible.
- 1.6 **Public Liability and Property Damage Insurance.** The Association shall obtain comprehensive public liability insurance coverage for the Property in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death and property damage, but in no event less than \$1,000,000 for personal injury or property damage per occurrence. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Association and all reasonably insurable activities in connection with the ownership, operation, maintenance, and other use of the Property.

- 1.7 **Worker's Compensation Insurance.** The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, if any, in the amounts and in the forms now or hereafter required by law.
- 1.8 **Fidelity Insurance or Bond.** The Association may obtain fidelity insurance or a bond in such amounts and in such forms as the Association deems appropriate to cover against dishonesty of employees or the Manager, destruction or disappearance of money or securities, and forgery.
- 1.9 **Additional Coverage.** The provisions of this 2021 Amendment shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required or permitted by the Act or by this Restated Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.
- 1.10 **Adjustment and Contribution.** Exclusive authority to adjust losses under the insurance policies hereafter in force on the Property shall be vested in the Association.
- 1.11 **Review of Insurance.** The Association shall review annually the coverage and policy limits of all insurance on the Property and shall adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Property by a representative of the insurance carrier or carriers providing the policy or policies on the Property, or such other qualified appraisers as the Association may select.

ARTICLE II BYLAWS

- 2.1 **Bylaws Adoption.** The Bylaws attached hereto as Exhibit "B" are hereby adopted as the Bylaws for the Clearwater Cove Homeowners Association, a Utah nonprofit corporation. If there are any conflicts between the Declaration and the Bylaws attached hereto as Exhibit "B", the Declaration shall control except as to those provisions in the Declaration which the Bylaws that are specifically intended to govern, and that are administrative in nature, such as notices, voting, board membership, etc.

ARTICLE III AMENDMENTS

- 3.1 **City Consent No Longer Required.** Notwithstanding the requirements in Section 13.02 of the Declaration, the Association shall no longer be required to obtain consent from Layton City before adopting future amendments to the Declaration.

ARTICLE IV REPEAL OF CONFLICTING LANGUAGE

- 4.1 **Repeal.** Article IX of the Declaration (Insurance) is hereby repealed in its entirety, and is replaced by Article I of this 2021 Amendment. In addition, if any other language or

requirements contained in the Declaration or any of the Governing Documents contradicts or violates any provision contained in (a) this 2021 Amendment or (b) the Bylaws attached as Exhibit "B", such provisions in the Declaration or Governing Documents are hereby repealed and shall no longer be enforceable.

- 4.2 **Severable.** The provisions of this 2021 Amendment shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

[Certification on Following Page]

CERTIFICATION

It is hereby certified that Residential Lot Owners holding a majority of the undivided ownership interest in the common areas and facilities have voted to approve these amendments.

IN WITNESS WHEREOF, we have affixed our signatures this 22 day of June, 2021.

CLEARWATER COVE HOMEOWNERS ASSOCIATION
a Utah nonprofit corporation

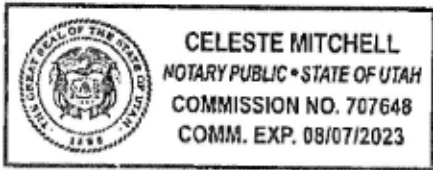
By: Michael Pless
Its: Vice President

By: Ailsa Peterson Williams
Its: Secretary/Treasurer

STATE OF UTAH)
 :SS
COUNTY OF DAVIS)

On this 22 day of JUNE, 2021, personally appeared before me Michael Pless and, Ailsa Williams who, being by me duly sworn, did say that they are the vice president and Secretary/Treasurer (officers) of Clearwater Cove Owners Association and that the within and foregoing instrument was signed in behalf of said Association and they duly acknowledged to me they executed the same.

