

**After Recording Return To:**  
644 East Union Square  
Sandy, UT 84070

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
FITZGERALD ESTATES  
(INCLUDING BYLAWS)**

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**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FITZGERALD ESTATES SUBDIVISION**, is made and executed by Home Savings Bank, a Utah corporation, and Candlelight Homes, L.L.C., a Utah limited liability company (collectively "Declarant").

## **RECITALS**

A. Fitzgerald Estates was created and is governed by a declaration of covenants, conditions, and restrictions recorded as Entry No. 10227795, in the Salt Lake County Recorder's Office ("Original Declaration");

B. This Declaration replaces the Original Declaration and all its amendments in their entirety;

C. This Declaration shall be binding against all phases within the Project as described in Exhibit "A";

D. These covenants, conditions, restrictions, easements and limitations shall run with the said real property and shall be binding on all parties having or acquiring any right, title or interest in the described real property or any part thereof and shall inure to the benefit of each owner thereof and are imposed upon said real property and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements.

E. It is intended and required that the Association shall be an incorporated homeowners association pursuant to Utah's Revised Nonprofit Corporations Act.

F. Under the Original Declaration Section 7, the Declarant as the managing agent of the Association certifies that more than a majority of the Lots in the subdivision have approved this Amended and Restated Declaration.

NOW, THEREFORE, for the benefit of the Project and the Owners thereof, the Declarant hereby executes this Declaration of Covenants, Conditions and Restrictions for Fitzgerald Estates Subdivision, for and on behalf of all of the Owners.

### **ARTICLE I. DEFINITIONS**

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

#### ***Section 1.01 Articles of Incorporation or Articles***

Articles of Incorporation or Articles shall mean the Articles of Incorporation for Fitzgerald Estates Homeowners Association, Inc., on file with the Utah State Department of Commerce, as amended.

#### ***Section 1.02 Assessment***

Assessment means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of this Declaration, the Bylaws or applicable law.

**Section 1.03 Association**

Association means Fitzgerald Estates Homeowners Association. It is intended that the Association be a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in dissolution of the Association. The Association may renew its corporate status, reinstate its corporate status, or incorporate without Owner approval.

**Section 1.04 Board**

Board means the Board of Directors. The Board governs the property, business, and affairs of the Association.

**Section 1.05 Bylaws**

Bylaws mean the bylaws of the Association, as amended or restated from time to time. The Bylaws are attached to this document as Exhibit "B."

**Section 1.06 Common Expenses**

Common Expenses mean all sums which are expended on behalf of all the Owners and all sums which are required by the Board to perform or exercise its functions, duties, or rights under the this Declaration, the management agreement for operation of the Project, and such rules and regulations as the Board may from time to time make and adopt.

**Section 1.07 Declarant**

Declarant shall mean and refer to Home Savings Bank, a Utah corporation, and Candlelight Homes, LLC, a Utah limited liability company, and/or any successors to said companies which, either by the operation of law, or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Project (or a portion thereof) as did its predecessor.

**Section 1.08 Declaration**

Declaration means this document, as amended from time to time.

**Section 1.09 Dwelling**

Dwelling means a residential unit that is designated and intended for use and occupancy as a residence by a single family.

**Section 1.10 Family**

Family shall mean and refer to Family as defined by the local zoning ordinance.

**Section 1.11 Improvements**

Improvements means every structure or improvement of any kind, including but not limited to landscaping required under the Project Documents, roads, sidewalks, curb, gutter, Dwellings, deck, porch, awning, fence, garage, carport, driveway, storage shelter or other product of construction efforts on or in respect to the Property.

**Section 1.12 Lot**

Lot means a subdivided parcel, lot or plot of ground as designated on the Plat.

Lot also includes mechanical equipment, ducts, pipes, and appurtenances located outside the Lots boundaries but designated and designed to serve only the Lot, such as air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Lot. All pipes, wires, conduits, or other public utility lines or installations serving only the Lot shall be considered part of the Lot.

**Section 1.13 Member**

Member means an Owner.

**Section 1.14 Owner**

Owner means the person or persons owning any Lot (including the holder of a buyer's interest under a land sale contract, unless otherwise stated in the contract), but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Lot (including the holder of a vendor's interest under a land sale contract, unless otherwise stated in the contract).

**Section 1.15 Map**

Map means the plat map on file with the Salt Lake County Recorder for the Project.

**Section 1.16 Project or Property**

Project or Property means all of the land described in attached **Exhibit "A."**

**Section 1.17 Project Documents**

Project Documents means the Declaration of Covenants, Conditions and Restrictions, Bylaws, Articles of Incorporation, the Plat, and Rules and Regulations.

**Section 1.18 Resident**

Resident means any person living or staying at the Project. This includes but is not limited to all lessees, tenants, and the family members of Owners, tenants or lessees.

**Section 1.19 Turnover Meeting**

Turnover Meeting means the meeting described in Article VIII, Section 8.01.

**ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION**

**Section 2.01 Property Subject**

The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in Salt Lake County, Utah, and is described on **Exhibit "A."**

All of the Property shall be owned, conveyed hypothecated, encumbered, used, occupied and improved subject to this Declaration. The easements, covenants, conditions, restrictions and charges, described in this Declaration shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of the Association, and each Owner thereof.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to improve walkways and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire seven (7) years after the date on which this Declaration, or any amendment or

supplement hereto, is filed for record in the office of the County Recorder of Salt Lake County, Utah.

