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Amended Restrictive Covenants  
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**AMENDED & RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
SUNRISE VILLAGE TOWNHOMES #2  
(ALSO KNOWN AS SUNRISE TOWNHOMES)  
(INCLUDING BYLAWS)**

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This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Sunrise Village Townhomes #2 (hereafter "**Declaration**") is made on the date evidenced below by Sunrise Townhomes Association (hereafter "**Association**").

### **RECITALS**

- A. This Declaration and the Bylaws attached hereto supersede and replace all prior declarations, bylaws, and amendments or supplements thereto, recorded against the subdivision or unrecorded, including the Declaration of Covenants, Conditions and Restrictions of Sunrise Village Townhomes #2 dated October 6, 1977, and referenced in the plat map recorded as Entry No. 188211, records of Washington County Recorder, Utah (the "**Original Declaration**");
- B. The property subject to this Declaration is the Sunrise Village Townhomes #2 subdivision in Washington County, Utah. Exhibit A of this Declaration further defines the property subject to this Declaration. All Lots therein are part of the Association and each Owner of Lot is a member thereof. The Association is created as a planned development and contains certain Common Area and easements for the benefit of the Owners of Lots therein. The Community is not a cooperative or a condominium project.
- C. The Association desires to continue to provide for the preservation and enhancement of the property values and improvements of the Property and to ensure a uniform plan and scheme of development.
- D. Pursuant to Utah Code § 57-8a-104, the undersigned hereby certifies that all of the voting requirements to amend the Declaration have been satisfied, that 67% of the voting interests of the Association have affirmatively approved the adoption of this document and that no change from the Original Declaration affecting lot boundaries or Members' voting rights has been made in this Declaration.

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

### **1. DEFINITIONS**

The following words when capitalized in this Declaration (except where otherwise stated) have the following meanings:

- 1.1 "**Act**" means the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.
- 1.2 "**Assessment**" means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to a Governing Document or applicable law.

**1.3 "Association"** means and refers to the Sunrise Townhomes Association, or any successor incorporated or unincorporated association of the Lot Owners acting under the authority of this Declaration and the Bylaws.

**1.4 "Board of Directors" or "Board"** means the entity, established in accordance with the Bylaws, with primary authority to manage the affairs of the Association.

**1.5 "Bylaws"** means the Bylaws of the Association (initially attached hereto as **Exhibit B**) as they may be amended from time to time.

**1.6 "Common Area"** means, refers to, and includes: (a) The real property and interests in it, which comprise the Community, excluding all Lots; (b) All common areas and facilities designated as such elsewhere in this Declaration or on the Plat, except as otherwise stated in this Declaration; (c) All installations for and all equipment connected with the furnishing of the Community's utility services and existing for common use, such as electricity, gas, water and sewer, except as otherwise provided herein; (d) In general, all apparatus, installations and facilities included within the Community and existing for common use; (e) The roads and parking areas, excluding all Lots; (f) All other parts of the Community normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; (g) All common areas as defined in the Act, whether or not enumerated herein; and (h) All Limited Common Areas and facilities (except inasmuch as it is treated differently than Common Area elsewhere in this Declaration for maintenance, use or insurance purposes).

**1.7 "Community"** means all of the land described in the Plat.

**1.8 "Good Standing"** means: (1) no Assessment imposed against the Owner or Lot is more than 60 days' past due, and (2) more than 60 days has elapsed since a fine has been assessed against the Owner or Lot.

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

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

**1.11 "Include," "includes," or "including"** means (regardless of capitalization), without limitation, that the items listed are not an exclusive list and do not limit the application of the preceding word, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive or limiting list.

**1.12 "Limited Common Areas"** means: (1) the driveways appurtenant to the Lots, and (2) the front yard areas bounded by the front Lot line of each Lot, the width of such Lot, and extending to the private road or public road in front of such Lot. Limited Common Areas are Common Areas, but to which certain different rights and limitations apply as more fully set forth herein, including that

they are limited to the use of a certain Lot to the exclusion of other Lot Owners, subject to the right of the Association to enter such areas as may be required by this Declaration.

**1.13 "Lot"** means any residential lot or parcel of land upon which a Living Unit could be constructed in accordance with applicable ordinances and laws, or is already constructed, shown upon the Plat as existing for private use and ownership, including any Improvements thereon.

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

**1.15 "Plat" or "Plat Map" or "Record of Survey Map"** (these terms may be used interchangeably herein) means the official subdivision plat map recorded in the office of the County Recorder, as the same may be amended or substituted from time to time.

**1.16 "Private Road"** means a private right of way, as described on the Plat.

**1.17 "Property" or "Project"** means all of the real property and interests within the boundaries of the project described in the Plat, including all Lots, Common Area, easements, and open space.

**1.18 "Rules" or "Rules and Regulations"** means the written rules, regulations, resolutions, policies or procedures (including the Design Guidelines) that state what is or is not allowed or what will happen within the Community or Association and which are adopted by the Board from time to time, pursuant to Section 8.1 of this Declaration.

**1.19 "Unit" or "Living Unit" or "Residence"** means a single-family residential dwelling unit constructed upon a Lot.

## **2. PROPERTY DESCRIPTION, RIGHTS AND EASEMENTS**

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

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

**2.3 Form of Lot Conveyance - Legal Description of Lot.** Each conveyance or installment contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot

by the number shown on the Plat with appropriate reference to the Plat and to this Declaration, as each shall appear on the records of the County Recorder and in substantially the following form: Lot \_\_\_\_\_ shown on the plat map for the subdivision, appearing in the records of the Washington County Recorder and as subjected to the declaration of covenants, conditions and restrictions appearing in the official records of the Washington County Recorder, as may be amended.

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

**2.5 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: (1) performing maintenance necessitated by this Declaration, (2) determining whether the use of the Lot or a Lot Improvement is causing damage or harm to the Common Areas and remedying the same, or (3) removing any Improvement constructed, reconstructed, refinished, altered or maintained in violation of this Declaration. Requests for entry under numbers (2) and (3) shall be made in advance and at a time that is convenient to the Owner within 30 days of the request, or at a time designated by the Association if such time is more than 30 days from the request, except in the case of an emergency, when such right shall be immediate. No such entry or actions by the Association shall be deemed to constitute a trespass or otherwise create any right of action for damage or otherwise in the Owner of such Lot.

**2.6 Utility Easements.** The Association and any public or private utility provider are hereby granted an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be deemed necessary by the Board. The Board may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area. Within any easement, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Lot and all improvements therein shall be maintained continuously by the person or entity responsible for maintenance of such Lot in accordance with the terms in this Declaration, except for those improvements for which a public authority or utility provider is responsible. Each Lot Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot.

**2.7 Common Areas.** All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas (excluding Limited Common Areas), subject to the provisions of the Governing Documents and to the right of the Association to limit the number of residents, guests and invitees using the Common Area at one time, and which right shall include (without limitation) the right of ingress and egress to such Owner's Lot.

**2.8 Transfer, Material Alteration of Common Area.** The approval of a majority of all Owners shall be required before the Association may: (1) dedicate or transfer any part of the Common Area; (2) make any material, discretionary addition to the Common Area, other than as to landscaping; or

(3) make any discretionary, material alterations to the appearance of the Community, other than asto landscaping.

**2.9 Encroachment.** No Unit or Lot shall encroach upon an adjoining Lot or Common Area. If, however, any part of a Unit encroaches or shall hereafter encroach upon the Common Area or an adjoining Lot due to or caused by error in the original construction of any building or improvements constructed within the Project, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Lot. If any part of the Common Areas encroaches or shall hereafter encroach upon any Lot, an easement for such encroachment and for the maintenance of the same shall and does exist.