Celeste Mitchell
Notary Public



LAYTON CITY CONSENT TO AMENDMENT

Attached is Layton City's consent



3394142
BK 7788 PG 1343

Mayor • Joy Petro
City Manager • Alex R. Jensen

• Office of the City Attorney •
Gary R. Crane • City Attorney
Telephone: (801) 336-3590
Fax: (801) 336-3595

Community • Prosperity • Choice

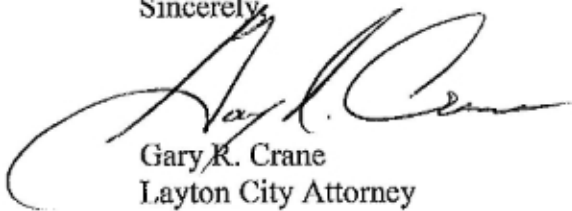
January 22, 2021

To: Clearwater Cove Homeowners Association

Layton City hereby consents to Clearwater Cove recording an Amendment to the Declaration of Covenants, Conditions and Restrictions of Clearwater Cove, a Planned Residential Unit Development ("Amendment"). The Amendment consented to contains an amendment to the manner in which the HOA insures its properties and brings the amendment into compliance with the Association's actual practice of insuring all the units as an HOA expense.

By consenting to this Amendment, Layton City is not endorsing or intending to endorse the provisions in the Amendment, and is providing this endorsement solely as an accommodation to the Association as required by Article 13.02 (c) of the Declaration of Covenants, Conditions and Restrictions of Clearwater Cove, recorded on May 21, 2002, as Entry Number 1755341, in the Records Office of Davis County, Utah. In the future, Layton City approval will not be required since that is also being removed by this amendment.

Sincerely,



Gary R. Crane
Layton City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION

CLEARWATER COVE

- All of Lots 11 thru 15, Clearwater Cove - A PRUD, Phase 1 PUD, Layton City, Davis County, Utah
11-507-0011 thru 0015
- All of Lots 21 thru 26, Clearwater Cove - A PRUD, Phase 2 PUD, Layton City, Davis County, Utah
11-508-0021 thru 0026
- All of Lots 31 thru 34, Clearwater Cove - A PRUD, Phase 3 PUD, Layton City, Davis County, Utah
11-512-0031 thru 0034
- All of Lots 41 thru 44, Clearwater Cove - A PRUD, Phase 4 PUD, Layton City, Davis County, Utah
11-513-0041 thru 0044
- All of Lots 51 thru 54, Clearwater Cove - A PRUD, Phase 5 PUD, Layton City, Davis County, Utah
11-526-0051 thru 0054
- All of Lots 61 thru 65, Clearwater Cove - A PRUD, Phase 6 PUD, Layton City, Davis County, Utah
11-527-0061 thru 0065
- All of Lots 71 thru 74, Clearwater Cove - A PRUD, Phase 7 PUD, Layton City, Davis County, Utah
11-528-0071 thru 0074
- All of Lots 81 thru 85, Clearwater Cove - A PRUD, Phase 8 PUD, Layton City, Davis County, Utah
11-540-0081 thru 0085
- All of Lots 91 thru 92, Clearwater Cove - A PRUD, Phase 9 PUD amd, Layton City, Davis County, Utah
11-566-0091 thru 0092 ca
- All of Lots 101 thru 102, Clearwater Cove - A PRUD, Phase 10 PUD, Layton City, Davis County, Utah
11-542-0101 thru 0102
- All of Lots 111 thru 114, Clearwater Cove - A PRUD, Phase 11 PUD, Layton City, Davis County, Utah
11-574-0111 thru 0114
- All of Lots 122 thru 123, Clearwater Cove - A PRUD, Phase 12 PUD, Layton City, Davis County, Utah
11-567-0122 thru 0123
- All of Lots 131 thru 132, Clearwater Cove - A PRUD, Phase 13 PUD, Layton City, Davis County, Utah
11-614-0131 thru 0132
- All of Lots 141 thru 142, Clearwater Cove - A PRUD, Phase 14 PUD, Layton City, Davis County, Utah
11-625-0141 thru 0142
- All of Lots 151 thru 153, Clearwater Cove - A PRUD, Phase 15 PUD, Layton City, Davis County, Utah
11-635-0151 thru 0152

All of Lots 161 thru 165, Clearwater Cove - A PRUD, Phase 16 PUD, Layton City, Davis County, Utah
11-572-0161 thru 0165

All of Lots 171 thru 174, Clearwater Cove - A PRUD, Phase 17 PUD, Layton City, Davis County, Utah
11-562-0171 thru 0174

All of Lots 181 thru 185, Clearwater Cove - A PRUD, Phase 18 PUD, Layton City, Davis County, Utah
11-563-0181 thru 0185

All of Lots 191 thru 193, Clearwater Cove - A PRUD, Phase 19 PUD, Layton City, Davis County, Utah
11-596-0191 thru 0192

