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KELLY A. SILVESTER
DAVIS COUNTY, UTAH RECORDER
1/21/2025 11:53 AM
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DEP AAM REC'D FOR CLEARWATER
COVE HOMEOWNERS ASSOCIATION

AMENDMENT

TO THE

DECLARATION

OF

**COVENANTS, CONDITIONS, AND
RESTRICTIONS**

AND

BYLAWS

OF

CLEARWATER COVE

A PLANNED RESIDENTIAL UNIT DEVELOPMENT

RETURNED
JAN 21 2025

**AMENDMENT TO THE
DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS AND
BYLAWS OF CLEARWATER COVE
A PLANNED RESIDENTIAL UNIT DEVELOPMENT**

This Amendment to the Declaration of Covenants, Conditions and Restrictions of Clearwater Cove and the Bylaws of Clearwater Cove ("2025 Amendment") is made and executed on the date shown below after a vote of approval by the members of Clearwater Cove Homeowners Association ("Association" or "Clearwater Cove"), a Utah nonprofit corporation.

GENERAL RECITALS

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions of Clearwater Cove Homeowners Association ("Declaration" or "CC&Rs") was recorded in the office of the Davis County Recorder on May 21, 2002, as entry number 1755341;

WHEREAS, the Bylaws of the Association ("Bylaws") were recorded on June 24, 2021 in the Davis County Recorder's Office as Exhibit B to an amendment to the Declaration, identified as Entry No.3394142;

WHEREAS, the Declaration, the Bylaws, the Articles of Incorporation of the Association ("Articles"), and any amendment thereof shall collectively be referred to as the "Governing Documents" herein;

WHEREAS, the Board of Directors (the "Board") has determined that certain amendments are necessary and in the best interests of the Association;

WHEREAS, these proposed amendments have been submitted to the Members for consideration in accordance with the procedures set forth in the Governing Documents;

WHEREAS, at a duly called meeting of the Members held on January 14, 2025, a quorum being present, the required percentage of Members approved the amendments set forth herein;

WHEREAS, the members of the Association desire to adopt this 2025 Amendment and record the same against the real property located in Davis County, Utah, known as Clearwater Cove Subdivision and more fully described on Exhibit "A" attached hereto;

WHEREAS, the proposed amendments to the Bylaws have been incorporated into the Amended and Restated Bylaws of the Association, which are attached hereto as Exhibit "B";

NOW THEREFORE, to accomplish the Owners' objectives, the following 2025 Amendment is hereby adopted. This amendment shall become effective upon recording of this document with the Davis County Recorder's Office. The Declaration and the Governing Documents are amended as follows:

**ARTICLE I
REINVESTMENT FEE**

RECITALS

WHEREAS, the Association is responsible for maintaining the common areas, infrastructure, and amenities of the Clearwater Cove community, and for ensuring that such maintenance is adequately funded; and

WHEREAS, the Association recognizes that, due to the aging of the community's homes and common areas, the need for repairs and capital improvements has increased, placing significant financial pressure on the Association's reserve funds; and

WHEREAS, the Association has determined that its financial reserves, while diligently maintained to the best of the Association's ability, are insufficient to meet the projected costs of future repairs and improvements without imposing significant increases in regular assessments on homeowners; and

WHEREAS, the Board has explored various funding options to avoid the need for large or frequent increases in regular assessments, including the implementation of a reinvestment fee to generate additional revenue upon the sale or transfer of homes within the Association; and

WHEREAS, the Board has solicited and received input from Lot Owners regarding the introduction of a reinvestment fee, and has determined that a reasonable and proportionate reinvestment fee would benefit the community by reducing the need for substantial future assessment increases, ensuring the long-term financial stability of the Association, and maintaining the property values of homes within the Clearwater Cove community; and

WHEREAS, the Board has determined that it is in the best interest of the Association to amend the CC&Rs to include a reinvestment fee, and to set forth procedures for the implementation and collection of such fee;

NOW, THEREFORE, the CC&Rs are hereby amended as follows:

AMENDMENT

Article V, Section 5.12 is hereby *added* to the CC&Rs, and shall read as follows:

