

**When Recorded, Return To:**

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR**

**TAVACI AT BIG COTTONWOOD CANYON**  
(A residential development located in Cottonwood Canyon Estates Subdivision,  
as shown on the official plat thereof recorded December 29, 2004 in Book 2004D  
at Page 388 of the official records of Salt Lake County, Utah)

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
is made as of September 14, 2007, by **COTTONWOOD ESTATES DEVELOPMENT,**  
LLC, a Utah limited liability company ("**Declarant**").

**Article I**

**Creation of the Community**

**1.1 Purpose and Intent.**

By Recording this Declaration, Declarant desires to establish certain covenants, restrictions, guidelines and procedures pursuant to which the Project will be developed, used and enjoyed on an ongoing basis in the future. This Declaration provides for the Project's overall development, administration, maintenance and preservation. An integral part of the development plan is the creation of the Association, which is comprised of all owners of real property in the Project, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

## **1.2 Binding Effect.**

All of the Property shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the land and title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Project, their heirs, successors, successors-in-title, and assigns. This Declaration, as it may be amended from time to time, shall remain in effect and shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 50 years from the date this Declaration is Recorded. After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by seventy-five percent (75%) of the then Owners has been Recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Notwithstanding the foregoing, if any provision of this Declaration would be unlawful, void, or voidable by reasons of applicable law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Jon Huntsman, Jr., current Governor of the State of Utah. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the grantee or other beneficiary of such easement.

## **1.3 Governing Documents.**

The Project's Governing Documents consist of:

- this Declaration;
- the Articles of Incorporation and By-Laws of the Association;
- Restrictions and Rules described in Article III;
- Design Guidelines described in Article IV; and
- the Board's resolutions;

all as the foregoing may be amended from time to time.

Nothing in this Section shall preclude any other Recorded covenants applicable to any portion of the Project from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control. The Association may, but shall not be required to, enforce any such covenants, restrictions, or other instruments. The Governing Documents apply to all Owners and occupants of property within the Project, as well as to their respective tenants, guests, and invitees. Any lease of a Lot or residence located thereon shall provide that the tenant and all occupants of the leased property are bound by and obligated to comply with the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

## **Article II**

### **Concepts and Definitions**

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

**"Area of Common Responsibility"**: The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration or other applicable covenants, contracts, or agreements.

**"Articles"**: The Association's Articles of Incorporation, as they may be amended.

**"Association"**: Tavaci at Big Cottonwood Canyon Owners Association, Inc., a Utah non-profit corporation, to be comprised of all owners of real property in the Project, the purpose of which shall be to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

**"Base Assessment"**: Assessments levied on all Lots subject to assessment under **Article VIII** to fund Common Expenses for the general benefit of all Lots, as determined in accordance with **Section 8.1**.

**"Board"**: The Association's board of directors.

**"Builder"**: Any Person who purchases one or more Lots for the purpose of constructing improvements for later sale to consumers.

**"By-Laws"**: The By-Laws of the Association, as they may be amended. A copy of the initial By-Laws is attached to this Declaration as **Exhibit C**.

**"Class "B" Control Period"**: The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board as provided in the By-Laws. The Class "B" Control Period shall terminate on the first to occur of the following:

(a) when 90% of the total number of Lots shown on the Plat (as it may be amended from time to time) for the Property have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders;

(b) December 31, 2037; or

(c) When, in its discretion, the Class "B" Member so determines.

**"Common Area"**: All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

**"Common Expenses"**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

**"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing at the Project, or the minimum standards established pursuant to the Design Guidelines, Restrictions and Rules, and Board resolutions, whichever is the highest standard. Declarant shall establish initially such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Project change.

**"Declarant"**: The Declarant named above, and any successor or assign who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument the immediately preceding Declarant executes.

**"Design Guidelines"**: The architectural, landscaping, design, and construction guidelines and review procedures adopted pursuant to **Article IV**, as they may be amended.

**"Governing Documents"**: Defined in Section 1.3.

**"Improvement"**: Any structure or thing that is constructed, placed, erected, or installed upon any Lot, and any staking, clearing, excavation, grading or other site work, exterior alterations of existing improvements, or planting or removal of landscaping.

**"Lot"**: Any separately numbered and individually described parcel of land shown as a Lot on the Plat and intended for private use and ownership.

**"Member"**: A member of the Association pursuant to **Article VI**.

**"Mortgage"**: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term **"Mortgagee"** shall refer to a beneficiary or holder of a Mortgage.

**"Owner"**: One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**"Person"**: A natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

**"Plat"**: That certain plat of subdivision entitled Cottonwood Canyon Estates Subdivision, and Recorded on December 29, 2004, as Entry No. 9262383 in Book 2004P at Page 388.

**"Property"**: The real property described in **Exhibit A**.

**"Project"**: The residential estate community known as Tavaci at Big Cottonwood Canyon, which shall consist of the Property and all improvements thereon.

**"Record," "Recording," or "Recorded"**: The filing of a legal instrument in the Salt Lake County, Utah Official Records.

**"Restriction and Rules"**: The initial restrictions and rules set forth in **Exhibit B**, as they may be supplemented, modified and repealed pursuant to **Article III** hereof.

**"Reviewer"**: The entity having jurisdiction over architectural matters in a particular case, whether it be Declarant, Declarant's designee, or the TAC.

**"Special Assessment"**: Assessments levied in accordance with **Section 8.4**.

**"Specific Assessment"**: Assessments levied in accordance with **Section 8.5**.

**"TAC"**: Tavaci at Big Cottonwood Canyon Architectural and Landscape Committee.

### **Article III**

#### **Use and Conduct**

##### **3.1 Framework for Regulation.**

The Governing Documents establish, as part of the general plan of development for the Project, a framework of affirmative and negative covenants, easements, and restrictions which govern the Project. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. Therefore, this Article establishes procedures for modifying and expanding the initial Restrictions and Rules set forth in **Exhibit B**. This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to **Section 7.1(c)**.

##### **3.2 Rule Making Authority.**

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board

shall send notice by mail to the Members concerning any proposed action at least fifteen (15) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective after compliance with subsection (c) below unless Members representing more than 50% of the total Class "A" votes in the Association, and the Class "B" Member, if any, disapprove. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. Upon such petition of the Members prior to the effective date of any Board action under this Section, the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(c) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Restrictions and Rules set forth in **Exhibit B**. In the event of a conflict between the Design Guidelines and the Restrictions and Rules, the Design Guidelines shall control.

(d) The procedures required under this Section shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility, speed limits on private roads, and the methods of allocating or reserving use of a facility (if permitted) by particular individuals at particular times.