All of Lots 201 thru 206, Clearwater Cove - A PRUD, Phase 20 PUD, Layton City, Davis County, Utah
11-601-0201 thru 0206

All of Lots 211 thru 215, Clearwater Cove - A PRUD, Phase 21 PUD, Layton City, Davis County, Utah
11-615-0211 thru 0215

All of Lots 221 thru 224, Clearwater Cove - A PRUD, Phase 22 PUD, Layton City, Davis County, Utah
11-607-0221 thru 0224

All of Lots 231 thru 234, Clearwater Cove - A PRUD, Phase 23 PUD, Layton City, Davis County, Utah
11-608-0231 thru 0234

All of Lots 241 thru 245, Clearwater Cove - A PRUD, Phase 24 PUD, Layton City, Davis County, Utah
11-616-0241 thru 0245

All of Lots 251 thru 254, Clearwater Cove - A PRUD, Phase 25 PUD, Layton City, Davis County, Utah
11-636-0251 thru 0254

All of Lots 261 thru 265, Clearwater Cove - A PRUD, Phase 26 PUD, Layton City, Davis County, Utah
11-637-0261 thru 0265

EXHIBIT "B"

BYLAWS

FOR

**CLEARWATER COVE
HOMEOWNERS ASSOCIATION**

The following are adopted as the administrative Bylaws of the Clearwater Cove Homeowners Association ("Clearwater Cove").

**ARTICLE I
PLAN OF UNIT OWNERSHIP AND INCORPORATION**

- 1.1 **Submission.** These Bylaws are adopted by the Owners of Units in Clearwater Cove . These Bylaws shall govern the administration of the Clearwater Cove Homeowners Association.
- 1.2 **Definitions.** The words defined in Article I of the Declaration of Covenants, Conditions and Restrictions of Clearwater Cove ("Declaration"), which was recorded in the office of the Davis County Recorder on May 21, 2002, as entry number 175534, shall have the same meaning when used herein unless the context clearly requires another meaning.
- 1.3 **Conflict.** In the event of any conflict, incongruity or inconsistency between the provisions of these Bylaws and the provisions of the Declaration or any amendments thereto, the latter shall in all instances govern and control, except as to those administrative matters described and referred to in Article II of the 2021 Amendment, and which have been repealed and replaced by these Bylaws..
- 1.4 **Bylaws Applicability.** All present and future Owners, residents, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted at Clearwater Cove shall be subject to and abide by these Bylaws.

**ARTICLE II
ASSOCIATION**

- 2.1 **Composition.** The Association of Owners is a mandatory association consisting of all Owners at Clearwater Cove.

- 2.2 **Voting.** Each Owner shall have an equal number of votes.
- 2.3 **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board from time to time and stated in the notice of meeting.
- 2.4 **Annual Meeting.** The annual meeting of the Unit Owners shall be held at a date as designated by the Board and at a location in Davis County, Utah, chosen by the Board and specified in the notice of the meeting. At least ten but not more than 30 days before the date of the annual meeting, notice of the meeting shall be given to each Owner. Such notice shall state the time, place, and general purpose of the meeting. The notice shall contain a proxy form whereby a Unit Owner may appoint a proxy to vote for them at the annual meeting.
- 2.5 **Special Meetings.** Special meetings of the Owners may be called by the President, by any two members of the Board, or by Unit Owners cumulatively holding at least one-fourth of the undivided ownership interest in the Project. At least two but not more than 30 days before the date set for a special meeting, written notice thereof shall be given in the manner described in the immediately preceding Paragraph.
- 2.6 **Notification by Mail, Website and Email.** Any notice permitted or required to be delivered by the Board or from the Association to the Owners may be delivered either personally, by U.S. mail, or by electronic means.
- (a) If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Owner at the address given by such person to the Board for the purpose of service of such notice or to the Unit of such person if no address has been given. Such addresses may be changed by Owner from time to time by notice in writing to the Board.
- (b) If notice is by electronic means, any notice delivered by the Association to Owners under the provisions of the Declaration or these Bylaws may be sent by electronic means, including text message, email, or the Association's website. The Association shall maintain records of all notices sent to Members by electronic means, including the electronic address to which notice was sent. When a notice is sent electronically, the Association shall first compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of well known electronic forms, such as Facebook) and the Association shall send notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner. A member may, by written demand, require the Association to provide notice to the Unit Owner by mail.

