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By BALL JANIK LLP - SALT LAKE CITY

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**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
MOOSE HOLLOW SUBDIVISION  
(INCLUDING BYLAWS)**

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by The Moose Hollow Owners Association, Inc. (hereafter "Association").

### RECITALS

A. The property subject to this Declaration is the Moose Hollow Subdivision in Summit County, Utah. Exhibit "A" of this Declaration further defines the property subject to this Declaration. All Lots therein are part of the Association and each Owner of a Lot is a member thereof. The Association is created as a planned development and contains certain Common Area and easements for the benefit of the Owners of Lots therein.

B. The Association desires to continue to provide for the preservation and enhancement of the property values and improvements of the Property and for maintenance of the Common Area.

C. This Amended and Restated Declaration of Covenants, Conditions and Restrictions supersedes and replaces all prior declarations, and amendments or supplements thereto, recorded against the subdivision, specifically the Declaration of Covenants, Conditions and Restrictions of Moose Hollow Subdivision recorded June 16, 1994 as Entry No. 00407004, records of the Summit County Recorder, Utah (the "Original Declaration");

D. Pursuant to Utah Code § 57-8a-104, the undersigned hereby certifies that all of the voting requirements to amend the Declaration have been satisfied, that 67% of the voting interests of the Association have affirmatively approved the adoption of this document and that no change from the Original Declaration affecting lot boundaries or Members' voting rights has been made in this Amendment. Pursuant to Article XI, Section 5(c) of the Declaration, the undersigned hereby certifies that all of the requirements to amend the Declaration have been satisfied and the consent of Eligible Mortgagees (as defined in the Original Declaration) holding Mortgages on at least 51% of the Lots which are subject to Mortgages held by Eligible Mortgagees has been obtained for adoption of this document.

NOW, THEREFORE, the Association declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth:

### ARTICLE I - DEFINITIONS

The following words when capitalized in this Declaration have the following meanings:

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

**1.2 "Assessment"** means a charge imposed or levied by the Association on or against an Owner or Lot pursuant to a Governing Document or applicable law.

**1.3** **“Association”** means and refers to The Moose Hollow Owners Association, or any successor incorporated or unincorporated association of the Lot Owners acting under this Declaration.

**1.4** **“Board” or “Board of Trustees”** means the entity with primary authority to manage the affairs of the Association.

**1.5** **“Building Envelope”** means, relative to each Lot, the interior of the geometric shape shown on the Plat for each Lot (also referred to as “building pad”) within which all improvements on the Lot shall be located except as approved by the Architectural Control Committee.

**1.6** **“Bylaws”** means the Bylaws of the Association (initially attached hereto as **Exhibit B**), as they may be amended from time to time.

**1.7** **“Code”** means the Summit County Snyderville Basin Development Code, and administrative rules promulgated thereunder, as may be amended or replaced from time to time.

**1.8** **“Common Area”** means, refers to, and includes: (a) The real property and interests in the real property which comprise the Project and which is and are submitted to this Declaration, excluding all Lots as defined herein; (b) All common areas and facilities designated as such on the Plat and all property on the Plat excluding the Lots but including easements over portions of the individual Lots reserved for common use as trails or utilities; (c) In general, all apparatus, installations and facilities included within the Project and existing for common use; (d) The Project’s roads; (e) All other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; (f) All common areas as defined in the Act, whether or not enumerated herein; and (g) one and twenty-four one-hundredths (1.24) class A Shares of capital stock in the Summit Water Distribution Company.

**1.9** **“Community”** means all of the land described in the Plat.

**1.10** **“Governing Documents”** means a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, rules and regulations, and architectural or design guidelines.

**1.11** **“Improvements”** means every structure or improvement of any kind, including but not limited to landscaping, sprinkler pipes, Units and accessories or additions to Units, decks, porches, awnings, fences, garages, carports, driveways, storage compartments or other products of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

**1.12** **“Living Unit” or “Unit”** means a dwelling constructed upon a Lot.

**1.13** **“Lot”** means any residential lot or parcel of land shown upon the recorded Plat, including any Improvements thereon, with the exception of the Common Area.

**1.14** **“Manager” or “Managing Agent”** means the person or entity retained to manage the Property and the Association according to the direction of the Board.

**1.15 “Member”** means a person who holds membership in the Association by virtue of his or her ownership of a Lot.

**1.16 “Mortgage”** means any mortgage or deed of trust encumbering any Lot and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument and/or security arrangement, has been recorded among the Recorder's Office.

**1.17 “Mortgagee”** means the person or entity secured by a Mortgage.

**1.18 “Open Space Area”** means all portions of the Common Areas, excluding the following: the Project's Private Street, parking areas and adjacent walkways, the Project's utility and drainage lines and facilities, and landscaped or otherwise developed portions of the Common Areas approved by Summit County.

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

**1.20 “Plat” or “Map” or “Record of Survey Map”** (these terms may be used interchangeably herein) means the plat for Moose Hollow Subdivision recorded at the Recorder's Office of Summit County, as the same may be amended or substituted from time to time.

**1.21 “Private Street”** means each of the Project's private streets identified as such on the Plat; provided, however, that any portion of a private street which occupies part of a Lot shall consist only of such perpetual easements and rights of ingress and egress on, over, under, through, and across the part of the Lot so occupied as may be necessary or convenient for the Association (in a manner not inconsistent with this Declaration) to construct, improve and maintain the project's private streets and adjacent walkways, all drainage structures and facilities, all utility lines, pipes, conduits, structures and other related facilities and improvements, and all other improvements occupying any such part of a Lot when all Project construction has been completed. Such perpetual easements and said rights shall benefit the entirety of the Project.

**1.22 “Property” or “Project”** means all of the real property and interests described in the Plat, including all Lots, Common Area, easements, and open space.

**1.23 “Rules and Regulations”** means those rules and regulations adopted by the Association from time to time as it deems necessary or prudent for the enjoyment, or furthering the purposes, of the Property and Association.

**1.24 “Water Share”** shall mean and refer to seventy-six one-hundredths (76/100) of a Class A share of capital stock in the Summit Water Distribution Company, a non-profit mutual water company, together with all rights incident or appurtenant thereto from time to time. Each Water Share represents the right to receive water for one (1) Living Unit. Water will be delivered by said Company according to the public drinking water standards of the Utah State Department of Health.

## ARTICLE II - PROPERTY DESCRIPTION

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

**2.2 Description and Legal Status of Lots.** The Plat shows the Lots, dimensions from which their areas may be determined together with the Definitions above, and the Common Areas. All Lots are residential Lots. All Lots shall be capable of being independently owned, encumbered, and conveyed.

**2.3 Water Share Fees.** Notwithstanding any inference that can be drawn from this Declaration to the contrary, the owner of each Water Share shall be responsible for the payment of any and all charges, assessments and fees (including hookup fees) relating to such Water Share or the rights to water represented thereby, and the Association shall not be liable for any part of such charges, assessments or fees.

**2.4 Form of Lot Conveyance - Legal Description of Lot.** Each conveyance or installment contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the number shown on the Plat with appropriate reference to said Plat and to this Declaration, as each shall appear on the records of the County Recorder, state of Utah, and in substantially the following form: Lot \_\_, shown on the Record of Survey Map for Moose Hollow PUD, appearing in the records of the County Recorder as Entry No. \_\_ Map No. \_\_, and as identified in the Declaration of Covenants, Conditions and Restrictions appearing as Entry No. \_\_ in the official records of the County Recorder, as may be amended, and the Plat. This conveyance is subject to the provisions of the aforementioned Declaration, including any amendments thereto. Also together with the Water Share, as defined in said Declaration of Covenants, Conditions and Restrictions that is appurtenant to such Lot. And subject to such perpetual easements and rights of ingress and egress on, over, under, through, and across the Lot which are associated with the Private Streets in said development.