***Section 2.02 Withdrawal of Property***

Prior to the Turnover Meeting, the Declarant may withdraw any property from the Property. Such withdrawn property shall no longer be subject to the covenants and restrictions of this Declaration except for any easements, rights, reservations, exemptions, power or privileges reserved to the Declarant pursuant to this Declaration which burdens the withdrawn property for the benefit of any property which is subject to the Declaration. Such withdrawal shall be made by recording a Supplemental Declaration among the Land Records of the County, withdrawing the effect of the covenants and restrictions of this Declaration from the withdrawn property. Such withdrawn property may be utilized by the Declarant, or any successor, assign or transferee thereof, for any lawful purpose or use.

**ARTICLE III. PROPERTY RIGHTS IN LOTS**

***Section 3.01 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:

(a) Right of Entry. The Association and any person authorized by 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 and determining whether or not the Lot is in compliance with this Declaration and Bylaws. 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. The right of entry granted by the subsection applies only to Lots upon which the Association has maintenance responsibilities as provided for in the Project Documents.

(b) Lots shall be subject to the easements shown on the Plat.

**ARTICLE IV. ARCHITECTURAL CONTROL**

***Section 4.01 Architectural Review Committee***

(a) Unless delegated to a separate body of Owners, the Board of Directors shall serve as the Architectural Review Committee ("ARC").

(b) No Improvement shall be commenced, erected, placed or altered on any Lot until an application and construction plans and specifications, showing the nature, shapes, heights, materials, colors and proposed location of Improvements or changes have been submitted to and approved in writing by the ARC as provided in this article. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of exterior design with the existing improvements and landscaping and as to location with respect to topography and finished grade elevation.

(c) The initial Architectural Review Committee shall be comprised of the Declarant or any persons or entities appointed by the Declarant as it determines. After the Turnover



Meeting, or at an earlier date if Declarant so elects, the Board of Directors shall function as the ARC and their terms as an ARC member shall be for as long as their Board of Director term. However, the Board of Directors may elect to delegate the ARC functions to a separate committee. In such an event, the committee shall consist of no fewer than three (3) members. The terms of office for each member of the ARC, appointed by the Board, shall be for one (1) year unless lengthened or shortened by the Board of Directors at the time of appointment. The Board may appoint any or all of its members for the ARC and there shall be no requirement for non-Board members to serve on the ARC.

#### **Section 4.02 Architectural Standards and Guidelines**

(a) The procedure and specific requirements for review and approval of an application shall be set forth in design guidelines and standards ("Architectural Standards and Guidelines") adopted from time to time by resolution of the Board of Directors at its sole discretion.

(b) The Architectural Standards and Guidelines shall interpret and implement the provisions of this Declaration and the Bylaws for architectural review and guidelines for architectural design of Dwelling and other Improvements, including, but not limited to, decks, porches, awnings, carports, garages, and storage structures, color schemes, exterior finishes and materials and similar features which may be used on the Property and landscaping; however, Architectural Standards and Guidelines may not be in derogation of the minimum standards established by this Declaration, the Bylaws, and City approvals.

(c) Elevations: The front elevation of Dwellings must be surfaced with a minimum of 50% hard surface in the following proportions: a minimum of 20% stone or brick, the remainder shall be fiber cement board. No vinyl or aluminum siding is allowed on any elevation. Aluminum fascia and soffit may be used.

(d) Roofs: Roofs must be constructed with 30-year architectural shingles.

(e) Completion: Once work has commenced on an Improvement, work shall continuously progress to completion. Any breaks in work shall not exceed 14 days, unless weather related.

(f) Colors: Without limiting the use of color, exterior walls shall be subdued in color and not reflective. Intense colors should be used as accent only. The Declarant or Association may create an approved color palette in the Architectural Standards and Guidelines.

#### **Section 4.03 Action by Committee**

A majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ARC. All decisions rendered by the ARC must be by written instrument setting forth the action taken by the members consenting thereto.

#### **Section 4.04 Duties**

The ARC shall consider and act upon the proposals or plans submitted pursuant to this article.

#### **Section 4.05 ARC Decisions**

The ARC shall render its approval or denial decision with respect to the proposal within thirty

(30) business days after it has received all material required by it with respect to the application. All decisions shall be in writing. If the ARC fails to render its decision of approval or denial in writing within such thirty (30) business days of receiving all material required by it with respect to the proposal, the application shall be deemed approved.

***Section 4.06 ARC Discretion***

The ARC may, at its sole discretion, withhold approval of any proposal if the ARC finds the proposal would be inappropriate for the particular Lot or incompatible with the Architectural Standards and Guidelines. Considerations such as sitting, shape, size, color, design, height, solar access or other effects on the enjoyment of other Lots, and any other factors which the ARC reasonably believe to be relevant, may be taken into consideration by the ARC in determining whether or not to approve any proposal.

***Section 4.07 Waiver, Precedent, Estoppel***

Approval or disapproval by the ARC of any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent, waiver or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

***Section 4.08 Appeal***

Any Owner adversely impacted by action of the ARC may appeal such action to the Board of Directors. If, however, the ARC's duties are being carried out by the Board of Directors, then no such right to appeal shall exist.

All appeals and hearings shall be conducted in accordance with procedures set forth by the Board by resolution.

***Section 4.09 Effective Period of Consent***

The ARC's approval of any proposal shall automatically be revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ARC.

***Section 4.10 Determination and Notice of Noncompliance***

(a) Inspection. The ARC may inspect from time to time, all work performed and determine whether it is in substantial compliance with the approval granted.

(b) Notice of Noncompliance. If the ARC finds that the work was not performed in substantial conformation with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of noncompliance and shall require the owner to remedy the noncompliance by a specific date.

***Section 4.11 Noncompliance***

Any construction, alteration, or other work done in violation of this Declaration shall be deemed to be in noncompliance. Upon receipt of a Notice of Noncompliance, Owners shall, at their own cost and expense, remove such nonconforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC or Board of Directors, or their designee, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a

trespasser. All costs incurred by the Association shall be an Individual Assessment against the Owner.

