

133  
L74

**Note to Recorder:  
Record against the real property  
described in Exhibits A and B,  
located in Washington County,  
Utah.**

Recorded at the Request of  
KLC PROPERTIES, LC

After recording mail to:  
Jenkins Ronnow Jensen & Bayles, LLP  
Attn: Bruce C. Jenkins  
902 North 1400 West  
St. George, UT 84770

**DOC # 20070059650**

Restrictive Page 1 of 33  
Russell Shirts Washington County Recorder  
12/19/2007 01:52:08 PM Fee \$ 148.00  
By FIRST TITLE OF UTAH



**DECLARATION OF FORMATION OF HOMEOWNER'S ASSOCIATION  
for SILVER FALLS @ WASHINGTON BENCH SUBDIVISION  
(Phases 1, 2A, 2B, 3, 4 and 5)  
(Mandatory Membership)**

**PREAMBLE**

This Declaration of Formation of Homeowner's Association for Phase I, Phase 2-A, Phase 2-B, Phase 3, and Phases 4 and 5 of Silver Falls @ Washington Bench Subdivision as hereinafter described, affects the following real property located in Washington County, State of Utah:

**See Exhibits A and B attached hereto and incorporated herein.  
(hereinafter known collectively as "Subdivisions")**

KLC PROPERTIES, LC., a Utah limited liability company, Declarant, has developed the Subdivisions and does hereby make the following declaration as to membership in the SILVER FALLS @ WASHINGTON BENCH OWNERS ASSOCIATION to which the lots constituting said subdivisions are a part of and hereby specifying that said declaration shall constitute covenants to run with all of the land and shall be binding upon all the parties and persons claiming under them. The Declaration of Formation of Homeowner's Association is established for the purpose of keeping the aforementioned subdivisions desirable, uniform, and consistent with the plats recorded therefore.

**RECITALS**

- A. Declarant has developed the aforementioned subdivisions (with all phases developed including Phases 1, 2A, 2B, 3, 4, and 5 known collectively as the "Development").
- B. Declarant has established or will establish Silver Falls @ Washington Bench Owners Association (the "Association") in conjunction with recording of the Official Plat Maps for Phases 4 and 5 of Silver Falls @ Washington Bench. The Association will be vested with powers of owning, maintaining, and administering all Common Areas of the

Subdivisions (including Common Areas in Phases 4 and 5 and such other tracts hereinafter added), and administering and enforcing the covenants and restrictions pertaining to the Subdivisions, promulgating Rules and Regulations through its Board and collecting and disbursing the assessments and charges created.

- C. Declarant has included in the development of the Development certain Common Areas that serve and benefit all of the lot owners therein with said Common Areas to be maintained by the Association.
- D. Declarant has caused to be approved and executed by all requisite governmental authorities and has recorded Official Plats for the Subdivisions with Notes on each of said plats setting forth as public notice as follows:

1. Phase 1. Note 3: "Washington City is hereby granted authority to require assessments against the home owner association."

Note 4: "The center of round-about to be maintained and any repairs and maintenance costs shall be the sole responsibility of the home owners association."

2. Phase 2-A. Note 3: "Washington City is hereby granted authority to require assessments against the home owners association."

3. Phase 2B. Note 3: "Washington City is hereby granted authority to require assessments against the home owners association."

4. Phase 3. Note 3: "Washington City is hereby granted authority to require assessments against the home owner association."

Now Therefore, Declarant makes the following declaration and covenants:


- 1.. Declarant hereby declares that each lot owner of all of the lots in the Subdivisions and Development is and shall be a member of the Association subject to the Articles of Incorporation and Bylaws thereof, executed copies of which are attached hereto as Exhibits C and D.
2. Declarant hereby declares that this Declaration does not amend or supercede any covenants or restrictions of the Subdivisions, but serves only as a Declaration establishing and setting forth the membership rights of each lot owner in the Association established by Declarant for the purpose of uniformly enhancing and protecting the value, attractiveness, and desirability of the lots and Common Areas.
3. Declarant hereby declares that this Declaration does not alter, change, amend, replace, or otherwise affect the Architecture and Landscape Committees as established separately for each of Phase 1, Phase 2A, Phase 2B, Phase 3, and Phases 4 and 5..

- 4. Declarant hereby declares that the covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with the land and burden all lots of the Subdivisions and shall be binding upon all persons having or acquiring any right, title, or interest in the lots, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Subdivisions and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by Declarant, the Association, each owner, and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Declarant executed this Declaration on the 14 day of March 2007.

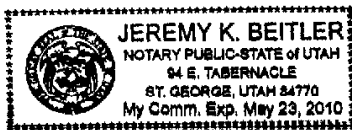
DECLARANT:

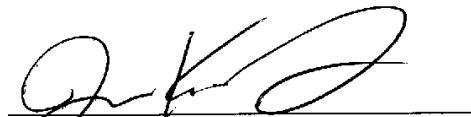
KLC PROPERTIES, LC  
A Utah Limited Liability Company

  
By: A. Kent Cottam  
Its: Managing Member

STATE OF UTAH,     )  
  :SS.  
County of Washington. )

On this 14 day of March, 2007, personally appeared before me A. Kent Cottam, who being personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that he is the Managing Member of KLC Properties, LC, a Utah limited liability company, and that he executed the foregoing Declaration of Formation of Homeowner's Association for Silver Falls @ Washington Bench Subdivision on behalf said limited liability company being authorized and empowered to do so by the operating agreement of said Company or resolution of its managers, and he acknowledged before me that such Company executed the same for the uses and purposes stated therein.



  
Notary Public

**EXHIBIT A**

**All of the lots of SILVER FALLS @ WASHINGTON BENCH according to the Official Plat thereof on file in the records of the Washington County Recorder as Entry No.00909224;**

**All of the lots of SILVER FALLS @ WASHINGTON BENCH Phase 2A according to the Official Plat thereof on file in the records of the Washington County Recorder as Entry No. 00951680;**

**All of the lots of SILVER FALLS @ WASHINGTON BENCH Phase 2B according to the Official Plat thereof on file in the records of the Washington County Recorder as Entry No. 00944638; and**

**All of the lots of SILVER FALLS @ WASHINGTON BENCH Phase 3 according to the Official Plat thereof on file in the records of the Washington County Recorder as Entry No. 20060012976;**