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

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

**2.6.1 Right of Entry.** The Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing maintenance referred to herein or whether the use of the Lot is causing damage or harm to the Common Areas. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

**2.6.2 Utility Easements.** The Association and any private or public utility provider shall have an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary, and for providing any other governmental, municipal, or utility service to the Project. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot in accordance with the terms herein, except for those improvements for which a public authority, utility provider, or the Association is responsible. Each Lot Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot.

**2.6.3 Common Areas.** All Owners are hereby granted a nonexclusive right and easement of enjoyment to the Common Areas, which shall include (without limitation) the right of ingress and egress to such Owner's Lot, which right shall be irrevocable, perpetual, and appurtenant to such Lot.

**2.6.4 Encroachments.** An easement for encroachments is hereby created in the following circumstances:

a. Where provision for drainage or a drain field on an Owner's Lot is infeasible or will not comply with governmental regulatory requirements because of the impermeability of soils or other unavoidable obstacles on the Owner's Lot, a drain field may encroach upon a Common Area (but not upon an adjacent Owner's Lot) only to the minimum extent necessary to establish a functioning and lawful drain field. Any Owner undertaking construction of such an encroachment shall be responsible for assuring that all damage to land and vegetation on the affected Common Area is fully reclaimed. No such encroachment shall be so located or designed that the drain field reaches within ten (10) feet of any water line, septic tank or drain field on such adjacent Common Area.

b. Encroachment is authorized for buildings, structures, or supply only temporarily in the course of construction or stabilization of earth or structures. Such encroachments are authorized only if an encroachment is unavoidable despite compliance with the Building Location requirements prescribed by applicable provisions of this Declaration. Any Lot Owner undertaking activities that result in such an encroachment shall be responsible for assuring that all damage to structures, land and vegetation on the encroached property is fully repaired or reclaimed; and shall fully indemnify the Owner of the encroached Lot (or the

Association, if the encroachment is upon Common Areas) for any liability to third persons that may result from injuries or damage to persons or property caused by the encroaching building or structures.

c. Where shifting, settlement or other unintended physical movement of roads or access easements encroaches on a Lot or Common Area, the encroachment is authorized for such reasonable period as is necessary to provide for repair or reconstruction.

## **ARTICLE III – RESTRICTIONS ON USE**

### **3.1 Use of Common Areas and Open Space Area.**

The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions contained herein. No automobile or other vehicle shall be parked at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts. All portions of the Open Space Area shall be and remain undisturbed open space with no building or structure constructed thereon without the prior written approval of Summit County. The Open Space Area may be used only for hiking, horseback riding, jogging, picnicking, non-motorized cycling, cross-country skiing and other outdoor recreational or agricultural uses consistent with the undisturbed natural state of the Open Space Area. Camping is not permitted at any time within any of the Common Areas

### **3.2 Use of Lots and Living Units.**

All Lots and Living Units are restricted to use as single-family residential housing; provided, however, that a portion of a Living Unit can be used to conduct a business or profession if: (i) such use is approved by all appropriate governmental and quasi-governmental bodies having jurisdiction over such matters; (ii) such use is approved by the Architectural Control Committee; (iii) such use is a type of traditionally conducted in a single-family residence; and (iv) such use is ancillary to the primary use as a single-family residence. Under no circumstances shall a Living Unit be used for other than a single-family residence. No Lot or Living Unit shall be used, occupied, or altered (i) in violation of law, (ii) so as to detract from the appearance or value of any other Lot, Living Unit, or the Common Areas, (iii) so as to create a nuisance or interfere with the rights of any Owner, or (iv) in a way which would result in an increase in the cost of any insurance covering the Common Areas. No aluminum foil, newspapers, or any other similar materials may be used to cover the windows in any Living Unit or other structure.

### **3.3 Recreational Vehicles.**

Boats, trailers, campers, RVs, and similar vehicles shall be parked only within the Lot of the Owner concerned. When parked within a Lot, such boats, trailers, campers, and similar vehicles shall be parked for no more than 30 days total in any twelve-month period (parking for any part of a day shall constitute a whole day and the 30 days need not be consecutive) unless they are kept in an enclosed structure or screened from view in accordance with standards established by the Architectural Control Committee.

### **3.4 Animals.**

No animals other than small household pets (dogs and cats) shall be kept on any Lot. Whenever a permitted animal is allowed to leave a Lot it shall be either on a leash or in a cage. No animals of any kind shall be raised, bred or kept for any commercial purpose. The Association may



promulgate reasonable rules and regulations concerning the use of, or damages to, the Common Areas by animals and the liability of individual Owners for such damage. The Association shall have the right, but not the obligation, to enforce the foregoing restrictions on animals.

**3.5 Lease Requirements.**

All leases or rental agreements for Lots shall be in writing and specifically subject to the provisions, restrictions, and requirements of the Governing Documents. No Lot may be leased or rented for a period of less than one year. Prior to renting a Lot, the Owner shall submit a copy of the proposed lease to the Association. The Association may require the lease to contain certain provisions relating to the Association or the Governing Documents. The Association shall not create or enforce any other restriction relating to the term of a lease or rental agreement of any Lot in the Project, except as provided in this Declaration or the law.

**3.6 Offensive or Unlawful Activities, Nuisances.**

No unsanitary, offensive, unsightly, or noxious conditions or activities, including noise, odor, or other nuisance, shall be permitted on any Lot or Common Area, nor shall anything be placed upon any Lot or Common Area, which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except: (1) in a contained barbecue unit while attended and in use for cooking purposes, (2) within a safe and well-designed interior fireplace, (3) within an outside fire pit which has been installed with the approval of the County, or (4) a single bonfire on New Year's Eve carried out with prior approval of the Board for the enjoyment of the Owners and their guests.

**3.7 Rubbish and Trash.**

No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No metals, bulk materials or scrap, garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure which is screened from public view at all times except 18 hours before and after trash collection. All such waste and garbage must be promptly and periodically removed.

**3.8 Motorbikes/ATVs/Snowmobiles.**

All motorcycles, trail bikes, three-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only on established streets and parking areas and are specifically prohibited from all other portions of the Common Areas. Snowmobiles may only be used in the Project for packing and preparing cross-country ski trails.

**3.9 Signs.**

No sign of any kind may be displayed to the public view without the approval of the Architectural Control Committee, except: (1) Not more than one "for sale" or "for rent" sign, not exceeding two feet by one and one-half feet, may be temporarily placed on a Lot; (2) A residential identification sign for a Lot not exceeding two square feet in surface area may be

placed on a Lot, and (3) other signs not exceeding one square foot may be placed on a Lot. The foregoing exceptions may be modified, limited or expanded by rules of the Association from time to time.

**3.10 Temporary and Other Structures.**

Structures of a temporary nature, trailers, basement houses, mobile homes, modular homes, prefabricated housing, tents, or shacks shall not be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on the Property at any time. No old or secondhand structures shall be moved onto any Lot, it being the intention hereof that all Living Units and other buildings erected on Lots or within the Property shall be new, permanent, on-site construction of good quality workmanship and materials.

**3.11 Increase in Insurance Cost.**

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

**3.12 Association Rules and Regulations.**

In addition to the restrictions and requirements above, the Association from time to time may adopt, modify, or revoke such rules and regulations governing the operation and use of the Lots and Common Areas as necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property.

## **ARTICLE IV - ARCHITECTURAL CONTROL**

**4.1 Architectural Control Committee.** The Board shall appoint a three or five member Architectural Control Committee, which shall have the authority to ensure that all Living Units and other improvements within the Lots harmonize with surroundings and structures and comply with the requirements set forth in this Article and the applicable provision of the Declaration for which the Committee is granted authority. The Committee need not be composed of Owners. If such a Committee is not so appointed, the Board itself shall perform the duties required of the Committee. The Committee shall have the right to take any action in the absence of a meeting which they could take at a meeting if notice is transmitted in writing (including via email) to each member of the Committee and each member of the Committee, by the time stated in the notice: (1) (a) signs a writing for such action; or (b) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and (2) fails to demand in writing that the action be taken at a meeting. Section 5.7.6 of the Bylaws regarding electronic transmission shall apply to this Section 4.1.

