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AMENDED & RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HIGH POINTE  
(INCLUDING BYLAWS)  
A PLANNED UNIT DEVELOPMENT

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIGH POINTE (hereafter "Declaration") is made on the date evidenced below by High Pointe Planned Unit Development (hereafter "Association").

## RECITALS

A. This Declaration and 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 and Reservation of Easements for High Pointe, recorded December 24, 1984, as Entry No. 690804, records of Davis County Recorder, Utah, and all supplements and amendments thereto (the "Original Declaration");

B. The property subject to this Declaration is the High Pointe subdivision in Davis 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 Section 14.05 of the Original Declaration, Lot Owners representing at least sixty-seven percent of the total votes of the Lots, and eligible first mortgagees who represent at least fifty-one percent of the total votes of the Lots have affirmatively approved the adoption of this document and the approval of seventy-five percent of eligible first mortgagees have approved the amendment of Articles 13 and 14 and section 7.06 of the Original Declaration. Pursuant to Section 1.17 of the Original Declaration, an eligible first mortgagee is a mortgagee who has requested notice from the Association of any proposed action that requires the consent of such mortgagees.

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

## ARTICLE I - DEFINITIONS

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

**1.1 "Act"** shall mean 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 the terms of the Governing Documents or applicable law.

**1.3** “*Association*” means and refers to the High Pointe Planned Unit Development, or any successor incorporated or unincorporated association of the Lot Owners acting under this Declaration.

**1.4** “*Board of Directors*” or “*Board*” shall mean and refer to the Board of Directors of the Association.

**1.5** “*Bylaws*” means the Bylaws of the Association (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 therein, excluding all Lots as defined herein, which comprise the Project; (b) All common areas and facilities designated as such elsewhere herein or on the Plat, except as otherwise stated herein; (c) All installations for and all equipment connected with the furnishing of the Project’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 Project and existing for common use; (e) The Project’s roads and parking areas, excluding all Lots; (f) All other parts of the project 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 such are treated differently than Common Area elsewhere herein for maintenance, use, or insurance purposes).

**1.7** “*Common Expenses*” means expenses of administration, maintenance, repair, or replacement of the common areas and facilities and the expenses incurred by the Association in carrying out the responsibilities and duties mandated by the Governing Documents.

**1.8** “*Community*” means all of the land described in attached Exhibit A.

**1.9** “*Community Wide Standard*” means the standard of conduct, maintenance, or other activity generally prevailing in the community, as set forth in this Declaration, the Bylaws and as defined or determined by the Board from time to time.

**1.10** “*Fines*” shall mean and refer to fines levied against a Lot Owner for violations of the Governing Documents of the Association. Fines shall be enforced and collected consistent with the Act and may be collected as an unpaid assessment.

**1.11** “*Governing Documents*” shall mean and refer to 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.

**1.12** “*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 Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

**1.13** *“Include,” “includes,” or “including”* means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.

**1.14** *“Limited Common Areas”* means all of the real property identified as limited common area herein or on the Plat, except as otherwise stated herein. 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 certain Lots to the exclusion of other Lot Owners.

**1.15** *“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.

**1.16** *“Manager” or “Managing Agent”* shall mean and refer to the person or entity retained by the Association to manage the Property according to the direction of the Board.

**1.17** *“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.

**1.18** *“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.

**1.19** *“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.

**1.20** *“Rules and Regulations”* means those rules and regulations adopted by the Board from time to time that are deemed necessary or prudent by the Board for the enjoyment, operation or governance of the Property and the Community.

**1.21** *“Unit” or “Living Unit” or “Residence”* shall mean a single-family residential dwelling unit constructed upon a Lot.

## **ARTICLE II - 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 Board or Association is described on Exhibit A attached hereto, which Declaration and covenants, conditions and restrictions therein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Property or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of each Owner thereof. To the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control.