<b>PHASE 1</b>	<b>PHASE 2-A</b>	<b>PHASE 2-B</b>	<b>PHASE 3</b>
W-SFWB-1-1	W-SFWB-2A-36	W-SFWB-2B-32	W-SFWB-3-58
W-SFWB-1-2	W-SFWB-2A-37	W-SFWB-2B-33	W-SFWB-3-59
W-SFWB-1-3	W-SFWB-2A-38	W-SFWB-2B-34	W-SFWB-3-60
W-SFWB-1-4	W-SFWB-2A-39	W-SFWB-2B-35	W-SFWB-3-61
W-SFWB-1-5	W-SFWB-2A-40	W-SFWB-2B-114	W-SFWB-3-62
W-SFWB-1-6	W-SFWB-2A-41		W-SFWB-3-63
W-SFWB-1-7	W-SFWB-2A-42		W-SFWB-3-64
W-SFWB-1-8	W-SFWB-2A-43		W-SFWB-3-65
W-SFWB-1-9	W-SFWB-2A-44		W-SFWB-3-66
W-SFWB-1-10	W-SFWB-2A-45		W-SFWB-3-67
W-SFWB-1-11	W-SFWB-2A-46		W-SFWB-3-68
W-SFWB-1-12	W-SFWB-2A-47		W-SFWB-3-69
W-SFWB-1-13	W-SFWB-2A-48		W-SFWB-3-70
W-SFWB-1-14	W-SFWB-2A-49		W-SFWB-3-71
W-SFWB-1-15	W-SFWB-2A-50		W-SFWB-3-72
W-SFWB-1-16	W-SFWB-2A-51		W-SFWB-3-73
W-SFWB-1-17	W-SFWB-2A-52		W-SFWB-3-74
W-SFWB-1-18	W-SFWB-2A-53		
W-SFWB-1-19	W-SFWB-2A-54		
W-SFWB-1-20	W-SFWB-2A-55		
W-SFWB-1-21	W-SFWB-2A-56		
W-SFWB-1-22	W-SFWB-2A-57		
W-SFWB-1-23			
W-SFWB-1-24			
W-SFWB-1-25			
W-SFWB-1-26			
W-SFWB-1-27			

W-SFWB-1-28			
W-SFWB-1-29			
W-SFWB-1-30			
W-SFWB-1-31			

**EXHIBIT B**

**PARCEL 1**

ALL OF SILVER FALLS @ WASHINGTON BENCH - PHASE 4 SUBDIVISION, a Subdivision according to the Official Plat thereof, on file in the Office of the Washington County Recorder, State of Utah.

TAX ID: W-SFWB-4-75 thru 97

**PARCEL 2**

ALL OF SILVER FALLS @ WASHINGTON BENCH - PHASE 5 SUBDIVISION, a Subdivision according to the Official Plat thereof, on file in the Office of the Washington County Recorder, State of Utah.

TAX ID: W-SFWB-5-98 thru 123

**RECEIVED**

**MAR 30 2007**

Utah State Tax Commission  
St. George, UT

EXHIBIT C

**ARTICLES OF INCORPORATION**

**OF**

**SILVER FALLS @ WASHINGTON BENCH OWNERS ASSOCIATION**

(Phases 1, 2A, 2B, 3, 4 and 5)

The undersigned person, over the age of 18 years, acting as the Incorporator of a nonprofit corporation under the Utah Revised Nonprofit Corporation Act (the "Act"), hereby adopts the following Articles of Incorporation for such Corporation:

**ARTICLE I - NAME**

The name of the Corporation is Silver Falls @ Washington Bench Owners Association.

**ARTICLE II - DURATION**

The duration of the Corporation is perpetual.

**ARTICLE III - INITIAL REGISTERED OFFICE**

The initial registered office of the Corporation is located at 626 E. Lost Ridge Dr., Washington, Utah 84780.

**ARTICLE IV - PURPOSE AND POWERS OF THE ASSOCIATION**

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for the maintenance and preservation of common areas, and architectural control of the properties and Common Areas in SILVER FALLS @ WASHINGTON BENCH SUBDIVISION, and all additional phases annexed into the Silver Falls @ Washington Bench Subdivision and to promote the health, safety and welfare of the residents within the above-described area and any additions thereto as may hereafter be brought within the jurisdiction of this Association, and for these purposes to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Bylaws as the same may be amended from time to time;

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to carrying out the purposes and responsibilities of the Association; to

pay all expenses in connection therewith and all office and other expenses incidental to the conduct of the business of the Association;

(c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Utah Revised Nonprofit Corporation Act by law may now or hereafter have or exercise.

#### **ARTICLE V - MEMBERSHIP AND SHARES**

Every person or entity who is a record owner of a lot or record owner of a completed Dwelling Unit in the Silver Falls @ Washington Bench development (inclusive of Phases 1, 2A, 2B, 3, 4, and 5) shall be a Member of the Corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership interests will not be evidenced by share certificates.

#### **ARTICLE VI - VOTING RIGHTS**

Subject to the provisions in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements of Silver Falls @ Washington Bench Subdivisions and the Bylaws, a Class A Member shall be entitled to one (1) vote for each Lot which he or it owns within the Development, and a Class B Member, if any, shall be entitled to the number of votes accorded to such Member as provided in the Declaration.

#### **ARTICLE VII - BOARD OF DIRECTORS**

The affairs of the Corporation shall be managed by a governing board designated as the Board of Directors, consisting of not less than three (3) directors or more than five (5) directors. The initial Board shall consist of three (3) directors. At each annual meeting of the members, the Directors shall be elected to hold office until the next succeeding annual meeting of members following their election. The number of Directors may be increased or decreased from time to time by amendment to the Bylaws. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the board. Should any vacancy of the Board remain unfilled for a period of two (2) months, the members may, at a special meeting of the members called for that purpose, elect a director to fill such vacancy by



a majority of the votes which members present at such meeting, or represented by proxy, are entitled to cast.

#### **ARTICLE VIII - MEETINGS OF MEMBERS**

An annual meeting of members of the Corporation shall be held each year. The exact time and place of the meeting shall be determined by the Board of Directors. Special meetings of members may be called by the President or the Board of the Association or by members holding not less than twenty-five (25%) of the total votes of all members, excluding votes of Declarant, or by Declarant if it holds at least ten percent (10%) of the total votes of all members. No business shall be transacted at a special meeting of the members except as indicated in the notice thereof. Written or printed notices satisfying the requirements of the Bylaws and stating the place, day, and hour, and in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be fair and reasonable if delivered to each voting member not less than ten (10) days and not more than thirty (30) days before the date of the meeting, either personally or by mail. If mailed, such notice shall be sent by first class or registered mail and shall be deemed delivered when deposited in the United States mail, with postage prepaid, and addressed as the names and addresses of the members appear on the records of the Corporation. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Act.

#### **ARTICLE IX - ACTION WITHOUT A MEETING**

Any action that may be taken at an annual or special meeting of the Members may be taken without a meeting and without prior notice if a consent, in writing, setting forth the action so taken, shall be signed by the 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 of the Members entitled to vote with respect to the subject matter thereof were present and voted. Directors may not be elected by written consent except by unanimous written consent of all Members entitled to vote for the election of Directors. Any action taken under this Section must comply with the Act and is not effective unless all necessary written consents are received within a sixty (60) day period and have not been revoked. A written consent may be given by electronically transmitted facsimile or other form of communication providing the Association with a complete copy of the written consent, including a copy of the signature to the written consent.