**4.2 Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to ensure that all improvements and construction on Lots within the Property harmonize with surroundings and comply with the requirements of this Article. It is the policy of the Association to allow for a diversity of architecture within the Community and not to require identical, matching, or strictly conforming improvements, so long as, in the opinion of the reviewing body (the Committee or the Board, as

appropriate, consistent with this Article), the design, contour, material, shapes, colors, and general character of the improvement is in harmony with its surroundings and is appropriate for the Community.

**4.3 Submission to Committee.** No Living Unit, accessory or addition to a Living Unit, other structure or building, or fence shall be constructed or maintained, and no grading or removal of natural vegetation shall occur, on a Lot unless approved in advance by the Architectural Control Committee. Such approval shall be solely at the discretion of the Committee as it deems appropriate from time to time (subject to a final decision rendered by the Board pursuant to an appeal of a Committee decision). Further, no Owner shall obtain a building permit relative to construction activities on a Lot until such construction is approved by the Committee in accordance with this Article.

**4.4 Application; Plans and Specifications.** The Owner concerned shall submit a written application including a complete set of plans and specifications for the proposed improvement or improvements to the Committee by electronic means (or three complete printed sets) (the "Application"). The Application shall consist of, and approval is conditioned upon compliance with, the following:

4.4.1. The Owner concerned signing a notice indicating that he has read and understood this Declaration and indicating that the Owner believes the Application to be complete.

4.4.2. The Owner concerned depositing with the Architectural Control Committee a Five Thousand and no/100 Dollar (\$5,000.00) security deposit to insure compliance with the provisions of this Declaration. All of such deposit shall be refundable if all provisions of this Declaration are complied with through the completion of the Living unit or other structure of building concerned, with the exception that a portion of said deposit shall be retained by the Architectural Control Committee to reimburse it for plan approval costs. The amount of said security deposit and the amount to be retained by the Architectural Control Committee may be increased by the Board of Trustees of the Association without a vote of the Members or amending this Declaration.

4.4.3. The Owner concerned submitting a site layout plan showing: (1) the proposed Living Unit or other structure of building as it will be situated on the Lot and in relation to the Building Envelope; (2) the extent of all cutting, filling, grading, and other excavation proposed in conjunction with construction of the proposed Living Unit and the landscaping of the Lot and the plans for handling all disposal of all excavated material; (3) the pre-construction and post-construction slope of each portion of the Lot and of the driveway serving the proposed Living Unit; (4) a drainage plan for disposition of storm water runoff from the Lot; (5) the relationship of the basement, above-ground floors, and roof to the original and finish grades of the particular Lot including slopes of the driveway serving a Living Unit; (6) the location of and specifications for the septic tank and drain field and type of all natural vegetation on the Lot and a complete landscaping and irrigation plan; and (7) a soil analysis by a qualified soils engineer verifying that the footings and foundations of the proposed Living Unit or other structure or building as it will be situated on the Lot and the location of and specifications for the septic tank and drain field designed to serve the proposed Living Unit comply with all applicable laws, rules,

regulations and governmental standards and will accomplish the purposes for which they are designed.

4.4.4. The Owner concerned submitting a complete set of architectural plans, including (without limitation): (1) A cross section of the proposed walls of the home indicating type of support, insulation, and exterior finish; (2) One complete set of all exterior colors in the form of samples or color chips, with detailed information as to the location of the color, including brick, stone, wood siding, roofing materials, etc.; and (3) Plans confirming the installation of a fire sprinkling system in the Living Unit along with specifications approved by Summit County.

4.4.5. Any subsequent changes, improvements, or alterations in such plans must be submitted to the Committee for written approval.

#### **4.5 Review, Approval, Appeal.**

4.5.1. Determination whether Application Complete. The Committee shall, within a period not to exceed 14 days from receipt of an Application, notify the Owner as to whether the Application is complete for the purposes of subsequent, substantive review by the Committee or if it is deficient with respect to specific requirements, and shall set forth such deficiencies, if any. If notice is given by the Committee that the Application is deficient, the subsequent submission by the Owner of the items remedying the deficiencies shall constitute a new Application for purposes of the notice requirement of this subsection 4.5.1.

4.5.2. Approval or Denial of Complete Application. Within 30 days of the date of a notice given by the Committee that an Application is complete, the Committee shall approve or deny the Application and send written notice to the Owner of the Committee's determination.

4.5.3. Failure to Approve or Deny Application. If the Committee fails to approve or deny an Application within 30 days of the date of a notice given by the Committee that an Application is complete, or if the Committee fails to approve or deny an Application within 45 days of submission of the Application if no notice is given by the Committee under 4.5.1, the Application shall be deemed approved. Failure of the Committee to act on an Application shall not be deemed to constitute an approval of any act prohibited by the Governing Documents.

4.5.4. Denial Authorized in Committee's Discretion. The Committee is expressly empowered and authorized to deny any Application for whatever reasons it deems prudent and, in so doing, shall have the right to take into consideration, among other things, the suitability of the proposed improvement, the materials of which it is to consist of, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said Improvement on the outlook from neighboring properties or the street.

4.5.5. Appeal of Denial. An Owner may appeal the denial of an Application by the Committee to the Board within 30 days of the denial by submitting a request for appeal to the Manager or Board. The Board shall review the Application and, if deemed necessary by the Board, may hear comments from the Owner at a Board meeting or hearing, as determined by the Board. The Board shall render a final decision within 45 days of receipt of the request for appeal, which decision shall be final and binding on all parties for all purposes. In all cases, an Application denied by the Committee and appealed to the Board shall be deemed denied unless approval is expressly granted by the Board in writing and no failure of the Board to act in any instance shall constitute approval of an Application.

**4.6 Living Unit Size.** The ground floor of Living Units, exclusive of open porches and garages, shall not be less than 1,850 square feet for a one story Living Unit. The ground floor shall be the first floor that is wholly above grade. In so-called split-entry or bi-level Living Units, the combined area of the single level and each of the two levels on the adjoining two story portion of the dwelling, exclusive of open porches, and garages shall total not less than 2,350 square feet. In a two-story home, the combined area of the ground story level and the story above the ground story level, exclusive of garage and any open porches, shall total not less than 2,500 square feet. Each Lot containing a Living Unit shall also contain an attached or detached garage for no fewer than two (2) nor more than four (4) cars. A detached building used for a garage may contain a dwelling area to the extent permitted by Summit County. No Living Unit, exclusive of garage and open porches shall exceed 6,500 square feet of aggregate floor area.

**4.7 Building Height.** No Lot in the development shall have a building or structure which exceeds a height of two stories or thirty (30) feet above fire-fighting grade, as defined in the Code, whichever is lesser. Height shall be measured from and to the points as contemplated in the Code.

**4.8 Building Location.** The entirety of the Living Unit shall be located within the Building Envelope. The Committee shall have the authority to alter a Building Envelope with the consent of the Lot Owner for the purpose of enhancing a view, preventing the removal of trees, or otherwise substantially enhancing the location of improvements on a Lot, but such alteration shall not reduce the aggregate size of the Building Envelope unless the request for alteration is made by an Owner.

**4.9 Living Unit Design and Construction.** In order to promote a harmonious community development and protect the character of the Project, the following design and construction guidelines must be complied with:

**4.9.1. Time of Construction.** Construction of a Living Unit shall be completed within eighteen (18) months of the time such construction is commenced. A functioning portable toilet and adequate refuse container shall be located at the construction site throughout the period of construction.

**4.9.2. Styles.** Living Unit styles, designs, alterations or additions will conform to standards determined by the Architectural Control Committee.