5.12 Reinvestment Fee. A reinvestment fee (the "Fee") is hereby established to be collected upon the sale, transfer, or conveyance of any Unit within the Association. The Fee shall be equal to 0.5% of the gross sale price of the Unit, or the maximum amount permitted by applicable law, whichever is less. The Fee shall be paid at closing by either the buyer or the seller, as agreed upon during the transaction, and shall be remitted to the Association no later than thirty (30) days following the sale or transfer of the Unit. The Fee shall be subject to the following provisions:

- (a) **Payment Responsibility.** The reinvestment fee shall be due and payable upon the sale, transfer, or conveyance of any Unit within the Association, as set forth in this Amendment. The fee shall be paid by either the buyer or the seller, as agreed

upon during the transaction. In the event that the buyer and seller fail to agree upon who shall pay the fee, the buyer shall be responsible for payment by default.

- (b) **Consequences and Remedies for Nonpayment.** If the reinvestment fee is not paid in full within thirty (30) days of the closing date of the sale or transfer, the Association shall have the authority to impose a late fee not to exceed 10% of the outstanding balance, as well as interest on the unpaid amount at a rate not to exceed 10% per annum, until the full payment is received. The Association shall also have the authority to record a lien against the Unit for any unpaid reinvestment fees, including any accrued late fees and interest. The lien shall remain in effect until the outstanding balance, including late fees, interest, and any costs associated with recording and enforcing the lien, has been fully satisfied. The lien shall be subordinate to any first mortgage on the property.
- (d) **Collection and Enforcement.** The Association may take any and all legal action necessary to collect unpaid reinvestment fees, late fees, interest, and costs associated with lien enforcement, including, but not limited to, initiating foreclosure proceedings on the Unit in accordance with applicable law.
- (e) **Exemptions for Certain Transfers.** The Fee may not be enforced upon: (a) a transfer between spouses or domestic partners; (b) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; (c) a transfer resulting from a court order; (d) 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; (e) a transfer due to foreclosure or deed in lieu of foreclosure; (f) involuntary transfers; or (g) transfers without monetary consideration.
- (f) **Use of Funds.** The funds collected from the Fee may be applied, at the discretion of the Board, to any lawful purpose deemed to be in the best interest of the Association. Such purposes may include, but are not limited to, contributing to the reserve fund for capital improvements, funding major repairs, the maintenance of common areas, funding community enhancements, supporting operational expenses, or addressing unforeseen contingencies, all in a manner consistent with the governing documents and the fiduciary duties of the Board.

**ARTICLE II
NUMBER OF BOARD MEMBERS**

RECITALS

WHEREAS, the Association recognizes the importance of effective governance through a Board of Directors that adequately represents the community's interests;

WHEREAS, Article IX, Section 9.01 of the CC&Rs and Article III, Section 3.2 of the Bylaws limit the Board to three (3) members;

WHEREAS, the Association desires to amend the CC&Rs and Bylaws to allow for a Board composed of up to five (5) members to enhance representation and distribute responsibilities more effectively;

WHEREAS, with the changes to the Board's composition, it is also necessary to amend the nomination and election procedures to ensure a fair and transparent process for filling Board positions;

WHEREAS, the Association desires to amend the Bylaws to address the procedures for nominations, elections, handling of vacancies, and to implement measures to encourage member participation and ensure that all Board positions are filled by qualified and willing candidates;

NOW, THEREFORE, the CC&Rs and Bylaws are hereby amended as follows:

AMENDMENTS

- 2.1. **Amendment to Article IX, Section 9.01 of the CC&Rs - Number, Tenure, and Qualifications.** The first sentence therein is hereby *removed* and *replaced* in its entirety, to now read: "The affairs of the Association shall be managed by a Board of Trustees, composed of not less than three (3) and not more than five (5) individuals." All other sentences in Section 9.01 remained unchanged.
- 2.2. **Amendment to Article III, Section 3.2 of the Bylaws – Composition of Board.** Article 3.2 of the Bylaws is hereby *removed* and *replaced* in its entirety, to now read: "The Board shall be composed of not less than three (3) and not more than five (5) members of the Association."
- 2.3. **Amendment to Article III, Section 3.4 of the Bylaws – Election and Term of Office of the Board.** Article 3.4 of the Bylaws is hereby *removed* and *replaced* in its entirety, to now read: "The term of office for each Board member shall be three (3) years. Board members shall be elected in such a manner that approximately one-third (1/3) of the Board positions are up for election each year. Initial terms may be adjusted (one-year, two-year, or three-year terms) to establish this rotation. Thereafter, all Board members shall serve three-year terms. Each member shall serve until their successor is duly elected and qualified."
- 2.4. **Amendment to Article III, Section 3.9 of the Bylaws – Vacancies.** Article III, Section 3.9 of the Bylaws is hereby *removed* and *replaced* in its entirety, to now read: "Vacancies on the Board caused by any reason other than the removal of a member by a vote of the Association members shall be filled by a majority vote of the remaining Board members at a special meeting called for that purpose, even if the remaining Board members constitute less than a quorum. Each person so