***Section 4.12 Liability***

Neither the Board of Directors, ARC nor any member thereof shall be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

***Section 4.13 Estoppel Certificate***

(a) Within fifteen (15) business days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the chairman, or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that as of the date thereof either:

(i) All improvements made or done upon or within such Lot by the Owner that are subject to the requirements of this article comply with the Declaration and the Bylaws; or

(ii) Such improvements do not comply, in which event; the certificate shall also identify the non-complying improvements and set forth with particularity the nature of such noncompliance.

(b) The Owner, Owner's heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between and among Declarant, the ARC, the Association and all Owners and such persons deriving any interest through any of them.

***Section 4.14 Fees***

Except for the Declarant, there shall be an application fee in an amount to be determined by the ARC for any new construction upon a Lot. There shall also be an application fee to be determined by the ARC for all other Improvements other than the construction of new Dwelling. In addition to any fees set forth herein, the ARC may charge a reasonable application fee and charge applicants additional costs incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers, landscape architects and other consultants to advise the ARC concerning any aspect of the application or compliance with any appropriate architectural criteria or standards. Such fee schedule shall be adopted by Board resolution and shall be collectible as assessments pursuant to this Declaration and the Bylaws.

***Section 4.15 Variance***

The ARC may grant variances to the Architectural Standards and Guidelines. Variances may only be granted if they are reasonably similar in design and appearance to the remainder of the Project. Procedures for variances will be established by Board resolution.

## ARTICLE V. ASSESSMENTS

### **Section 5.01 Covenant for Assessment:**

By accepting a deed or other conveyance, each Owner covenants and agrees to pay the Association all regular assessments, special assessments, emergency assessments, individual assessments, late penalties, and collection costs (including attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for assessments by abandonment of their Lot or failure of the Association to perform under this Declaration. Except for foreclosures, the personal obligation for unpaid assessments, late fees, interest, and collection costs, including attorney's fees, shall pass to the successor in title. If title passes through foreclosure sale, the successor in title shall only be liable for six months unpaid assessments, late fees, interest, and collection costs, including attorney's fees. A successor in title is entitled to a statement from the Association setting forth the amounts due by the prior owner. The amounts set forth in the statement shall be binding upon the Association. If an Owner loses their Lot to foreclosure or voluntarily conveys it, they shall remain personally liable for unpaid assessments, late fees, interest, and collection costs (including attorney's fees). Declarant shall be exempt from assessment liability.

### **Section 5.02 Annual Budget:**

The Board shall prepare an annual budget for the Association. The annual budget shall provide for: the administration, management, operation, and reserves of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

### **Section 5.03 Regular Assessment**

The Board shall fix the amount of the regular assessment for each Lot by dividing the total budget by the number of Lots. The Association may collect the regular assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis. Written notice of the regular assessment amount and payment schedule shall be sent to Owners at least 30 days in advance of the beginning of the fiscal year for which the regular assessment will be due. Apart from the initial notice of regular assessment, the Association is not obligated to send periodic invoices for regular assessments. If the Board fails to fix a regular assessment, the amount of the last regular assessment and payment schedule will continue in effect.

### **Section 5.04 Special Assessment**

The Association may levy a special assessment for the purpose of funding any over budget items. The Association may levy a special assessment up to 50% of the annual budget without approval from the Owners. If a special assessment exceeds 50% of the annual budget, it must be approved by a majority of a quorum of Owners.

### **Section 5.05 Individual Assessment**

Any expenses attributable to less than all the Lots may be assessed exclusively against the affected Lots. Individual assessments include, without limitation:

- (a) Assessments levied against a Lot to reimburse the Association for costs incurred in correcting a violation of the Project Documents;
- (b) Fines, late fees, interest, collection costs (including attorney's fees);
- (c) Services provided to a Lot due to an Owner's failure to maintain, for emergency repairs, or to protect the health, safety, and welfare of adjoining Lots;
- (d) Reinvestment or transfer fees; and
- (e) Any charge described as an individual assessment by the Governing Documents.

**Section 5.06 Apportionment of Assessments**

Regular and special assessments will be assessed equally to all Lots. Individual assessments shall be apportioned exclusively to the Lots benefitted or affected.

**Section 5.07 Nonpayment of Assessment**

Assessments not paid within 30 days after the due date established by the Board will be late and subject to interest at 18% per annum on any delinquent balance and a late fee in an amount to be determined by the Board. Late fees may only be charged once for a missed payment.

**Section 5.08 Application of Partial Payment**

Partial payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

**Section 5.09 Suspension of Voting Rights**

If an Owner has a delinquent assessment balance, the Association may suspend their right to vote.

**Section 5.10 Lien for Assessment**

All assessments, late fees, interest, and collection costs (including attorney's fees) not timely paid shall be a charge and continuing lien upon each Lot against which the assessment is made. The Association shall file a notice of lien with the county recorder as evidence of nonpayment.

**Section 5.11 Enforcement of Lien**

Without waiving its right to personally pursue an Owner for unpaid assessments, the Association may foreclose its lien in the same manner as deeds of trust, mortgages, or any other manner permitted by Utah law.

**Section 5.12 Subordination of Lien**

A lien for assessments shall be subordinate to a first mortgage now or hereafter placed upon a Lot. The sale of a Lot pursuant to foreclosure of a first mortgage shall extinguish the lien for assessments which became due prior to the foreclosure sale. A foreclosure will not relieve the purchaser's obligation to pay 6 months of assessments, late fees, and penalties.

**ARTICLE VI. RESTRICTIONS ON USE**

**Section 6.01 Use of Lots - Residential Use**

Each of the Lots in the Project is limited to residential use only. Each Lot and Owner is subject to the uses and restrictions imposed by such restrictions (including any parking restrictions).