### **3. RESTRICTIONS ON USE**

#### **3.1 Residential Use.**

Lots shall be used for residential purposes in accordance with, and subject to, the Governing Documents. No trade, craft, business, profession, commercial, or similar activities shall be conducted on any Lot or in any other portion of the Community if the same: (1) causes pedestrian or vehicular traffic which is in excess of a normal level for residential occupancy; (2) creates a sight or noise nuisance; (3) is not merely incidental to the use thereof as a dwelling; or (4) has external visible, audible or other indications of use of the dwelling as anything but as a dwelling, all as determined by the Board. Owners engaging in any business activities from their Lots hereby agree to indemnify, defend, and hold harmless the Association and its officers, directors, agents, and other Owners from all claims which may arise from such business activities.

#### **3.2 Lease Restrictions.**

**3.2.1 Rental Cap.** No Units in the Project may be rented at any time, except grandfathered Units (pursuant to Section 3.2.3), and except Units rented pursuant to an exemption under Section 3.2.4 or 3.2.5. When a rental is permitted, no Owner shall rent less than the entire Unit, and no Owner shall rent such Owner's Unit for an initial term of less than 6 months.

**Definition of Rental.** "Rental," "Rented," or "Renting" means: (1) a Unit owned by an entity or trust, regardless of who occupies the Unit, unless the entity or trust was created for estate planning purposes for the estate of a current resident of the Unit or the parent, child, or sibling of the current resident of the Unit; or (2) a Unit not owned by an entity or trust, that is occupied by someone while no Owner or Owner's parent, child or sibling occupies the Unit as his or her primary residence. Owners who choose to rent their unit in any way must be compliant with local ordinances and zoning restrictions. The board reserves the right to request a background check be completed on tenants if they see fit. All lease agreements should be turned into the board within 14 days of tenant occupation.

**3.2.2 Grandfather Status.** Notwithstanding Section 3.2.1, an Owner who has a rental in the Community at the time this Declaration is recorded and who submits to the Board, within 60 days of

recording of this Declaration, a written statement that the Owner is currently renting the Unit together with the Owner's name, address, Unit address and phone number, (a "Grandfathered Owner") shall be allowed to continue renting such Unit until: (1) the Owner transfers or conveys the Unit (including, if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's shares, stock, membership interests, or partnership interests in a 12-month period), (2) the Owner occupies the Unit; or (3) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, occupies the Unit. A Grandfathered Owner includes an Owner of a Unit who is the heir of a Grandfathered Owner and who takes title to the Grandfathered Owner's Unit after the death of such Grandfathered Owner. For the purposes of this section, "heir" means a person or entity who has the legal right to receive the property of someone who dies.

**3.2.3 Required Exemptions.** The following Owners and Units are exempt from the restrictions on the number and term of rentals contained in this Declaration: (1) an Owner in the military for the period of the Owner's deployment, (2) an Owner whose employer has relocated the Owner for no less than two years.

**3.2.4 Hardship Exemptions.** The Board may grant exemptions ("Hardship Exemptions") in writing temporarily granting an Owner the right to rent, which Hardship Exemptions shall only be granted in the sole discretion of the Board to avoid undue hardships or extreme practical difficulties in situations such as the Owner's disability, extended charitable service, or the taking of title to a Unit by heirs after of the death of an Owner. A Hardship Exemption shall expire two years from issuance, at which point the Owner shall cease to rent the Unit unless another Hardship Exemption has been granted in writing. The Board may or may not approve an application to rent less than the Owner's entire Unit or to rent the Lot for a period of less than 12 consecutive months.

**3.2.5 The Lease Agreement.** Any lease agreement between an Owner and a lessee must be in writing, and must provide, among other things, that the terms of the lease shall in all respects be subject to the provisions of the Declaration, the Bylaws, and the Rules and Regulations. All lease agreements shall contain as an attachment to the lease agreement, a copy of the current Rules and Regulations of the Association. Within 14 days of a Unit being rented, the Owner must provide the Association with a copy of the signed lease agreement and the name(s) of all occupants of the Unit, and the Owner must keep such information updated with the Association within 14 days of any change.

**3.2.6 Administration of Rental Restrictions.** The Association shall create, in the Rules, procedures to: (1) determine and track the number of rentals and Units in the Association which are grandfathered or exempt pursuant to the provisions described in Subsections 3.2.3, 3.2.4 and 3.2.5; and (2) enable or aid in the consistent administration and enforcement of the rental restrictions contained herein.

### **3.3 Animals.**

**3.3.1** No animals of any kind may be kept or permitted within any Lot, except dogs, cats, or other household pets, subject to the Rules and Regulations, and provided that they are not kept, bred, or maintained for any commercial purpose. The Owner of any dog must keep such dog on a



leash when outside of the Lot or keep it confined within the Lot. Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Community. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof and owners shall be responsible for removal of wastes of their animals from the Property. Each provision of the applicable county or city code regarding animals shall be deemed a part of this Declaration as if fully set forth herein and the Association shall have the right, but not the obligation, to enforce all such provisions.

3.3.2 An owner may be required to remove a pet upon receipt of a written notice from the Association if in violation of the Rules and Regulations or this Declaration. The Board may promulgate rules, beyond those stated herein, restricting the keeping of pets.

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

No unsanitary, offensive, unsightly, or noxious conditions or activities, including noise, odor, clutter or other nuisance, shall be permitted on any Lot or Common Area, nor shall anything be placed upon any Lot or Common Area, which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

**3.5 Rubbish and Trash.**

No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

**3.6 Exterior Windows and Window Coverings.**

All exterior windows and window coverings viewable to the public in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction. Appropriate window coverings must be installed on windows at all times. The color of such window coverings shall be in harmony with surroundings and the exterior of the structure. Appropriateness and harmony shall be determined by the Board and a window covering shall be promptly removed by an Owner upon the determination by the Board that it is not appropriate or in harmony with surroundings. No exterior window viewable by the public may be covered by paint, aluminum foil, newspapers, bed sheets, cardboard, blankets, or other similar items.

**3.7 Vehicles; Parking.**

(1) Parking of the following is prohibited within the Community, except within a garage: boats; trailers; oversized vehicles (defined as vehicles more than 8 1/2' wide (including mirrors) by 19 1/2' long, any vehicle that has more than two axles, or vehicles weighing more than 6,500 pounds); vehicles displaying commercial advertising, logos, or business names exceeding three square feet per side or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle; truck campers; motor homes; RVs; and like vehicles and equipment.

(2) Garages shall be used for parking of vehicles and shall not be used or modified for

the intent of any other purpose than storage or parking so as to prevent the parking of at least one vehicle.

(3) Only currently registered and operational vehicles shall be permitted on the Property. Except for emergency repairs, no vehicle shall be repaired, constructed or reconstructed in any common area.

(4) The Association may adopt further rules and restrictions regarding parking and vehicles within the Property and to govern the enforcement of parking and vehicle restrictions. Vehicles in violation of the Governing Documents may be towed at the cost (including the cost of any storage thereof) of the owner. The Association shall be indemnified and held harmless by the owner of a vehicle from any loss, damage or claim caused by or arising out of the impounding, towing or storing of a vehicle pursuant hereto.

### **3.8 Items in Public View; Appearance.**

The Rules may regulate and control the appearance and use of driveways, entries, decks, patios, and balconies within the Project, including by way of illustration but not limitation a regulation limiting items on the patio to patio furniture; prohibiting hanging of items over the railings; planters and plants; and the storage of personal property, furnishings, appliances, junk, boxes, furniture, and effects in public view. No rugs, rags, laundry, clothing or other materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless the same are not visible from any part of the Common Area or any other Unit.

### **3.9 Signs.**

Unless approval is obtained from the Board in writing or granted by the Rules, no sign, advertisement, poster, flag or banner of any kind may be displayed to the public view on or from any Unit or Lot or the Common Area, except as allowed by law and except: (1) Not more than one "for sale" or "for rent" sign, not exceeding 24 inches in height and 24 inches long, may be temporarily placed on a Lot; (2) the display of a U.S. flag inside a Unit, Lot or Limited Common Area is permitted, if the care of the flag and display is consistent with federal law (the Association may control and restrict the display of a flag in the Common Area), and (3) security system signs not exceeding one square foot may be placed on a Lot or Unit.