appointed shall serve for the remainder of the term of the Board member being replaced. In the event a Board member is removed by a vote of the Association members at a duly called regular or special meeting, the vacancy shall be filled by a vote of the Association members at the same meeting. The individual elected shall serve for the remainder of the term of the Board member being replaced. The Board must maintain a minimum of three (3) members at all times. If the number of Board members falls below this minimum due to vacancies, the remaining Board members shall promptly appoint qualified members to fill the vacancies to reach the required minimum number, following the procedures outlined above. When vacancies occur and the number of remaining Board members is three (3) or more, the Board may, at its discretion, choose to fill the vacancy or leave the position vacant. If the Board is unable to fill all vacancies, it may operate with fewer than the maximum number of Board members specified in Article III, Section 3.2, provided that the number of Board members does not fall below the minimum required number of three (3).”

- 2.5. **Amendment to Article III, Section 3.12 of the Bylaws – Tie Votes.** The following new subsection (d) is hereby *added* to Article III, Section 3.12 of the Bylaws as follows: “(d) Tie Votes. The Board shall endeavor to maintain an odd number of members to minimize the occurrence of tie votes. In the event of a tie vote, the motion shall fail.”
- 2.6. **Amendment to Article IV, Section 4.4 of the Bylaws – Notice of Nominations.** Article IV, Section 4.4 is hereby *removed* and *replaced* in its entirety, to now read: “4.4 Notice of Nominations. The names of all qualified candidates nominated for election to the Board shall be included in the notice of the annual meeting sent to members of the Association and shall be listed on any proxy and absentee ballots sent to members. Write-in candidates are permitted. Nominations may also be made from the floor at the annual meeting of the members, provided the nominee is present or has given prior written consent to serve if elected.”
- 2.7. **Amendment to Article IV of the Bylaws – Handling of Insufficient Nominations.** The following new section is hereby *added* to Article IV as follows: “4.6 Insufficient Nominations. If the number of nominated candidates is fewer than the number of Board positions to be filled at the close of the nomination period, nominations may be accepted from the floor during the annual meeting or any special meeting called for the election of Board members. Any member nominated from the floor must be present at the meeting or must have provided prior written consent to serve if elected. In the event that the number of candidates remains fewer than the number of vacancies, the candidates who have been nominated shall be deemed elected by acclamation, provided they receive a majority of the votes cast. Any remaining vacancies after the election shall be considered vacancies to be filled by the Board in accordance with Article III, Section 3.9.”
- 2.8. All other provisions of the CC&Rs and Bylaws not expressly amended herein shall remain in full force and effect.

**ARTICLE III
REPEAL OF CONFLICTING LANGUAGE**

- 3.1 **Repeal.** If any language or requirements contained in this 2025 Amendment or any other of the Governing Documents contradicts any provision contained in this Amendment, this 2025 Amendment shall prevail. Such conflicting provisions are hereby repealed and shall no longer be enforceable.
- 3.2 **Severable.** The provisions of this 2025 Amendment shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability any of one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

[Certification on Following Page]


CERTIFICATION

It is hereby certified that Residential Lot Owners holding a majority of the undivided ownership interest in the common areas and facilities have voted to approve these amendments.

IN WITNESS WHEREOF, the undersigned officers of the Clearwater Cove Homeowners Association have affixed our signatures this 17th day of January, 2025.