**ARTICLE X - DISSOLUTION**

The Association may be dissolved as provided for in the Act. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets will be granted, conveyed, and assigned to any non-profit corporation, association, trust, or other organization to be devoted to such similar purposes.

**ARTICLE XI - OFFICERS**

The officers of the Corporation shall be a president, secretary, and treasurer, and such other officers or vice presidents as may be deemed necessary by the Board. The officers shall be appointed by the Board of Directors and shall hold office at the pleasure of the Board.

**ARTICLE XII - INITIAL DIRECTORS**

The names and street addresses of the persons who are to serve as the initial Directors are as follows:

A. Kent Cottam  
President  
626 E. Lost Ridge Dr.  
Washington, Utah 84780

Laura Cottam  
Vice President  
626 E. Lost Ridge Dr.  
Washington, Utah 84780

Robert M. Elliott  
Secretary/Treasurer  
37 West 1070 South  
St. George, Utah 84770

**ARTICLE XIII - INITIAL INCORPORATION**

The name and street address of the incorporator of the Corporation is as follows:

A. Kent Cottam  
President  
626 E. Lost Ridge Dr.  
Washington, Utah 84780

**ARTICLE XIV - PRESENT PRINCIPAL OFFICE AND AGENT**

The location and street address of the initial principal office of the Corporation is 626 E. Lost Ridge Dr., Washington, UT 84780. This office and/or agent may be changed at any time by the

Board of Directors without amendment of these Articles of Incorporation. The lawful agent of the Corporation shall be A. Kent Cottam and said A. Kent Cottam is hereby appointed and authorized to accept and acknowledge service and upon whom may be served all necessary process in any actions here to proceed that may be brought against the Corporation in the courts of the State of Utah and for all purposes required by law.

  
A. Kent Cottam, Agent

#### **ARTICLE XV - AMENDMENTS BY BOARD**

The Board of Directors may adopt, without Member approval, one or more amendments to these Articles of Incorporation to (a) delete the names and addresses of the initial Directors; (b) delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Division; (c) change the Association name by adding, deleting, or changing a geographical attribution; or (d) make any other change expressly permitted by the Act to be made without Member action.

The Board of Directors may adopt, without Member action, one or more amendments to these Articles of Incorporation to change the corporate name, if necessary, in connection with any reinstatement of the Association pursuant to the Act.

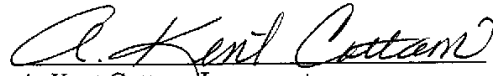
#### **ARTICLE XVI - AMENDMENT BY MEMBERS**

The Board of Directors or the Members representing at least ten percent (10%) of all of the votes entitled to be cast on the amendment may propose an amendment to these Articles of Incorporation for submission to the Members. For an amendment to these Articles of Incorporation to be adopted pursuant to this Article, the Board of Directors shall recommend the amendment to the Members unless the amendment is proposed by Members; or the Board of Directors determines that because of conflict of interest or other special circumstances it should make no recommendation, and communicates the basis for its determination to the Members with the amendment; and a majority of each class of Members shall approve the amendment. The proposing Board of Directors or the proposing Members may condition the effectiveness of the amendment on any basis. The Association shall give notice to each Member entitled to vote on the amendment of the Members'

meeting at which the amendment will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the amendment; and contain or be accompanied by a copy or a summary of the amendment, or shall state the general nature of the amendment.

If the Board of Directors or the Members seek to have the amendment approved by the Members by written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

IN WITNESS WHEREOF, for the purpose of forming this Corporation under the laws of the State of Utah, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this 14 day of March, 2007.

  
A. Kent Cottam, Incorporator

**WAIVER OF NOTICE AND CONSENT TO HOLDING  
OF ORGANIZATIONAL MEETING  
OF**

**SILVER FALLS @ WASHINGTON BENCH OWNERS ASSOCIATION  
a Utah nonprofit corporation**

We, the undersigned, Incorporator and Directors of Silver Falls @ Washington Bench Owners Association, a Utah nonprofit corporation, duly formed by the filing of Articles of Incorporation with the Department of Commerce, Division of Corporations, on February 21, 2007, and desiring to hold the organizational meeting of the Association for the purpose of completing the organization of its affairs, DO HEREBY WAIVE NOTICE OF SUCH MEETING AND CONSENT to holding thereof the meeting telephonically, on the 14 day of March, 2007, for the purpose of transacting such business as may be brought before said meeting.

WITNESS our signatures this 14 day of March, 2007.

  
A. KENT COTTAM  
INCORPORATOR/DIRECTOR

  
LAURA COTTAM, DIRECTOR

  
ROBERT M. ELLIOTT, DIRECTOR

EXHIBIT D

**BYLAWS**  
**OF**  
**SILVER FALLS @ WASHINGTON BENCH OWNERS ASSOCIATION**  
(Phases 1, 2A, 2B, 3, 4 and 5)

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BYLAWS

OF

SILVER FALLS @ WASHINGTON BENCH OWNERS ASSOCIATION  
(Phases 1, 2A, 2B, 3, 4 and 5)

ARTICLE I

GENERAL

1.1 Purpose of Bylaws. These Bylaws are adopted for the regulation and management of the affairs of Silver Falls @ Washington Bench Owners Association, a Utah nonprofit corporation (the "Association"), organized to be the association to which reference is made in the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements of Silver Falls @ Washington Bench Subdivision (including Phases 1, 2A, 2B, 3, 4, and 5), as amended or supplemented from time to time (the "Declaration"), to perform the functions as provided in the Declaration and to further the interests of Owners of Dwelling Units or Lots within the Development.

1.2 Terms Defined in Declaration. Unless otherwise specifically provided herein, capitalized terms in these Bylaws shall have the same meaning as given to such terms in the Declaration.

1.3 Controlling Laws and Instruments. These Bylaws are controlled by and shall always be consistent with the provisions of the Utah Revised Nonprofit Corporation Act (the "Act"), the Declaration, and the Articles of Incorporation of the Association filed with the Division of Corporations and Commercial Code of the Utah Department of Commerce (the "Division"), as any of the foregoing may be amended from time to time.

ARTICLE II

OFFICES

2.1 Principal Office. The principal office of the Corporation shall be at 626 E. Lost Ridge Dr., Washington, Utah 84780. The Board of Directors, in its discretion, may change from time to time the location of the principal office.

2.2 Registered Office and Agent. The Act requires that the Association have and continuously maintain in the State of Utah a registered office and a registered agent. The registered agent must be an individual who resides in the State of Utah and whose business office is identical with the registered office. The initial registered office and the initial registered agent are specified in the Articles of Incorporation and may be changed by the Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law with the Division.