### **3.10 Antenna and Dish Policy.**

Owners are encouraged to use cable service for television and internet. All outside television or radio aerials or antennas, satellite dishes or other similar devices, except satellite dishes, such as Direct Broadcast Satellite (DBS) dishes one meter in diameter or less, designed to receive direct broadcast satellite service or receive or transmit fixed wireless signals via satellite, are prohibited. Such allowed dishes may be installed, provided the dish and any wires are installed so as to not be visible from the streets. If locating the dish so that it is not visible from the streets precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets possible. An Owner must submit written notification to the Association within three (3) business days before installing any dish. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the dish. Location of an allowed dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation,

maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner.

The Owner is responsible for, and shall indemnify and hold the Association harmless from, all damage caused by or connected with a dish servicing the Owner's Unit, for as long as the dish remains, including damage resulting from water entering a building due to the installation or existence of such dish, and including personal injury and any other property damage. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein. The term "dish" shall include antenna in the interpretation of the above policy.

**3.11 Noise Disturbance.**

Residents shall exercise extreme care to minimize noise and to use musical instruments, radios, televisions, amplifiers, or any other device so as to not disturb other residents. Noise disturbances, as determined by the Board, shall subject the Owner of the Lot from which the noise originates to a fine.

**3.12 Solar Panels.**

Solar panels may be permitted if approved in advance by the Board pursuant to Article 4 below.

**3.13 Temporary Structures.**

No Owner or occupant shall place upon any part of the common area any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Board.

**3.14 Increase in Insurance Cost.**

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

## **4. ARCHITECTURAL REQUIREMENTS**

**4.1 Changes Require Approval.** No exterior maintenance, repair, replacement, addition, change or alteration to any Lot (including any Improvement), whether structural, landscaping, cosmetic or otherwise, may be made without prior written Board approval. Board approval shall be requested through submission of plans and specifications showing the nature, kind, shape, height, materials, and location of the proposed maintenance, repair, replacement, construction, addition, change or alteration (an "Application"). Board approval is subject to qualifications and criteria determined by the Board, including but not limited to harmony of external design and location in relation to surrounding structures, topography and the Community generally. Such approval shall be solely at the discretion of the Board as it deems appropriate. The Board has the sole discretion to make final, conclusive and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as made in good faith and in accordance with the procedures herein.

**4.2 Approval or Denial of Complete Application.** Within 30 days of receipt by the Board of an Application, the Board shall approve or deny the Application and send written notice to the Owner of the Board's determination. If the Application is denied because it is deficient with respect to a specific design review application requirement, the notice shall set forth such deficiencies. If the Board fails to approve or deny an Application within 30 days of receiving it, the Application shall be deemed approved. Failure of the Board to act on an Application shall not be deemed to constitute an approval of any act prohibited by the Governing Documents.

**4.3 No Liability.** The Board shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of performance for an intended purpose, adequate engineering, structural safety or conformance with building or other codes, standards or practices other than as specifically stated herein. Neither the Board nor any member thereof shall be liable to the Association or any person whatsoever for any loss, damage or injury arising out of, or in any way connected with the performance of the Board's duties hereunder.

**4.4 Review Fee.** The Association may charge a fee for the actual cost of reviewing and approving plans for any construction on or improvement of a Lot, including any costs charged to the Association by any other party, but the Association shall not charge a fee for reviewing and approving plans that exceeds such costs.

**4.5 Design Guidelines.** All exterior maintenance, repair, replacement, addition, construction or change to any Lot (including any Improvement), whether structural, landscaping, cosmetic or otherwise, shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design criteria which the Board is hereby empowered to adopt (referred to as "**Design Guidelines**") to expand, clarify, and otherwise provide for the harmony and compatibility of the Improvements constructed within the Project. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction. All builders and Owners shall comply with and are bound by the design restrictions herein and the Design Guidelines, if and when such are adopted. The Board shall have the authority to establish a security deposit or bond requirement as may be required by the Association and any portion of that amount that shall be non-refundable as an impact fee.

## **5. MAINTENANCE OBLIGATIONS**

### **5.1 Maintenance by Owner.**

5.1.1 Lots. Except to the extent that the Association is responsible for such maintenance under Section 5.2, maintenance of the Lots and the Living Units shall be the responsibility of the Owners thereof, who shall maintain such Lots and Living Units in good condition and repair. Each Owner at his or her sole expense shall maintain and repair the interior of the Living Units, including floors and each and every structural element beneath the Unit, exterior windows, window frames, and exterior doors and door frames. The Owner shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, heating equipment, air conditioners, or other appliances or like fixtures that may be in, or connected solely with, his or her Lot. Any pipe, conduit, or other utility device or apparatus that services only one Lot shall be the responsibility of that Lot's Owner to

maintain, repair, and replace. Each Unit and Lot shall be maintained so as to not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Unit or Lot, all as determined by the Association. The painting or repainting, remodeling, rebuilding or modification of any part of a Unit exterior or Lot exterior for which an Owner is responsible must first be submitted to and approved by the Board pursuant to procedures in Article IV above.

**5.1.2 Limited Common Area.** Each Lot Owner shall keep the Limited Common Areas appurtenant to his or her Lot in a clean, sanitary and uncluttered condition at all times and the Association shall maintain, repair and replace such Limited Common Area.

**5.2 Maintenance by Association.** The Association shall provide for, as a common expense, such care, maintenance, repair and replacement of the following as deemed necessary or desirable by the Board to keep them attractive and generally in good condition and repair:

- (1) the Common Area;
- (2) the Limited Common Area;
- (3) exterior surfaces of the Units and the roofs, gutters and downspouts on a Unit (but not including glass surfaces or the maintenance, repair, or replacement of glass, doors, door frames, windows, window frames and also not including sealing, repairing or otherwise fixing foundations); and
- (4) the trees, shrubs, grass, walks, driveways, and other landscaping and improvements on Lots, except within fenced or enclosed areas and except patios and the walls of patios.

**5.3 Snow Removal.** The Association shall provide for snow removal from the Common Area and the Lots, including sidewalks, walkways and driveways. If a parked vehicle prevents or interferes with snow removal from any Lot, the Owner of the Lot shall be responsible for such snow removal.

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

**5.5 Damage to a Unit from Common Area.** If damage is incurred to the physical structure of a Unit, including any fixture, improvement, or betterment permanently part of or affixed to a Unit, and including any Limited Common Area, in the course of maintenance, repair or replacement performed by the Association, or damage to the same results from a failure of an element for which the Association is responsible to maintain, repair and replace, such as water damage, the Association will repair such damage if the Association is notified within 30 days from the time the damage occurs and prior to any repairs made by any person other than emergency repairs. The Association shall not be liable beyond such damage (except to the extent any injury or damage is covered by the Association's insurance), including for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of any building, including from any pipes, drains, conduits, appliances, or

equipment, or from any other place, unless caused by the negligent or intentional act of the Association.

**5.6 Acts of Owner.** If any area or improvement is damaged, or the need for maintenance, repair or replacement is caused, by the willful or negligent acts of an Owner, their guests, tenants, invitees or other Unit occupants, the Owner shall be responsible for the cost of required maintenance, repair or replacement and such costs shall automatically and immediately be an Assessment against such Owner.

**5.7 Failure of Owner to Maintain.** The Association may assume an Owner's maintenance responsibility as to a Lot if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within ten (10) days after mailing of such written notice, then the Association may proceed to maintain the Lot. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall automatically and immediately be an Assessment against such Owner.

**5.8 Party Walls.**

**5.8.1 General Rules of Law Apply.** Each wall or fence built as a part of the original construction of any Lot or Living Unit and placed substantially on a dividing line between any two Living Units or Lots shall constitute a Party Wall. In the event the Owner, or its tenant, guest or invitee, causes damage to the party wall, then the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto. The Owner of each Lot adjoining a Party Wall shall be an "Owner" of the Party Wall for purposes of this Section.

**5.8.2 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in proportion to such use; provided that the foregoing provision shall not prejudice the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions (including failure to adequately insure).