CLEARWATER COVE HOMEOWNERS ASSOCIATION

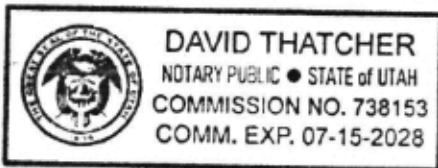
A Utah nonprofit corporation

By: 
Robert Woolley, Vice President

By: 
Kyler Jensen, Secretary/Treasurer

STATE OF UTAH)
 :SS
COUNTY OF DAVIS)

On this 17th day of January, 2025, personally appeared before me Robert Woolley and Kyler Jensen, who being by me duly sworn, did say that they are the Vice President and Secretary/Treasurer (officers) of Clearwater Cove Homeowners Association and that the within and foregoing instrument was signed in behalf of said Association and they duly acknowledged to me they executed the same.





Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION
CLEARWATER COVE

All of Lots 11 thru 15, Clearwater Cove - A PRUD, Phase 1 PUD, Layton City, Davis County, Utah
11-507-0011 thru 0015

All of Lots 21 thru 26, Clearwater Cove - A PRUD, Phase 2 PUD, Layton City, Davis County, Utah
11-508-0021 thru 0026

All of Lots 31 thru 34, Clearwater Cove - A PRUD, Phase 3 PUD, Layton City, Davis County, Utah
11-512-0031 thru 0034

All of Lots 41 thru 44, Clearwater Cove - A PRUD, Phase 4 PUD, Layton City, Davis County, Utah
11-513-0041 thru 0044

All of Lots 51 thru 54, Clearwater Cove - A PRUD, Phase 5 PUD, Layton City, Davis County, Utah
11-526-0051 thru 0054

All of Lots 61 thru 65, Clearwater Cove - A PRUD, Phase 6 PUD, Layton City, Davis County, Utah
11-527-0061 thru 0065

All of Lots 71 thru 74, Clearwater Cove - A PRUD, Phase 7 PUD, Layton City, Davis County, Utah
11-528-0071 thru 0074

All of Lots 81 thru 85, Clearwater Cove - A PRUD, Phase 8 PUD, Layton City, Davis County, Utah
11-540-0081 thru 0085

All of Lots 91 thru 92, Clearwater Cove - A PRUD, Phase 9 PUD, Layton City, Davis County, Utah
11-566-0091 thru 0092 ca

All of Lots 101 thru 102, Clearwater Cove - A PRUD, Phase 10 PUD, Layton City, Davis County, Utah
11-542-0101 thru 0102

All of Lots 111 thru 114, Clearwater Cove - A PRUD, Phase 1 PUD, Layton City, Davis County, Utah
11-574-0111 thru 0114

Red
All of Lots ~~121~~ thru ~~122~~, Clearwater Cove - A PRUD, Phase 12 PUD, Layton City, Davis County, Utah
11-567-012~~1~~ thru 012~~2~~

All of Lots 131 thru 132, Clearwater Cove - A PRUD, Phase 13 PUD, Layton City, Davis County, Utah
11-614-0131 thru 0132

All of Lots 141 thru 142, Clearwater Cove - A PRUD, Phase 14 PUD, Layton City, Davis County, Utah
11-625-0141 thru 0142

All of Lots 151 thru 152, Clearwater Cove - A PRUD, Phase 15 PUD, Layton City, Davis County, Utah
11-635-0151 thru 0152

All of Lots 161 thru 165, Clearwater Cove - A PRUD, Phase 16 PUD, Layton City, Davis County, Utah
11-572-0161 thru 0165

All of Lots 171 thru 174, Clearwater Cove - A PRUD, Phase 17 PUD, Layton City, Davis County, Utah
11-562-0171 thru 0174

All of Lots 181 thru 185, Clearwater Cove - A PRUD, Phase 18 PUD, Layton City, Davis County, Utah
11-563-0181 thru 0185

AND

All of Lots 191 thru 192, Clearwater Cove - A PRUD, Phase 19 PUD, Layton City, Davis County, Utah
11-596-0191 thru 0192

All of Lots 201 thru 206, Clearwater Cove - A PRUD, Phase 20 PUD, Layton City, Davis County, Utah
11-601-0201 thru 0206

All of Lots 211 thru 215, Clearwater Cove - A PRUD, Phase 21 PUD, Layton City, Davis County, Utah
11-615-0211 thru 0215

All of Lots 221 thru 224, Clearwater Cove - A PRUD, Phase 22 PUD, Layton City, Davis County, Utah
11-607-0221 thru 0224

All of Lots 231 thru 234, Clearwater Cove - A PRUD, Phase 23 PUD, Layton City, Davis County, Utah
11-608-0231 thru 0234