- (c) If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Dwelling, or by securely attaching a copy of the notice to the front entry door of the Owner's Dwelling.
- 2.7 **Waiver of Notice.** No notice of any Owners meeting shall be required if a waiver of such notice is signed by all of the Owners. Whenever all the Owners meet in person or by proxy such meeting may not be challenged on grounds of inadequate notice.
- 2.8 **Voting Requirements.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of this Declaration, any Association rules and the Bylaws., and shall have fully paid all Assessments due.
- 2.9 **Proxies.** The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Board before the meeting. Only individual Owners or the legal representative of an Organizational Owner may be proxies.
- 2.10 **Quorum.** The presence of Owners in person or by proxy entitled to cast a majority of all the undivided ownership interest in the Project shall constitute a quorum for the transaction of business at any Owners meeting. In the event a quorum is not present at any Owners meeting, whether regular or special, the Board shall chose a date for a rescheduled Owners meeting and the meeting may be adjourned. The rescheduled Owners meeting shall be set for a time no earlier than 48 hours and no later than 30 days after the time set for the original meeting. No other notice of such rescheduled meeting shall be required other than to announce the date, time and place of the rescheduled meeting before adjourning the original meeting. The presence of Owners entitled to cast 25% of all undivided ownership interest in the Project shall constitute a quorum at the rescheduled meeting. Notwithstanding the foregoing provisions of this Paragraph, however, in any case in which the Declaration required the affirmative vote of at least a specified percentage of the Project's undivided ownership interest for authorization or percentage of the Project's undivided ownership interest for authorization or approval of a matter, the presence in person or by proxy of Owners entitled to cast such percentage shall be necessary to constitute a quorum at any meeting (whether original or rescheduled) at which action on such matter is taken.
- 2.11 **Multiple Ownership.** The vote attributable to and exercisable in connection with a Unit shall be the percentage of undivided ownership interest, which is then appurtenant thereto. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit

shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

2.12 **Order of Business.** The order of business at all meetings of the Association shall be as follows:

- (a) roll call to determine quorum status;
- (b) proof of notice of meeting;
- (c) reading of minutes of preceding meeting;
- (d) reports of officers;
- (e) report of special Boards, if any;
- (f) appointment of inspectors of election, if applicable;
- (g) election of Board Members, if applicable;
- (h) unfinished business; and
- (i) new business.

2.13 **Conduct of Meeting.** The President shall, or in his absence the Vice-president, preside over all meetings of the Association; the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record of all transactions occurring thereat.

ARTICLE III BOARD OF TRUSTEES

3.1 **Status and General Authority of Board.** The Project shall be managed, operated, and maintained by the Board of Trustees ("Board") on behalf of the Association. The Board shall, in connection with its exercise of any of the powers delineated in the subparagraphs below, constitute a legal entity capable of dealing in its Board name. No two people from the same household can serve on the Board at the same time. The Board shall have and is hereby granted the following authority and powers:

- (a) A right of entry upon any Unit and any Limited Common Area to affect emergency repairs, and a reasonable replacement or maintenance of the Project or any portion thereof, as necessary.
- (b) The Authority, without vote or consent of the Unit Owners, Mortgages, Insurers, or guarantors of Mortgages, or any other person(s) to grant or create, on such terms as it deem advisable, reasonable permits, licenses and easements over, under, across, through the Common Area and Facilities for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project.
- (c) The Authority to execute and record, on behalf of all the Unit Owners, any

amendments to the Declaration or Record of Survey Map which has been approved by the vote and consent necessary to authorize such amendment.

- (d) The power to sue and be sued.
- (e) The authority to enter into contracts, which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement, has been obtained.
- (f) The power and authority to convey and transfer any interest in real property, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
- (g) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action, has been authorized by any vote or consent which is necessary under the circumstances.
- (h) The power and authority to add any interest in real property obtained pursuant to subparagraph (g) above to the Project so long as such action has been authorized by the necessary vote or consent.
- (i) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Board in carrying out its functions or to insure that the project is maintained and used in a manner consistent with the interests of the Unit Owners.
- (j) The power and authority to levy and collect general and special assessments for the payment of Common expenses.
- (k) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions on behalf of the Unit Owners.
- (l) Any Instrument executed by the Board that recites facts which, if true would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

3.2 **Composition of Board.** The Board shall be composed of three (3) members of the Association.