**2.2 Description and Legal Status of Lots.** Except as otherwise stated herein, the Plat shows the Lots and building designations, the Limited Common Areas, 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 Record of Survey Map with appropriate reference to said Map and to this Declaration, as each shall appear on the records of the County Recorder, state of Utah, and in substantially the following form: Lot \_\_\_\_ shown on the Record of Survey Map for High Pointe subdivision, appearing in the records of the Davis County Recorder as Entry No. \_\_\_\_ Map No. \_\_\_\_, and as identified in the Declaration of Covenants, Conditions and Restrictions appearing as Entry No. \_\_\_\_ in Book \_\_\_\_ at Pages \_\_\_\_\_ of the official records of the Davis County Recorder, as may be amended, and the Plat. This conveyance is subject to the provisions of the aforementioned Declaration, including any amendments thereto.

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

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

(a) Right of Entry. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of: (1) determining whether or not the Lot is in compliance with the Governing Documents, (2) determining whether the use of the Lot is causing damage or harm to the Common Areas, (3) for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration, or (4) performing maintenance referred to herein. Requests for entry under numbers (1), (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 to the Owner of such Lot.

(b) Utility Easements. The Association and any public or private utility provider shall have an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary as determined 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 herein, 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.

(c) Common Areas. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas, excluding the Limited Common Areas as defined herein.

**2.6 Easements for Parking.** Temporary guest parking shall be permitted within the Common Area only within spaces and areas marked for this purpose and as determined by the Board from time to time. The Board is hereby empowered to restrict and regulate parking within the Common Area, including establishing parking and no parking areas, as well as to enforce any parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle.

**2.7 Encroachment.** If any part of a Lot encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Lot, 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. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any building or improvements constructed or to be 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. 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.

### **ARTICLE III - 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 causes pedestrian or vehicular traffic which in the Board's determination is in excess of a normal level for residential occupancy; creates a sight or noise nuisance as determined by the Board; is not merely incidental to the use thereof as a dwelling; or has external visible, audible or other indications of use of the dwelling as anything but as a dwelling, all as determined solely and conclusively 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, employees, agents, and other Owners from all claims which may arise from such business activities.

### 3.2 *Lease Restrictions.*

3.2.1. Rental Cap. No more than **ten percent (10%)** of the total Units in the Project may be rented at any given time, including grandfathered Units (pursuant to Section 3.2.5), but excluding Units rented pursuant to an exemption under Section 3.2.6 or 3.2.7 (the “Rental Cap”).

3.2.2. Application Required. Prior to renting a Unit, the Unit Owner shall apply to the Association. The Association shall review the application and make a determination of whether the rental or lease will exceed the Rental Cap and the Association shall deny the application if it determines that the rental of the Unit will exceed the Rental Cap.

3.2.3. Minimum Requirements. 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 twelve (12) months.

3.2.4. Definition of Rental. “Rental,” “Rented,” or “Renting” means: (a) a Unit owned by an entity or trust, regardless of who occupies the Unit, or (b) a Unit not owned by an entity or trust, that is occupied by someone while no Owner occupies the Unit as the Owner’s primary residence.

3.2.5. Grandfather Status. Notwithstanding Section 3.2.1, An Owner who has a rental in the Association 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, shall be allowed to continue renting such Unit until: (a) 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 share, stock, membership interests, or partnership interests in a 12-month period), (b) the Owner occupies the Unit; or (c) 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.

3.2.6. Required Exemptions. The following Owners and Units are exempt from the restrictions on the number and term of rentals contained in this Declaration: (a) an Owner in the military for the period of the Owner’s deployment; (b) a Unit occupied by an Owner’s parent, child, or sibling; (c) an Owner whose employer has relocated the Owner for no less than two years; or (d) a Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for: (1) the estate of a current resident of the Unit; or (2) for the parent, child, or sibling of the current resident of the Unit.