All of Lots 241 thru 245, Clearwater Cove - A PRUD, Phase 24 PUD, Layton City, Davis County, Utah
11-616-0241 thru 0245

All of Lots 251 thru 254, Clearwater Cove - A PRUD, Phase 25 PUD, Layton City, Davis County, Utah
11-636-0251 thru 0254

All of Lots 261 thru 265, Clearwater Cove - A PRUD, Phase 26 PUD, Layton City, Davis County, Utah
11-637-0261 thru 0265

AMENDED
AND
RESTATED
BYLAWS
FOR
**CLEARWATER COVE
HOMEOWNERS ASSOCIATION**

2025 REVISION

**AMENDED AND RESTATED BYLAWS FOR
CLEARWATER COVE HOMEOWNERS ASSOCIATION**

The following are adopted as the administrative Bylaws for the Clearwater Cove Homeowners Association (the "Association"), a Utah nonprofit corporation formed to govern the planned residential unit development known as Clearwater Cove.

**ARTICLE I
PLAN OF UNIT OWNERSHIP AND INCORPORATION**

- 1.1 **Submission.** These Bylaws are adopted by the Owners of Units in Clearwater Cove. These Bylaws shall govern the administration of the Clearwater Cove Homeowners Association.
- 1.2 **Definitions.** The words defined in Article I of the Declaration of Covenants, Conditions and Restrictions of Clearwater Cove ("Declaration"), which was recorded in the office of the Davis County Recorder on May 21, 2002, as entry number 175534, shall have the same meaning when used herein unless the context clearly requires another meaning.
- 1.3 **Conflict.** In the event of any conflict, incongruity or inconsistency between the provisions of these Bylaws and the provisions of the Declaration or any amendments thereto, the latter shall in all instances govern and control, except as to those administrative matters described and referred to in Article II of the 2021 Amendment, and which have been repealed and replaced by these Bylaws.
- 1.4 **Bylaws Applicability.** All present and future Owners, residents, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted at Clearwater Cove shall be subject to and abide by these Bylaws.

**ARTICLE II
ASSOCIATION**

- 2.1 **Composition.** The Association of Owners is a mandatory association consisting of all Owners at Clearwater Cove.
- 2.2 **Voting.** Each Owner shall have an equal number of votes.
- 2.3 **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board from time to time and stated in the notice of meeting.

- 2.4 **Annual Meeting.** The annual meeting of the Unit Owners shall be held at a date as designated by the Board and at a location in Davis County, Utah, chosen by the Board and specified in the notice of the meeting. At least ten but not more than thirty (30) days before the date of the annual meeting, notice of the meeting shall be given to each Owner. Such notice shall state the time, place, and general purpose of the meeting. The notice shall contain a proxy form whereby a Unit Owner may appoint a proxy to vote for them at the annual meeting.
- 2.5 **Special Meetings.** Special meetings of the Owners may be called by the President, by any two members of the Board, or by Unit Owners cumulatively holding at least one-fourth of the undivided ownership interest in the Project. At least two but not more than thirty (30) days before the date set for a special meeting, written notice thereof shall be given in the manner described in the immediately preceding Paragraph.
- 2.6 **Notification by Mail, Website and Email.** Any notice permitted or required to be delivered by the Board or from the Association to the Owners may be delivered either personally, by U.S. mail, or by electronic means.
- (a) If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Owner at the address given by such person to the Board for the purpose of service of such notice or to the Unit of such person if no address has been given. Such addresses may be changed by Owner from time to time by notice in writing to the Board.
 - (b) If notice is by electronic means, any notice delivered by the Association to Owners under the provisions of the Declaration or these Bylaws may be sent by electronic means, including text message, email, or the Association's website. The Association shall maintain records of all notices sent to Members by electronic means, including the electronic address to which notice was sent. When a notice is sent electronically, the Association shall first compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of well-known electronic forms, such as Facebook) and the Association shall send notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner. A member may, by written demand, require the Association to provide notice to the Unit Owner by mail.
 - (c) If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Dwelling, or by securely attaching a copy of the notice to the front entry door of the Owner's Dwelling.