**5.8.3 Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, any Owner thereof may restore it, and the other Owners thereof shall contribute to the cost of restoration thereof in proportion to such ownership without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions (including failure to adequately insure).

**5.8.4 Arbitration.** In the event any dispute arises concerning a Party Wall, or under the provisions of this Section titled "Party Walls," each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

**5.8.5 Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

## 6. ASSESSMENTS

**6.1 Covenant for Assessments.** Each Owner, by acceptance of a deed hereafter conveying any Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association Annual Assessments, Special Assessments, and Individual Assessments, as provided for and defined below. Annual Assessments and Special Assessments shall be assessed equally against each Lot.

### 6.2 Annual Budget and Annual Assessment.

**6.2.1 Adoption of Budget.** The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association, which shall provide, without limitation, for the administration, management and operation of the Association, including fulfilling its duties under this Declaration, and shall include a reserve fund line item in an amount the Board determines to be prudent based on the reserve analysis (as defined in Section 6.6.2). If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect. The Board shall present the adopted budget to Owners at a meeting of the Owners.

#### 6.2.2 Determination of Annual Assessment.

(a) **Amount, Notice.** The Board shall fix the amount of the annual assessment ("Annual Assessment") against each Lot at least thirty days in advance of the beginning of the fiscal year. Written notice of the Annual Assessments shall be sent to all Owners at least thirty days in advance of the beginning of the year.

(b) **Approval for Increases of More Than 20%.** The Annual Assessment may not be increased by more than 10% above the prior fiscal year's Annual Assessment unless such increase is first voted upon by the Owners and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum of Owners holding at least 30% of the voting rights in the Association cast a vote.

(c) **Equitable Changes.** If the Annual Assessment is, or will become, inadequate to meet the expenses incurred by the Association during a fiscal year for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board may determine the approximate amount of the inadequacy and adopt a supplemental budget which establishes the equitable change in the amount of the Annual Assessment (subject to subsection 6.2.2(b) above). Owners shall be given at least thirty days' written notice of any equitable change in the amount of an Annual Assessment under this paragraph.

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

(e) **Installments of Annual Assessments.** The Board shall determine whether installments of Annual Assessments are levied and collected on a monthly, quarterly, semi-annual, annual or other basis. Any Owner may prepay one or more installments of any Assessment without

premium or penalty. No Owner may exempt itself from liability for Assessments by abandonment of a Lot.

**6.3 Purpose of Assessments.** The Assessments levied by the Association shall be used to fulfill the purposes of the Association and carry out the provisions of this Declaration, including, but not limited to: (1) The improvement, maintenance, operation, care, and services related to the Common Areas and other areas for which the Association is responsible; (2) The costs of utilities and other services which may be provided by the Association for the Community; (3) The cost of labor, equipment, insurance, materials, management, legal and other professional and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; (4) The cost of funding reserves for the Association; and (5) Any item properly chargeable as a common expense of the Association.

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

**6.5 Individual Assessments.** Any expenses which are not properly expenses common to all Owners and which benefit or are attributable to fewer than all of the Lots may be assessed exclusively against the Lot or Lots affected or benefitted ("Individual Assessments"). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs or fees incurred in bringing the Lot or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents, and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses relating to the cost of maintenance, repair and replacement of a Lot to the extent incurred by the Association, other than expenses incurred by the Association in carrying out the responsibilities and duties mandated by the Governing Documents.

**6.6 Reserve Analysis.**

**6.6.1 Reserve Analysis Required.** The Board shall cause a reserve analysis to be conducted no less frequently than every six years, and shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years. However, the Board may increase or decrease the frequency of conducting and updating a reserve analysis in a formal resolution of the Board delivered to all Owners. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.



**6.6.2 Reserve Analysis Defined.** "Reserve analysis" means an analysis to determine the need for a reserve fund to accumulate reserve funds, and the appropriate amount of any reserve fund. A reserve analysis shall include:

- (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds;
- (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;
- (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;
- (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and
- (5) a reserve funding plan that recommends how the Association may fund the annual contribution described in subsection 6.6.2(4) above.

**6.6.3 Reserve Analysis Summary Provided to Owners.** The Association shall: (1) annually provide Owners a summary of the most recent reserve analysis or update; and (2) provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

**6.7 Reserve Funds.** The Association shall establish and maintain a reserve fund for the purpose of (1) maintenance, repair, replacement or restoration of the Common Areas and any other area or items for which it is responsible, (2) any emergency, unforeseen, unusual or unanticipated expenditure, and (3) for any other purpose determined from time to time by the Board. The Board may not use money in a reserve fund for daily maintenance expenses, unless a majority of the Owners vote to approve the use of reserve fund money for that purpose. Daily means performed or occurring more often than yearly.

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

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

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

**6.8.3 Termination of Common Services and Facility Use.** If an Owner fails or refuses to pay an assessment when due, the Association may, after giving notice and an opportunity to be heard in accordance with the law and the written procedures of the Association, terminate an Owner's right: (1) to receive any service paid as a common expense, including but not limited to utility services; and (2) of access and use of recreational facilities. If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing.

has been conducted and a final decision has been rendered by the Board. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner shall be responsible for all such costs. Upon payment of the assessment due, including any interest, late charge, and costs of collection, the Board shall immediately take action to reinstate the terminated utility services to the Lot.

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

**6.8.5 Other Remedies, Including Suspension of Membership Rights.** All Association membership rights, including the right of an Owner to vote shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member or officer shall become immediately ineligible to serve on the Board or as an officer and shall be automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. The Association shall have each and every remedy for collection of assessments provided in the Act and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

**6.9 Lien.** All Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Declaration and the Act and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment.

**6.10 Enforcement of Lien.** The lien is established and may be enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for breach of any provisions of the Governing Documents. The lien may be foreclosed judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association and each Owner of a Lot hereby conveys and warrants pursuant to U.C.A. § 57-1-20 and 57-8a-302 to the attorney of the Association, with power of sale, each Lot and all improvements to each Lot for the purpose of securing payment of assessments under the terms of the Declaration. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

**6.11 Appointment of Trustee.** The Association and each Owner hereby appoints the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., as may be amended from time to time.

**6.12 Subordination of Lien to Mortgages.** The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as follows: the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, or from the lien of any future assessment, nor shall it relieve any personal obligation arising under Section 6.13 or elsewhere.

**6.14 Personal Obligation and Costs of Collection.** Assessments imposed under this Declaration, together with interest and late charges, not to exceed the maximum permitted by law, and costs and reasonable attorney fees incurred or expended in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of any Owner holding title to any Lot at the time when the assessment became due, and, regardless of the terms of any agreement to the contrary, the liability of the Owners of a Lot for the payment of such amounts shall be joint and several, and any remedy for the collection of such amounts may be enforced against any or all Owners of the Lot concerned. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

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

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

**6.17 Application of Payments.** Payments shall be applied first to costs and attorney fees, then to late charges, then interest, then to all other Assessments in the order of their coming due.

## **7. THE ASSOCIATION**

**7.1 Organization.** The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the state of Utah, the Board may re-incorporate the Association without a vote of the Owners. The affairs of the Association shall be governed by a Board as provided herein and in the Bylaws. The Board acts in all instances on behalf of the Association except as to matters specifically requiring approval by the Owners in the Governing Documents or the law.