ARTICLE III

MEMBERS

3.1 Members. A "Member," as provided in the Declaration, is the person or, if more than one, all persons collectively, who constitute the Owner of a Lot within the Development (including Phases 1, 2A, 2B, 3, 4, and 5).

3.2 Memberships Appurtenant to Lots. Each Membership shall be appurtenant to the fee simple title to a Lot. The person or persons who constitute the owner of fee simple title to a Lot shall automatically be the holder of the Membership appurtenant to that Lot and the Membership shall automatically pass with fee simple title to the Lot.

3.3 Members' Voting Rights. Subject to the provisions in the Declaration and the Articles of Incorporation, a Class A Member shall be entitled to one (1) vote for each Lot which he or it owns within the Development, and a Class B Member, if any, shall be entitled to the number of votes accorded to such Member as provided in the Declaration.

3.4 Voting by Joint Owners. In the event there is more than one (1) Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy or through ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned, unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

3.5 Resolution of Voting Disputes. In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting, the Board of Directors of the Association shall act as arbitrators and the decision of a disinterested majority of the Board of Directors shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with Utah law.

3.6 Suspension of Voting Rights. The Board of Directors may suspend the voting rights of a Member for any period during which an assessment remains unpaid. The Board of Directors may also, after Notice and Hearing, suspend the right of the Member to use the Common Area and Facilities during and for up to sixty (60) days following any breach by such Member or Occupant of any provision of the Declaration or of any Rule or Regulation adopted by the Association unless such breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues and up to sixty (60) days thereafter.

3.7 Transfer of Memberships on Association Books. Transfer of Membership shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Lot to which the Membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the Membership as the owner of the Membership entitled to all rights in connection therewith, including the right to vote and to receive notice.

3.8 Assignment of Voting Rights to Tenants and Mortgagees. A Member may assign his right to vote to a tenant occupying his Unit or to a mortgagee of his Unit for the term of the lease or the mortgage and any sale, transfer or conveyance of the Unit and the Lot upon which it is situated shall, unless otherwise provided in the document of sale, transfer or conveyance, be subject to any such assignment of voting rights

to any tenant or mortgagee. Any such assignment of voting rights and any revocation or termination of any assignment of voting rights shall be in writing and shall be filed with the Secretary of the Association.

#### ARTICLE IV

#### MEETING OF MEMBERS

4.1 Place of Members' Meetings. Meetings of Members shall be held at the principal office of the Association or at such other place, within or convenient to the Development, as may be fixed by the Board of Directors and specified in the notice of the meeting.

4.2 Annual Meetings of Members. Annual Meetings of the Members shall be held at such time of day as is fixed by the Board of Directors and specified in the notice of meeting. The Annual Meetings shall be held to elect Directors of the Association and to transact such other business as may properly come before the meeting.

4.3 Special Meetings of Members. Special Meetings of the Members may be called by the President or the Board of Directors or by Members holding not less than twenty-five percent (25%) of the total votes of all Members, excluding votes of Declarant, or by Declarant if it holds at least ten percent (10%) of the total votes of all Members. No business shall be transacted at a Special Meeting of Members except as indicated in the notice thereof.

4.4 Record Date/Members List.

4.4.1. Record Date. The record date for the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose for the taking of any other lawful action shall be as set forth in Subsection 4.4.2 below, unless the Board of Directors, in advance of sending notice, set a date by resolution as the record date for any such determination of Members. Such record date shall not be more than sixty (60) days prior to the meeting of Members or the event requiring a determination of Members.

4.4.2. Members Entitled to Notice. Members entitled to notice of a meeting of the Members are the Members of the Association at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held. Members entitled to vote at a meeting of the Members are the Members of the Association on the date of the meeting, and who are otherwise eligible to vote. The record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action are Members of the Association at the later of (i) the close of business on the day on which the Board of Directors adopts the resolution relating to the exercise of the right; or (ii) the close of business on the sixtieth (60<sup>th</sup>) day before the date of the exercise of the right. A record date fixed under this Section may not be more than seventy (70) days before the meeting or action requiring a determination of Members occurs. A determination of members entitled to notice of or to vote at a meeting of Members is effective for any adjournment of the meeting unless the Board of Directors fixes a new date for determining the right to notice or the right to vote.

4.4.3. Member List. The Association shall only be required to prepare a list of the names of the Members as provided for in Section 9.3.3.

4.5 Notice of Members' Meetings. Written notice stating the place, day and hour of any meeting shall be delivered not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by first class or registered mail, by or at the direction of any of the Officers of the Association, or the Officers or persons calling the meeting, to each Member entitled to vote at such meeting. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Act. The notice of an Annual, Regular or Special Meeting shall include (a) the names of any known candidate for Director and shall identify any other matter which it is known may come before the meeting; (b) potential conflicting interest transactions of a Director, party related to a Director, or an entity in which the Director is a director or has a financial interest, if any; (c) notice of any indemnification or advance of expenses to a director in connection with a legal "proceeding" as defined in the Act; (d) notice of any amendment to these Bylaws proposed by the Members and a copy, summary or general statement of the proposed amendment; (e) notice of a proposed plan of merger; (f) notice of a proposed sale of the properties by the Association other than in the regular course of activities; (g) notice of a proposed dissolution of the Association; and (h) any matter a Member intends to raise at the meeting if requested in writing to do so by a person entitled to call a Special Meeting and the request is received by the Secretary or President at least ten (10) days before the Association gives notice of the meeting. The notice of a Special Meeting shall state the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be delivered three (3) business days after a copy of the same has been deposited in the United States mail addressed to the Member at the street address given by the Member to the Association, or to the residence of such Member if no address has been given to the Association.

4.6 Proxies and Ballots Used at Meetings. A Member entitled to vote at a meeting may vote in person or ballot, or by proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the Secretary of the meeting prior to the time the proxy is exercised. Any proxy or ballot may be revoked, prior to the time the proxy is exercised or the ballot counted, by (a) the Member attending the meeting and voting in person, or (b) the Member signing and delivering to the Secretary or other person authorized to tabulate proxy or ballot votes (i) a writing stating that the appointment of proxy or ballot is revoked, or (ii) a subsequent proxy form or ballot. A proxy or ballot shall automatically cease upon the conveyance by a Member of the Lot of the Member and the transfer of the Membership on the books of the Association. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. The death or incapacity of the Member appointing a proxy or issuing a ballot does not affect the right of the Association to accept the proxy's authority or count the ballot unless notice of the death or incapacity is received by the Secretary or other Officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority or the ballot is counted.

In addition to utilizing a ballot in connection with a meeting, the Association may utilize ballots without a meeting to take any action that may be taken at any annual, regular or special meeting of the Members provided the Association delivers a written ballot to every member entitled to vote. Any ballot utilized without a meeting shall be valid only when (1) the time by which all ballots must be received has passed so that a quorum can be determined and (2) 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: (a) set forth each proposed action, (b) provide for an opportunity to vote for or against each proposed action, (c) indicate the number of responses needed to meet the quorum requirements; (d) state the percentage of approvals necessary to approve each matter other than election of Directors; (e) specify the time by which a ballot must be received by the Association in order to be counted; and (f) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

4.7 Telecommunications. Any or all of the Members may participate in an Annual, Regular, or Special Meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting by a means permitted under this Section is considered to be present in person at the meeting.