3.3 **Qualification.** Only individual Owners or officers or agents of organizational Owners other than individuals shall be eligible for Board Membership. Only one Owner per Unit shall serve on the Board at any given same time.

- 3.4 **Election and Term of Office of the Board.** The term of office of membership on the Board shall be three (3) years, with one member of the Board being elected each year. Each member shall serve on the Board until such time as his successor is duly qualified and elected.
- 3.5 **Regular Meetings.** A regular meeting of the Board shall be held within 30 days of each annual Owners meeting. Regular meetings of the Board shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Board, but no less often than monthly. Either oral or written notice shall be given to each Board member of the time and place of each regular Board meeting at least three days prior to such meeting.
- 3.6 **Special Meetings** Special Board meetings shall be held whenever called by the President or by any two members of the Board. Reasonable effort should be made to give either oral or written notice of a special meeting to each Board member at least three days (but in the event of emergency, 24 hrs) before the time fixed for the meeting. Adequate notice of a special meeting shall be deemed to have been given to a member if such effort is made, even though the member concerned does not actually receive notice. The propriety of holding any meeting which is attended by all Board members may not be challenged on grounds of inadequate notice. A Quorum for the transaction of business at any Board meeting shall consist of a majority of all the members then in office.
- 3.7 **Waiver of Notice.** Before or at any meeting of the Board, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any such meeting of the Board shall constitute a waiver of notice. If all the members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
- 3.8 **Quorum.** At all meetings of the Board, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Board members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no shorter than two (2) days nor more than five (5) days and give notice of the rescheduled meeting to the members not in attendance. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.
- 3.9 **Vacancies.** Vacancies in the Board caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Board at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the members of the Association at a special meeting called for that purpose shall be filled by the election and vote of the members of the Association at said

meeting.

- 3.10 **Removal of Board Member.** A member may be removed, with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board Member who misses twenty-five percent (25%) or more of the Board Meetings in any twelve month period or who misses three (3) consecutive meetings in any calendar year, shall be automatically removed from the Board.
- 3.11 **Compensation.** Officers, agents and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board. Appointment of any officer, agent or employee shall not, of itself, create contractual rights of compensation for services performed by such officer, agent or employee.
- 3.12 **Conduct of Meetings.** The President shall preside over all meetings of the Board and the Secretary shall keep a Minute Book of the Board recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings, subject to the following:
- (a) **Open Meetings.** A portion of each meeting of the Board shall be open to all members of the Association, but members other than members of the Board may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board. The Board shall establish procedures, policies, and guidelines for conducting of its meetings, retiring to executive session, and prohibiting photographs and/or any electronic (video or audio) recordation of the meetings, or any part thereof.
 - (b) **Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in open session.
 - (c) **Action Without a Formal Meeting.** Any action to be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all members of the Board.
- 3.13 **Report of Board.** The Board shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.
- 3.14 **Books, Audit.** The Board shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association, in a manner consistent with

generally accepted accounting principles, and at no greater than annual intervals shall obtain an independent audit of such books and records. A copy of each such audit shall be delivered to a Member within thirty (30) days after the completion of such audit, upon written request from said Member.

ARTICLE IV NOMINATION AND ELECTION OF BOARD MEMBERS

- 4.1 **Nomination Process.** The process for the nomination and election of the Board shall proceed as set forth herein.
- 4.2 **Nominations.** Nominations for election to the Board shall be made by the Board. The Board will seek out and locate qualified individuals as candidates for election to the Association's Board. The Board shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of vacant Board seats to be filled. The Board may notify members that it is seeking qualified candidates and interview all candidates interested in serving on the Board to determine if, in the Board's sole discretion, the potential candidate has the proper demeanor, experience, ability and character to serve the interests of the Association if elected. The Board shall place on the Association's ballots those names which are approved by a majority of the Board. Those nominated as candidates shall have the opportunity to communicate their qualifications to the members and to solicit votes. Should the Board fail to follow the procedures outlined in this Article 4.2, then nominations shall be made from the floor at the annual meeting or any special meeting.
- 4.3 **Nomination Approval.** Anyone nominated as a candidate prior to or at the Association's election meeting should have first granted their approval and affirmatively stated that he or she is willing to serve for the term if elected.
- 4.4 **Nominations.** The names of the candidates recommended by the Board shall be included in the Notice of the annual meeting sent to members of the Association, and may be included on proxy and absentee ballots sent to members. Write-in candidates are permitted. Nominations may also be received from members of the Association from the floor at the annual meeting of the members.
- 4.5 **Election.** At the annual meeting for the election of new Board members, the Board shall prepare and distribute a ballot to each Owner. Owners who do not attend the meeting may vote by proxy ballot or by written ballot. Each Unit is entitled to vote as provided in the Declaration and Bylaws. Voting need not be conducted by secret ballot.