### **3.3 Owner's Acknowledgment and Notice to Purchasers.**

ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR LOTS AND THE COMMON AREA IS LIMITED BY THE RESTRICTIONS AND RULES AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER LOT CAN BE AFFECTED BY THIS PROVISION AND THAT THE RESTRICTIONS AND RULES MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF LOTS ARE ON NOTICE THAT THE ASSOCIATION MAY HAVE ADOPTED CHANGES. COPIES OF THE CURRENT RESTRICTIONS AND RULES MAY BE OBTAINED FROM THE ASSOCIATION.

### 3.4 **Protection of Owners and Others.**

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth in **Exhibit B**, all Restrictions and Rules shall comply with the following provisions.

(a) **Similar Treatment.** Similarly situated Owners shall be treated similarly.

(b) **Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

(c) **Household Composition.** No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit (which may include extended family) and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair use of the Common Area.

(d) **Activities Within Dwellings.** No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(e) **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in **Article VIII**.

(f) **Abridging Existing Rights.** No rule shall require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot, and shall not apply to subsequent owners who take title to the Lot after adoption of the rule.

(g) **Reasonable Rights to Develop.** No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Project.

The limitations in subsections (a) through (g) of this Section shall only limit rulemaking authority exercised under **Section 3.2**; they shall not apply to amendments to this Declaration adopted in accordance with **Article XX. Article IV**

## **Architecture and Landscaping**

### **4.1 General.**

Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Project, acknowledges that, as the developer of the Project and as an owner of portions of the Project, Declarant has a substantial interest in ensuring that the Improvements within the Project enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, no Improvements shall take place within the Project except in compliance with this Article and the Design Guidelines. Notwithstanding anything to the contrary in this Article, Declarant's activities shall not be subject to the requirements of this Article so long as Declarant owns any property within the Project. Subject to the rights of Declarant hereunder, the requirements of this Article shall not apply to the Association. *The Governing Documents include rules, regulations, standards and specifications that are in addition to those standards, specifications and other rules and regulations imposed on the Project by the City of Cottonwood Heights, including, without limitation, Cottonwood Heights Code of Ordinances Section 19.72 (Sensitive Lands).*

### **4.2 Architectural Review.**

(a) **By Declarant.** No Improvements shall be carried out during the Class "B" Control Period without the prior written consent of Declarant, which consent may be granted or withheld in Declarant's sole discretion. In reviewing and acting upon requests for approval of proposed Improvements, Declarant shall be acting solely in its own interest and shall owe no duty to any other Person. During the Class "B" Control Period, Declarant may, in its sole discretion, delegate its approval authority hereunder to one or more Persons. Any such delegation shall be in writing and shall specify the scope of responsibilities delegated. Such delegation shall also be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. The authority of Declarant's designee hereunder shall be limited to the matters specifically delegated to it by Declarant.

(b) **By TAC.** At any time during the Class "B" Control Period, Declarant may appoint the TAC to exercise Declarant's authority under this Article. If Declarant appoints the TAC during the Class "B" Control Period, the TAC shall have the same rights and be subject to the same restrictions applicable to any other designee of Declarant pursuant to **Section 4.2(a)**. If Landlord does not appoint the TAC during the Class "B" Control Period, the Board shall appoint the TAC upon the expiration of the Class "B" Control Period, and the TAC shall assume jurisdiction over the architectural matters set forth herein. The TAC shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The TAC may consist of architects, engineers, or other persons who may or



may not be Members of the Association. Members of the TAC may be compensated in such manner and amount, if any, as the Board may establish.

(c) **Exceptions.** No approval shall be required under this Article to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her residence without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structure shall be subject to approval. All dwellings constructed on any portion of the Project shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion.

#### 4.3 **Guidelines and Procedures.**

(a) **Design Guidelines.** Declarant has prepared the initial Design Guidelines, which establish architectural and design standards governing Improvements and designate the materials an Owner must submit ("**Application**") and the procedure an Owner must follow to obtain approval for proposed Improvements. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering Applications, but the Design Guidelines are not the exclusive basis for decisions of the Reviewer, and compliance with the Design Guidelines does not guarantee approval of any Application. Declarant shall have sole and full authority to amend the Design Guidelines during the Class "B" Control Period. Thereafter, the TAC shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of Improvements previously approved once construction of the approved Improvements has begun. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive. The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Project. In Declarant's discretion, the Design Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) **Procedures.** Except as otherwise specifically provided in the Design Guidelines, Improvements may not be commenced on any portion of the Project until an Application for approval has been submitted to and approved by the Reviewer. The required contents of the Application, including plans and specifications for the proposed Improvements, shall be designated in the Design Guidelines. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider an Application. In reviewing an Application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular Improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic

judgment, and such determinations shall not be subject to review so long as made in good faith and in accordance with the provisions of this Article and the Design Guidelines. The Reviewer shall make a determination on an Application within the time frame set forth in the Design Guidelines. The Reviewer may: (i) approve the Application, with or without conditions; (ii) approve a portion of the Application and disapprove other portions; or (iii) disapprove the Application. During the Class "B" Control Period, the Reviewer, if other than Declarant, shall notify Declarant in writing within three (3) business days after the Reviewer has approved any Application. The notice shall be accompanied by a copy of the Application and any additional information which Declarant may require. Declarant shall have ten (10) business days after receipt of such notice to veto the Reviewer's action, in its sole discretion, by written notice to the Reviewer. The Reviewer shall notify the Applicant in writing of the final determination on any Application within five (5) business days thereafter or, with respect to any determination by the Reviewer subject to Declarant's veto right, within five (5) business days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the ten (10)-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer specify the reasons for any objections and/or offer suggestions for curing any objections.

If the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's right to veto pursuant to this Section. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with this Article or Design Guidelines unless a written variance has been granted pursuant to **Section 4.5**. If construction of approved Improvements does not commence (defined as footings and foundations poured or otherwise installed with respect to the construction of structures, and as otherwise reasonably determined by the Reviewer with respect to construction of Improvements of a more minor nature) within one year after the date of approval, such approval shall be deemed withdrawn, and the Owner shall be required to reapply for approval before beginning construction on any Improvements. Once construction is commenced, it shall be diligently pursued to completion. All Improvements shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its sole discretion, grants an extension in writing. If approved Improvements are not completed within the required time, they shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner. The Reviewer may, by resolution, exempt certain proposed Improvements from the Application and approval requirements of this Article, provided such Improvements are undertaken in strict compliance with the requirements of such resolution.

(c) **Fees; Assistance.** The Reviewer may establish and charge reasonable fees for review of Applications and may require such fees to be paid in full prior to review of any Application. Such fees may include the reasonable costs incurred in having any Application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

#### **4.4 No Waiver of Future Approvals.**

Each Owner acknowledges that the Reviewer will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until Improvements are completed, in which case it may be unreasonable to require changes to the Improvements involved. But the Reviewer may refuse to approve similar proposals in the future. Any approval granted pursuant to this Article shall not be deemed to constitute a waiver of the right to withhold approval as to any similar matter.