4.8 Quorum at Members' Meetings. Except as may be otherwise provided in the Declaration, the Articles of Incorporation, or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the representation, in person, by proxy or by ballot, of Members entitled to cast at least twenty-five percent (25%) of the votes of all Members shall constitute a quorum at any meeting of such Members. Members present in person or by proxy or represented by ballot at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum. If a quorum is not present at any meeting, another meeting may be called by the Board of Directors issuing a Notice of Members Meeting at which meeting the members that are present in person or by proxy or represented by ballot shall constitute a quorum, except as otherwise provided in the Declaration, the Articles of Incorporation, or these Bylaws. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

4.9 Adjournment of Members' Meetings. Members present in person or by proxy at any meeting at which a quorum or reduced quorum, as the case may be, was present may adjourn the meeting from time to time, without notice other than announcement at the meeting, for a total period or periods not to exceed forty-five (45) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall be the same as the quorum requirement of the meeting so adjourned, and any business may be transacted which might have been transacted at the adjourned meeting.

4.10 Vote Required at Members' Meetings. At any meeting where a quorum is present, a majority of the votes present in person, ballot or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, except that, in the case of elections in which there are more than two (2) candidates, the persons receiving the highest number of votes shall be elected.

4.11 Cumulative Voting Not Permitted. Cumulative voting by Members in the election of Directors shall not be permitted.

4.12 Order of Business. The order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) election of Directors, if applicable; (d) report of finances; and (e) any other Association business.

4.13 Expenses of Meetings. The Association shall bear the expenses of all Regular and Annual Meetings of Members and of Special Meetings of Members.

4.14 Waiver of Notice. A Member may waive any notice required by the Act or by these Bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. A waiver shall be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes; or filing with the corporate records. The delivery and filing required above may not be conditions of the effectiveness of the waiver. A Member's attendance at a

meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

4.15 Action of Members Without a Meeting. Any action that may be taken at an annual or special meeting of the Members may be taken without a meeting and without prior notice if a consent, in writing, setting forth the action so taken, shall be signed by the 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 of the Members entitled to vote with respect to the subject matter thereof were present and voted. Directors may not be elected by written consent except by unanimous written consent of all Members entitled to vote for the election of Directors. Any action taken under this Section must comply with the Act and is not effective unless all necessary written consents are received within a sixty (60) day period and have not been revoked. A written consent may be given by electronically transmitted facsimile or other form of communication providing the Association with a complete copy of the written consent, including a copy of the signature to the written consent.

4.16 Signature of Members. Except as otherwise provided in the Act, all votes, consents, written ballots, waivers, proxy appointments, and proxy or ballot revocations shall be in the name of the Member and signed by the Member with a designation of the Member's capacity; *i.e.*, owner, partner, president, director, member, trustee, conservator, guardian, etc.

## ARTICLE V

### BOARD OF DIRECTORS

5.1 General Powers and Duties of the Board of Directors. The Board of Directors shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board of Directors shall have the power to exercise or cause to be exercised for the Association all of the powers, rights and authority of the Association not reserved to Members in the Declaration, the Articles of Incorporation, these Bylaws, or the Act.

5.2 Special Powers and Duties of the Board of Directors. Without limiting the foregoing statement of general powers and duties of the Board of Directors or the powers and duties of the Board of Directors as set forth in the Declaration, the Board of Directors shall be vested with the following specific powers and duties:

5.2.1 Assessments. The duty to fix and levy from time to time assessments, special assessments, and all other assessments upon the Members of the Association as provided in the Declaration; and to enforce the payment of such delinquent assessments as provided in the Declaration.

5.2.2 Insurance. The duty to contract and pay premiums for fire and casualty and liability and other insurance in accordance with the provisions of the Declaration.

5.2.3 Common Area. The duty to manage and care for the Common Area, and to employ personnel necessary for the care and operation of the Common Area, and to contract and pay for necessary or desirable Improvements on property acquired by the Association in accordance with the Declaration.

5.2.4 Agents and Employees. The power to select, appoint, and remove all Officers, agents, and employees of the Association and to prescribe such powers and duties for them as may be consistent with law, with the Declaration, the Articles of Incorporation, and these Bylaws.

5.2.5 Borrowing. The power, with the approval of the Members representing at least two-thirds (2/3) of the voting power of the Association, to borrow money and to incur indebtedness for the purpose of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt, and securities therefor.

5.2.6 Enforcement. The power to enforce the provisions of the Declaration, the Rules and Regulations of the Association, these Bylaws, or other agreements of the Association.

5.2.7 Delegation of Powers. The power to delegate its powers according to law.

5.2.8 Rules and Regulations. The power to adopt such rules and regulations with respect to the interpretation and implementation of the Declaration, use of Common Area, and use of any property within the Development including Dwelling Units and to levy fines and penalties for infractions and violations thereof; provided, however, that such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation, and these Bylaws.

5.2.9 Emergency Powers. The right to exercise such emergency powers as provided for in the Act.

5.3 Qualifications of Directors. A Director must be a natural person 18 years of age or over and an Owner of a Lot within the Development or, if the Owner of any such Lot is a partnership, corporation, or limited liability company, must be a designated representative of such partnership, corporation, or limited liability company. If a Director conveys or transfers title to his Lot, or if a Director who is a designated representative of a partnership, corporation, or limited liability company ceases to be such designated representative, or if the partnership, corporation, or limited liability company of which a Director is a designated representative transfers title to its Lot, such Director's term as Director shall immediately terminate and a new Director shall be selected as promptly as possible to take such Director's place. Notwithstanding anything in this Section to the contrary, none of the initial Directors, as designated in the Articles of Incorporation, shall be required to have any ownership interest in any Lot in order to qualify to serve as a Director until the first election of Directors by the Members. Any Director no longer qualified to serve under the standards provided for in this Section 5.3 may be removed by a majority vote of the Directors then in office.

5.4 Number of Directors. The number of Directors of the Association shall be not less than three (3) and not more than five (5). Subject to such limitations, the number of Directors shall be three (3) until changed pursuant to this Section 5.4. The number of Directors can be increased beyond three (3) Directors to five (5) by the majority vote of the Board of Directors.