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

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

**7.4 Powers, Duties and Obligations.** The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a corporation and under any applicable statute, as such statute may be amended to expand the scope of association powers, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments and fines as provided in this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

7.4.1 In fulfilling any of its duties under this Declaration, including its duties for the management, maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Areas, the Association shall have the power and authority to do the following: (1) to pay and discharge any and all liens placed upon any Lot on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration, (2) to defend, bring, prosecute, and settle litigation for itself and the Community, (3) to obtain, contract and pay for, or to otherwise provide for such utility services as the Board may from time to time deem desirable, and the services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable, (4) to delegate by resolution or contract to a Managing Agent any of its powers under this Declaration, (5) to repair or restore the Community following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation and the Association, as the attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of any part of the Common Area (the award in any condemnation proceeding, the proceeds of any settlement related thereto, and the proceeds of any insurance on the Common Areas shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear), (6) to grant easements and rights-of-way over the Common Area and to approve signage for the Project, and (7) to borrow money and to pledge or assign current or future Assessments as security for any loan obtained by the Association, provided the assent of a majority of the voting interests is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

7.4.2 Provision of Services and Facilities. The Association may provide services and facilities for the Lots, Owners, their guests, lessees and invitees. A facility is space designated, or equipment built and installed, to serve a specific function. The Association shall be authorized to enter into contracts or other similar agreements with other entities, to provide such services and facilities, including contracts with telecommunication service providers and facilities owners pursuant to which the provider serves as the exclusive or nonexclusive provider of telecommunication services and/or facilities to each Lot, as well as the power to enter into, on behalf of the Association, similar bulk rate service contracts of any nature deemed in the Association's best interests. By way of example, some services and facilities which may be provided include snow removal, landscape maintenance, pest control, telecommunication service, security service or

facilities, fire protection facilities, caretaker, utilities, and similar services and facilities. The Board shall be permitted to modify, cancel or remove existing services or facilities, if any, or to provide or establish additional services and facilities, except that the prior approval of the Owners shall be obtained, by a vote where a majority of the votes cast are cast in favor of the proposal, in order to cancel or remove any existing service or facility or to provide or establish an additional service or facility. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, shall be provided by the Association.

## **8. RULES, ENFORCEMENT, APPEAL**

### **8.1 Rules and Regulations.**

8.1.1 The Board may adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce the Rules and Regulations, subject to limitation and requirements of the law, including the right of the Owners to disapprove a rule pursuant to law, and subject to the Board's duty to exercise business judgment on behalf of the Association and the Owners.

8.1.2 Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the Rules and Regulations, the Board shall:

- (1) at least 15 days before the Board will meet to consider a change to the Rules and Regulations, deliver notice to the Owners that the Board is considering a change to the Rules and Regulations;
- (2) provide an open forum at the Board meeting giving Owners an opportunity to be heard at the Board meeting; and
- (3) deliver to the Owners a copy of the change in the Rules and Regulations approved by the Board within 15 days after the date of the Board meeting.

8.1.3 The Board may adopt a Rule without first giving notice to the Owners if there is an imminent risk of harm to the Common Area, an Owner, an occupant of a Lot, a Lot, or a Unit. The Board shall provide notice to the Owners of such a rule within 15 days of adoption by the Board.

**8.2 Compliance.** Each Owner, occupant and guest of a Lot shall comply with the provisions of the Governing Documents and any applicable statute. Failure to comply therewith shall be grounds for levying of a fine and an action or suit maintainable by the Association or an aggrieved Owner.

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

- (1) subject to the provisions of this Declaration, to enter the Lot as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to such provisions, and the Board shall not thereby be deemed guilty of any manner of trespass;
- (2) enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;
- (3) levy fines according to a schedule of fines adopted by the Association from time to time and according to Section 8.4 below;
- (4) suspend the right to receive, access or use any services or facilities provided by or through the Association until the violation is corrected, and to suspend the voting rights of an Owner,

but not for longer than 60 days, except in the case of a continuous violation;

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

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

**8.4 Fines.** The Board may assess a fine against an Owner for a violation of the Governing Documents in accordance with the provisions in this Section 8.4.

8.4.1 Warning. A written warning ("Warning") shall be sent to the Owner of the lot. The Warning shall:

- (1) describe the violation;
- (2) state the rule or provision of the Governing Documents that the Owner has violated;
- (3) state that the Board may, in accordance with the provisions of the law, assess fines against the Owner and suspend membership rights if a continuing violation is not cured or if the Owner commits similar violations within one year after the day on which the Board gives the Owner the Warning or assesses a fine against the Owner;
- (4) if the violation is a continuous violation, state a time by which the Owner must cure the violation (which time must be at least 48 hours after the day the Owner is given the Warning); and
- (5) state the amount of the fine that will be assessed if a continuous violation is not cured within 48 hours or if the Owner commits similar violations within one year after the day on which the Board gives the Owner the Warning.

8.4.2 Initial Fine. The Board may assess a fine against an Owner if: (1) within one year after the day on which the Board gives the Owner a Warning, the Owner commits another violation of the same rule or provision identified in the Warning; or (2) for a continuing violation, the Owner does not cure the violation within 48 hours after the day the Owner is given the Warning.

8.4.3 Subsequent Fines for Same Violation. After a fine is assessed against an Owner, the Board may, without further warning, assess an additional fine against the Owner each time the Owner: (1) commits a violation of the same rule or provision within one year after the day on which the Board assesses a fine for a violation of the same rule or provision; or (2) allows a violation to continue for 10 days or longer after the day on which the Board assesses the fine.

8.4.4 Fine Amount. The Rules and Regulations may establish separate and different fines for specified violations in any amounts. Until modified by the Rules and Regulations, the fine for any violation of the Governing Documents is \$50.

8.4.5 Notice of Fine. Each time a fine is assessed, notice of the fine shall be sent to the

Owner describing the violation, stating the rule or provision of the Governing Documents that the Owner has violated, and stating that the Owner may request an informal hearing before the Board to dispute the fine within 33 days after the date of the notice.

**8.5**        Membership Rights. An Owner shall not be deemed an Owner in Good Standing for 60 days after a fine is assessed against the Owner.

**8.6**        Appeal by Owner. Any Owner who is assessed a fine or other penalty or who has rights suspended may request an informal hearing before the Board to dispute the fine, penalty or suspension within 33 days after the date of the notice stating that the fine or penalty is assessed or that rights have been suspended. The hearing requested shall be conducted in accordance with procedures promulgated by resolution of the Board from time to time, or if none, in accordance with the standards determined by the Board at the hearing.

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

**8.8**        Injunctive Relief. Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate. In such an action, the violation of any covenants or restrictions in the Governing Documents shall be presumed to cause irreparable harm to the Association and its members.

**8.9**        Purchase Subject to Violations. Buyers shall take ownership of Lots subject to any violations of the Governing Documents which may exist concerning the Lot, whether or not such violations were disclosed by the seller of the Lot and whether or not the Association knew of the violations at the time of sale. Such buyers shall be liable for correcting such violations upon demand by the Association.

## **9.        INSURANCE**

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

**9.1.1**     Liability. The Association shall maintain a public general liability insurance policy covering the Association, its officers, Board members and managing agents, having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence or in an amount not less than the minimum amount required by applicable law, ordinance or regulation. Coverage under this policy shall include, without limitation, all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas;

**9.1.2**     Property. The Association shall maintain blanket property insurance or guaranteed replacement cost insurance with not less than 100% of the full replacement cost for the physical structure of all attached dwellings, Limited Common Areas appurtenant to a dwelling on a Lot, and Common Areas, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, and including coverage for any fixture, improvement, or betterment installed at any time to an attached dwelling or to a Limited Common Area appurtenant

to a dwelling on a Lot, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to an attached dwelling or to a Limited Common Area;

**9.1.3 Fidelity Insurance or Bond.** The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board, employees, and all others who are responsible for handling funds of the Association, including any property manager. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Lots plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's management agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association or any insurance trustee.

**9.1.4 Directors and Officers (D&O) Insurance.** The Association shall purchase and maintain insurance on behalf of any person who was or is a Board member or officer of the Association, and any other person the Association is required by law or contract to indemnify, against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the laws of the state of Utah; as the same may hereafter be amended or modified.

**9.1.5 Other Insurance.** The Association shall obtain such other insurance if and to the extent required by law or as the Board deems necessary from time to time, such as worker compensation insurance.