**4.9.3. Exterior Walls.** Exterior Living Unit walls shall be of natural stone or natural stone veneer, concrete, stucco, rough sawn or resawn wood siding or logs, or such other materials approved in advance by the Committee as being satisfactory in quality and appearance and shall be in earth tones indigenous to the area. It is recommended that regardless of the material used, precaution should be made to inhibit the combustibility on combustible materials.

**4.9.4. Roofs.** All Living Unit roofs shall be of non-combustible tile, asphalt shingle construction, standing seam metal, or such other materials approved in advance by the Committee as being satisfactory in quality, appearance, and non-combustibility, or any combination of the foregoing materials approved by the Committee. Wood shake and other combustible roof materials will not be permitted. Absent specific approval of the Committee,

based upon unusual characteristics of a Lot, no roof shall have a pitch of more than ten feet in twelve feet, less than four feet in twelve feet. The Committee may approve the incorporation of solar panels into the roof or otherwise ancillary to a Living Unit.

**4.9.5. Related Improvements.** The design and location of all storage, utility, or accessory buildings shall be at locations approved in advance by the Committee. No television, radio, or like antenna, disks or dishes shall be permitted, except as specifically authorized by the Committee and except as follows: an Owner may install, maintain and use on a Lot one (or, if approved, more than one) Small Antenna (as hereinafter defined) in the rear yard of a Living Unit, at such location, and screened from view from adjacent dwellings in such a manner and using such trees, landscaping or other screening material, as are approved by the Committee, in accordance with this Article. Notwithstanding the foregoing terms of this subsection, (i) if the requirement that a Small Antenna installed on a Lot be placed in the rear yard of a dwelling would impair such Small Antenna's installation, maintenance or use, then it may be installed, maintained and used at another approved location on such Lot where such installation, maintenance or use would not be impaired; (ii) if and to the extent that the requirement that such Small Antenna be screened would result in any such impairment, such approval shall be on terms not requiring such screening; and (iii) if the prohibition against installing, maintaining and using more than one (1) Small Antenna on a Lot would result in any such impairment, then such Owner may install on such Lot additional Small Antennae as are needed to prevent such impairment (but such installation shall otherwise be made in accordance with this subsection). In determining whether to grant any approval pursuant to this Section, neither the Committee nor the Board shall withhold such approval, or grant it subject to any condition, if and to the extent that doing so would result in an impairment; provided however, that any Small Antenna shall be placed in the rear of each dwelling. As used herein, (i) "impair" has the meaning given it in 47 Code of Federal Regulations Part 1, Section 1.4000, as hereafter amended; and (ii) "Small Antenna" means any antenna (and accompanying mast, if any) of a type, the impairment of the installation, maintenance or use of which is the subject of such regulation. Such antennae are currently defined thereunder as, generally, being one meter or less in diameter or diagonal measurement and designed to receive certain types of broadcast or other distribution services or programming.

**4.9.6. Lighting.** Any outdoor lighting shall be so arranged as to reflect light away from adjacent lots and away from the vision of passing motorists and shall not in any event include mercury vapor lights.

**4.9.7. Landscaping.** The entirety of the disturbed portion of each Lot shall be re-vegetated or otherwise landscaped within one (1) year from occupancy of the Living Unit on said Lot and shall be completed in accordance with the plan thereof approved by the Committee.

**4.9.8. Address.** Each Lot shall incorporate a visible address marker.

**4.9.9. Chimneys.** All wood or coal burning chimneys will be equipped with appropriate spark screens as approved by the Architectural Control Committee. Further, all fireplaces and wood burning devices shall meet the applicable minimum requirements of the Environmental Protection Agency as more particularly referenced in the Code.

**4.10 Fences; Dog Runs.** No fences shall be permitted within the Project except as may be approved by the Committee in each instance and only under circumstances peculiar to a given Lot which militate toward the need for such a fence. No dog runs exceeding 20 feet on a side or 400 sq. ft. in area shall be allowed, and no dog run shall be allowed outside of the Building Envelope on a Lot.

**4.11 Drainage.** No Owner may interfere with the established drainage pattern over any part of the Project unless adequate provision is made for proper drainage and is approved in advance by the Committee. Established drainage shall mean and refer to the drainage which exists at the times the overall grading and development of the Project was initially completed or which is shown on any subdivision plans or plans approved by the Committee.

**4.12 Storage Tanks and Utility Lines.** All water tanks or similar storage facilities shall either be constructed as an integral part of a Living Unit or shall be installed or constructed underground. All utility services, including but not limited to, phone lines, power lines, and water and sewer lines shall be located underground. Fuel tanks (other than those used exclusively for barbecues not exceeding 20 gallons) shall not be permitted on any Lot without the prior approval of the Architectural Control Committee.

**4.13 Fire Protection.** Each Living Unit shall include a water fed fire-sprinkler system for the interior of the Living Unit which meets the specifications determined by the Park City Fire District and Summit County. Further, Owners shall maintain the areas of the Lot surrounding the Living Unit in accordance with the following, but not inconsistent with the other provisions of this Declaration:

4.13.1. Area within 5 feet from the exterior boundary of the Living Unit:

- Remove all dead trees, shrubs, and branches.
- Remove native trees and shrubs with the exception of a few well maintained specimen plants (i.e., prune out dead wood, rake up fallen leaves and shrubs.)
- Plant low growing vegetation with high moisture content such as flowers and ground covers.
- Keep plants green with supplemental water if necessary.
- Use rock mulches.
- Deciduous shrubs can be used. Low growing shrubs are preferred.
- Avoid planting evergreen shrubs and trees such as juniper.

4.13.2. Area from 5 to 30 feet of the exterior boundary of the Living Unit:

- Remove all dead trees, shrubs, and branches.
- Bare ground in this zone is unacceptable because of soil erosion.
- Use lawn, ground covers, erosion control grasses, low growing deciduous shrubs, and mulches in this zone.
- Keep plants green during fire season. Use supplemental irrigation if necessary.
- A few deciduous shrubs used as specimen plants are acceptable.



4.13.3. Area from 30 to 100 feet (or 150 ft. in areas where slope is greater than 30%, 250 ft. in areas where slope is greater than 50%) of the exterior of the Living Unit:

- Remove dead trees and shrubs.
- Remove dead branches from shrubs and trees.
- Remove dead woody material lying on the ground.

**4.14 No Further Subdividing.** No Lot or Common Areas may be further subdivided.

**4.15 No Liability for Damages.** The Committee or Board shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of engineering, structural safety, proper drainage, or conformance with building or other codes. Neither the Committee nor the Board shall be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made or arising out of, or in any way connected with, the performance of the Committee's duties hereunder.

**4.16 Non-Waiver.** The approval of the Committee of any plans, drawings, or specifications for any work done or proposed or in connection with any other matter requiring the approval of the Committee under these restrictions shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification, or matter whenever subsequently or additionally submitted for approval.

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

**4.18 Design Guidelines.** Design, construction, reconstruction, remodeling, improvement and maintenance of the Lots and Living Units shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design criteria and procedures that the Board and Committee is hereby empowered to adopt (referred to as "Design Guidelines") to expand, clarify, and otherwise provide for the harmony and compatibility of the Improvements constructed or maintained within the Community and to provide for procedures and requirements applicable before, during and after such construction or maintenance (but that may not contradict the provisions of this Declaration). Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction. All builders and Owners shall comply with and are bound by the design restrictions herein and in the Design Guidelines.

**4.19 County Approval.** No Living Unit, accessory or addition to a Living Unit, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns shall occur, on a Lot until a permit or written approval therefor is obtained from Summit County following submission to the County of such information as the County may reasonably require. In granting such permit or approval the County may apply any of the standards of this Article it determines to have public significance. The granting of a permit or approval by the County with respect to any matter shall not bind or



otherwise affect the power of the Committee to deny or condition the approval of any such matter.