**Section 6.02 Cancellation of Insurance, Illegal Activity, Nuisance**

Nothing shall be done or kept in any Lot or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof over what the Board, but for such activity, would pay, without the prior written consent of the Board.

Nothing shall be done or kept in any Lot or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

No noxious, destructive or offensive activity shall be carried on in any Lot or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

**Section 6.03 Rules and Regulations**

No Owner or Resident shall violate the Rules and Regulations for the use of the Lots as adopted from time to time by the Board. An Owner shall be responsible to advise their guests and invitees about the rules and shall be responsible for their guests and invitees compliance with the rules and regulations.

**ARTICLE VII. ASSOCIATION**

**Section 7.01 Organization**

(a) The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the State of Utah (Utah Code Annotated Title 16-6a, as amended from time to time).

(b) The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association.

(c) The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws.

**Section 7.02 Membership**

Each Owner during the entire period of Owner's ownership of one or more Lots within the Project shall be a Member. 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.

**Section 7.03 Voting Rights**

Voting rights within the Association shall be allocated as follows:

(a) **Class A.** Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

(b) **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to 3 votes for each Lot owned. The Class B Membership shall automatically cease and be converted to a Class A membership upon the sale of the last lot.

- (c) Method of Voting. The method of voting shall be as provided in the Bylaws.

**Section 7.04 Powers, Duties and Obligations**

The Association shall have such powers and duties as may be granted to it or imposed by the Project Documents and any applicable statute, as such statute may be amended to expand the scope of association powers.

**Section 7.05 Adoption of Bylaws**

The Association has adopted Bylaws which are being recorded simultaneously with this Declaration.

**ARTICLE VIII. DECLARANT RIGHTS**

**Section 8.01 Administrative Control of Association**

Declarant shall assume full administrative control of the Association through an appointed interim Board of Directors, which shall serve until the Turnover Meeting.

The Turnover Meeting shall be held at the Declarant's option and sole discretion but shall not be held later than three (3) years from the date the last Lot to be developed upon the Property is sold.

Declarant may elect to relinquish control of the Association at an earlier time by written notice to Owners and the Turnover Meeting shall be held within ninety (90) days of such notice.

**Section 8.02 Other Rights**

In addition to any other rights under the Project Documents, as long as Declarant owns at least one (1) Lot within the Property Declarant:

(a) Sales Office and Model. Shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) "For Sale Signs." May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant, at reasonable locations on the Property, including without limitation, the Common Property.

(c) Approval of Amendments. For so long as the Declarant owns at least one Lot within the Property, Declarant shall have the right to approve all amendments to the Project Documents proposed by the members.

(d) Assessment Exemption. Notwithstanding anything herein, Declarant shall be exempt from paying assessments.

(c) Declarant Exemption. Unless specifically and expressly bound by a provision of the Project Documents, Declarant shall be exempt from the provisions of the Project Documents.

**Section 8.03 Easements Reserved to Declarant**

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Drainage and Utility Easement," "Sewer Easement," "Drainage and Sewage Easement," and "Open Space," or otherwise designated as an easement area over any road on the Property, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located, together with the right and

(c) The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Community in, over, through, upon and across any and all of the roads, streets, avenues, alleys, and open space and in, over, through, upon and across each and every Lot in any easement area set forth in this Declaration or as shown on the Plat.

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

(e) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any Structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(f) Declarant further reserves unto itself, for itself and any builder and their successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property other than those Lots conveyed to Owners for all purposes necessary or appropriate to the full and final completion of construction of the Property.

The Declarant will take reasonable steps, and will ensure that any builder takes reasonable steps, to avoid unduly interfering with the beneficial use of the Lots by Owners.

## **ARTICLE IX. ASSOCIATION AND OWNER MAINTENANCE OBLIGATIONS**

### ***Section 9.01 Lots***

(a) Owner's Responsibility. All maintenance of the Lots, Dwellings, and improvements shall be the sole responsibility of the Owner thereof, who shall maintain such Lot



in accordance with the Project Documents of the Association.

(b) Maintenance by Association. The Board of Directors, after notice and opportunity for hearing, or in the case of an emergency immediately, may assume the maintenance responsibility over a Lot or Dwelling if, in the opinion of the Board of Directors, the Owner is unwilling or unable to adequately provide such maintenance. Should the Board exercise its right under this provision, it shall not be liable for trespass or nuisance and shall have the right to levy an Individual Assessment to recover its maintenance costs. Association shall maintain: parking strips on Carlquist Drive and 150 East that abut the development, land drains and subsurface drains, entry feature and monumentation.

## **ARTICLE X. COMPLIANCE AND ENFORCEMENT**

### ***Section 10.01 Compliance***

Each Owner or Resident 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 an action or suit maintainable by the Association or an aggrieved Owner.

### ***Section 10.02 Remedies***

Violation of any provisions of the Project Documents, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, the right, in addition to any other rights set forth in the Project Documents, or under law, to do, any or all of the following after giving notice and an opportunity to be heard:

(a) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(b) To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board of Directors;

(c) The right of the Association to suspend the voting rights after notice and a hearing for any period not to exceed 60 days for any infraction of the Project Documents; or

(d) 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. Costs and attorney's fees shall be an Individual Assessment.

### ***Section 10.03 Action by Owners***

Subject to any limitation imposed under the Project 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.

### ***Section 10.04 Hearing***

The Board shall, by resolution, promulgate procedures for hearings. When a hearing is requested or required, the hearing shall be conducted in accordance with the Board's resolution on hearings.