**9.2 Acceptable Insurance Providers.** The Association shall use generally acceptable insurance carriers.

**9.3 Lot Owner Insurance Responsibility.**

**9.3.1 Master Policy Deductible.** The amount of the deductible under the Association's policy shall be determined by the Board from time to time. The Association shall provide notice to the Lot Owners of the amount of, and any change in the amount of, the deductible. For covered losses to Lots and Limited Common Area, the Association's policy is primary but the Lot Owner is responsible for the Association's policy deductible (which shall be an automatic Assessment against such Owner 30 days after substantial completion of the repairs to, as applicable, the Lot, a dwelling on the Lot, or the limited common area appurtenant to the Lot) as follows:

(1) If a loss occurs that is covered by the Association's policy and by a Lot Owner's policy, the Association's policy provides primary insurance coverage and the Lot Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

(2) If a Lot, or Limited Common Area or facility appurtenant to a Lot, suffers damage as part of a covered loss, the Lot Owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to Lot damage for that Lot to the amount of the deductible under the Association's policy.



9.3.2 Contents of Lot/Unit. The Association's policy does not cover the contents of a Lot or Unit or a Lot Owner's personal property. Each Lot Owner is strongly encouraged to obtain insurance coverage for contents of his or her Lot or Unit, as well as for coverage in the event the Owner has to pay the Association policy deductible as provided above.

9.3.3 Loss Due to Fault of Another. This Declaration does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss, except that, notwithstanding the foregoing, an insurer under a property insurance policy or liability insurance policy obtained by the Association waives the insurer's right to subrogation under the policy against: (a) any person residing with the unit owner, if the unit owner resides in the unit, and (b) the unit owner.

9.3.4 Acceptable Contractors. No work on any part of the Property, including Lots and Units, shall be performed for repair or replacement due to a covered loss except by a licensed contractor carrying adequate liability and workers compensation insurance, whether such person is hired by an Owner or the Association.

#### **9.4 Power of Attorney**

9.4.1 Notwithstanding any of the foregoing provisions and requirements relating to Association property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement (the "Insurance Trustee") who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. By purchasing a Lot, all Owners appoint the Association or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose.

9.4.2 By purchasing a Lot, all Owners appoint the Association or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority.

### **10. AMENDMENT AND DURATION**

#### **10.1 Amendments.**

10.1.1 How Proposed. Amendments to the Declaration shall be presented to the Owners for approval by the Board after either a majority of the Board requests it or upon receiving a written request signed by Owners holding thirty percent (30%) or more of the voting rights of the Association. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment.

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

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

## **11. MISCELLANEOUS PROVISIONS**

**11.1 Priority of Governing Documents.** In the event of any conflict between the Governing Document, the document in the highest priority beginning with the first document listed prevails over any later listed document: this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations. In the event of any conflict between provisions or documents consisting of the Rules and Regulations: (1) the later adopted provision or document prevails, or (2) if conflicting provisions are adopted on the same date or the adopted dates are not evident, the conflicting provisions have no force or effect until the Board determines which provision or document prevails by duly adopted Board resolution given to all Owners.

**11.2 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes. Words and phrases used in the Governing Documents are to be construed according to the context and the ordinary usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined herein, are to be construed according to such peculiar and appropriate meaning or definition. Local zoning or other ordinances or statutes may define certain words or phrases which are used herein and such definitions, unless otherwise required by law, are not authoritative or binding unless the Board specifically determines, as to a particular word or phrase, that such definition applies, and such determination shall be final and conclusive as to all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Board except where powers are expressly restricted. The Board may from time to time issue written policies, procedures and resolutions interpreting and implementing the provisions of this Declaration, including, by way of example and not limitation, policies, procedures and resolutions that interpret or clarify any provision of the Governing Documents deemed vague or ambiguous by the Board.

**11.3 Recovery of Costs and Attorney Fees.** The Association shall be entitled to recover its costs and attorney's fees incurred for enforcement of this Declaration regardless of whether any lawsuit or other action is commenced. Such costs and attorney's fees shall automatically be and constitute an assessment against the Owner and the Lot. Additionally, the prevailing party shall be entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action

dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

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

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

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

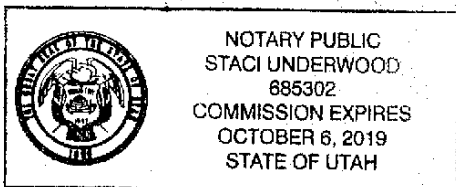
**11.7 Liability; Duties.** From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, the Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities, and an Owner shall defend, indemnify and hold harmless the Association against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the common area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the common area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril. Nothing contained in this Declaration shall be construed so as to impose any liability upon the Association for personal injuries

or property damages to guests, invitees, trespassers, or other third parties arising out of the Association's failure to perform any duty or obligation imposed upon the Association by this Declaration. Nothing contained in this Declaration shall be construed so as to impose any contractual liability upon the Association for failing to take any of the following actions, except to the extent funds shall be available and the action shall be deemed necessary and appropriate by the Association: (a) maintain the Common Areas; or (b) take any corrective or enforcement action, including an action against any Owner for non-compliance with any provision in the Governing Documents or any federal, state or local statute or regulation. Nothing contained in this Declaration shall be construed so as to impose any duty upon the Association to inspect the Common Areas, Limited Common Areas or Lots for dangerous, unsafe or unsanitary conditions or compliance with the Governing Documents or any municipal, county, state or federal law, regulation or order.

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

**11.9 Notice of Sale, Mortgage, Rental, or Lease.** Immediately upon the sale or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee or lessee. The Board may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it and the address of each Owner shall be deemed for all purposes to be the address of the Lot owned by such Owner unless the Board is otherwise advised in writing.

IN WITNESS WHEREOF, the Association has executed this Declaration this 10 day of SEPTEMBER, 2016.



**SUNRISE TOWNHOMES ASSOCIATION**  
a Utah nonprofit corporation

By: [Signature]  
Its President

STATE OF UTAH )  
 )ss:  
County of Washington )

Subscribed and sworn to before me on this 07 day of October, 2017 by  
Kent Barney

[Signature]  
Notary Public

**EXHIBIT A**

**(LEGAL DESCRIPTION)**

Lots 1 - 19, SUNRISE VILLAGE TOWNHOMES #2 subdivision, according to the official plat thereof recorded with the office of the Washington County Recorder, state of Utah.

Parcel #'s SG-SRV-2-1 through SG-SRV-2-19

**EXHIBIT B**  
**BYLAWS**  
**OF**  
**SUNRISE TOWNHOMES ASSOCIATION**

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**ARTICLE 1 - DEFINITIONS**

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

**ARTICLE 2 – NOTICE, AFFAIRS, ELECTRONIC MEANS**

**2.1 Notices.**

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

2.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to

be given to the Owners, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section from time to time, including a requirement that Owners furnish the Association with a current email address.

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

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

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

### **ARTICLE 3 – ASSOCIATION MEETINGS, VOTING, QUORUM**

**3.1 Annual Meetings.** The Association shall hold an annual meeting each year on the day and at a time and place within the state of Utah stated in the notice of such meeting.

**3.2 Special Meetings.** The Association, by and through the Board, shall notice, hold and conduct a special meeting of its Members: (1) on call of the President or any two members of the Board, or (2) if the Association receives one or more written demands for the meeting that state the purposes for which the meeting is to be held, and are signed and dated by Owners in Good Standing holding at least 25% of the voting rights of the Association. When a special meeting is requested by the Owners, the Board shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the request and if notice of the meeting is not given by the Board within 30 days after the date the written request is delivered to an Association officer, a person signing the request may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

**3.3 Notice of Meetings.** Written notice of each meeting of the members shall be given by, or at

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

### **3.4 Owner List.**

3.4.1 After determining the record date for a notice of a meeting or for determining the Owners entitled to take action by written ballot, the Association shall prepare a list of the names of all Owners who are entitled to notice of the meeting and to vote at the meeting (or to take the action by written ballot, as applicable). The list shall: (1) be alphabetical, (2) show the address of each Owner entitled to notice of, and to vote at, the meeting or to take such action by written ballot; and (3) show the number of votes each Owner is entitled to vote at the meeting or by written ballot.