3.2.7. Hardship Exemptions. The Board may grant hardship exemptions (“Hardship Exemption”) and an Owner who has been granted a Hardship Exemption by the Board in writing shall be exempt from the Rental Cap and applications requirements in 3.2.1 and 3.2.2 (but not from any other provision herein), 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 not approve an application to rent or lease less than the Owner's entire dwelling unit or to rent or lease the Lot for a period of less than twelve consecutive months.

3.2.8. 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 Articles of Incorporation of the Association, 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 10 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 15 days of any change.

3.2.9. Administration of Rental Restrictions. The Association shall create, by rule or resolution, procedures to: (a) determine and track the number of rentals and Units in the Association which are grandfathered or exempt pursuant to the provisions described in Subsections 3.2.5, 3.2.6 and 3.2.7; and (b) enable or aid in the consistent administration and enforcement of the rental restrictions contained herein.

3.2.10. Interpretation, Construction. All questions of interpretation or construction of any of the covenants, restrictions or terms herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes.

### **3.3 *Animals.***

3.3.1. No more than two (2) dogs and no more than two (2) cats shall be kept within any Lot. Additionally, no animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within any Lot, except dogs and cats as stated above, or other household pets provided that they are not kept, bred, or maintained for any commercial purpose or in any unreasonable numbers. The Owner of any dog must keep such dog on a leash when outside of the Lot or keep it confined within the Lot.

3.3.2. 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.

3.3.3. An owner may be required to remove a pet upon receipt of a written notice from the Board given pursuant to a resolution relating to rules and regulations governing pets within the Community and enforcement of such rules and regulations and provisions of this subsection. The Board may apply for appropriate judicial relief in the event that Owners violate this Article.

3.3.4. The Board of Directors shall have the express authority and right to promulgate rules, beyond those stated herein, restricting the keeping of pets, except the Board may not reduce the number of dogs and cats allowed within a Lot in 3.3.1 above.

**3.4 Nuisances; Offensive Activities.**

No noxious, offensive or unsightly conditions or nuisances, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities, as determined by the Board, shall be permitted on any Lot or other portion of the Common Areas, nor shall anything be done in or placed upon any Common Area or Lot which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents.

**3.5 Unlawful Activities.**

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.

**3.6 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.

**3.7 Window Coverings.**

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 window may be covered by paint, aluminum foil, newspapers, bed sheets, cardboard, blankets, or other similar items.

**3.8 Vehicles in Disrepair.**

3.8.1. No Owner shall permit any vehicle which is in an extreme state of disrepair or unregistered to be abandoned or to remain parked upon any part of the Property unless such vehicle is within a garage. A vehicle shall be deemed in an extreme state of disrepair when the Board reasonably determines that its presence offends the occupants of the other Lots.

3.8.2. If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair or unregistered within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board, the Board may have such vehicle removed from the Property (i.e., towed) and assess the Owner the expense of such removal and any storage necessitated thereby.

**3.9 Parking of Automobiles and Other Vehicles.**

Parking of boats; trailers; oversized or commercial vehicles (vehicles more than 8 1/2' wide (including mirrors) or 19 1/2' long, any vehicle that has more than two axles, or vehicles weighing more than 6,000 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, are prohibited from parking within the Property except within a

garage. The Board may adopt and amend rules to be more or less restrictive than the provisions herein, and to otherwise regulate and govern the parking of vehicles in the Property, including the Lots. An Owner may be fined and be assessed the expense of removing any vehicle or equipment parked in violation of any rule or of this subsection and the cost of any storage thereof.

**3.10 *Clothes Lines and Materials.***

No clothes lines, clothing racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located on the Property except within a Unit, unless in an area screened from public view. No garments, rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless in an area screened from public view.

**3.11 *Signs.***

Unless written approval is first obtained from the Board, 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 36 inches long, may be temporarily placed on a Lot; and (2) Political signs may be temporarily placed on a Lot unless and until prohibited or otherwise limited by the Board by rule.