5.5 Term of Office of Directors and Elections. The affairs of the Association shall be managed by a Board of Directors composed of three (3) individuals, unless changed pursuant to Section 5.4. Except as provided in Section 4.15, the Board of Directors shall be elected by secret ballot at a meeting of the Members to serve as follows:

At each annual meeting, the Members shall elect Directors for terms of two (2) years, with an odd number of Directors (at least two (2) less than the entire Board) elected in odd-numbered years and an even number of Directors elected in even-numbered years. In the initial election of Directors, the method of election shall provide that the term of an odd number of Directors (at least two (2) less than the entire Board) shall expire in the next odd numbered year, and the term of an even number of trustees shall expire in the next even numbered year.

Directors newly elected at the Annual Meeting shall take office on the first day of the month following the Annual Meeting. Said newly elected Directors are invited to attend Board of Directors meetings to familiarize them with the Association procedures prior to taking office. Only Members who are not in violation of the Declaration, these Bylaws, Association Rules and Regulations, or Architectural Rules and Regulations shall be eligible to run for a position on the Board of Directors.

In an election of multiple Directors, that number of candidates equaling the number of Directors to be elected, having the highest number of votes cast in favor of their election, are elected to the Board of Directors. When only one (1) Director is being voted upon, the candidate having the highest number of votes cast in his or her favor is elected to the Board of Directors.

5.6 Nominating Committee. Nominations for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the Annual Meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such Annual Meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Except for the initial Board of Directors appointed by the Declarant, such nominations shall be made from among the Members.

5.7 Removal of Directors By the Members. At any meeting of the Members, the notice of which indicates such purpose, any or all of the Directors may be removed, with or without cause, by the affirmative vote of Members holding a majority of the voting interests of all Members; and a successor may be then and there elected to fill the vacancy thus created.

5.8 Resignation of Directors. Any Director may resign at any time by giving written notice to the President, to the Secretary, or to the Board of Directors stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective. A Director who resigns may deliver to the Utah Department of Commerce, Division of Corporations and Commercial Code a statement setting forth (a) that person's name; (b) the name of this Association; (c) information sufficient to identify the report or other document in which the person is named as a Director or Officer; and (d) the date on which the person ceased to be a Director or Officer or a statement that the person did not hold the position for which the person was named in the corporate report or other document.



5.9 Vacancies in the Board of Directors. Any vacancy occurring in the Board of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members. A Director elected by the Board of Directors to fill the vacancy of a Director elected by the voting Members may be removed without cause by the voting Members, but not the Board of Directors. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining Directors though less than a quorum of the Board of Directors. Should any vacancy of the Board of Directors remain unfilled for a period of two (2) months, the Members may, at a Special Meeting of the Members called for that purpose, elect a Director to fill such vacancy by a majority of the votes which Members present at such meeting, or represented by proxy or ballot, are entitled to cast.

5.10 Appointment of Committees. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint one or more committees which shall consist of two or more Directors and which, unless otherwise provided in such resolution, shall have and may exercise the authority to make recommendations (but not final decisions) to the Board of Directors in the management of the Association, except authority with respect to those matters specified in the Act as matters which such committee may not have and exercise the authority of the Board of Directors.

5.11 General Provisions Applicable to Committees. The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him by law. The provision of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of the Board of Directors shall be applicable to meetings of committees of the Board of Directors.

## ARTICLE VI

### MEETING OF DIRECTORS

6.1 Place of Directors' Meetings. Meetings of the Board of Directors shall be held at the principal office of the Association or at such other place, within or convenient to the Development, as may be fixed by the Board of Directors and specified in the notice of the meeting.

6.2 Annual Meeting of Directors. The Annual Meeting of the Board of Directors shall be held on the same date as, or within ten (10) days following, the Annual Meeting of Members and also on the date that newly elected Directors take office. The Business to be conducted at the Annual Meeting of the Board of Directors shall consist of the appointment of Officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the Annual Meeting of the Board of Directors shall be necessary if the meeting is held on the same day and at the same place as the Annual Meeting of Members at which the Board of Directors is elected or if the time and place of the Annual Meeting of the Board of Directors is announced at the Annual Meeting of Members.

6.3 Other Regular Meetings of Directors. The Board of Directors may hold other regular meetings and may, by resolution, establish in advance the times and places for such regular meetings. No prior notice of any regular meeting need be given after establishment of the time and place thereof by such resolution.

6.4 Special Meetings of Directors. Special Meetings of the Board of Directors may be called by the President or any two (2) members of the Board of Directors other than the President.

6.5 Notice of Directors' Meetings. In the case of all meetings of the Board of Directors for which notice is required by these Bylaws, notice stating the place, day and hour of the meeting shall be delivered not less than three (3) nor more than thirty (30) days before the date of the meeting, by mail, fax, telephone or personally, by or at the direction of the persons calling the meeting, to each member of the Board of Directors. If mailed, such notice shall be deemed to be delivered three (3) business days after a copy of the same has been deposited in the United States mail addressed to the Director at his home or business address as either appears on the records of the Association, with postage thereon prepaid. If faxed, such notice shall be deemed delivered when the transmission is complete. If by telephone such notice shall be deemed to be delivered when given by telephone to the Director. If given personally, such notice shall be deemed to be delivered upon delivery of a copy of a written notice to, or upon verbally advising, the Director or some person who appears competent and mature at his home or business address as either appears on the records of the Association.

Neither the business to be transacted at, nor the purpose of, any Regular or Special Meeting of the Board of Directors need be specified in the notice or waiver of such meeting.

6.6 Proxies. 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 Director may be considered to be present at a meeting and to vote if the Director has granted a signed written proxy: (i) to another Director who is present at the meeting; and (ii) authorizing the other Director 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. Except as provided in this Section 6.6 and as permitted by Section 6.13, Directors may not vote or otherwise act by proxy.

6.7 Telecommunications. The Board of Directors may permit any Director to participate in a Regular or Special Meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating may hear each other during the meeting. A Director so participating in such a meeting is considered to be present in person at the meeting.

6.8 Quorum of Directors. A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business. For the purpose of determining the presence of a quorum, Directors will be counted if represented in person or by proxy, if applicable.

6.9 Adjournment of Directors' Meeting. Directors present at any meeting of the Board of Directors may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than announcement at the meeting, for a total period or periods of not to exceed thirty (30) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

6.10 Vote Required at Directors' Meeting. At any meeting of the Board of Directors, if a quorum is present, a majority of the votes present in person or by proxy, if applicable, and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation, or these Bylaws.

6.11 Officers at Meetings. The President shall act as chairman and the Board of Directors shall appoint a secretary to act at all meetings of the Board of Directors.

6.12 Waiver of Notice. A waiver of notice of any meeting of the Board of Directors, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting unless (a) at the beginning of the meeting or promptly upon the Director's later arrival the Director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and, after objecting, the Director does not vote for or assent to action taken at the meeting, or (b) the Director contemporaneously requests that the Director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or (c) the Director causes written notice of the Director's dissent or abstention as to any specific action to be received by (i) the presiding officer of the meeting before adjournment of the meeting; or (ii) the Association promptly after adjournment of the meeting.