3.4.2 If prepared in connection with a meeting of the Owners, the Owner list required by Section 3.4.1 shall be available for inspection by any Owner entitled to vote at the meeting: (1) (A) beginning the earlier of 10 days before the meeting for which the list was prepared or two business days after notice of the meeting is given; and (B) continuing through the meeting, and any adjournment of the meeting; and (2) at the Association's principal office or at a place identified in the notice of the meeting in the city where the meeting will be held. The Association shall make the Owner List available at the meeting. Any Owner entitled to vote at the meeting or an agent or attorney of an Owner entitled to vote at the meeting is entitled to inspect the Owner List at any time during the meeting or any adjournment. An Owner entitled to vote at the meeting, or an agent or attorney of an Owner entitled to vote at the meeting, is entitled on written demand to inspect and, subject to Utah Code Subsection 16-6a-1602(3) and Subsections 16-6a-1603(2) and (3), to copy an Owner List, at the Owner's expense, during regular business hours and during the period it is available for inspection.

**3.4 Voting.** Each Lot shall be allocated one vote.

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



### **3.6 Quorum of Owners.**

3.6.1 "Quorum" means the minimum number of Owners (when duly assembled or represented at a meeting, casting a written ballot in an action by written ballot or consenting to an action without a meeting) necessary to make the proceedings valid.

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

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

3.6.4 When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

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

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

**3.9 Meeting Procedure.** Rules of order may be adopted by resolution of the Board, otherwise, the President shall conduct meetings according to the procedure he or she deems fit and shall have absolute authority to fix the period of time allowed for the registration of Owners and the filing of proxies, to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal or question and answer portions thereof). A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

**3.10 Action by Written Ballot in Lieu of a Meeting.** Any action that may be taken at any annual, regular, or special meeting of Owners may be taken without a meeting if the Association causes to be delivered a written ballot to every Owner entitled to vote on the matter not less than fifteen (15) days prior to the date on which the ballots must be received by the Association in order to

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

**3.11 Action without Notice and a Meeting.** Any action required to be taken or which may be taken at a meeting of Owners may be taken without a meeting and without prior notice if one or more written consents, setting forth the action so taken, are signed by Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty day period. Any such writing may be received by the Association electronically. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date. Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

**3.12 Voting by Fiduciaries and Joint Owners.** An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Lot owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Lot in such capacity. Whenever any Lot is owned by two or more persons jointly, according to the records of the Association, the vote of the Lot may be exercised by any one of the Owners, in the absence of protest by a co-owner prior to the tallying of votes, so long as only one vote for such Lot is cast. In the event of a protest prior to the vote tally, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners prior to the vote tally, or the casting of more than one ballot or vote for the Lot and such ballots or vote conflict, the vote of the Lot shall be disregarded completely with respect to the matter.

**3.13 Record Date – Determining Owners Entitled to Notice and Vote.** Unless otherwise established in the Rules, this Section 3.13 shall apply. The Owners entitled to notice of a meeting are the Owners reflected in the Association's records at the close of business on the business day

preceding the day on which notice is given. The Owners entitled to vote at an Association meeting are the Owners: (1) reflected in the Association's records on the date and time of the start of the meeting, and (2) who are otherwise eligible to vote. The Owners entitled to vote in an action under 3.10 or 3.11 above are the Owners on the date the first written consent or written ballot is mailed or solicited and who are otherwise eligible to vote.

#### **ARTICLE 4 – BOARD: SELECTION, ELECTION, TERM OF OFFICE**

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

4.1.1 The affairs of the Association shall be governed by a Board of Directors composed of at least three and not more than seven Board members, as determined from time to time by the Board except that no decrease in number shall have the effect of shortening the term of any incumbent Board member, and any vacancies caused by an increase shall only be filled by a vote of the Owners at an annual meeting of the Association.

4.1.2 Members of the Board shall serve for terms of two (2) years. Elections shall be staggered so all Board members are never elected in the same year.

4.1.3 A Board member must be an Owner, the spouse of an Owner, or the occupant, of a Lot in Good Standing. A representative of an entity which owns a Lot in Good Standing may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Lot.

**4.2 Nomination.** Nomination for election to the Board shall be made in the manner determined by the Board, which may include a nominating committee, nominations from the floor at a meeting, or the requirement that nominations (including self-nominations) for positions on the Board be made by petition filed with the secretary of the Association a specified number of days prior to the annual meeting of the Association, which petition shall be signed by the nominee named therein indicating his or her willingness to serve as a member of the Board, if elected. The Board may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Board. The Board or, if established, the nominating committee, shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies. Self-nomination of candidates who qualify for election shall be permitted, provided they comply with any procedures for self-nomination stated herein or promulgated by the Association at least 30 days before the applicable meeting.

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

**4.4 Vacancies.** Vacancies on the Board, caused by any reason other than the removal of a Board member by a vote of the Association, shall be filled for the balance of the term by vote of a majority of the remaining Board members even though they may constitute less than a quorum. Each person

so elected shall be a Board member until a successor is elected upon expiration of the term for which the person was elected by the other Board members to serve.

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

**4.6 Removal of Board members.**

4.6.1 At any annual or special meeting, any one or more of the Board members may be removed, with or without cause, by a majority of the total voting interests of all Owners of the Association. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Board member whose removal has been proposed by the Owners may be given an opportunity to be heard at the meeting.

4.6.2 A Board member who is delinquent in the payment of an Assessment for longer than three months, is absent from three consecutive regular meetings of the Board, or is absent from more than 25% of the regular Board meetings held in any 12 month period, shall be deemed to have tendered his or her resignation, and upon acceptance by the Board his or her position shall be vacant. The vacancy shall be filled as provided in Section 4.4 above.

**4.7 Utah HOA Registry.** The Association shall register with the Utah Department of Commerce's Homeowner Associations Registry (currently at <https://secure.utah.gov/hoa/index.html>) and provide (1) the name and address of the Association, (2) the name, address, telephone number, and, if applicable, email address of the chair of the Board, (3) contact information for the manager, if any, and (4) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has Association payoff information that a closing agent needs in connection with the closing of a Lot Owner's financing, refinancing, or sale of the Owner's Lot. The Association shall update the information stated in this Section with the Utah HOA Registry within 90 days after a change in any of the information.

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

**5.1 Organizational Meeting.**

5.1.1 Location, Date and Time. The first meeting of a newly-elected Board shall be at such place, date and time as shall be fixed by the Board members at the meeting at which the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

5.1.2 Procedure and Business. Until the election of new officers, those existing officers that continue to serve on the Board shall remain in their positions, and the organizational meeting shall be chaired by the president, or in the absence of such person, the vice president, or in the absence of such person, the secretary. At the organizational meeting, the Board shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

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

**5.3 Special Meetings.** Special meetings of the Board shall be held when called by the President, or by any two Board members, after not less than forty-eight hours' notice to each Board member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.8 below. The notice must state the time, place, and purpose of the meeting.

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

**5.5 Open Board Meetings; Executive Sessions.**

**5.5.1 Open Board Meetings.** Except as provided in subsection 5.5.3, all meetings of the Board shall be open to Owners. At each meeting, the Board shall provide each Owner a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the meeting and may limit the time allotted to each Owner so long as the time allotted is determined by a majority of the Board members present. Beyond such comment period, no Owner shall have a right to participate in the Board meeting unless the Owner is also a member of the Board. The President or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting. The Board may adopt policies governing meetings of the Board from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Board shall also supersede these Bylaws to the extent the policy restates then current Utah law. "Meeting" means a gathering of a Board, whether in person or by means of electronic communication in real time under Section 5.6, at which the Board can take binding action.

**5.5.2 Notice of Board Meeting.** At least 48 hours before a Board meeting, the Association shall give written notice of the meeting via email to each Owner who requests notice of a Board meeting ("Meeting Notice"), unless notice of the meeting is included in a meeting schedule that was previously provided to the Owner or the meeting is to address an emergency and each Board member receives notice of the meeting less than 48 hours before the meeting. A Meeting Notice shall: (1) be delivered to the Owner by email, to the email address that the Owner provides to the Association; (2) state the time and date of the meeting; (3) state the location of the meeting; and (4) if a Board member may participate by means of electronic communication under Section 5.6 below, provide the information necessary to allow the Owner to participate by the available means of electronic communication.