**3.12 *Antenna and Dish Policy.***

Owners are encouraged to use cable service for television and internet. Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite ("DBS") antennas/dishes one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, 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 antenna or dish that is allowed pursuant to this section. 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 antenna/dish. Location of an FCC approved 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 all damage caused by or connected with the dish, for as long as the dish remains, including damage resulting from water entering a building due to the installation or existence of such antenna/dish. By installing a dish, the Owner agrees to hold the Association harmless and indemnify the Association in the event that someone is injured by the dish or in the installation or maintenance of the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. In the event of a violation of this Section, the Association may bring an action for declaratory and/or injunctive relief and the Owner is subject to a \$50.00 fine to the Association for each violation. If the violation is not corrected within a

reasonable length of time as determined by the Board, additional fines of \$10.00 per day will be imposed for each day that the violation continues. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section. 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 terms "dish" and "antenna" are to be used interchangeably in the interpretation of the above policy.

**3.13 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 shall subject the Owner of the Lot from which the noise originates to a fine, as levied by the Board in its sole discretion.

**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.

**3.15 Association Rules and Regulations.**

In addition to the restrictions and requirements above, the Board from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots and Common Areas as it may deem necessary or appropriate. Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations and for violations of any restrictions contained in this Declaration. A schedule of fines may be adopted by the Board specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

## **ARTICLE IV - ARCHITECTURAL REQUIREMENTS**

**4.1 Modifications.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to, or change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board as to aesthetics and to harmony of external design and location in relation to surrounding structures and topography and to the Project generally. Such approval shall be solely at the discretion of the Board as it deems appropriate from time to time. The Board will have the sole discretion to make final, conclusive and binding determinations on matters of aesthetic judgment and such determinations will not be subject to review so long as made in good faith and in accordance with the procedures herein. Any such request shall be deemed to have been denied if the relevant Owner cannot produce the written approval granted by the Board upon request, and any changes or alterations made by an Owner shall be removed and the property restored to its original condition at the request of the Board. In the event the Board fails to approve or disapprove a request by an Owner, the request will be deemed to have been denied.

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 structural safety or conformance with building or other codes. 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.

The Association may charge a fee for the actual cost of reviewing and approving plans for the construction 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.

**4.2 Design Guidelines.** All Improvements, including construction or modification thereof, 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. There shall be no fee for review and approval of Lot plans by the Association, except for the actual costs incurred by the Association of reviewing and approving plans.

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

**4.4 Inspection of Work; Correction of Defects.** Upon the completion of any work for which approved plans are required, the Owner shall give written notice of completion to the Board. Thereafter, the Board may inspect such Improvement. If the Board finds that such work was not done in substantial compliance with the approved plans, it shall notify the Lot Owner in writing of such noncompliance, specifying the particulars of noncompliance, and the Lot Owner shall be required to remedy the same within 30 days of such notice.

## ARTICLE V - MAINTENANCE OBLIGATIONS

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

5.1.1. Except to the extent that the Association is responsible for such maintenance under Section 5.2, maintenance of the Lots and the Living Units, and any appurtenant Limited Common Area, shall be the responsibility of the Owners thereof, who shall maintain such Lots,

Living Units and Limited Common Area 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. In addition to decorating and keeping the interior of his or her Unit in good repair and in a clean and sanitary condition, he or she shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, heat tape, rain gutters and downspouts, water heaters, heating equipment, air conditioners, lighting fixtures, refrigerators, dishwasher, disposal equipment, ranges, toilets, or other appliances or fixtures that may be in, or connected with, his or her Lot, including fences or gates. Any fixture, 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 (including exterior lights on the Living Units). 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.

5.1.2. It shall be the duty of each Lot Owner, at his or her sole cost and expense, subject to specifications provided by the Board, to install electric heat tape on all non-southern exposed roofs as well as within all gutters and downspouts and to maintain and operate such heat tape as necessary to prevent the formation of ice dams or large icicles that could lead to interior water damage or present a hazard to individuals or vehicles in or around the Lot Owner's Dwelling Unit.