6.12.1 Dissent or Abstention. The right of dissent or abstention pursuant to Section 6.12 is not available to a Director who votes in favor of the action taken.

6.13 Action of Directors Without a Meeting. Any action required to be taken or which may be taken at a meeting of the Board of Directors may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors. Any action taken under this Section 6.13 is not effective unless all written consents are received within a sixty (60) day period and have not been revoked.

## ARTICLE VII

### OFFICERS

7.1 Officers, Employees and Agents. The officers of the Association shall be natural persons 18 years of age or over and shall consist of a President, a Secretary, a Treasurer, and such other Officers, assistant Officers, employees, and agents as may be deemed necessary by the Board of Directors. Officers other than the President need not be Directors. The same person may simultaneously hold more than one office.

7.2 Appointment and Term of Office of Officers. The Officers shall be appointed by the Board of Directors at the Annual Meeting of the Board of Directors and shall hold office, subject to the pleasure of the Board of Directors, until the next Annual Meeting of the Board of Directors or until their successors are appointed, whichever is later, unless the Officer resigns, or is removed earlier.

7.3 Resignation and Removal of Officers. An Officer may resign at any time by giving written notice of resignation to the Association. A resignation of an Officer is effective when the notice is received by the Association unless the notice specifies a later effective date. If a resignation is made effective at a later date, the Board of Directors may: (a) (i) permit the Officer to remain in office until the effective date; and (ii) fill the pending vacancy before the effective date if the successor does not take office until the effective date; or (b) (i) remove the Officer at any time before the effective date; and (ii) fill the vacancy created by the removal. The Board of Directors may remove any Officer at any time with or without cause. An Officer who resigns, is removed, or whose appointment has expired may file a statement in the same form as provided in Section 5.8.

7.4 Vacancies in Officers. Any vacancy occurring in any position as an Officer may be filled by the Board of Directors. An Officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

7.5 President. The President shall be a Member of the Board of Directors and shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall direct, supervise, coordinate and have general control over the affairs of the Association, and shall have the powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board of Directors and of the Members of the Association.

7.6 Vice President. The Vice President, if any, may act in place of the President in case of his death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board of Directors or by the President.

7.7 Secretary. The Secretary shall be the custodian of the records and the seal, if any, of the Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association set forth in Section 9.3 are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Members, of the Board of Directors, and of committees of the Board of Directors; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board of Directors or by the President. The Board of Directors may appoint one or more Assistant Secretaries who may act in place of the Secretary in case of his death, absence or inability to act. The duties of the Secretary may be delegated to a property management company.

7.8 Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; shall deposit all such funds in the name of the Association in such depositories as shall be designated by the Board of Directors; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board of Directors may, from time to time, require; shall arrange for the annual report required under Section 9.6 of these Bylaws; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the Board of Directors or by the President. The Board of Directors may appoint one or more Assistant Treasurers who may act in place of the Treasurer in case of his death, absence or inability to act. The duties of the Treasurer may be delegated to a property management company.

7.9 Bonds. The Association shall require and pay for fidelity bonds covering Officers or other persons handling funds of the Association as required in the Declaration. The Association shall pay the premiums for such bonds.

## ARTICLE VIII

### INDEMNIFICATION OF OFFICIALS AND AGENTS

8.1 Right of Indemnification. The Association shall indemnify any Director, Officer, employee, fiduciary and agent (including without limitation the property manager) to the fullest extent allowed under Sections 16-6a-901 through 16-6a-910 of the Act, or any replacement Sections thereof.

8.2 Authority to Insure. The Association may purchase and maintain liability insurance on behalf of any Director, Officer, employee, fiduciary and agent against any liability asserted against him and incurred by him in such capacity or arising out of his status as such, including liabilities for which he might not be entitled to indemnification hereunder.

## ARTICLE IX

### MISCELLANEOUS

9.1 Amendment/Conflict. These Bylaws may be amended, at any Regular, Annual, or Special Meeting of the Board of Directors, by a vote of the majority of the Board of Directors, except if 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. The Members may amend the Bylaws even though the Bylaws may also be amended by the Board of Directors. Amendments to the Bylaws by Members shall be made in accordance with the Act. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration will control.

9.2 Compensation of Officers, Directors and Members. No Director shall have the right to receive any compensation from the Association for serving as a Director except for reimbursement of expenses as may be approved by resolution of disinterested Members of the Board of Directors and except as may otherwise be approved by the Members. Officers, agents and employees shall receive such reasonable compensation as may be approved by the Board of Directors. Appointment of a person as an Officer, agent or employee shall not, of itself, create any right to compensation.

#### 9.3 Books and Records.

9.3.1 The Association shall keep as permanent records: (a) minutes of all meetings of its Members and Board of Directors; (b) a record of all actions taken by the Members or Board of Directors without a meeting; (c) a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the Association; (d) a record of all waivers of notices of meetings of Members and of the Board of Directors or any committee of the Board of Directors; and (e) a copy of the Declaration, as the same may be amended.

9.3.2 The Association shall maintain appropriate accounting records.

9.3.3 The Association or its agent shall maintain a record of its Members in a form that permits preparation of a list of the name and address of all Members: (a) in alphabetical order, by class, and (b) showing the number of votes each Member is entitled to vote.

9.3.4 The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

9.3.5 The Association shall keep a copy of each of the following records at its principal office: (a) its Articles of Incorporation; (b) its Bylaws; (c) resolutions adopted by its Board of Directors relating to the characteristics, qualifications, rights, limitations, and obligations of Members or any class or category of Members; (d) the minutes of all Members' meetings; (e) records of all actions taken by Members without a meeting; (f) all written communications to Members

generally as Members for a period of three years; (g) a list of the names and business or home addresses of its current Directors and Officers; (h) a copy of its most recent annual report; and (i) all financial statements prepared for periods ending during the last three (3) years.

9.4 Inspection of Records.

9.4.1 A Director or Member is entitled to inspect and copy any of the records of the nonprofit corporation described in Subsection 9.3.5: (a) during regular business hours; (b) at the Association's principal office; and (c) if the Director or Member gives the Association written demand, at least five (5) business days before the date on which the Member wishes to inspect and copy the records.

9.4.2 In addition to the rights set forth in Subsection 9.4.1, a Director or Member is entitled to inspect and copy any of the other records of the Association: (a) during regular business hours; (b) at a reasonable location specified by the Association; and (c) at least five (5) business days before the date on which the Member wishes to inspect and copy the records, if the Director or Member: (i) meets the requirements of Subsection 9.4.3; and (ii) gives the Association written demand.

9.4.3 A Director or Member may inspect and copy the records described in Subsection 9.4.2 only if: (a) the demand is made: (i) in good faith; and (ii) for a proper purpose; (b) the Director or Member describes with reasonable particularity the purpose and the records the Director or Member desires to inspect; and (c) the records are directly connected with the described purpose.