#### **4.5 Variances.**

The Reviewer may authorize variances from compliance with any of the Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

#### **4.6 Limitation of Liability.**

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Project; they do not create any duty to any Person. Review and approval of any Application pursuant to this Article is made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved Improvements, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Declarant, the Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a builder in the Project; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved Improvements. In all matters, the Board, the Reviewer, and the members of each shall be defended and indemnified by the Association as provided in **Section 7.6**.

#### **4.7 Certificate of Compliance.**

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within thirty (30) days after receipt of a

written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

## **Article V**

### **Maintenance and Repair**

#### **5.1 Maintenance of Lots.**

Each Owner shall maintain his or her Lot and all landscaping and improvements comprising a part thereof in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants. Each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or right-of-way lying between the Lot boundary and any wall, fence, or curb located on the Common area or right-of-way within 10 feet of the Lot boundary; provided, there shall be no right to remove trees, shrubs, or similar vegetation from such area without prior approval pursuant to **Article IV**.

#### **5.2 Responsibility for Repair and Replacement.**

Unless otherwise specifically provided in the Governing Documents, each Owner's responsibility for maintenance shall include responsibility for repair and replacement, as necessary, to maintain such Owner's Lot to a level consistent with the Community-Wide Standard. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on such Owner's Lot, less a reasonable deductible. If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Lots and the Owners. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on such Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with **Article IV**. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

## **Article VI**

### **The Association and its Members**

#### **6.1 Function of Association.**

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its

functions in accordance with the Governing Documents and Utah law.

**6.2 Membership.**

Each Owner of a Lot shall be a Member of the Association.

**6.3 Voting.**

The Association shall have two classes of membership, Class "A" and Class "B".

(a) **Class "A".** The Class "A" Members shall be the Owners. Each Owner, or group of Owners (where a Lot is owned by multiple Persons), other than Declarant, shall have one equal vote per Lot.

(b) **Class "B".** The sole Class "B" Member shall be the Declarant. The Class "B" Member may appoint a majority of the members of the Board during the Class "B" Control Period, as specified in the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

(i) two years after expiration of the Class "B" Control Period pursuant to **Article III** of the By-Laws; or

(ii) when, in its discretion, Declarant so determines and declares in a Recorded instrument.

## **Article VII**

### **Association Powers and Responsibilities**

#### **7.1 Acceptance and Control of Association Property; Agreements for Services and Use of Facilities.**

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether non-profit or for profit.

(b) Declarant and its designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved. Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

(d) The Association may also enter into leases, licenses, membership agreements, operating agreements, shared use arrangements and other similar forms of contracts or agreements for the provision of goods, services or use rights for the general benefit of or convenience of Owners occupants, and residents of the Project, including, without limitation, agreements to utilize recreational facilities, concierge services, private clubs or other similar amenities.

#### **7.2 Maintenance of Area of Common Responsibility.**

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(a) All portions of and structures situated on the Common Area;

(b) Landscaping within the public rights-of-way within or abutting the Project;

(c) Such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, a covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Association;

(d) All ponds, streams and/or wetlands located within the Property which serve as part of the storm water drainage system for the Project, including improvements and equipment installed therein or used in connection therewith; and

(e) Any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation. Except as provided above, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval as long as Declarant owns any property described in **Exhibit A** of this Declaration (as it may be amended from time to time). The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof.

### **7.3 Insurance.**

(a) **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Broad form property insurance for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary

and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses

(b) **Policy Requirements.** The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the location of the Project. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of **Section 7.3(a)**. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Specific Assessment. All insurance coverage obtained by the Board shall, to the extent available without unreasonable cost:

(i) be written with a company authorized to do business in the State of Utah;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;



(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

(vii) provide a waiver of subrogation under the policy against any Owner or household member of an Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) **Restoring Damaged Improvements.** In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of the Members and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under **Section 7.3(a)**.

#### **7.4 Compliance and Enforcement.**

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after such notice and a hearing in accordance with the procedures set forth in **Section 3.24** of the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(iii) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vi) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in the Project; and

(vii) levying Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in **Section 3.24** of the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule. The Association, by contract or other agreement, may enforce applicable governmental ordinances, if applicable, and permit governmental authorities to enforce ordinances within the Project for the benefit of the Association and its Members.

#### **7.5 Implied Rights; Board Authority.**

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Membership. The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association. In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in **Section 3.25** of the By-Laws.

#### **7.6 Indemnification of Officers, Directors and Others.**

Subject to Utah law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The

Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

#### **7.7 Access Control.**

Declarant, its successors or assigns shall have the exclusive right and authority, but not the obligation, to control access to the Property or any portion thereof by such means as the Board, in its sole discretion, deems reasonable and appropriate. Declarant may assign such right and authority to the Association. This authority shall include, but shall not be limited to, the right to construct, install, operate, and staff entrance gates, to require identification for admission to the Property, to videotape or otherwise record and document all Persons and vehicles entering the Property, to screen and/or require registration of vehicles, guests, and others entering the Property, and to deny entry to the Property to Persons other than Owners and residents.

#### **7.8 Safety and Security.**

EACH OWNER AND OCCUPANT OF A LOT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY IN THE PROJECT. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROJECT DESIGNED TO ENHANCE THE LEVEL OF SAFETY OR SECURITY WHICH EACH PERSON PROVIDES FOR HIMSELF AND HIS PROPERTY. NEITHER THE ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE PROJECT, NOR SHALL EITHER BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROJECT, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND SHALL BE RESPONSIBLE FOR INFORMING ITS TENANTS AND ALL OCCUPANTS OF ITS LOT THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE PROJECT ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING LOTS AND THE CONTENTS OF LOTS, RESULTING FROM ACTS OF THIRD PARTIES.

#### **7.9 Provision of Services.**

The Association may provide, or provide for, services and facilities for the Members and/or the Owners and/or their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Lots. By way of example, such

services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any owner from the obligation to pay assessments for such services.

#### **7.10 Relationships with Other Property.**

The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

### **Article VIII**

#### **Association Finances**

##### **8.1 Budgeting and Allocating Common Expenses.**

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to **Section 8.2**. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Lots, as authorized in **Section 8.5**. The Association is authorized to levy Base Assessments equally against all Lots subject to assessment under **Section 8.5** to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under **Section 8.6(b)** to fund the Common Expenses). In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year. Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under **Section 8.6(b)**), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in **Section 2.4** of the By-Laws any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined. The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

#### **8.2 Budgeting for Reserves.**

The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility. The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repairs or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to **Section 8.1** a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

#### **8.3 Special Assessments.**

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of the Members representing more than 50% of the total votes allocated to the Members which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

#### **8.4 Specific Assessments.**

The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

(a) To cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in **Section 7.10**). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) To cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection.