## **ARTICLE XI. INSURANCE**

**Section 11.01 Types of Insurance Maintained by the Association**

Commencing not later than the date a Lot is conveyed to a Person other than Declarant, the Association shall have the authority to and shall obtain and maintain, to the extent reasonably available, the insurance specified below:

(a) The Board of Directors may adopt General Insurance Rules, Policies and Procedures intended as a guide for Owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners. The Association shall obtain the following insurance coverages ("The Association Master Policy"):

(i) D&O. Directors and officers in not less than an amount equal to the Association's gross annual income, bank deposits, and cash;

(ii) Fidelity Bond. Fidelity bond, in an amount not less than the reserves and operating capital of the association; and

(iii) Other. Any other types of insurance the Association deems necessary.

**Section 11.02 Insurance Company.**

The Association shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

**Section 11.03 Premium as a Common Expense.**

The premium for the Association's insurance is to be a Common Expense.

**Section 11.04 Insurance by Owner.**

Each Owner shall obtain and maintain the following types of insurance coverages:

(a) Public Liability Insurance. Each Owner will obtain public liability insurance for his Lot and shall provide the Association with a Certificate of Insurance upon request;

(b) Casualty and Fire Insurance. Each Owner will obtain a casualty and fire insurance policy for his Dwelling, for the full replacement value of the Dwelling, and shall provide the Association with a Certificate of Insurance upon request.

(c) Premium. The insurance premium on the Owner's policies shall be paid by the Owner.

(d) Maintenance of Coverage. The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah.

(e) Not a Limitation. The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he may deem appropriate.

(f) Default. If an Owner fails to maintain the required insurance or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to, without further

notice, purchase the required insurance and treat the cost as an Individual Assessment.

**Section 11.05 Payment of Deductible.**

It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the Association Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose Lot the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party(s) responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Owner shall be responsible for the deductible. Each Owner is encouraged to purchase insurance to cover the cost of the deductible as stated above.

**Section 11.06 Damages.**

Each Owner is responsible for the maintenance of his Lot and Dwelling and for the repair of any damage he causes to another Lot or Dwelling.

**Section 11.07 Right to Adjust Claims.**

The Association has the right, power and authority to adjust claims.

**Section 11.08 Use of Insurance Proceeds and Repairs.**

Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

**Section 11.09 Obligation of Lot Owner to Repair and Restore**

(a) In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the ARC; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the ARC and obtain its approval prior to commencing the repair, restoration or replacement.

(b) If any Owner of an improved Lot fails to maintain the insurance required by this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for any costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Lot, and, upon the failure of the Owner to pay such costs within ten (10) days after such Owner's receipt of a written demand therefor from the Association, the Association may establish a lien therefor upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

**ARTICLE XII. AMENDMENT AND DURATION**

**Section 12.01 Amendments**

(a) Approval Required. Except as otherwise provided in this Declaration, this Declaration may be amended by approval of Owners holding a majority of the voting rights of

the Association.

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

### **ARTICLE XIII. MISCELLANEOUS PROVISIONS**

#### ***Section 13.01 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.

#### ***Section 13.02 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.

#### ***Section 13.03 Lessees and Other Invitees***

Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration, the Bylaws and rules and regulations adopted by the Association 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.

#### ***Section 13.04 Nonwaiver***

Failure by the Association or any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

#### ***Section 13.05 Waiver, Precedent and Estoppel***

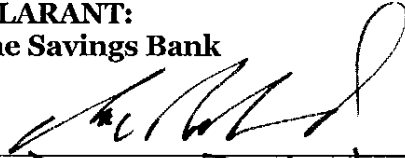
No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or 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 or Owner as to any similar matter.

#### ***Section 13.06 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 manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenants.

**IN WITNESS WHEREOF**, the Declarant, has caused this Declaration to be executed by its duly authorized officers on the 18<sup>th</sup> day of July, 2011.

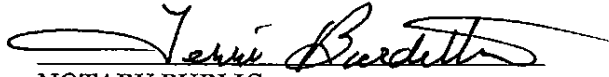
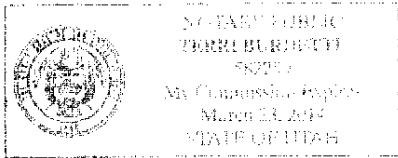
DECLARANT:  
Home Savings Bank



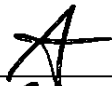
By: Don C. Ballard  
Its: Vice President

STATE OF UTAH )  
 ) :SS  
County of SL )

On this 18 day of July, 2011, personally appeared before me Don C. Ballard, who being by me duly sworn, did say that he is the agent of Declarant, authorized to execute this Declaration.


  
NOTARY PUBLIC

DECLARANT:  
Candlelight Homes, LLC

  
By: Nathan Shipp  
Its: manager

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

On this 21 day of July, 2011, personally appeared before me Nathan Shipp, who being by me duly sworn, did say that he is the agent of Declarant, authorized to execute this Declaration.

  
NOTARY PUBLIC

**EXHIBIT A**  
**LEGAL DESCRIPTION**

28313300080000 LOT 5, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313300090000 LOT 6, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313300100000 LOT 7, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313300110000 LOT 4, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313300120000 LOT 3, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313300130000 LOT 2, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313300150000 LOT 1, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313310010000 LOT 12, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313310020000 LOT 11, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313310030000 LOT 10, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313310040000 LOT 9, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313310050000 LOT 8, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313310060000 LOT 13, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875  
28313310070000 LOT 14, FITZGERALD ESTATES. 9452-4748 9522-5505 9635-6875

**EXHIBIT B**

**BYLAWS OF FITZGERALD ESTATES HOMEOWNERS  
ASSOCIATION, INC.**

**ARTICLE I.  
BYLAW APPLICABILITY**

**Section 1.01 Property Submission**

The Property is located in Salt Lake County, Utah, has been submitted to the provisions of a Declaration recorded in the Office of the County Recorder of Salt Lake County, Utah, simultaneously herewith, and shall hereafter be referred to as the "Project."