## **5.2 Maintenance by Association.**

5.2.1. 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:

- (a) the Common Area (unless otherwise stated in this Declaration);
- (b) exterior surfaces of the Living Units and garages, including the roofs (but excluding rain gutters and downspouts), skylights, but specifically excluding maintenance, repair, replacement or cleaning of the following: glass, doors or entrances of Living Units or garages, door frames, windows, window frames, courtyard gates and fences, courtyards (whether enclosed or not), patios and decks, and excluding sealing, repairing or otherwise fixing foundations, and also excluding railings and trim except staining or painting, which shall be the Association's responsibility;
- (c) exterior walls between decks;
- (d) trees, shrubs, grass, walks, driveways, and other landscaping on Lots, if any, except within fenced areas such as courtyards.

5.2.2. Snow Removal. The Association shall provide for snow removal from the Common Area streets only.

5.2.3. 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.

5.2.4. Except to the extent any injury or damage is covered by the Association's insurance, the Association shall not be liable 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 grossly negligent or intentional act of the Association.

5.2.5. 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.

5.2.6. 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 with 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.

### 5.3 *Party Walls.*

5.3.1. 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, with the exception of walls between decks pursuant to Section 5.2.1. 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.

5.3.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners in proportion to their ownership thereto.

5.3.3. 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.

5.3.4. 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.

5.3.5. 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.

## ARTICLE VI - ASSESSMENTS

### 6.1 *Covenant for Assessments.*

6.1.1. Covenant for Assessments. Each Owner, by acceptance of a deed hereafter conveying any Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments, as provided for and defined below: Annual Assessments, Special Assessments, and Individual Assessments.

6.1.2. Installments of 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 levied by the Association, without premium or penalty. No Owner may exempt itself from liability for Assessments by abandonment of any Lot owned by such Owner.

6.1.3. Share of Assessments. Each Lot Owner shall pay an equal share of the Annual Assessments and Special Assessments.

### 6.2 *Annual Budget and Assessment.*

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

#### 6.2.2. Determination of Annual Assessment.

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

(b) The omission by the Board, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of



any 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.

(c) Equitable Changes. If the Annual Assessments levied at any time are, or will become, inadequate to meet the expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes the equitable change in the amount of the Annual Assessment. Owners shall be given at least twenty (20) days' written notice of any changes in the amount of an Assessment.

**6.3 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of fulfilling the purposes of the Association and carrying out this Declaration, and including, but not limited to: (a) The improvement and maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums; (c) The costs of utilities and other services which may be provided by the Association for the Community; (d) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; (e) The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements as provided below; and (f) Any 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 be paid for through other types of Assessments. The Board may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per 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 of 30% of the Owners cast a vote.

**6.5 Individual Assessments.** Any expenses which are not common expenses and which benefit or are attributable to fewer than all of the Lots, and any general expense defrayed by the efforts of some but not all Owners, such as the Association's spring and fall cleanup, may be assessed exclusively against the Lots affected or benefitted ("Individual Assessments"). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents, and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses relating to the cost of maintenance, repair and replacement of a Lot to the extent incurred by the Association, other than Common Expenses incurred in fulfilling its ordinary maintenance, repair and replacement responsibilities to Lots and Units hereunder; and (3) a fee assessed to an Owner in lieu of participation by the Owner in the Association's spring or fall cleanup.

## **6.6 Reserve Funds.**

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

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

6.6.3. The Board's reasonable determination with respect to the amount of the reserve fund contribution shall be conclusively deemed appropriate absent intentional misconduct or gross mismanagement of Association funds. Except in such instances, individual Board members shall not be held liable for any potential or alleged under funding of the reserve account.

**6.7 Fee Due on Transfer of Unit.** Each time legal title to a Lot passes from one person to another, within thirty (30) days after the effective date of such title transaction, the new Lot Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee, in the amount of \$250, or such other amount determined by the Board from time to time. The following are not subject to the fee: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of a Lot owned by a financial institution, except to the extent required for the payment of the Association's costs directly related to the transfer of the property, not to exceed \$250.