#### **8.5 Authority to Assess Owners; Time of Payment.**

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which Declarant conveys the Lot to an Owner, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

#### **8.6 Obligation for Assessments.**

(a) **Personal Obligation.** Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Project, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 12% per annum or such higher rate as the Board may establish, subject to the limitations of Utah law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for



inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes. Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) **Declarant's Option to Fund Budget Deficits.** During the Class "B" Control Period, Declarant may satisfy its obligation, if any, for assessments on Lots which it owns either by paying such assessments in the same manner as any other Owner, notwithstanding the commencement date of assessments set forth in **Section 8.5**, or by paying the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

#### **8.7 Lien for Assessments.**

The Association shall have a lien against each Lot including Declarant's to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Utah law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure. The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no assessment shall be levied on it; and (b) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Lot shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under **Section 8.5**, including such acquirer, its successors and assigns.

**8.8 Exempt Property.**

The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) All undeveloped or unimproved land owned by Declarant.

**Article IX**

**[This Article Intentionally Left Blank]**

**Article X**

**Additional Rights Reserved to Declarant**

**10.1 Marketing and Sales Activities.**

Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including but not limited to, business offices, signs, model Lots, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

**10.2 Right to Develop.**

Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion. Every Person that acquires any interest in the Project acknowledges that the Project is a planned residential community, the development of which is likely to extend over many years.

**10.3 Right to Approve Changes in Community Standards.**

No amendment to or modification of any Restrictions and Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration.

#### **10.4 Right to Transfer or Assign Declarant Rights.**

Any or all of Declarant's rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time, occasional or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise. Upon such transfer, Declarant shall be relieved of all obligations related thereto.

#### **10.5 Easement to Inspect and right to Correct.**

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Project, including Lots, and a perpetual nonexclusive easement of access throughout the Project to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

#### **10.6 Termination of Rights.**

The rights contained in this Article shall not terminate until the earlier of (a) 40 years from the date this Declaration is Recorded, or (b) Recording by Declarant of a written statement that all sales activity has ceased.

### **Article XI**

#### **Easements**

##### **11.1 Easements in Common Area.**

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:

(i) adopt rules regulating use and enjoyment of the Common area, including rules limiting the number of guests who may use the Common Area;

(ii) suspend the right of an Owner to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Lot remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public; and

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of the lease.

#### **11.2 Easements of Encroachment.**

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots or due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### 11.3 Easements for Utilities, Etc.

(a) **Installation and Maintenance.** Declarant reserves for itself, so long as Declarant owns any property subject to this Declaration, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Project (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Project, cable, wireless and other systems for sending and receiving data and/or other electronic signals (including all technological evolutions thereof and replacements therefor), security and similar systems, walkways, cart paths, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described above; and

(iii) access to read utility meters.

(b) **Specific Easements.** Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any portion of the Property. The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned. Declarant specifically informs the Owners of the existence of certain utility easements affecting certain Lots, as shown on the Plat, including the utility easement affecting the rear yard of those Lots shown on **Exhibit D**.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

### 11.4 Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Project as necessary to enable the Association to fulfill its maintenance responsibilities under **Section 7.2**. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the

Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

#### **11.5 Easements for Access.**

Declarant reserves for itself and its successors, assigns, and designees, a perpetual easement over the roads, trails, and walkways within the Property for access by employees, independent contractors, and accompanied guests of Developer in connection with real estate sales activities within the Property. An easement is also reserved over such trails within the Project as are hereafter integrated into and become a part of the Salt Lake County regional trails network (as so designated by Declarant or, after Declarant no longer owns any portion of the Property, the Association), and for reasonable public use of such trails for pedestrian, bicycle and similar passage in a manner consistent with the nature of the Project.

### **Article XII**

#### **Environmental Areas and Issues**

##### **12.1 Assignment of Responsibilities.**

Within and adjacent to the Project there may be various types of property such as wetlands, drainage areas, conservation areas, open spaces, and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by governmental agencies. Declarant may from time to time and at any time deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to the Association, which shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such agencies. All such areas that are conveyed to the Association shall become a portion of the Common Area, and the ownership, operation, and maintenance thereof shall be a Common Expense. Alternatively, Declarant may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, a foundation, or similar type entity with which the Association shall cooperate.

##### **12.2 Surface Water Management System.**

(a) No Owner, by erection of any structure or otherwise, shall in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the ditches, canals, channels, ponds, lakes, retention areas, or other bodies of water or waterways reserved for, or intended by Declarant to be reserved for, drainage ways or for the accumulation of runoff waters, as reflected in any permits therefore, or plat or instrument of records, without the specific written permission of the Association and Declarant.

(b) An Owner shall in no way deny or prevent ingress and egress by Declarant or the Association to, from, and across such drainage areas for maintenance or landscape purposes. The right of ingress and egress and easements therefor are hereby specifically reserved and created in favor of Declarant, the Association, or any appropriate governmental or quasi-governmental

agency that may reasonably require such ingress and egress.

(c) No Lot shall be increased in size by filling in any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established drainage ways without the prior written consent of the Association and Declarant.

(d) Water management for any Lot shall be provided in accordance with the overall drainage system for the Property. Surface water drainage and management including but not limited to, storm water treatment and storage capacity, shall conform to the overall drainage system requirements and permits, if any, for the Property and meet with the approval of Declarant and applicable governmental agencies.

(e) No wells may be drilled, dug, or installed within any Lot except by the Declarant or with the Declarant's written consent.

### **12.3 Conservation Areas.**

Any portions of the Common Area designated as a conservation area shall be maintained and preserved by the Association in accordance with the rules and regulations of all applicable governmental agencies. The Association shall not, and it shall not allow any Person to, undertake or perform any activity of improvements to a conservation area, or remove any native vegetation, without the prior approval of such agencies. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a conservation area.

### **12.4 Open Space and Buffers.**

Any property conveyed or dedicated to the Association, which is designated as open space, landscape buffer, preserve area, or conservation area on any plat, permit, or other Recorded document, shall be owned and maintained by the Association in a natural open condition. The Association or any subsequent owner shall not do anything that diminishes or destroys the open space, buffers, preserve area, or conservation areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

### **12.5 Recycling Program.**

The Board may, but shall not be obligated to, establish a recycling program for the Project. In such event, all occupants of Lots shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation. Any costs associated with the implementation or operation of a recycling program shall be Common Expenses and any income the Association receives as a result of such recycling efforts shall be applied to Common Expenses.