## **ARTICLE V - MAINTENANCE OBLIGATIONS**

### **5.1 *Owner's Responsibility.***

5.1.1 Except to the extent that the Association is responsible therefor under Section 5.2, maintenance of the Lots and the Units shall be the responsibility of the Owner(s) thereof, who shall maintain such Lots and Unit in good condition and repair and in accordance with Section 4.14 above. Each Unit and Lot shall be maintained in a clean and orderly condition and in such condition as does not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Unit, Lot or Common Area.

5.1.2 Weed Control. Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and other flammable materials on his Lot so as to minimize fire and other hazards to surrounding Lots, Living Units, the Common Areas, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to crops, livestock, land, or the public health. The foregoing is not intended to restrict the natural growth of vegetation in undisturbed areas on any Lot.

5.1.3 Utility Services. Each Lot Owner, and not the Association, shall be responsible to pay for utility services (including, without limitation, both hookup and installation fees and periodic charges) which are separately charged, billed, and/or metered to the Owner's Lot by governmental or quasi-governmental authorities or by public or private utility companies. In addition, each Owner shall pay the Association reasonable hookup and use fees for utility services provided to a Lot by the Association.

**5.2 *Maintenance by Association.*** The Association shall maintain the Common Areas of the Property, unless otherwise stated in this Declaration. However, if the Common Area is damaged by the willful misconduct or negligence of an Owner, their guests, tenants, or invitees, the Owner shall be responsible for all such damage.

Included in such obligation to maintain and operate the Common Areas are the obligations to provide or cause to be provided garbage collection and snow removal services upon the Common Areas, to maintain street and other signs and lights located on the Common Areas, to maintain the Private Streets, to provide revegetation of the Common Areas, and to maintain all storm water runoff and drainage structures and facilities as may be located in the Project. Nothing herein shall be construed as a waiver of any right of the Association to obtain contribution and/or reimbursement from any third-party benefitting from the existence of the water storage and service facilities located within the Common Areas or the maintenance thereof by the Association or any other utility services or improvements located in, on or under the Common Areas.

To the extent not clarified herein and not inconsistent with the provisions of this Declaration, the Association may, by duly adopted Board resolution, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Such determinations shall be set forth in a Board resolution distributed to all Owners and shall be binding against all Owners.

Additionally, the Association, by and through the Board, may assume the Owner's general maintenance responsibility over a Lot if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action with fifteen (15) days after mailing of such written notice, then the Association may proceed to maintain the Lot. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall constitute an assessment and collected in the same manner as assessments pursuant to this Declaration.

## **ARTICLE VI - ASSESSMENTS**

**6.1. Covenant for Assessments.** Each Owner, by acceptance of a deed hereafter conveying any Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments, as provided for and defined below: Annual Assessments, Special Assessments, and Individual Assessments. The Board shall determine whether installments of Annual Assessments are levied and collected on a monthly, quarterly, semi-annual, annual or other basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty. Each Lot Owner shall pay an equal share of the Annual Assessments and Special Assessments. No member may exempt itself from liability for Assessments by abandonment of any Lot owned by such member.

### **6.2. Annual Budget and Assessment.**

**6.2.1. Adoption of Budget.** The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect. The Board shall present the adopted budget to Association members at a meeting of the members.

#### **6.2.2. Determination of Annual Assessment.**

(a) The Board shall fix the amount of the annual assessment ("Annual Assessment") against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the assessment period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any

assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period.

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

(c) Equitable Changes. If the Annual Assessments levied at any time are, or will become, inadequate to meet the expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Association may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes the equitable change in the amount of the Annual Assessment. Owners shall be given at least thirty (30) days' written notice of any changes in the amount of an Assessment.

**6.3. Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of fulfilling the purposes of the Association and carrying out this Declaration, and including, but not limited to: (a) The improvement and maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums; (c) The costs of utilities and other services which may be provided by the Association for the Community; (d) The cost of labor, equipment, insurance, materials, management, legal and other professional and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; and (e) The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements as provided below; and (f) Any other items properly chargeable as a Common Expense of the Association.

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

**6.5. Individual Assessments.** Any expenses which are not common expenses and which benefit or are attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefitted ("Individual Assessments"). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents, and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing

Documents; (2) Expenses, other than common expenses, relating to the cost of maintenance, repair, replacement and reserves of the Lots which may be incurred by the Association.

**6.6. Reserve Funds.**

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

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

**6.7. Nonpayment of Assessments.** The Annual Assessments shall be due and payable on such date or dates established by the Association and shall be delinquent if not paid within the period established by the Association from time to time. The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment or in the notice of the Assessment.

6.7.1. Interest, Late Charge. Delinquent payments shall bear interest and be subject to a late charge at the rate and amount determined by the Association from time to time.

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

6.7.3. Rent Payments by Tenant to Association. If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than 60 days after the assessment is due, the Association may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until all amounts due to the Association are paid. Such demand to the tenant shall be made in accordance with the law and any written procedures of the Association. The Association shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and any written procedures of the Association.

6.7.4. Remedies, Including Suspension of Membership Rights and Services. All membership rights, including the right of a Member to vote, shall be automatically suspended

during any period of delinquency, unless otherwise determined by the Association. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. Any service provided by the Association to the Owners may also be terminated as to the delinquent Owner. The Association shall have each and every remedy for collection of assessments provided in the Utah Community Association Act, Utah Code Title 57, Chapter 8a, as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

**6.8. Lien.** All Assessments imposed together with late charges, interest, fines, costs and reasonable attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for enforcement of the Governing Documents shall be a charge and continuing lien upon each of the Lots against which the assessment or charge is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment.

**6.9. Personal Obligation and Costs of Collection.** Assessments imposed under this Declaration, together with late charges, interest, fines, costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a legal proceeding is initiated), shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

**6.10. Appointment of Trustee.** By acceptance of a deed for a Lot, each Owner as trustor conveys and warrants to trustee in trust for the Association, as beneficiary, with power of sale, the Owner's Lot and all improvements thereon for the purpose of securing payment of all Assessments provided for in this Declaration. For purposes of this Section and Utah Code Ann. §§57-1-19, et seq., as amended from time to time, the trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the trustee by recording an "Appointment of Trustee" on the records of the local County Recorder. Each Owner hereby also grants to the Association and trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, et seq.

**6.11. Enforcement of Lien.** The lien for nonpayment of assessments may be foreclosed by the Association judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to

collect the rental income or the reasonable rental value without regard to the value of the security.

**6.12. Subordination of Lien to Mortgages.** The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as follows: the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability or lien for any Assessments thereafter becoming due.

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

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

## ARTICLE VII - THE ASSOCIATION

**7.1 Organization.** The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the Division of Corporations and Commercial Code, the Board may re-incorporate the Association without a vote of the Owners. The affairs of the Association shall be governed by a Board of Trustees as provided herein and in the Bylaws.

**7.2 Membership.** Each Owner during the entire period of Owner's ownership of one or more Lots within the Community shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**7.3 Voting Rights.** The method of voting shall be as provided in the Bylaws. Each Owner shall have one (1) vote in matters of the Association for each Lot owned as set forth in the Bylaws.

**7.4 Powers, Duties and Obligations.** The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation and the Bylaws, together with its general powers as a corporation and under any applicable statute, as such statute may be amended, and the power to do any and all things that may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Board may delegate by resolution or contract to a Manager any of its powers under this Declaration.

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

(c) Telecommunications/Fiber Optic/Related Contracts. The Association may provide telecommunication services and/or facilities or similar bulk rate services to the Lots only after the prior approval of the Owners is obtained by a vote where a majority of the votes cast are cast in favor of the service.