- 2.7 **Waiver of Notice.** No notice of any Owners meeting shall be required if a waiver of such notice is signed by all of the Owners. Whenever all the Owners meet in person or by proxy such meeting may not be challenged on grounds of inadequate notice.
- 2.8 **Voting Requirements.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of this Declaration, any Association rules and the Bylaws, and shall have fully paid all Assessments due.
- 2.9 **Proxies.** The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Board before the meeting. Only individual Owners or the legal representative of an Organizational Owner may be proxies.
- 2.10 **Quorum.** The presence of Owners in person or by proxy entitled to cast a majority of all the undivided ownership interest in the Project shall constitute a quorum for the transaction of business at any Owners meeting. In the event a quorum is not present at any Owners meeting, whether regular or special, the Board shall choose a date for a rescheduled Owners meeting and the meeting may be adjourned. The rescheduled Owners meeting shall be set for a time no earlier than 48 hours and no later than 30 days after the time set for the original meeting. No other notice of such rescheduled meeting shall be required other than to announce the date, time and place of the rescheduled meeting before adjourning the original meeting. The presence of Owners entitled to cast 25% of all undivided ownership interest in the Project shall constitute a quorum at the rescheduled meeting. Notwithstanding the foregoing provisions of this Paragraph, however, in any case in which the Declaration requires the affirmative vote of at least a specified percentage of the Project's undivided ownership interest for authorization or approval of a matter, the presence in person or by proxy of Owners entitled to cast such percentage shall be necessary to constitute a quorum at any meeting (whether original or rescheduled) at which action on such matter is taken.
- 2.11 **Multiple Ownership.** The vote attributable to and exercisable in connection with a Unit shall be the percentage of undivided ownership interest, which is then appurtenant thereto. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

- 2.12 **Order of Business.** The order of business at all meetings of the Association shall be as follows:
- (a) roll call to determine quorum status;
 - (b) proof of notice of meeting;
 - (c) reading of minutes of preceding meeting;
 - (d) reports of officers;
 - (e) report of special Boards, if any;
 - (f) appointment of inspectors of election, if applicable;
 - (g) election of Board Members, if applicable;
 - (h) unfinished business; and
 - (i) new business.
- 2.13 **Conduct of Meeting.** The President shall, or in his absence the Vice President, preside over all meetings of the Association; the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record all of the transactions occurring thereat.

ARTICLE III BOARD OF TRUSTEES

- 3.1 **Status and General Authority of Board.** The Project shall be managed, operated, and maintained by the Board of Trustees ("Board") on behalf of the Association. The Board shall, in connection with its exercise of any of the powers delineated in the subparagraphs below, constitute a legal entity capable of dealing in its Board name. No two people from the same household can serve on the Board at the same time. The Board shall have and is hereby granted the following authority and powers:
- (a) A right of entry upon any Unit and any Limited Common Area to affect emergency repairs, and a reasonable replacement or maintenance of the Project or any portion thereof, as necessary.
 - (b) The Authority, without vote or consent of the Unit Owners, Mortgages, Insurers, or guarantors of Mortgages, or any other person(s) to grant or create, on such terms as it deems advisable, reasonable permits, licenses and easements over, under, across, through the Common Area and Facilities for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project.
 - (c) The Authority to execute and record, on behalf of all the Unit Owners, any amendments to the Declaration or Record of Survey Map which has been approved by the vote and consent necessary to authorize such amendment.
 - (d) The power to sue and be sued.

- (e) The authority to enter into contracts, which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement, has been obtained.
- (f) The power and authority to convey and transfer any interest in real property, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
- (g) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action, has been authorized by any vote or consent which is necessary under the circumstances.
- (h) The power and authority to add any interest in real property obtained pursuant to subparagraph (g) above to the Project so long as such action has been authorized by the necessary vote or consent.
- (i) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Board in carrying out its functions or to ensure that the project is maintained and used in a manner consistent with the interests of the Unit Owners.
- (j) The power and authority to levy and collect general and special assessments for the payment of Common expenses.
- (k) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions on behalf of the Unit Owners.
- (l) Any Instrument executed by the Board that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

3.2 **Composition of Board.** The Board shall be composed of not less than three (3) and not more than five (5) members of the Association.

3.3 **Qualification.** Only individual Owners or officers or agents of organizational Owners other than individuals shall be eligible for Board Membership. Only one Owner per Unit shall serve on the Board at any given time.