### **Article XIII**

**[This Article Intentionally Left Blank]**

### **Article XIV**

#### **Party Walls and Other Shared Structures**

##### **14.1 General.**

Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and /or separates any two adjoining Lots shall constitute a party structure. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of **Article XV**.

##### **14.2 Maintenance; Damage and Destruction.**

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal portions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

### **Article XV**

#### **Dispute Resolution and Limitation on Litigation**

##### **15.1 Agreement to Encourage Resolution of Disputes Without Litigation.**

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in **Section 15.2** in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to



(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under **Article IV**, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 15.2**:

(i) any suit by the Association to collect Assessments or other amounts due from any Owner;

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

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would require within 180 days of giving the Notice required by **Section 15.2(a)**, unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

## **15.2 Dispute Resolution Procedures.**

(a) **Notice.** The bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice to each Respondent and to the Board stating plainly and concisely;

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

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

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

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

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in **Section 15.2(a)** (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Utah. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all fees charged by the mediator.

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

### **15.3 Initiation of Litigation by Association.**

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge property taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising

out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

## **Article XVI**

**[This Article Intentionally Left Blank]**

## **Article XVII**

### **Mortgagee Provisions**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Project.

#### **17.1 Notices of Action.**

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an “**Eligible Holder**”), will be entitled to timely written notice sent to such address of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or its tenants which is not cured within 60 days; and

(c) Any lapse, cancellation or materially modification of any insurance policy maintained by the Association.

#### **17.2 No Priority.**

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

### **17.3 Notice to Association.**

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

## **Article XVIII**

### **Changes in Ownership of Lots**

Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. Notwithstanding any other provision hereof, all transferors shall see that Transfer Assessments are paid when required under this Declaration and shall remain jointly and severally responsible for the same until paid.

## **Article XIX**

### **Changes in Common Area**

#### **19.1 Condemnation.**

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, so long as Declarant owns any property subject to the Declaration, and Owners representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of **Section 7.3(c)** regarding funds for restoring improvements shall apply.

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

#### **19.2 Partition.**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action partition of any portion of the Common Area without the written consent of all Owners and Mortgagees, and Declarant as long as Declarant owns any property subject to this Declaration. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

#### **19.3 Transfer or Dedication of Common Area.**

The Association may dedicate portions of the Common Area to any governmental or quasi-governmental entity.

### **Article XX**

#### **Amendment of Declaration**

##### **20.1 By Declarant.**

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor or mortgage loans, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (iv) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

##### **20.2 By Members.**

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than Declarant, and Declarant's consent, so long Declarant owns any property subject to this Declaration. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

### **20.3 Validity and Effective Date.**

No amendment may remove, revoke or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). If any Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

## **Article XXI**

### **Transfer Assessments**

Upon any transfer of any Lot after the original sale thereof ("original sale" being defined for purposes of this sentence as (a) the original sale of a Lot built by a Builder if the Lot was constructed by such Builder with the intent of selling the same to consumers without any personal use thereof by such Builder, and (b) in any other case, the first sale of the Lot after the original sale by Declarant), there shall be automatically levied and due at the closing of the subject transfer an assessment against such Lot equal to 0.75% of the gross sales price thereof, less actual customary expenses of sale (or the equivalent thereof which would have been received by the transferor had the transaction been an arms-length, third-party cash transaction, in the event the transfer is not the same) ("**Transfer Assessment**"). Each Transfer Assessment shall be the joint and several obligation of both the subject transferor and transferee, and shall be subject to all other provisions hereof regarding transfers, including, without limitation, the lien provisions hereof. Transfer Assessments shall be used exclusively by the Association for purposes related to Project amenities and Resort Activities.

## **Article XXII**

### **Notices**

Any approval, notice or other writing permitted or required by this Declaration may be delivered in person, by certified or registered, postage pre-paid United States mail, or by nationally recognized commercial carrier. Delivery shall be deemed made twenty-four (24) hours after having been deposited with the United States Postal Service or nationally recognized commercial carrier, addressed as follows: if to Declarant or the Association, 4198 East Prospector Drive, Salt Lake City, Utah 84121; if to an Owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notification as provided herein.



## EXHIBIT A

### DESCRIPTION OF LAND

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 25, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S89°59'27"E ALONG THE SECTION LINE 500.00 FEET TO AN ALUMINUM CAP MONUMENT; THENCE CONTINUING ALONG SAID SECTION LINE S89°59'56"E 2121.24 FEET TO THE NORTHEAST CORNER OF SAID SECTION 25; THENCE S00°31'13"W ALONG THE SECTION LINE 1819.36 FEET TO THE NORTHEAST CORNER OF UTAH POWER & LIGHT CO.; THENCE N64°15'58"W 271.15 FEET; THENCE S89°32'41"W 530.49 FEET TO A POINT OF TANGENCY ON A 155.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 50.92 FEET THROUGH A CENTRAL ANGLE OF 18°49'22" (CHORD BEARS N81°02'38"W 50.69 FEET); THENCE N71°37'57"W 172.84 FEET TO A POINT OF TANGENCY ON A 55.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE 185.33 FEET THROUGH A CENTRAL ANGLE OF 193°03'54" (CHORD BEARS S11°50'06"W 109.29 FEET) TO A POINT OF TANGENCY; THENCE S84°41'50"E 59.88 FEET TO A POINT OF TANGENCY ON A 125.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 147.01 FEET THROUGH A CENTRAL ANGLE OF 67°23'07" (CHORD BEARS S51°00'17"E 138.68 FEET) TO A POINT OF REVERSE CURVATURE ON A 15.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 9.05 FEET THROUGH A CENTRAL ANGLE OF 34°34'07" (CHORD BEARS S34°35'45"E 8.91 FEET) TO A POINT OF REVERSE CURVATURE ON A 39.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 66.93 FEET THROUGH A CENTRAL ANGLE OF 97°04'46" (CHORD BEARS S03°20'27"E 59.20 FEET) TO A POINT OF REVERSE CURVATURE ON A 22.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 41.50 FEET THROUGH A CENTRAL ANGLE OF 108°04'54" (CHORD BEARS S08°50'31"E 35.62 FEET) TO A POINT OF NON-TANGENCY ON THE NORTH RIGHT- OF-WAY LINE OF SR-190 (ALSO KNOWN AS BIG COTTONWOOD CANYON ROAD); THENCE ALONG SAID RIGHT-OF-WAY LINE N89°48'30"W 64.39 FEET TO A POINT OF NON-TANGENCY ON A 22.00 FOOT RADIUS CURVE TO THE LEFT (BEARING N31°45'41"W TO CENTER OF SAID CURVE); THENCE NORTHERLY ALONG THE ARC OF SAID CURVE 40.06 FEET THROUGH A CENTRAL ANGLE OF 104°19'05" (CHORD BEARS N06°04'46"E 34.75 FEET) TO A POINT OF REVERSE CURVATURE ON A 39.50 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 32.24 FEET THROUGH A CENTRAL ANGLE OF 46°46'12" (CHORD BEARS N22°41'40"W 31.36 FEET); THENCE N00°41'25"E 15.70 FEET TO A POINT OF TANGENCY ON A 59.26 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 88.31 FEET THROUGH A CENTRAL ANGLE OF 85°23'16" (CHORD BEARS N42°00'12"W 80.36 FEET) TO A POINT OF TANGENCY; THENCE N84°41'50"W 59.88 FEET TO A POINT OF TANGENCY ON A 105.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 353.81 FEET THROUGH A CENTRAL ANGLE OF 193°03'54" (CHORD BEARS N11°50'07"E 208.64 FEET) TO A POINT OF TANGENCY; THENCE S71°37'57"E 172.84 FEET TO A POINT OF TANGENCY ON A 105.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE 34.49 FEET THROUGH A CENTRAL ANGLE OF 18°49'22" (CHORD BEARS S81°02'37"E 34.34 FEET) TO A POINT OF TANGENCY; THENCE N89°32'41"E 428.83 FEET TO A POINT ON THE BOUNDARY OF COTTONWOOD ESTATES INVESTMENT L.L.C. AS FOUND IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER, ENTRY NO. 8544867, BOOK 8745, PAGE 0747; THENCE N64°15'58"W 745.48 FEET; THENCE N89°48'18"W 1597.89 FEET TO THE SECTION LINE; THENCE N00°28'43"E ALONG SAID SECTION LINE 608.42 FEET TO AN ALUMINUM CAP MONUMENT; THENCE CONTINUING ALONG SAID SECTION LINE N00°28'31"E 715.00 FEET TO THE POINT OF BEGINNING.