**5.5.3 Executive Sessions.** In the discretion of the Board, the Board may close a Board meeting and adjourn to executive session to: (1) consult with an attorney for the purpose of obtaining legal advice; (2) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (3) discuss a personnel matter; (4) discuss a matter relating to contract negotiations, including review of a bid or proposal; (5) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (6) discuss a delinquent assessment or fine.

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

**5.6 Meetings by Electronic Communication in Real Time.** In the event of an emergency, or by decision of the Board, and to the fullest extent allowed by law, meetings of the Board may be conducted by means of electronic communication that allows all members of the Board participating to be able to communicate orally in real time.

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

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

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

**5.7.2 Content of Notice.** The notice required by Subsection 5.7.1 (the "Notice") shall state: (1) the action to be taken; (2) the time by which a Board member must respond to the Notice; (3) that failure to respond by the time stated in the Notice will have the same effect as abstaining in writing by the time stated in the Notice, and failing to demand in writing by the time stated in the Notice that action not be taken without a meeting; and (4) any other matters the Association determines to include.

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

- (1) the affirmative votes in writing for the action received by the Association equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Board members then in office were present and voted; and
- (2) the Association has not received a written demand by a Board member that the action not be taken without a meeting (other than a demand that has been revoked pursuant to Subsection 5.7.5).

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

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

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

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

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

For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Board member may be considered to be present at a meeting and to vote if the Board member has granted a signed written proxy: (1) to another Board member, or other person, who is present at the meeting; and (2) authorizing the other Board member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

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

**6.1 General Powers and Duties.** The Board shall have the powers and duties necessary for the administration of the affairs of the Association. Except as limited in the Declaration, these Bylaws, or the law, the Board acts in all instances on behalf of the Association and may do all such acts and

things as are not by law or the Governing Documents specifically directed to be exercised and done by, or upon the vote of, the Owners. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association managed under the direction of, the Board.

**6.2 Best Interest of Association.** A Board member or officer shall discharge the Board member or officer's duties (1) in good faith, (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (3) in a manner the Board member or officer reasonably believes to be in the best interests of the Association. The Board members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a reasonable, prudent person would do to serve the best interest of the Association.

**6.3 Reliance on Information.** In discharging duties, a Board member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (1) one or more officers or employees of the Association whom the Board member or officer reasonably believes to be reliable and competent in the matters presented, (2) legal counsel, a public accountant, or another person as to matters the Board member or officer reasonably believes are within the person's professional or expert competence, or (3) in the case of a Board member, a sub-committee of the Association or Board of which the Board member is not a member if the Board member reasonably believes the sub-committee merits confidence.

**6.4 Conflicts of Interest.**

6.4.1 A conflict of interest or conflicting interest transaction includes a contract, transaction, or other financial relationship between the Association and (1) a Board member, (2) a party related to a Board member, or (3) an entity in which a Board member is a director or officer or has a financial interest.

6.4.2 A Board member shall avoid conflicts of interest or conflicting interest transactions, unless: (1) the material facts as to the Board member's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Board, (2) the Board in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Board members (even if the disinterested Board members are less than a quorum), and (3) the conflicting interest transaction is fair as to the Association.

**ARTICLE 7 - OFFICERS AND THEIR DUTIES**

**7.1 Designation and Qualification.**

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

7.1.2 Qualifications. The principal officers must be Board members (and shall cease to be an officer upon ceasing to be on the Board). Any Board member may be an officer of the



Association.

7.1.3 **Multiple Offices.** A person may simultaneously hold more than one office.

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

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

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

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

7.5 **Compensation of Officers.** No officer who is a member of the Board may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of the Owners. The Board may fix any compensation to be paid to any officers who are not also Board members. Nothing herein shall preclude an officer from receiving compensation for any other service performed for the Association.

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

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

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

sign all leases, mortgages, deeds and other written instruments.

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

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

#### **ARTICLE 8 – LIABILITY; INDEMNIFICATION OF OFFICERS AND DIRECTORS**

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

## ARTICLE 9 - RECORDS AND AUDITS

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

### 9.1 General Records.

9.1.1 Permanent Records. The Association shall keep (or cause to be kept) as permanent records: (1) The Declaration, Bylaws, Articles of Incorporation, (2) minutes of all meetings of the Association and of the Board; (3) a record of all actions taken by the Association members or the Board without a meeting; (4) a record of all actions taken by a committee of the Board in place of the Board on behalf of the Association; and (5) a record of all waivers of notices of meetings of members and of the Board or any committee of the Board.

9.1.2 Resolutions and Rules. The Association shall maintain (1) a record of the rules, regulations, and policies adopted by the Association, (2) appropriate accounting records, and (3) a record of its members in a form that permits preparation of a list of the name and address of all members in alphabetical order, and showing the number of votes each member is entitled to vote.

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

9.1.4 Records at Principal Office. The Association shall keep a copy of each of the following records at its principal office (copies of such records kept electronically by an Association officer or manager shall satisfy this requirement regardless of where located as long as such electronic records are capable of being transmitted to, or viewed by, others, such as via email from an electronic storage medium or via website): (1) all Governing Documents; (2) the minutes of all Owners' meetings for a period of three years; (3) records of all action taken by Owners without a meeting, for a period of three years; (4) all written communications to Owners generally as Owners for a period of three years; (5) a list of the names and business or home addresses of the current Board members and officers; (6) a copy of its most recent annual report (annual renewal) delivered to the Division of Corporations under Utah Code Section 16-6a-1607; and (7) all financial statements prepared for periods ending during the last three years that show in reasonable detail the assets and liabilities and results of the operations of the Association.

9.1.5 Form of Records. The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. "Written form" does not mean paper form. The Association may maintain any of its records by retaining an electronic record of the information in the record that: (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise, and (2) remains accessible for later reference.

9.2 Financial Reports and Audits. Upon written request by an Owner or mortgagee of a Lot, an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to the person(s) making the request within ninety days after the end of each fiscal year. From time to time, the Board, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and mortgagees of Lots.

9.3 Inspection of Records by Owners.

9.3.1 Inspection of Records Kept at Principal Office. If an Owner gives the Association written request at least five business days before the date on which the Owner wishes to inspect and copy, or electronically receive, the records, an Owner is entitled to either (1) inspect and copy during regular business hours at the Association's principal office, or (2) receive electronically any of the records in Section 9.1.4 above.

9.3.2 Inspection of Other Records - Proper Purpose Required. An Owner may inspect and copy any of the other records of the Association during regular business hours at a reasonable location specified by the Association only if a written request is made 5 days before the date of inspection and: (1) the request is made in good faith and for a proper purpose; (2) the Owner describes with reasonable particularity the purpose and the records the Owner desires to inspect; and (3) the records are directly connected with the described purpose.

9.3.3 The Board, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this Article, consistent with the Act. The fee may include reasonable personnel costs incurred to furnish the information, consistent with the Act, except the Association may not require an Owner to pay a fee for production of the records in Section 9.1.4, except for copying costs.

9.4 Redaction; Records Not Subject to Inspection. The Association may redact a Social Security number, a bank account number, and any communication subject to attorney-client privilege from any document the Association produces for inspection or copying. The Board may withhold from inspection or copying any records: (i) considered by the Board in executive session and the minutes of any executive session, or (ii) that in its reasonable business judgment would constitute an unwarranted invasion of privacy (including, if so determined by the Board, a list of phone numbers or email addresses of Owners) or involve pending or anticipated litigation or contract negotiations.

## ARTICLE 10 - AMENDMENTS

Approval of a majority of the total voting rights of the Association is required for approval of any amendment to these Bylaws. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder's Office.

## ARTICLE 11 - MISCELLANEOUS

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

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

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

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

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officer on this 10 day of SEPTEMBER, 20 16.

(Sign): \_\_\_\_\_  
(Print Name): \_\_\_\_\_, President