## **ARTICLE VIII - COMPLIANCE AND ENFORCEMENT**

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

**8.2 Remedies.** Violation of any provisions of the Governing Documents, or of any decision of the Association made pursuant to such documents, shall give the Board, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

**8.2.1** Subject to the provisions of this Declaration, to enter the Lot as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

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

**8.2.3** To levy fines. A violation of any specific and express rule, regulation, covenant, restriction, or term of any Governing Document of the Association (a "violation"), and any subsequent occurrence of such violation, shall be subject to a fine in the amount determined by the Association from time to time. A subsequent occurrence of the same violation occurring



within 6 months of a prior occurrence is and shall be deemed the same violation for all purposes, including the purpose of notice, and each such subsequent occurrence shall be subject to an immediate fine without further warning or notice;

**8.2.4** To suspend the right to receive, access or use any services or facilities provided by or through the Association until the violation is corrected;

**8.2.5** To suspend the voting rights of an Owner, but not for longer than 60 days except in the case of a continuous violation;

**8.2.6** To bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. The prevailing party shall be entitled to an award of its attorney fees and costs in any action taken for the purpose of enforcing or otherwise implementing the terms of the Governing Documents, or in any action taken pursuant to the Governing Documents, regardless of who instituted the action; or

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

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

**8.4** *Injunctive Relief.* Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

## **ARTICLE IX - INSURANCE**

### **9.1** *Types of Insurance Maintained by the Association.*

**9.1.1** The Board shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, (as well as such other insurance as it deems reasonable) property insurance, if required by law or deemed necessary by the Board, as well as liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first-class subdivisions in the county and as consistent with the Act.

**9.1.2** The Board may purchase, maintain in force, and pay the premiums for, if and as it deems reasonable, the following types of insurance:



(a) Director's and Officer's Insurance. Directors and officers (D & O) liability insurance coverage.

(b) Fidelity. Fidelity insurance or bond covering all Board members, officers, employees and other persons handling or responsible for the funds of, or administered by, the Association, in such amounts as the Board of Directors deems appropriate, but no less than a sum equal to three months aggregate assessments on all units plus reserve funds. Where the Managing Agent has the responsibility for handling or administering funds of the Association, fidelity coverage shall include coverage for its officers, employees, and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bond or insurance shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or Managing Agent, as the case may be, at any given time during the term of each bond or policy. The bonds or policies shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The bonds or policies shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association or insurance trustee.

9.1.3 Miscellaneous Items. The following provisions shall apply to all insurance coverage of the Association:

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

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

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

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

## **ARTICLE X - AMENDMENT AND DURATION**

### **10.1 Amendments.**

(a) How Proposed. Amendments to the Declaration shall be proposed to the membership by and through the Board upon the request of (1) a majority of the Board of Directors, or (2) Owners holding thirty percent (30%) or more of the voting rights of the Association, in which case the Board shall cause the amendment to be proposed to the membership within 65 days of receipt of such request. The Board shall cause the proposed

amendment to be appropriately reduced to writing, which shall then be included in the notice of any meeting at which action is to be taken thereon or attached to any request for vote on or consent to the amendment

(b) **Approval Required.** This Declaration, as well as the Plat, may be amended, and any provision, covenant, condition or restriction whatsoever, may thereby be added, modified or deleted, if such amendment is approved by Owners holding sixty percent (60%) of the voting rights of the Association.

(c) **Execution and Recordation.** An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration, is acknowledged, and is recorded in the appropriate County Recorder's Office.

**10.2 Termination of Covenants as a Whole.** The provisions, covenants, conditions and restrictions contained in this Declaration, as amended, added to or deleted from, in whole or in part from time to time as provided above, may only be terminated as a whole upon recordation of an instrument directing the permanent termination of this Declaration and the Association after the vote and approval of seventy-five percent (75%) of all of the Owners of the Lots. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the County Recorder's Office not less than six (6) months prior to the intended termination date.

## **ARTICLE XI - MISCELLANEOUS PROVISIONS**

**11.1 Priority of Governing Documents.** In the event of any conflict between or among this Declaration and any other Governing Document, the document in the highest priority beginning with the first document listed hereinafter shall prevail (as to any such conflict) over any later listed document: this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations.

**11.2 Recovery of Costs and Attorney Fees.** The Association shall be entitled to recover its costs and attorney's fees incurred for enforcement of this Declaration regardless of whether any lawsuit or other action is commenced. Such costs and attorney's fees shall automatically be and constitute an assessment against the Owner and the Lot. Additionally, the prevailing party shall be entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit, before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

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

**11.4 Joint Owners.** In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of Directors, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

**11.5 Lessees and Other Invitees.** No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Unit occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Board and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, invitees, guests, Unit occupants, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

**11.6 Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association, the Board or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association, Board or Owner as to any similar matter.

**11.7 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Board except where powers are expressly restricted.

**11.8 Premises Liability.** The Association and the Board is and shall remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities and an Owner shall defend, indemnify and hold harmless the Association and Board against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it

shall be the affirmative duty and responsibility of each Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

**11.9 Notice of Sale, Mortgage, Rental, or Lease.** Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or Managing Agent of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

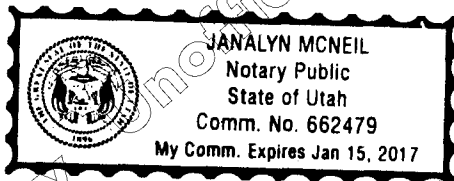
**IN WITNESS WHEREOF,** Moose Hollow Owners Association has executed this Declaration this 2 day of October, 2015.

**MOOSE HOLLOW OWNERS ASSOCIATION**

Michael Dougherty  
By: Michael Dougherty  
Its: President

STATE OF UTAH )  
 )ss:  
County of Salt Lake )

The foregoing instrument was acknowledged before me on this 2nd day of October, 2015 by Michael Dougherty.



Janalyn McNeil  
Notary Public for Utah

**EXHIBIT A**

**(LEGAL DESCRIPTION)**

Lots 1 - 26, MOOSE HOLLOW SUBDIVISION, AMENDED, according to the official plat thereof recorded with the office of the Summit County Recorder, state of Utah.

Parcel Numbers: MOOSE-1-AM through MOOSE-26-AM

**EXHIBIT B**  
**BYLAWS**  
**OF**  
**MOOSE HOLLOW OWNERS ASSOCIATION**

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**ARTICLE 1 - DEFINITIONS**

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

**ARTICLE 2 - MEETINGS OF ASSOCIATION**

2.1 **Place of Meeting.** The Association shall hold meetings at such suitable place as may be designated by the Board from time to time.

2.2 **Annual Meetings.** Each regular annual meeting of the members shall be held each year on the day and at a time and place within the state of Utah selected by the Board.

2.3 **Special Meetings.** The Association, by and through the Board, shall notice, hold and conduct a special meeting of its members (1) on call of the President or two or more members of

the Board, or (2) if the Association receives one or more written demands for the meeting that state the purpose or purposes for which the meeting is to be held, and are signed and dated by members in good standing holding at least 10% of the voting rights of the Association. When a special meeting is demanded by the members, the Board shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the demand and if notice of the meeting is not given by the Board within 30 days after the date the written demand is delivered to a Board member, a person signing the demand may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

2.4 Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, in a fair and reasonable manner, including by delivering a copy of such notice to each member entitled to vote thereat, in accordance with the notice requirements specified in these Bylaws, and sufficiently in advance of the meeting to provide fair and reasonable notice of the meeting, as determined by the Board. Notice shall always be deemed fair and reasonable if given 10 days before the meeting, but shorter notice may also be fair and reasonable when all the circumstances are considered. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the members and, in the case of a special meeting, the purpose of the meeting.

2.5 Voting. Each Lot shall be allocated the voting rights set forth in Section 7.3 of the Declaration.

2.6 Proxies and Absentee Ballots. A vote may be cast in person, by proxy or by absentee ballot. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by resolution of the Board. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution. No proxy shall be valid if it purports to be revocable without notice. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association, or to the Board if a vote is being conducted by written ballot in lieu of a meeting. Every proxy shall automatically cease upon sale of the Lot.

2.7 Fiduciaries; Joint Owners. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Lot owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Lot in such capacity. Whenever any Lot is owned by two or more persons jointly, according to the records of the Association, the vote of the Lot may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Lot shall be disregarded completely in determining the proportion of votes given with respect to the matter.