**ALSO KNOWN AS:** LOTS A THROUGH D, 1 THROUGH 43, AND LOT ST, COTTONWOOD CANYON ESTATES SUBDIVISION, AS SHOWN ON THE RECORDED PLAT RECORDED DECEMBER 29, 2004 IN BOOK 2004D AT PAGE 388 OF THE OFFICIAL RECORDS.

(Legal Description Continued on Next Page)



Lot A : 22-25-202-006-0000  
Lot A : 22-25-227-004-0000  
Lot B : 22-25-226-004-0000  
Lot B : 22-25-226-010-0000  
Lot C : 22-25-203-011-0000  
Lot C : 22-25-227-005-0000  
Lot D : 22-25-227-003-0000  
Lot 1 : 22-25-226-009-0000  
Lot 2 : 22-25-226-008-0000  
Lot 3 : 22-25-226-007-0000  
Lot 4 : 22-25-226-006-0000  
Lot 5 : 22-25-226-005-0000  
Lot 6 : 22-25-202-011-0000  
Lot 7 : 22-25-202-010-0000  
Lot 8 : 22-25-202-009-0000  
Lot 9 : 22-25-202-008-0000  
Lot 10 : 22-25-202-007-0000  
Lot 11 : 22-25-202-005-0000  
Lot 12 : 22-25-202-004-0000  
Lot 13 : 22-25-202-003-0000  
Lot 14 : 22-25-202-002-0000  
Lot 15 : 22-25-202-001-0000  
Lot 16 : 22-25-203-001-0000  
Lot 17 : 22-25-203-002-0000  
Lot 18 : 22-25-203-003-0000  
Lot 19 : 22-25-203-004-0000  
Lot 20 : 22-25-203-005-0000  
Lot 21 : 22-25-203-006-0000  
Lot 22 : 22-25-203-007-0000  
Lot 23 : 22-25-203-008-0000  
Lot 24 : 22-25-203-009-0000  
Lot 25 : 22-25-203-010-0000  
Lot 26 : 22-25-227-001-0000  
Lot 27 : 22-25-227-002-0000  
Lot 28 : 22-25-201-018-0000  
Lot 29 : 22-25-201-017-0000  
Lot 30 : 22-25-201-016-0000  
Lot 31 : 22-25-201-015-0000  
Lot 32 : 22-25-201-014-0000  
Lot 33 : 22-25-201-013-0000  
Lot 34 : 22-25-201-012-0000  
Lot 35 : 22-25-201-003-0000  
Lot 36 : 22-25-201-004-0000  
Lot 37 : 22-25-201-005-0000  
Lot 38 : 22-25-201-006-0000

Lot 39 : 22-25-201-007-0000  
Lot 40 : 22-25-201-008-0000  
Lot 41 : 22-25-201-009-0000  
Lot 42 : 22-25-201-010-0000  
Lot 43 : 22-25-201-011-0000  
Lot ST : 22-25-202-012-0000

## EXHIBIT B

### INITIAL RESTRICTIONS AND RULES

The following restrictions shall apply to all of the Property until such time as they are amended, modified, repealed or limited pursuant to the Declaration. The words used in these Rules and Regulations shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Declaration to which these Rules and Regulations are attached unless the context indicates otherwise.

1. **General.** The Property shall be used only for residential and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of portions of the Property, offices for any property manager retained by the Association, or business offices for Declarant or the Association, and commercial purposes as shown on the Land Use Plan) consistent with this Declaration.

2. **Restricted Activities.** The following activities are prohibited within the Project unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

(a) Parking any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages; provided, construction, services and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area;

(b) Raising, breeding or keeping animals, livestock or poultry of any kind, except that a reasonable number of dogs, cats or other usual and common household pets (as determined by the Board in its absolute and sole discretion) may be permitted on a Lot; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law.

(c) Any activity which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Lots;

(d) Any activity which violates governmental laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Lot;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance or nuisance to persons using the Common Area or to the occupants of other Lots;

(g) Outside burning of trash, leaves, debris or other materials;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell or other audio equipment or sound device so as to be audible to occupants or other Lots, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other illegal fireworks;

(j) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any drainage ditch, stream, pond or lake or elsewhere within the Project, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Obstruction or re-channeling drainage flows after location and installation of drainage swales, storm sewers or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of a unreasonably interfere with the use of any Lot without the Owner's consent;

(m) Subdivision of a Lot into two or more Lots, or modification of the boundary lines of any Lot after a subdivision plat including such Lot has been approved and Recorded, except that Declarant shall be permitted to subdivide or replat Lots which it owns;

(n) Use of any Lot for operation of a timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years;

(o) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(p) On-site storage of gasoline, heating or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to the Declaration;