9.4.4 Notwithstanding any other provision in these Bylaws, for purposes of this Section: (a) "Member" includes: (i) a beneficial owner whose membership interest is held in a voting trust; and (ii) any other beneficial owner of a membership interest who establishes beneficial ownership; and (b) "proper purpose" means a purpose reasonably related to the demanding Member's or Director's interest as a Member or Director.

9.4.5 The right of inspection granted by this Section may not be abolished or limited by the Articles of Incorporation or these Bylaws.

9.4.6 This Section does not affect: (a) the right of a Director or Member to inspect records relating to ballots; (b) the right of a Member to inspect records to the same extent as any other litigant if the Member is in litigation with the Association; or (c) the power of a court, independent of this Article, to compel the production of corporate records for examination.

9.4.7 A Director or Member may not use any information obtained through the inspection or copying of records permitted by 9.4.2 for any purposes other than those set forth in the demand made under 9.4.3.

9.5 Scope of Inspection Right. A Director or Member's agent or attorney has the same inspection and copying rights as the Director or Member. The right to copy records under Section 9.4 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means. *Except for requests for financial statements, the Association may impose a reasonable charge covering the costs of labor and material for copies of any documents provided to the Director or Member.* The charge may not exceed the estimated cost of production and reproduction of the records. The nonprofit

corporation may comply with a Director's or Member's demand to inspect the record of Members under Subsection 9.3.3 by furnishing to the Director or Member a list of Directors or Members that: (a) complies with Subsection 9.3.3; and (b) is compiled no earlier than the date of the Director's or Member's demand. Concerning financial statements, by no later than fifteen (15) days after the day on which the Association receives a written request of any Member, the Association shall mail to the Member the following that show in reasonable detail the assets and liabilities and results of the operations of the Association: (a) the Association's most recent annual financial statements, if any; and (b) the Association's most recently published financial statements, if any. Without consent of the Board of Directors, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a Member's interest as a Member.

9.6 Annual Report. The Board of Directors shall cause to be prepared and distributed to each Member and any First Mortgagee of a Member who has filed a written request therefor, not later than ninety (90) days after the close of each fiscal year of the Association, an annual report containing (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year, (c) a statement of changes in financial position for such fiscal year, and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses of current Members, may be found.

9.7 Statement of Account. Upon payment of a reasonable fee to be determined by the Association and upon written request of an Owner of a Lot or any person with any right, title or interest in a Lot or intending to acquire any right, title or interest in a Lot, the Association shall furnish, within ten (10) days after the receipt of such request, a written statement of account setting forth the amount of unpaid assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Lot and the Unit thereon, and the amount of the assessments for the current fiscal period of the Association payable with respect to the Lot and the Unit thereon. Such statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other assessments have been levied.

9.8 Annual Corporation Reports. The Association shall file with the Division of Corporations and Commercial Code for the Utah Department of Commerce, within the time prescribed by law, annual corporate reports in such form and containing the information required by law and shall pay the fee for such filing as prescribed by law.

9.9 Fiscal Year. The fiscal year of the Association shall be the calendar year, and shall begin on January 1 and end the succeeding December 31. The fiscal year may be changed by the Board of Directors without amending these Bylaws.

9.10 Seal. The Board of Directors may adopt a seal which shall have inscribed thereon the name of the Association and the words "SEAL" and "UTAH".

9.11 Shares of Stock and Dividends Prohibited. The Association shall not have or issue shares of stock and no dividends shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Directors or Officers. Notwithstanding the foregoing paragraph, the Association may issue certificates evidencing Membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

9.12 Loans to Directors, Officers and Members Prohibited. No loan shall be made by the Association to its Members, Directors or Officers, and any Director, Officer or Member who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

9.13 Limited Liability. The Association, the Board of Directors, the Architectural Control Committee, and Declarant, and any agent or employee of any of the same shall not be liable to any person for any actions or for any failure to act in connection with the affairs of the Association if the action taken or failure to act was in good faith and without malice.

9.14 Minutes and Presumptions Thereunder. Minutes or any similar record of the meetings of Members or of the Board of Directors, when signed by the Secretary or acting Secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

9.15 Checks, Drafts and Documents. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

9.16 Execution of Documents. The Board of Directors, except as these Bylaws otherwise provide, may authorize any officer or Officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no Officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

9.17 Right to Inspect. Notwithstanding the other provisions of this Article, unless otherwise provided in these Bylaws, a right of a Member to inspect or receive information from the Association applies only to a voting Member of the Association.

## ARTICLE X

### ENFORCEMENT RIGHTS

In the event of an alleged violation by a Member or Occupant ("Respondent") of the Declaration, these Bylaws, or the Rules and Regulations of the Association, the Board of Directors shall have the right, upon an affirmative vote of a majority of all Directors on the Board of Directors, to take any one or more of the actions and to pursue one or more of the remedies permitted under the provisions of the Declaration, these Bylaws, or the Rules and Regulations of the Association. If, under the provisions of the Declaration, these Bylaws, or the Rules and Regulations, a Notice of Noncompliance and Right to Hearing is required prior to taking action or pursuing remedies, the Board shall give the Member notice and an opportunity to be heard. The remedies set forth and provided in the Declaration, the Rules and Regulations of the Association or these Bylaws shall be cumulative and none shall be exclusive. However, any individual Member must exhaust all available internal remedies of the Association prescribed by the Declaration, these Bylaws, and the Architectural Control Committee Rules and Regulations, and other Rules and Regulations of the Association before that Member may resort to a court of law for relief with respect to any alleged violation by another Member of the Declaration, these Bylaws, or the Rules and Regulations of the



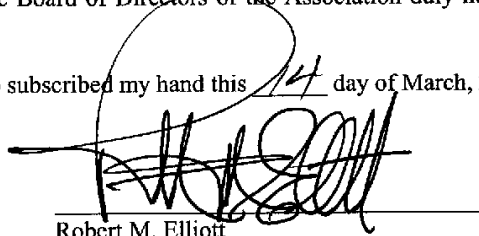
Association, provided that the foregoing limitation pertaining to exhausting administrative remedies shall not apply (i) to the Board of Directors or to any Member where the complaint alleges nonpayment of assessments, special assessments or other assessments, or (ii) to matters the Board of Directors determines in its discretion will (a) affect the safety of the Common Area or Facilities or the Owners or their property or (b) will result in irreparable harm to the Association if not quickly remedied. In such cases, the Board of Directors may immediately file suit.

**CERTIFICATE OF SECRETARY**

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of Silver Falls @ Washington Bench Owners Association, a Utah nonprofit corporation ("Association"); and
2. The foregoing Bylaws, comprising 17 pages, including this page, constitute the Bylaws of the Association duly adopted at the meeting of the Board of Directors of the Association duly held on \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 14 day of March, 2007.



Robert M. Elliott  
Secretary