**6.8 Nonpayment of Assessments.** The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by the Board, and shall be delinquent if not paid by the 15<sup>th</sup> of the month or within such other period established by the Board from time to time. The due date of any Special Assessment or other Assessment shall be fixed in the resolution or document authorizing or levying the Assessment.

6.8.1. Interest. Delinquent payments shall bear interest from the sixteenth (16<sup>th</sup>) day of the month, or such other date established by the Board (the "date of delinquency"), at the rate of 18% per annum, or such other rate established by the Board.

6.8.2. Late Charge. Each delinquent payment shall be subject to a late charge of Thirty Dollars (\$30.00), or such other amount as determined by the Board from time to time.

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

6.8.4. 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 Board 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 amount dues 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 Board, 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.

6.8.5. Termination of Common Services and Facility Use. If an Owner fails or refuses to pay an assessment when due, the Board 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.

6.8.6. Other Remedies. All 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 shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. 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 Article and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment. 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.

**6.10 Enforcement of Lien.** The Association may enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. 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, 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.

**6.13 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 attorneys' 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.

**6.14 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.

**6.15 Statement of Unpaid Assessment & Payoff Information.** The Association shall, upon demand at any time, furnish to any Owner liable for assessments 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 the maximum amount allowed by law.

## ARTICLE VII – THE ASSOCIATION

**7.1 Organization.** The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the 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.

**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 ("Member"). The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**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:

(a) The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00).

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

(c) Telecommunications/Fiber Optic/Related Contracts. Provided the Association already provides such service to the Lots, the Board shall have the power, in its own discretion and subject to federal law, to enter into, accept an assignment of, or otherwise cause the Association to comply with contracts with Telecommunication Service providers and Telecommunication Facilities owners (both, a "Telecommunication Provider"), pursuant to which the Telecommunication Provider serves as the exclusive provider of Telecommunication Services and/or Telecommunication Facilities to each Lot in the Properties, as well as the power to enter into or contract on behalf of the Association for similar bulk rate service contracts of any nature deemed in the Association's best interests. If such service(s) is not already provided to the Lots, the prior approval of the Owners shall be obtained by a vote where a majority of the votes cast must be cast in favor of the service.

## ARTICLE VIII - COMPLIANCE AND ENFORCEMENT

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

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

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

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

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

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

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

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

8.2.6. 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; or

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

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

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

**8.5 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

## ARTICLE IX - INSURANCE

**9.1 Types of Insurance Maintained by the Association.** The Association shall obtain the following types of insurance:

(a) Liability. 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;

(b) Property. Blanket property insurance or guaranteed replacement cost insurance with not less than 100% of the full replacement cost for the physical structure of all Living Units, limited common areas appurtenant to a dwelling on a Lot, all garages, and all 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;

(c) 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.

(d) 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.

(e) 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 workers' 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. For covered losses to Lots, 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:

(a) 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.

(b) 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. 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 any change in the amount of the deductible.

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 their 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.

## ARTICLE X - AMENDMENT AND DURATION

### 10.1 *Amendments.*

10.1.1. How Proposed. Amendments to the Declaration shall be presented to the Membership for approval by the President 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-seven percent (67%) 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.

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

## ARTICLE XI - MISCELLANEOUS PROVISIONS

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

**11.2 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.

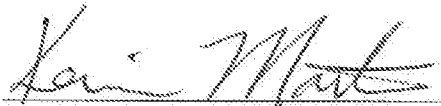
**11.7 Liability; Duties.** From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, the Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind 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, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant. 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 9<sup>th</sup> day of August, 2016.