3.4 **Election and Term of Office of the Board.** The term of office for each Board member shall be three (3) years. Board members shall be elected in such a manner that approximately one-third (1/3) of the Board positions are up for election each year. Initial terms may be adjusted (one-year, two-year, or three-year terms) to establish this rotation. Thereafter, all Board members shall serve three-year terms. Each member shall serve until their successor is duly elected and qualified.

- 3.5 **Regular Meetings.** A regular meeting of the Board shall be held within 30 days of each annual Owners meeting. Regular meetings of the Board shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Board, but no less often than monthly. Either oral or written notice shall be given to each Board member of the time and place of each regular Board meeting at least three days prior to such meeting.
- 3.6 **Special Meetings.** Special Board meetings shall be held whenever called by the President or by any two members of the Board. Reasonable effort should be made to give either oral or written notice of a special meeting to each Board member at least three days (but in the event of emergency, 24 hours) before the time fixed for the meeting. Adequate notice of a special meeting shall be deemed to have been given to a member if such effort is made, even though the member concerned does not actually receive notice. The propriety of holding any meeting which is attended by all Board members may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Board meeting shall consist of a majority of all the members then in office.
- 3.7 **Waiver of Notice.** Before or at any meeting of the Board, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any such meeting of the Board shall constitute a waiver of notice. If all the members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
- 3.8 **Quorum.** At all meetings of the Board, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Board members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no shorter than two (2) days nor more than five (5) days and give notice of the rescheduled meeting to the members not in attendance. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.
- 3.9 **Vacancies.** Vacancies on the Board caused by any reason other than the removal of a member by a vote of the Association members shall be filled by a majority vote of the remaining Board members at a special meeting called for that purpose, even if the remaining Board members constitute less than a quorum. Each person so appointed shall serve for the remainder of the term of the Board member being replaced. In the event a Board member is removed by a vote of the Association members at a duly called regular or special meeting, the vacancy shall be filled by a vote of the Association members at the same meeting. The individual elected shall serve for the remainder of the term of the Board member being replaced. The Board must maintain a minimum of three (3) members at all times. If the number of Board members falls below this minimum due to vacancies, the remaining Board members shall promptly appoint qualified members to fill the vacancies to reach the required minimum number, following the procedures outlined above. When vacancies occur and the number of remaining Board members is three (3) or more, the Board may, at its discretion, choose to fill the vacancy or leave the position vacant. If the Board is unable to fill all

vacancies, it may operate with fewer than the maximum number of Board members specified in Article III, Section 3.2, provided that the number of Board members does not fall below the minimum required number of three (3).

- 3.10 **Removal of Board Member.** A member may be removed, with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board Member who misses twenty-five percent (25%) or more of the Board Meetings in any twelve month period or who misses three (3) consecutive meetings in any calendar year, shall be automatically removed from the Board.
- 3.11 **Compensation.** Officers, agents and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board. Appointment of any officer, agent or employee shall not, of itself, create contractual rights of compensation for services performed by such officer, agent or employee.
- 3.12 **Conduct of Meetings.** The President shall preside over all meetings of the Board and the Secretary shall keep a Minute Book of the Board recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings, subject to the following:
- (a) **Open Meetings.** A portion of each meeting of the Board shall be open to all members of the Association, but members other than members of the Board may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board. The Board shall establish procedures, policies, and guidelines for conducting of its meetings, retiring to executive session, and prohibiting photographs and/or any electronic (video or audio) recording of the meetings, or any part thereof.
 - (b) **Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in open session.
 - (c) **Action Without a Formal Meeting.** Any action to be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all members of the Board.
 - (d) **Tie Votes.** The Board shall endeavor to maintain an odd number of members to minimize the occurrence of tie votes. In the event of a tie vote, the motion shall fail.

- 3.13 **Report of Board.** The Board shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.
- 3.14 **Books, Audit.** The Board shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Association, in a manner consistent with generally accepted accounting principles, and at no greater than annual intervals shall obtain an independent audit of such books and records. A copy of each such audit shall be delivered to a Member within thirty (30) days after the completion of such audit, upon written request from said Member.