**2.8 Quorum of Owners.**

2.8.1 At any regular annual meeting of the Association, the Members that are represented for any purpose at the annual meeting shall constitute a quorum, except for matters requiring a higher quorum as provided in the Declaration or these Bylaws. For any other meeting of the Association or action taken without a meeting, and except as otherwise provided in the Declaration or these Bylaws, Members holding one-third (1/3) of the voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum.

2.8.2 The subsequent ratification of an Owner of the action taken at a meeting shall constitute the presence of the person for the purpose of determining a quorum. When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

2.8.3 If any meeting or vote of Members cannot be organized because of a lack of quorum, the Members who are present may adjourn the meeting to a time at least 48 hours from the time of the meeting at which a quorum was not present and Members holding twenty percent (20%) of the voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum at such adjourned meeting or vote.

2.9 **Binding Vote.** Action on a matter other than the election of directors is approved and shall be binding upon all owners for all purposes if a quorum exists and the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number of affirmative votes is required by law or the Governing Documents.

2.10 **Order of Business.** The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of the preceding meeting; (d) Reports of officers; (e) Reports of committees, if any; (f) Election of Board members; (g) Unfinished business; (h) New business; and (i) Adjournment.

2.11 **Meeting Procedure.** Formal rules of order shall only apply to any Association meeting inasmuch as one or more rules of order are adopted by the Board by resolution. Otherwise, the President shall conduct meetings according to the procedure he or she deems fit. A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

2.12 **Action by Written Ballot in Lieu of a Meeting.** Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association causes to be delivered a written ballot to every Member entitled to vote on the matter not less than fifteen (15) days prior to the date on which the ballots must be received by the Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at



a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Board members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting of Members and may be described as such in any document. The Board may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

2.13 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, are signed by Members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty day period. Any such writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

### **ARTICLE 3 – BOARD OF DIRECTORS – SELECTION, TERM OF OFFICE**

#### **3.1 Number, Term and Qualifications.**

3.1.1 The affairs of the Association shall be governed by a Board of Directors composed of at least three (3) and not more than nine (9) Board members, as determined by the Board.

3.1.2 Members of the Board shall serve for a term of two years. Elections shall be staggered so all Board members are never elected in the same year.

3.1.3 All Board members must be an Owner or the spouse of an Owner of a Lot, except that a husband and wife may not serve on the Board at the same time. A representative of an entity which owns a Lot, and only one such representative, may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Lot.

3.2 Vacancies. Vacancies on the Board, caused by any reason other than the removal of a Board member by a vote of the Association, shall be filled for the balance of the term by vote of

a majority of the remaining Board members even though they may constitute less than a quorum. Each person so elected shall be a Board member until a successor is elected upon expiration of the term for which the person was elected by the other Board members to serve.

**3.3 Removal of Board members.**

3.3.1 At any annual or special meeting, any one or more of the Board members, other than interim Board members, may be removed, with or without cause, by a majority of the voting interests of the Members. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Trustee whose removal has been proposed by the owners may be given an opportunity to be heard at the meeting.

3.3.2 A Board member who is delinquent in the payment of an Assessment for longer than three months, is absent from three consecutive regular meetings of the Board, or is absent from more than 25% of the regular Board meetings held in any 12 month period, shall be deemed to have tendered his or her resignation, and upon acceptance by the Board his or her position shall be vacant. The vacancy shall be filled as provided in Section 3.2 above.

**3.4 Compensation.** No Board member shall receive compensation for any service he or she may render to the Association as a Board member. However, any Board member may be reimbursed for actual expenses incurred in the performance of his or her duties.

**ARTICLE 4 - NOMINATION AND ELECTION OF BOARD MEMBERS**

**4.1 Nomination.**

4.1.1 Method of Nomination. Nomination for election to the Board shall be made in the manner determined by the Board, which may include a nominating committee and/or nominations from the floor at a meeting. The Board, or, if one is established, the nominating committee, shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies and not less than the number of candidates volunteering and willing to serve.

4.1.2 Nominating Committee. The nominating committee, if any, shall consist of a chairman, who shall be a member of the Board; and one or more members of the Association.

**4.2 Election.** At the election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Voting in an election shall be by written ballot. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**ARTICLE 5 - MEETINGS OF THE BOARD OF DIRECTORS**

**5.1 Organizational Meeting.**

5.1.1 Location, Date and Time. The first meeting of a newly-elected Board shall be held at such place, date and time as shall be fixed by the Board members at the meeting at which

the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

5.1.2 Procedure and Business. Until the election of new officers, the meeting shall be chaired by the outgoing president, or in the absence of such person, the outgoing secretary, regardless of whether the outgoing president or secretary is a member of the newly constituted Board. At the organizational meeting, the Board shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.2 Regular Meetings. Regular meetings of the Board shall be held at such place and hour as may be fixed from time to time by the Board, and if so fixed, no notice thereof need be given. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, or at another date and time agreed upon by the Board with notice to all members of the Board.

5.3 Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) Board members, after not less than three (3) days' notice to each Board member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.7 below. The notice must state the time, place, and purpose of the meeting.

5.4 Meeting Procedure. Formal rules of order shall only apply to any Board or Association meeting inasmuch as one or more rules of order are adopted by the Board by resolution. Meetings of the Board shall be conducted by the President. A decision of the Board may not be challenged because the appropriate rules of order were not used. A decision of the Board is deemed valid without regard to any procedural errors related to the rules of order unless the error appears on the face of a written instrument memorializing the decision.

5.5 Open Meetings; Executive Sessions.

5.5.1 Open Meetings. Except as provided in subsection 5.5.2, all meetings of the Board shall be open to Owners. At each meeting, the Board shall provide each Owner a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the meeting. Beyond such comment period, no Owner shall have a right to participate in the Board meeting unless the Owner is also a member of the Board. The president or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting. The Board may adopt policies governing meetings of the Board from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Board shall also supersede these Bylaws to the extent the policy restates then current Utah law.

5.5.2 Executive Sessions. In the discretion of the Board, the following matters, in addition to matters provided for by law, may be considered in executive session:

- (a) consult with an attorney for the purpose of obtaining legal advice;
- (b) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings;
- (c) discuss a personnel matter;

- (d) discuss a matter relating to contract negotiations, including review of a bid or proposal;
- (e) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or
- (f) discuss a delinquent assessment or fine.

**5.5.3 Executive Session Procedure.** Except in the case of an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

**5.6 Meetings by Electronic Communication in Real Time.** In the event of an emergency, or by decision of the Board, and to the fullest extent allowed by law, meetings of the Board may be conducted by means of electronic communication that allows all members of the Board participating to be able to communicate orally in real time. The requirement in Section 5.5.1 that Board meetings be open to Owners shall not apply to such meetings, to the extent allowed by law and subject to policies adopted by the Board from time to time to reflect current law.

**5.7 Action Taken by Board without a Meeting.**

**5.7.1 Notice, Response.** The Board shall have the right to take any action in the absence of a meeting which they could take at a meeting if notice is transmitted in writing to each member of the Board and each member of the Board, by the time stated in the notice:

- (a) (1) signs a writing for such action; or (2) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and
- (b) fails to demand in writing that action not be taken without a meeting.

**5.7.2 Content of Notice.** The notice required by Subsection 5.7.1 (the "Notice") shall state:

- (a) the action to be taken;
- (b) the time by which a Board member must respond to the Notice;
- (c) that failure to respond by the time stated in the Notice will have the same effect as: (1) abstaining in writing by the time stated in the Notice; and (2) failing to demand in writing by the time stated in the Notice that action not be taken without a meeting; and
- (d) any other matters the Association determines to include.

**5.7.3 Approval of Action/Decision.** Action is taken under this Section 5.7 only if, at the end of the time stated in the Notice:

- (a) the affirmative votes in writing for the action received by the Association equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Board members then in office were present and voted; and
- (b) the Association has not received a written demand by a Board member that the

action not be taken without a meeting (other than a demand that has been revoked pursuant to Subsection 5.7.5).