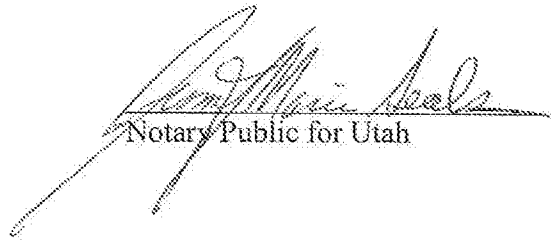
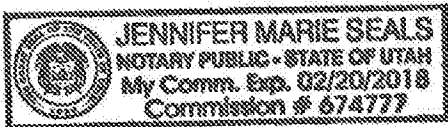
HIGH POINTE PLANNED UNIT  
DEVELOPMENT  
a Utah nonprofit corporation



By:  
Its President

STATE OF UTAH )  
County of Salt Lake ) ss:

On the 9<sup>th</sup> day of August, 2016, personally appeared before me Kevin Martin, who being by me duly sworn did that say that they are the President of the Association and that said instrument was signed and sealed in behalf of said Association by authority of its Board of Directors; and acknowledged said instrument to be their voluntary act and deed.

  
Notary Public for Utah

**EXHIBIT A**  
**(Legal Description)**

Lots 1 through 11, Lot 31, HIGH POINTE PHASE I subdivision,  
Lots 12 through 21, HIGH POINTE PHASE II subdivision,  
Lots 26 through 27, HIGH POINTE PHASE III subdivision,  
Lots 22 through 25, Lot 28, HIGH POINTE PHASE IV subdivision,  
Lot 29, HIGH POINTE PHASE V subdivision,

all as according to the official plats thereof recorded with the office of the Davis County Recorder, state of Utah.

Parcel Serial Numbers:

05-093-0001 - 05-093-0011, 05-093-0031  
05-094-0012 - 05-094-0021  
05-099-0026 - 05-099-0027  
05-103-0022 - 05-103-0025, 05-103-0028  
05-105-0029  
(30 Lots Total)

**EXHIBIT B**  
**BYLAWS**  
**OF**  
**HIGH POINTE PLANNED UNIT DEVELOPMENT**

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**ARTICLE 1 - DEFINITIONS**

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

**ARTICLE 2 - MEETINGS OF ASSOCIATION**

- 2.1 Place of Meeting. The Association shall hold meetings at such suitable place as may be designated by the Board from time to time.
- 2.2 Annual Meetings. Each regular annual meeting of the Owners shall be held each year on the day and at a time and place within the State of Utah selected by the Board.
- 2.3 Special Meetings. The Association, by and through the Board, shall notice, hold and conduct a special meeting of its Owners (1) on call of the President or two or a majority of the

Board, or (2) if the Association receives one or more written demands for the meeting that state the purpose or purposes for which the meeting is to be held, and are signed and dated by Owners in good standing holding at least 25% of the voting rights of the Association. When a special meeting is demanded 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 demand and if notice of the meeting is not given by the Board within 30 days after the date the written demand is delivered to an Association officer, a person signing the demand may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

2.4 Notice of Meetings. Written notice of each meeting of the Owners shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, in a fair and reasonable manner, including by delivering a copy of such notice to each Owner 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 Owners and, in the case of a special meeting, the purpose of the meeting.

2.5 Voting. Each Lot shall be allocated one vote.

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

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



2.8 Quorum of Owners.

2.8.1 “Quorum” means the minimum number of Owners (when duly assembled at a meeting or casting a written ballot in an action without a meeting) necessary to make the proceedings valid.

2.8.2 At any regular 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, shall constitute a quorum.

2.8.3 If any meeting of Owners cannot be organized because of a lack of quorum, the Owners who are present may adjourn the meeting to a time at least 48 hours from the time of the meeting at which a quorum was not present and 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.

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

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

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

2.11 Meeting Procedure. 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. A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

2.12 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of 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.

2.13 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 consents in writing, 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 by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

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

#### 3.1 Number, Term and Qualifications.

3.1.1 The affairs of the Association shall be governed by a Board of Directors composed of at least three (3) and not more than five (5) Board members, as determined by the Board.