(q) Any business, trade, garage sale, moving sale, rummage sale or similar activity, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (ii) the business activity conforms to all zoning requirements for the Project; (iii) the business activity does not involve door-to-door solicitation of residents of the Project; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Project which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation; work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit, or (iii) a license is required. Leasing of a Lot shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of the Project or its use of any Lots which it owns within the Project;

(r) Capturing, trapping or killing of wildlife within the Project, except in circumstances posing an imminent threat to the safety of persons using the Project, or as determined by the Association to constitute an nuisance;

(s) Any activities which materially disturb or destroy the vegetation, wildlife or air quality within the Project or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(t) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Lot without prior approval pursuant to the provisions of the Declaration;

(u) Operation of motorized vehicles on pathways or trails maintained by the Association;

(v) Disposal or drainage of sewage, wastewater, storm water or other water matter from the Property into canals or other bodies of water within or adjacent to the Property; and

(w) Any construction, erection, placement or modification of any thing, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines or other clothes drying facilities; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind. Standard TV antennas, satellite dishes and other similar hardware (collectively, "**Reception Devices**") which are one meter in diameter or less shall be permitted at the Project, and no other Reception Devices shall be permitted, provided that the erection of all otherwise permitted Reception Devices shall be subject to the prior written approval of the TAC, which shall have the maximum authority permitted by applicable law to impose conditions thereon, such as prior written approval of location, appearance (including color) and screening. In the event any screening or other condition required by the TAC is determined by the Board (in its sole and absolute discretion) to be likely to result in a cost in excess of the amount the Owner in question can be legally required to incur, the Board shall have the authority to expend common funds to pay or reimburse such excess cost. "For sale" and "for lease" signs shall be permitted provided: (i) the sign is limited in size to 18" by 24"; (ii) no more than one sign shall be permitted per Lot at any time; (iii) the sign shall be restricted to the Lot; (iv) the sign shall be permitted only while the Lot is being actively and seriously marketed; (v) the sign must be professional in appearance and kept in good repair at all times; and (vi) no balloons, banners, streamers or attachments to the sign will be permitted.

3. **Prohibited Conditions.** The following shall be prohibited within the Property:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Project;

(b) Structures, equipment or other items on the exterior portions of a Lot which have become rusty, dilapidated or otherwise fallen into disrepair;

(c) Mobile homes or temporarily buildings or structures of any kind other than sheds or workshops to be used only for the works incidental to the erection of any permanent buildings on a Lot; or

(d) Septic tanks;

4. **Leasing of Lots.** "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Lot by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. All leases shall be in writing and shall be with respect to the entire Lot and such lease shall permit single family residential use only. The minimum lease term shall be six (6) months, or such longer lease term as the Board may require. The Board may further limit the number of times a Lot may be leased per year. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws and the Restrictions and Rules.

5. **Window Treatments and Visibility.** Only such draperies, shades and other interior window coverings, as are permitted by the Design Guidelines shall be permitted. In no event will materials such as towels, sheets, aluminum foil, etc. be used to cover windows, even on a temporary basis. Owners shall at all times utilize appropriate window treatments. Owners shall not erect or display any signs, banners or similar items visible from outside their Lots without the prior written consent of the TAC.

**EXHIBIT C**  
**BY-LAWS**  
**OF**  
**TAVACI AT BIG COTTWONWOOD CANYON**  
**OWNERS ASSOCIATION, INC.**

**ARTICLE I**  
**NAME, PRINCIPAL OFFICE AND DEFINITIONS**

**1.1 Name.** The name of the corporation is Tavaci at Big Cottonwood Canyon Owners Association, Inc. (the “Association”).

**1.2 Principal Office.**

The principal office of the Association shall be located at 4198 E. Prospector Drive, Salt Lake City, Utah 84121. The Association may have such other offices, either within or outside Utah, as the Board may determine or as the affairs of the Association may require.

**1.3 Definitions.**

The words used in these By-Laws shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Declaration to which these By-Laws are attached unless the context indicates otherwise.

**ARTICLE II**  
**MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES**

**2.1 Membership.**

The Association shall have two classes of membership, Class “A” and Class “B,” as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated by this reference.

**2.2 Place of Meetings.**

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

### **2.3 Annual Meetings.**

The Association's first meeting, whether a regular or special meeting, shall be held within one year after the date of the Association's incorporation. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

### **2.4 Special Meetings.**

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 10% of the total Class "A" votes of the Association.

### **2.5 Notice of Meetings.**

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 30 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice shall be deemed to be delivered when deposited with a mail carrier in accordance with **Section 6.5** hereof and addressed to the Member at his address as it appears on the Association's records, with postage prepaid.

### **2.6 Waiver of Notice.**

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Any Member who attends a meeting waives notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

### **2.7 Voting.**

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

### **2.8 Proxies.**

Members may not vote by proxy, but only in person through their Members.



## **2.9 Quorum.**

For purposes of any Association meeting, a quorum shall consist of the Members actually in attendance at such Association meeting who collectively represent not less than forty percent (40%) of the Association's Members.

## **2.10 Conduct of Meetings.**

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

## **2.11 Action Without a Meeting.**

Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, prior notice, or a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest date consent, dated, and delivered to the Association. Such consents, as filed with the minutes of the Association, shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving written consent authorization for any action, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

# **ARTICLE III BOARD OF DIRECTORS: SELECTION, MEETINGS, POWERS**

## **A. Composition and Selection.**

### **3.1 Governing Body: Composition**

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to the Class "B" Member's appointees, directors shall be Owners.

### **3.2 Number of Directors.**

The Board shall consist of three to seven directors, as provided herein. The initial Board shall consist of three directors as identified in the Articles.

### **3.3 Directors During Class "B" Control Period.**

Directors appointed by the Class "B" Member pursuant to **Section 3.5** hereof shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

### **3.4 Nomination and Election Procedures.**

(a) **Nominations and Declarations of Candidacy.** Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position Class "A" votes shall fill. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Nominations also shall be permitted from the floor. Except with respect to Class "B" Member selected directors, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chair person, who shall be a member of the Board, and three or more Members. The Board shall appoint members of the Nominating Committee not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election. The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) **Election Procedures.** Each Member may cast all of its votes for each position to be filled from the slate of candidates on which such Member is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

### **3.5 Election and Term of Office.**

Except as these By-Laws may otherwise specifically provide, election of directors shall take place at the Association's annual meeting. Notwithstanding any other provision of these By-Laws:

(a) Within 30 days after the time that Class "A" Members other than Builders first own 25% of the Lots, or whenever the Class "B" Member earlier determines, the President shall call for an election at which the Members may elect one of the three directors. The remaining two directors shall be appointees of the Class "B" Member. The Members' director shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within 30 days after the time that Class "A" Members other than Builders own 50% of the Lots permitted by the Land Use Plan for the Property (as Exhibit A to the Declaration may be amended from time to time), or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call for an election at which the Members may elect two of the five directors. The remaining three directors shall be appointees of the Class "B" Member. The Members' directors shall not be subject to removal by the Class

"B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within 90 days after termination of the Class "B" Control Period, the President shall call for an election by which the Members shall be entitled to elect three of the five directors. The remaining two directors shall be appointees of the Class "B" Member. Directors elected by the Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting is scheduled to occur within 90 days after termination of the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) Not later than the first annual meeting after the termination of the Class "B" Control Period, the Board shall be increased to seven directors and an election shall be held pursuant to which the Class "A" Members shall elect six directors. Three of such directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves. Until termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint one director. Upon termination of the Class "B" membership, the director elected by the Class "B" Member shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years. Upon expiration of the term of office of each director elected by the Members, Members entitled to elect such director shall be entitled to elect a successor to serve a term of two years. Directors elected by the Members shall hold office until their respective successors have been elected.