**Section 1.02 Bylaws Applicability**

The Provisions of these Bylaws are applicable to the Project as the same may be expanded as provided in the Declaration and the use, occupancy, sale, lease or other transfer thereof. All Owners of any fee or leasehold interest, all occupants or users of the Project, and the agents and servants of any of them are subject to the provisions of the Project Documents.

**Section 1.03 Personal Application**

All present and future Owners, tenants, future tenants, their guests, licensees, servants, agents, employees and any other person or persons who shall be permitted to use the facilities of the Project, shall be subject to the Project Documents. Acquisition, rental or occupancy of any of the Lots in the Project shall constitute an acknowledgment that such Owner, tenant or occupant has accepted and ratified these Bylaws, the provisions of the Project Documents and will comply with them.

**Section 1.04 Office**

The office of the Association and of the Board of Directors shall be located at the Project or at such other place as may be designated from time to time by the Board of Directors (hereinafter sometimes called the "Board").

**ARTICLE II. ASSOCIATION**

**Section 2.01 Composition**

All of the Lot Owners acting as a group in accordance with the Utah Revised Nonprofit Corporations Act, as amended (the "Act"), and the Project Documents shall constitute the Association. Except as to those matters which the Act specifically requires to be performed by the vote of the Lot Owners, the administration of the Project shall be performed by the Board.

**Section 2.02 Voting**

Each Owner shall have the number of votes assigned in the Declaration. Since a Lot Owner may be more than one person, if only one of such persons is present at a meeting of the Association that person shall be entitled to cast the vote appertaining to that Lot. But if more than one of such persons is present, the vote appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the vote appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting.

Since a person need not be a natural person, the word "person" shall be deemed for the purposes of this Section to include, without limitation, any natural person having authority to execute deeds on behalf of any person, excluding natural persons, which are, either alone or in conjunction with another person or persons, a Lot Owner.

Except where a greater number is required by the Act or the Project Documents, a majority of the votes of Lot Owners present in person or represented by proxy in good standing and entitled



to vote is required to adopt decisions at any meeting of the Association.

**Section 2.03 Place of Meeting**

Meetings of the Association shall be held at the principal office of the Project or at such other suitable place as may be designated by the Board and stated in the notice of the meeting.

**Section 2.04 Annual Meeting**

Annual meetings for any other purpose than the election of the Board of Directors may be held at any time on call of the President of the Board, by a majority of the Board or by Lot Owners representing twenty percent (20%) of the Lot Owners. Notice of such meeting shall be given in accordance with the provisions of Section 6.02.

Thereafter, the annual meetings of the Association shall be held in May. The Board in its discretion may designate another date for the annual meeting. At such annual meetings the Board shall be elected by ballot of the Owners in accordance with the requirements of these Bylaws. The Association may transact such other business as may properly come before them at such meetings.

**Section 2.05 Special Meetings**

It shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or, after all of the Board has been elected by Lot Owners, upon a petition signed and presented to the Secretary by Owners having not less than twenty percent (20%) of the votes of all Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 2.06 Notice of Meetings**

It shall be the duty of the Secretary to mail, by United States mail, postage prepaid, a notice of (a) each annual meeting of the Owners, at least twenty (20) days in advance of such meeting and (b) each special meeting of the Owners at least ten (10) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of their respective Lots and at such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

**Section 2.07 Voting Requirements**

An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall have fully paid all due installments of assessments made or levied against him and his Lot, together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and against his Lot, and shall have no reported or obvious violations of the Project Documents at least three (3) days prior to the date fixed for such annual or special meeting.

**Section 2.08 Proxies**

The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or, in cases where the Lot Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Lot Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice as

aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy, and must be filed with the Secretary not less than three (3) days before the meeting.

***Section 2.09 Absentee Ballots***

(a) A Member who is incapacitated, or who will be absent, on the date set for balloting may cast an absentee ballot at the place or time of balloting, or by mail, in the manner required by the Election Committee, but in no event shall the vote be cast more than fourteen (14) days prior to the voting date.

(b) Ballot boxes containing absentee votes shall be opened and the ballots tabulated at the same time and place and under the same conditions as the regular ballots.

***Section 2.10 Mail-in Ballots***

(a) Any action that may be taken by the Unit Owners, except election of Board members, may be taken by written consent in accordance with the procedure established in the Utah Revised Nonprofit Corporation Act Section 16-6a-709, as amended from time to time.

(b) A combination of mail-in ballots and “in person” ballots may be used.

***Section 2.11 Written Consent in Lieu of Vote***

Any action that may be taken by the Owners, except election of Board members, may be taken by written consent in accordance with the procedure established in the Utah Revised Nonprofit Corporation Act Section 16-6a-707, as amended from time to time.

***Section 2.12 Quorum***

Except as may otherwise be provided in the Project Documents or by statute, the Owners present in person or represented by proxy or absentee ballot at a meeting shall constitute a quorum for the adoption of decisions.

***Section 2.13 Order of Business***

The order of business at all meetings of the Association shall be as follows: (a) roll call; (b) proof of notice of meeting; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) report of special committees, if any; (f) election of inspectors of election, if applicable; (g) election of Board Members, if applicable; (h) unfinished business; and (i) new business. In its sole discretion, the Board of Directors may change the order of business.

***Section 2.14 Title to Lot***

Title to Lots may be taken in the name of a natural person or in the names of two or more natural persons, or in the name of a corporation, partnership, association or other entity capable of holding title to real property, or any combination thereof.

***Section 2.15 Conduct of Meeting***

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

### **ARTICLE III. BOARD OF DIRECTORS**

#### ***Section 3.01 Powers and Duties***

The affairs and business of the Association shall be managed by the Board which shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things as are not by the Act or by these Bylaws directed to be exercised and done by the Association.