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

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

#### 3.2 Vacancies. Vacancies on the Board, caused by any reason other than the removal of a

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

3.3 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.

3.4 Removal of Board Members.

3.4.1 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.

3.4.2 The Board may declare the office of a member of the Board to be vacant in the event such member is absent from three consecutive regular meetings of the Board, or from more than 25% of the regular meetings held in any 12 month period, or, within 24 hours of a request to take Board action without a meeting, more than twice in any 6 month period fails to respond in writing by (1) voting for the action, (2) voting against the action and waiving the right to demand that action not be taken without a meeting, or (3) abstaining from voting and waiving the right to demand that action not be taken without a meeting. The vacancy shall be filled as provided in Section 3.2 above.

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

4.1 Nomination.

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

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

4.2 Election. At the election, the Owners 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. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE 5 - MEETINGS OF THE BOARD OF DIRECTORS

### 5.1 Organizational Meeting.

5.1.1 Location, Date and Time. The first meeting of a newly-elected Board shall be held within fourteen (14) days of election at such place, date and time as shall be fixed by the Board members at the meeting at which the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

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

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

5.3 Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) Board members, after not less than three (3) days' notice to each Board member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.8 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 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 Meetings; Executive Sessions.

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

- (a) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;
- (b) Personnel matters, including salary negotiations and employee discipline;
- (c) The negotiation of contracts with third parties;
- (d) Collection of unpaid assessments; and
- (e) Other matters of a sensitive, private, or privileged nature at the discretion of the Board and consistent with the law.

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

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

5.7 Action Taken by Board without a Meeting.

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

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

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

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

(d) any other matters the Association determines to include.

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

(a) the affirmative votes in writing for the action received by the Association equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Board members then in office were present and voted; and

(b) the Association has not received a written demand by a Board member that the action not be taken without a meeting (other than a demand that has been revoked pursuant to Subsection 5.7.5).

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

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

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

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

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

For purposes of determining a quorum with respect to a particular proposal, and for purposes of

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

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

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

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

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

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

## ARTICLE 7 - OFFICERS AND THEIR DUTIES

7.1 Designation and Qualification.

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

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

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

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

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

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

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

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

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

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

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



have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall prepare and maintain the minutes of all meetings of the Board and the minutes of all meetings of the Association, have charge of such books, papers and records as the Board may direct, shall have the responsibility for preparation and maintenance 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.

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

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

9.1 General Records.

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

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

(c) The Board shall maintain a list of Owners. The list of Owners may specify whether the Owner is an Owner in good standing.

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

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

9.3 Financial Reports and Audits.

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

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

9.4 Inspection of Records by Owners.

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

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

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

furnish the information.

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

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

(a) Personnel matters relating to a specific identified person or a person's medical records.

(b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(c) Communications with legal counsel that relate to matters specified in this section, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.

(d) Disclosure of information in violation of law.

(e) Documents, correspondence or management or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session held in accordance with these Bylaws.

(f) Documents, correspondence or other matters considered by the Board in executive session held in accordance with these Bylaws and the minutes of any executive session.

(g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association. Records, including the assessment roll, may be redacted by the Board so that specific individuals are not identifiable as being delinquent in payment of assessments and such information is specifically deemed confidential and private and not subject to any inspection requirements of the law or the Governing Documents. Any list or compilation of phone numbers or email addresses of Owners kept by the Association is not subject to viewing, inspection or copying by any Owner and is specifically deemed confidential and private and not subject to any inspection requirements of the law or the Governing Documents.

## ARTICLE 10 - AMENDMENTS

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

## ARTICLE 11 - MISCELLANEOUS

### 11.1 Notices.

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

### 11.1.2 Owners.

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

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

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

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

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

the Association as to any similar matter.

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

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

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

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers on this 9<sup>th</sup> day of August, 2016.

(Sign): Kevin Martin  
(Print Name): Kevin Martin, President