### **3.6 Removal of Directors and Vacancies.**

By the vote of Members holding a majority of the votes entitled to be cast for the election of such director, the Members may remove, with or without cause, any director they elected. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director. Any Member-elected director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term. This Section shall not apply to directors the Class "B" Members appoints nor to any director serving as Declarant's representative. The Class "B" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death,

disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

## **B. Meetings.**

### **3.7 Organizational Meetings.**

The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

### **3.8 Regular Meetings.**

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

### **3.9 Special Meetings.**

The Board shall hold special meetings when the President or Vice President or any two directors signs and communicates written notice of such.

### **3.10 Notice; Waiver of Notice.**

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail or air mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, fiber optics, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association. Notices sent by first class mail or air mail shall be deposited with the mail carrier at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

### **3.11 Telephonic Participation in Meetings.**

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

### **3.12 Quorum of Board.**

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

### **3.13 Conduct of Meetings.**

The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

### **3.14 Open Meetings; Executive Session.**

(a) Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Project which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of **Section 3.15** hereof, all Board meetings shall be open to all Members and, if required by law, all Owners; but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

### **3.15 Action Without a Formal Meeting.**

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the

action so taken, is signed by all of the directors. Such consent shall have the same force and effect as a unanimous vote.

### **C. Powers and Duties.**

#### **3.16 Powers.**

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or Utah law require to be done and exercised exclusively by the Members or the membership generally.

#### **3.17 Duties.**

Duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget and establishing each Owner's share of the Common Expenses and any Member Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the

manner provided in the Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the Association's receipts and expenditures;

(m) making available to any prospective purchase of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in **Section 6.4** hereof;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Project;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Utah law, the Articles, or the Declaration; and

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

### **3.18 Compensation.**

Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

### **3.19 Right of Class "B" Members to Disapprove Actions.**

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Declarant or Builders under the Declarant or these By-Laws, or interfere with development or construction of any portion of the Project, or diminish the level of services the Association provides.

(a) **Notice.** The Class "B" Member shall be given written notice of all meetings and

proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with **Sections 3.9 and 3.10** hereof and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) **Opportunity to be Heard.** The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met. The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### **3.20 Management.**

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in **Sections 3.17(a)** (with respect to adoption of the budget), **3.17(b)**, **3.17(f)**, **3.17(g)** and **3.17(i)**. Declarant or its affiliate may be employed as managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

### **3.21 Accounts and Reports.**

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) no remuneration shall be accepted by the managing agent from vendors, independent



contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(c) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(d) commencing at the end of the quarter in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least annually containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution);

(e) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year:

(i) a balance sheet;

(ii) an operating (income) statement; and

(iii) a statement of changes in financial position for the fiscal year;

Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant.

(f) accounting and controls should conform to generally accepted accounting principles; and

(g) cash accounts of the Association shall not be commingled with any other accounts.

### **3.22 Borrowing.**

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 50% of the Association's budgeted gross expenses for that fiscal year.

### **3.23 Rights to Contract.**

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Member and other owners or residents associations, within and outside the Project. Any common management agreement shall require the consent of a majority of the Board.

### **3.24 Enforcement.**

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration the Board shall comply with the following procedures prior to imposition of sanctions:

(a) **Notice.** The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to **Article V** hereof; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing.** If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) **Appeal.** Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the hearing date.

(d) **Additional Enforcement Rights.** Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution procedures set forth in the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of such abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed as trespass.

### **3.25 Board Standards.**

In the performance of their duties, Association directors and officers shall be insulated from personal liability as provided by Utah law for directors and officers of non-profit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule. As defined herein, a director shall be acting in accordance with the business judgment rule so long as the director: (a) acts within the express or implied terms of the Governing Documents and his or her actions are not ultra vires; (b) affirmatively undertakes to make decisions which are necessary for the continued and successful operation of the Association and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Association. A director acting in accordance with the business judgment rule shall be protected from personal liability. Board determinations of the meaning, scope, and application of Governing Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

## **ARTICLE IV OFFICERS**

### **4.1 Officers.**

Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or

more officers may be held by the same person, except the offices of President and Secretary.

#### **4.2 Election and Term Office.**

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

#### **4.3 Removal and Vacancies.**

The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

#### **4.4 Power and Duties.**

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

#### **4.5 Resignation.**

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 the receipt of such notice or at any time later specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

#### **4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.**

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

#### **4.7 Compensation.**

Compensation of officers shall be subject to the same limitations as compensation of directors under **Section 3.18** hereof.

### **ARTICLE V COMMITTEES**

#### **5.1 General.**

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall

operate in accordance with the terms of such resolution.

#### **5.2 Covenants Committee.**

In addition to any other committees which the Board may establish pursuant to **Section 5.1** hereof, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to **Section 3.24** hereof.

### **ARTICLE VI MISCELLANEOUS**

#### **6.1 Fiscal Year.**

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

#### **6.2 Parliamentary Rules.**

Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law or the Governing Documents.

#### **6.3 Conflicts.**

If there are conflicts among the provisions of Utah law, the Articles, the Declaration, and these By-Laws, the provisions of Utah law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

#### **6.4 Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Project as the Board shall designate.

(b) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing documents requested.

(c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

#### **6.5 Notices.**

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally, sent by U.S. mail, first class postage prepaid:

(a) if to a Member or Member, at the address which the Member or Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member or Member;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

#### **6.6 Amendment.**

(a) **By Class "B" Member.** Prior to termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these By-Laws. Thereafter, the Class "B" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Lots; provided, however, any such amendment shall not materially and adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 2% of the Members.

(b) **By Members Generally.** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**(c) Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declaration, the Class "B" Member, or the assignee of such right or privilege.

**EXHIBIT D**

**Rear Lot Utility Exhibit**

**[See Attached]**