The Board shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the enjoyment of the Project provided such Rules and Regulations shall not be in conflict with the Act, the Declaration or these Bylaws. The Board shall delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the Managing Agent, if any, which might arise between meetings of the Board. Subject to any limitations or provisions contained in the Declaration, the Board shall be responsible for the following:

- (a) Preparation of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) Making assessments against Owners to defray the cost and expenses of the Project, establishing the means and methods of collecting such assessments from the Owners, and establishing the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Board, the annual assessment against each Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.
- (c) Designating, hiring and dismissing the personnel necessary for providing services for the Property, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Owners.
- (d) Collecting the assessments against the Owners, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Property.
- (e) Making and amending Rules and Regulations respecting the use of the Property.
- (f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.
- (g) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these Bylaws, after damage or destruction by fire or other casualty.

(h) Enforcing by legal means the provisions of the Project Documents for the use of the Property adopted by it, and bringing any proceedings which may be instituted on behalf of the Owners.

(i) Obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof.

(j) Borrow money.

(k) Paying the cost of all services rendered to the Project and not billed to Owners of individual Lots.

(l) Keeping books with detailed accounts of the receipts and expenditures affecting the Property, and the administration of the Association. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices, and the same, upon resolution of the Association, shall be audited every three (3) years by an outside auditor employed by the Board who shall not be a resident of the Project, or an Owner therein. The cost of such audit shall be a Common Expense. A copy of the annual audit report shall be supplied to any first mortgagee of any Lot in the Project who requests the same in writing from the Secretary.

(m) To do such other things and acts not inconsistent with the Act or the Project Documents.

***Section 3.02 Manager***

The Board may employ a Manager at a compensation established by the Board, to perform such duties and services as the Board shall authorize, including, but not limited to, the duties listed in Section 3.1.

The Board may delegate to the Manager all of the powers granted to the Board by these Bylaws; provided that any actions by the Manager with respect to the powers set forth in paragraphs (b), (f), (g) and (I), of Section 3.01 shall require the written consent of the Board.

***Section 3.03 Number of Board Members***

After the Turnover Meeting, the Board shall be composed of three (3) persons, who are members in good standing. The Board by resolution shall determine the number of Board members.

***Section 3.04 Selection and Term of Office of the Board***

Declarant shall have the right to appoint Directors until the Turnover Meeting. Unless appointed under the provisions of Section 3.10, Board members shall be elected as follows:

(a) Board members shall be elected by a majority vote of the Members present in person or by proxy at the annual meeting. Cumulative voting shall not be permitted.

(b) All Board members shall hold office until the members shall have elected their respective successors.

(c) Board members' terms shall be staggered. The initial term of each member (1, 2, or 3 years) shall be decided by vote of the newly elected Board members at their first meeting. Upon the natural expiration of a Board member's term, a successor shall be elected for a two (2) year term. There shall be no limit on the number of terms an Owner may serve as a Board member.

**Section 3.05 Organization Meeting**

The first meeting of the members of the Board following the annual meeting of the Association shall be held within ten (10) days after the annual meeting at such place as shall be fixed by the Board at the meeting at which such Board-persons were elected, and no notice shall be necessary to the newly elected Board members in order legally to constitute such meeting provided that majority of the whole Board shall be present thereat.

**Section 3.06 Regular Meetings**

Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least three (3) such meetings shall be held during each fiscal year after the first annual meeting of the Association. Notice of regular meetings of the Board shall be given to each Board member at least three (3) business days prior to the day named for such meeting.

**Section 3.07 Special Meetings**

The President on three (3) business days' notice to each member may call special meetings of the Board. Such shall state the time, place and purpose of the meeting. The President or Secretary shall call special meetings of the Board in like manner and on like notice on the written request of at least two (2) Board members.

**Section 3.08 Waiver of Notice**

Before or at any meeting of the Board, any Board member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board member at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Board members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 3.09 Board's Quorum**

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

**Section 3.10 Vacancies**

In the event a Board seat which was filled by Declarant becomes vacant, Declarant shall have the right to select a replacement member to sit on the Board for the balance of the term associated with the vacated seat.

Vacancies in the Board caused by any reason other than removal of a Board member by a vote of the Association shall be filled by vote of the majority of the remaining Board members at a special meeting of the Board held for that purpose promptly after the occurrence of any such

vacancy, even though the Board members present at such meeting may constitute less than a quorum of the Board; and each person so elected shall be a Board member for the remainder of the term of the Board member so replaced and until a successor is elected at the next annual meeting of the Association.

***Section 3.11 Removal of Board Member***

(a) A Board member may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum is present, by an affirmative vote of the majority of the votes represented and voting. Any Board member whose removal has been proposed by the Owners shall be given at least thirty (30) days written notice of the calling of the meeting and the purpose thereof and shall be given a reasonable opportunity to be heard at the meeting.

(b) Any Board member who allows his installments of assessments made or levied against him and his Lot by the Board to become three (3) months overdue, and fails to cure the default within ten (10) days after written notice shall automatically forfeit his membership on the Board.

(c) Any Board member who is found to be in violation of the Project Documents, may be removed by majority vote of a quorum of the Board.

***Section 3.12 Compensation***

Board members shall not be compensated for their work. However, they may seek reimbursement for actual costs incurred associated with their service.

***Section 3.13 Conduct of Meetings***

The President shall preside over all meetings of the Board and the Secretary shall keep a Minute Book of the Board recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings.

***Section 3.14 Report of Board***

The Board shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, full and clear statement of the business and condition of the Association.

***Section 3.15 Fidelity Bonds***

The Board shall require that all officers, agents (including professional Manager and its employees) and employees of the Association handling or responsible for funds furnish adequate fidelity bonds. The premiums on such bonds shall constitute a Common Expense. The Board shall provide a fidelity insurance coverage as required by the Declaration.