ARTICLE V OFFICERS

- 5.1 **Designation.** The principal officers of the Association shall be a President, a Vice-president, a Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board. Two or more offices may be held by the same

person, except that the President shall not hold any other office.

- 5.2 **Election of Officers.** The officers of the Association shall be elected by the members of the Board at their first meeting after the annual meeting of the Association. Any vacancy in an office shall be filled by the remaining members of the Board at a regular meeting or special meeting called for such purpose.
- 5.3 **Removal of Officers.** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purposes.
- 5.4 **President.** The president shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power to appoint committees from among the Members from time to time as he may, in his discretion decide is appropriate, to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board, have general supervision, direction and control of the business of the Association. The President shall be, ex officio, a member of all standing committees and he shall have such other powers and duties as may be prescribed by the Board or these Bylaws.
- 5.5 **Vice-president.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, disabled, refuses or is unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so in an interim basis. The Vice President shall also perform such other duties as shall, from time to time, be imposed upon him by the Board or these Bylaws or the Articles of Incorporation of the Association.
- 5.6 **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association at the principal office of the Association, or at such other place as the Board may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board may direct, and the Secretary shall, in general, perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notices of meetings of the Members of the Association and of the Board required by these Bylaws or by law to be given. The Secretary shall maintain a book of record Owners listing the names and addresses of the Owners as furnished the Association, and such books shall be changed only at such time as satisfactory evidence of a change of ownership of a Unit is presented to the Secretary. The books and records of the Association shall be made available for inspection by the Secretary to Unit Owners at reasonable times during normal business hours unless otherwise agreed to. The Secretary shall perform such other duties as may be prescribed by the Board.
- 5.7 **Treasurer.** The Treasurer shall have responsibility for Association funds and securities and

shall be responsible for keeping or causing to be kept full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board. The Treasurer shall co-sign all checks and promissory notes on behalf of the Association as may be ordered by the Board, in accordance with the Declaration; shall render to the President and Board, upon request, an account of all of his transactions as Treasurer and of the financial condition of the Association and shall have such other powers and perform such other duties as may be prescribed by the Board or by these Bylaws. Upon request of the Board, he/she shall furnish it with a bond, in the amount specified by the Board, conditioned upon the faithful performances of his duties. The offices of Secretary and Treasurer or of Vice-President and Treasurer may be held by the same Board member. The Treasurer shall see that the financial books of the Association are audited annually.

- 5.8 **Additional Board Members.** The Board may assign duties or assignments to any member of the Board, whether or not such member is an Officer.

ARTICLE VI FISCAL YEAR

- 6.1 The fiscal year of the Association shall be the calendar year consisting of the twelve month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

ARTICLE VII AMENDMENT TO BYLAWS

- 7.1 **Amendments.** These Bylaws may be modified or amended either (i) by the affirmative vote of a majority of the members of the Association or (ii) pursuant to a written instrument of consent duly executed by a majority of the members of the Association provided all of the written consents are obtained within a ninety day period.

ARTICLE VIII COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

- 8.1 **Compliance.** These Bylaws are set forth in compliance with the requirements of the Declaration.
- 8.2 **Conflict.** These Bylaws are subordinate to and are subject to all provisions of the Declaration, except in those cases where the provisions of the Bylaws are clearly intended to govern (administrative matters). All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration.

- 8.3 **Severability.** If any provisions of these Bylaws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.
- 8.4 **Waiver.** No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.
- 8.5 **Captions.** The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.
- 8.6 **Construction.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; the use of any gender shall be deemed to include both masculine and feminine, and the term “shall” is mandatory and “may” permissive.
- 8.7 **Effective.** These Bylaws shall be effective upon recording in the Office of the County Recorder of Davis County.