**5.7.4 Waiver of Meeting.** A Board member's right to demand that action not be taken without a meeting shall be considered to have been waived unless the Association receives such demand from the Board member in writing by the time stated in the Notice.

**5.7.5 Revocation.** A Board member who in writing has voted, abstained, or demanded action not be taken without a meeting may, in writing, revoke the vote, abstention, or demand at any time before the time stated in the Notice.

**5.7.6 Electronic Transmission.** A communication or writing under this Article may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this Article if the electronic transmission is delivered with information from which the Association can determine that the electronic transmission is transmitted by the person (e.g., from a sender's known email account), and the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed. For purposes of this Section 5.7, communications to the Association are not effective until received.

**5.8 Waiver of Notice.** Any Board member may, at any time, waive notice of any meeting of the Board in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Board member at any meeting of the Board shall constitute a waiver of notice by the Board member, except where the Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Board members are present at any meeting of the Board, no notice to Board members shall be required and any business may be transacted at the meeting.

**5.9 Quorum and Acts.** At all meetings of the Board a majority of the existing Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present shall be the acts of the Board. If, at any meeting of the Board, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Board member may be considered to be present at a meeting and to vote if the Board member has granted a signed written proxy: (i) to another Board member, or other person, who is present at the meeting; and (ii) authorizing the other Board member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

## ARTICLE 6 - POWERS, RIGHTS, AND DUTIES OF THE BOARD

6.1 General Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

6.2 Specific Powers. In addition to powers granted by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board shall have the power to: (a) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; (b) in the Board's discretion, appoint such committees as deemed appropriate in carrying out its purpose.

6.3 Best Interest of Association and Reliance on Information. A Board member or officer shall discharge the Board member or officer's duties (a) in good faith, (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (c) in a manner the Board member or officer reasonably believes to be in the best interests of the Association. The Board members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a reasonable, prudent person would do to serve the best interest of the Association.

In discharging duties, a Board member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the Association whom the Board member or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, a public accountant, or another person as to matters the Board member or officer reasonably believes are within the person's professional or expert competence, or (c) in the case of a Board member, a sub-committee of the Association or Board of which the Board member is not a member if the Board member reasonably believes the sub-committee merits confidence.

## ARTICLE 7 - OFFICERS AND THEIR DUTIES

7.1 Designation and Qualification.

(a) Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The Board may designate the office of assistant treasurer and assistant secretary and the Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

(b) Qualifications. The president and vice-president shall be a member of the Board, but the other officers need not be Board members or Owners. Any Board member may be an officer of the Association.

(c) Multiple Offices. A person may simultaneously hold more than one office.

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

7.2 Election and Vacancies. The officers of the Association may be elected by the Board at the organizational meeting of each new Board or any Board meeting thereafter to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Board shall elect a successor to fill the unexpired term.

7.3 Resignation. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 Removal of Officers. Officers shall hold office at the pleasure of the Board. Upon an affirmative vote of a majority of the members of the Board any officer may be removed, either with or without cause.

7.5 Compensation of Officers. No officer who is a member of the Board may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of the Owners. The Board may fix any compensation to be paid to any officers who are not also Board members.

7.6 Duties of Officers. Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and by the Board, to the extent not inconsistent with these Bylaws or the Declaration. The Board may delegate any powers or duties of officers to other persons or agents as the Board deems necessary or appropriate from time to time. Any principal officer may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. The general duties of the officers are as follows:

(a) President. The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments, including amendments to the Governing Documents.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall prepare and maintain the minutes of all meetings of the Board and the minutes of all meetings of the Association, have charge of such books, papers and records as the Board may direct, shall have the responsibility for preparation and maintenance of other records and information required to be kept by the Association under the Act and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act; and for authenticating records of the nonprofit corporation, and in general, shall perform all of the duties

incident to the office of secretary,

(d) **Treasurer.** The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a managing agent, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board and disbursing funds as directed by resolution of the Board.

#### **ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND BOARD MEMBERS**

Each officer and Board member of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities reasonably incurred by him or her in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Board member or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Board member or officer or person may be entitled by law or agreement or vote of the members or otherwise. No member of the Board or any committee of the Association, and no officer of the Association shall be personally liable to the Association or its Members or to any Owner for damages for breach of fiduciary duty, mistake of judgment, negligence, tortious acts or other conduct but this Article shall not eliminate or limit the liability of such for acts or omissions that involve intentional misconduct, fraud or a knowing violation of law. No member of the Board or any committee of the Association, and no officer of the Association shall be personal liable in contract under any agreement, instrument or transaction entered into by them on behalf of the Association. Further, no member of the Board or any committee of the Association, and no officer of the Association shall have any personal liability arising out of the use, misuse or condition of the Project or any part thereof that might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as Directors, officers or committee members. When a member of the Board is sued for liability for actions undertaken in his or her role as a member of the Board, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, until and unless it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

#### **ARTICLE 9 - RECORDS AND AUDITS**

The Association shall maintain within the state of Utah, all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act.



9.1 General Records.

(a) The Board and managing agent or manager, if any, shall keep records of the actions of the Board and managing agent or manager; minutes of the meetings of the Board; and minutes of the meeting of the Association.

(b) The Board shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association and Board.

(c) The Board shall maintain a list of Owners. The list of Owners may specify whether the Owner is an Owner in Good Standing or a Suspended Owner.

(d) The Association shall retain within this state, all records of the Association for not less than the period specified in applicable law.

9.2 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot. The account shall designate the Lot number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.3 Financial Reports and Audits.

(a) Upon written request by an Owner or mortgagee of a Lot, an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to the person(s) making the request within ninety (90) days after the end of each fiscal year.

(b) From time to time, the Board, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and mortgagees of Lots.

9.4 Inspection of Records by Owners.

(a) Except as otherwise provided in Section 9.5 below, all records of the Association shall be reasonably available for examination by an Owner and any mortgagee of a Lot pursuant to rules adopted by resolution of the Board or if no such resolution has been adopted, pursuant to the Utah Revised Nonprofit Corporation Act.

(b) The Board shall maintain a copy, suitable for the purposes of duplication, of the following: (1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association; (2) The most recent financial statement prepared pursuant to Section 9.3 above; and (3) The current operating budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section, subject to a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to

furnish the information.

(d) The Board, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

**9.5 Records Not Subject to Inspection.** Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

- (a) Personnel matters relating to a specific identified person or a person's medical records.
- (b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.
- (c) Communications with legal counsel that relate to matters specified in this section, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.
- (d) Disclosure of information in violation of law.
- (e) Documents, correspondence or management or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session held in accordance with these Bylaws.
- (f) Documents, correspondence or other matters considered by the Board in executive session held in accordance with these Bylaws and the minutes of any executive session.
- (g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

## **ARTICLE 10 - AMENDMENTS**

Approval of a majority of the voting rights of the Members is required for approval of any amendment to these Bylaws. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder's Office. No action to challenge the validity of an adopted amendment may be brought more than two (2) years after the amendment is recorded.

## **ARTICLE 11 - MISCELLANEOUS**

### **11.1 Notices.**

**11.1.1 Association.** All notices to the Association or the Board shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board may hereafter designate from time to time.

11.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to the Owners, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring Owners to furnish the Association with a current email address.

(b) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Board, or if no address has been designated, then to the Owner's Lot.

(c) If a Lot is jointly owned, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the Lot shall be sufficient.

11.2 Affairs, Electronic Means. Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the Owner if the Board does so in good faith and has no reason to believe it is not the act of the Owner. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a Member or by the Association.

11.3 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

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

11.5 Fiscal Year. The fiscal year of the Association shall be determined by the Board.

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

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officer on this 2 day of October, 2015.

(Sign): Michael Dougherty  
(Print Name): Michael Dougherty, President