***Section 3.16 Dispensing with Vote***

Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if all the members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

***Section 3.17 Liability of the Board***

The members of the Board shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the Board members from and against all

contractual liability to others arising out of contracts made by the Board on behalf of the Owners unless any such contract shall have been made in bad faith or contrary to the provisions of the Project Documents.

#### **ARTICLE IV. OFFICERS**

##### ***Section 4.01 Designation***

The principal officers of the Association shall be a President, Vice President, Secretary, and a Treasurer, all of whom shall be elected by and from the Board.

The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. With the exception of the President, no officer need be a member of the Board. The same person may hold two or more offices, except that the President shall not hold any other office.

##### ***Section 4.02 Election of Officers***

The officers of the Association shall be elected annually by the Board at the organization meeting of each Board and shall hold office at the pleasure of the Board. The Board at a regular meeting or special meeting called for such purpose shall fill any vacancy in an office.

Nevertheless, the Board members may serve as the officers of the Association, with such positions therein determined amongst them.

##### ***Section 4.03 Removal of Officers***

The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the whole Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

##### ***Section 4.04 President***

The President shall be the chief executive officer; he shall preside at meetings of the Association and the Board and shall be an ex officio member of all committees; he shall have general and active management of the business of the Association and shall see that all orders and resolutions of the Board are carried into effect.

##### ***Section 4.05 Vice President***

There shall be a Vice President. The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board or the President shall prescribe. If neither the President nor the Vice President is able to act, the Board shall appoint a member of the Board to do so on an interim basis.

##### ***Section 4.06 Secretary***

The Secretary shall attend all sessions of the Board and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for committees when required. He or she shall give, or cause to be given, notice of all meetings of the Association, the Board and committees and shall perform such other duties as may be prescribed by the Board.

The Secretary shall compile and keep current at the principal office of the Project, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the minute book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board including resolutions.

***Section 4.07 Treasurer***

The Treasurer shall have the custody of all funds and securities that are not under the control of the Managing Agent, and, with the assistance of the Managing Agent, shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all moneys and other valuable effects in such depositories as may be designated by the Board. He or she shall disburse funds as ordered by the Board taking proper vouchers for such disbursements, and shall render to the President and Board members, at the regular meetings of the Board, or whenever they may require it, an account of all of his transactions as Treasurer and of the financial condition of the Association.

***Section 4.08 Agreement, Contracts, Deeds, Checks, etc.***

All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures shall be executed by any person or persons as may be designated by the Board.

**ARTICLE V. FISCAL YEAR**

***Section 5.01 Fiscal Year***

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

**ARTICLE VI. AMENDMENT TO BYLAWS**

***Section 6.01 Amendments***

Except as otherwise provided in this Section, these Bylaws may be modified or amended by the Board at any time, to add, change or delete a provision, unless it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class or unless it is prohibited by the Declaration.

Notwithstanding anything in these Bylaws, so long as the Class B membership exists, the written consent of the Declarant is required to amend these Bylaws.

***Section 6.02 Recording***

A modification or amendment of these Bylaws shall become effective only if such modification or amendment is recorded in the office of the County Recorder of Salt Lake County, Utah.

***Section 6.03 Conflicts***

No modification or amendment of these Bylaws may be adopted which shall be inconsistent with the provisions of the Declaration. A modification or amendment once adopted and recorded as provided for herein shall then constitute part of the official Bylaws of the Association and all Owners shall be bound to abide by such modification or amendment.



## **ARTICLE VII. NOTICE**

### ***Section 7.01 Manner of Notice***

All notices, demands, bills, statements or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (i) if to an Owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary, or (ii) if to the Board or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section. The Association may, by resolution, collect and give notice by electronic mail or other electronic means.

### ***Section 7.02 Waiver of Notice***

Whenever any notice is required to be given under the provisions of the statutes, the Declaration or of these Bylaws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

## **ARTICLE VIII. COMPLIANCE, CONFLICT AND MISCELLANEOUS PROVISIONS**

### ***Section 8.01 Compliance***

These Bylaws are set forth in compliance with the requirements of the Act.

### ***Section 8.02 Conflict***

All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration or the Act. In the event of any conflict between these Bylaws and the Declaration, the provisions of the Declaration shall control; and in the event of any conflict between the Declaration and the Act, the provisions of the Act shall control.

### ***Section 8.03 Severability***

If any provision of these Bylaws or the application thereof is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

### ***Section 8.04 Waiver***

No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

### ***Section 8.05 Captions***

The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

### ***Section 8.06 Gender, etc.***

Whenever in these Bylaws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

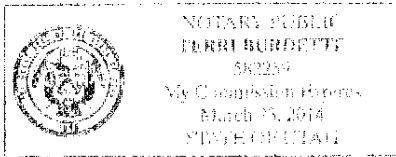
IN WITNESS WHEREOF, the Declarant, has caused these Bylaws to be executed by its duly authorized officers on the 18<sup>th</sup> day of July, 2011.

DECLARANT:  
Home Savings Bank

[Signature]  
By: Don C. Ballard  
Its: Vice President

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

On this 18<sup>th</sup> day of July, 2011, personally appeared before me Don C. Ballard, who being by me duly sworn, did say that he is the agent of Declarant, authorized to execute this Declaration.



[Signature]  
NOTARY PUBLIC

DECLARANT:  
Candlelight Homes, LLC

[Signature]  
By: Nathan Snapp  
Its: manager

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

On this 21 day of July, 2011, personally appeared before me Nathan Snapp, who being by me duly sworn, did say that he is the agent of Declarant, authorized to execute this Declaration.

[Faint Notary Seal]

[Signature]  
NOTARY PUBLIC