ARTICLE IV NOMINATION AND ELECTION OF BOARD MEMBERS

- 4.1 **Nomination Process.** The process for the nomination and election of the Board shall proceed as set forth herein.
- 4.2 **Nominations.** Nominations for election to the Board shall be made by the Board. The Board will seek out and locate qualified individuals as candidates for election to the Association's Board. The Board shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of vacant Board seats to be filled. The Board may notify members that it is seeking qualified candidates and interview all candidates interested in serving on the Board to determine if, in the Board's sole discretion, the potential candidate has the proper demeanor, experience, ability and character to serve the interests of the Association if elected. The Board shall place on the Association's ballots those names which are approved by a majority of the Board. Those nominated as candidates shall have the opportunity to communicate their qualifications to the members and to solicit votes. Should the Board fail to follow the procedures outlined in this Article, then nominations shall be made from the floor at the annual meeting or any special meeting.
- 4.3 **Nomination Approval.** Anyone nominated as a candidate prior to or at the Association's election meeting should have first granted their approval and affirmatively stated that he or she is willing to serve for the term if elected.
- 4.4 **Notice of Nominations.** The names of all qualified candidates nominated for election to the Board shall be included in the notice of the annual meeting sent to members of the Association and shall be listed on any proxy and absentee ballots sent to members. Write-in candidates are permitted. Nominations may also be made from the floor at the annual meeting of the members, provided the nominee is present or has given prior written consent to serve if elected.
- 4.5 **Election.** At the annual meeting for the election of new Board members, the Board shall prepare and distribute a ballot to each Owner. Owners who do not attend the meeting may vote by proxy ballot or by written ballot. Each Unit is entitled to vote as provided in the Declaration and Bylaws. Voting need not be conducted by secret ballot.

- 4.6 **Insufficient Nominations.** If the number of nominated candidates is fewer than the number of Board positions to be filled at the close of the nomination period, nominations may be accepted from the floor during the annual meeting or any special meeting called for the election of Board members. Any member nominated from the floor must be present at the meeting or must have provided prior written consent to serve if elected. In the event that the number of candidates remains fewer than the number of vacancies, the candidates who have been nominated shall be deemed elected by acclamation, provided they receive a majority of the votes cast. Any remaining vacancies after the election shall be considered vacancies to be filled by the Board in accordance with Article III, Section 3.9.

ARTICLE V OFFICERS

- 5.1 **Designation.** The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board. Two or more offices may be held by the same person, except that the President shall not hold any other office.
- 5.2 **Election of Officers.** The officers of the Association shall be elected by the members of the Board at their first meeting after the annual meeting of the Association. Any vacancy in an office shall be filled by the remaining members of the Board at a regular meeting or special meeting called for such purpose.
- 5.3 **Removal of Officers.** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purposes.
- 5.4 **President.** The president shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power to appoint committees from among the Members from time to time as he may, in his discretion decide is appropriate, to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board, have general supervision, direction and control of the business of the Association. The President shall be, ex officio, a member of all standing committees and he shall have such other powers and duties as may be prescribed by the Board or these Bylaws.
- 5.5 **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, disabled, refuses or is unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall, from time to time, be imposed upon him by the Board or these Bylaws or the Articles of Incorporation of the Association.

- 5.6 **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association at the principal office of the Association, or at such other place as the Board may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board may direct, and the Secretary shall, in general, perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notices of meetings of the Members of the Association and of the Board required by these Bylaws or by law to be given. The Secretary shall maintain a book of record Owners listing the names and addresses of the Owners as furnished the Association, and such books shall be changed only at such time as satisfactory evidence of a change of ownership of a Unit is presented to the Secretary. The books and records of the Association shall be made available for inspection by the Secretary to Unit Owners at reasonable times during normal business hours unless otherwise agreed to. The Secretary shall perform such other duties as may be prescribed by the Board.
- 5.7 **Treasurer.** The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping or causing to be kept full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for 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. The Treasurer shall co-sign all checks and promissory notes on behalf of the Association as may be ordered by the Board, in accordance with the Declaration; shall render to the President and Board, upon request, an account of all of his transactions as Treasurer and of the financial condition of the Association and shall have such other powers and perform such other duties as may be prescribed by the Board or by these Bylaws. Upon request of the Board, he/she shall furnish it with a bond, in the amount specified by the Board, conditioned upon the faithful performance of his duties. The offices of Secretary and Treasurer or of Vice President and Treasurer may be held by the same Board member. The Treasurer shall see that the financial books of the Association are audited annually.
- 5.8 **Additional Board Members.** The Board may assign duties or assignments to any member of the Board, whether or not such member is an Officer.

ARTICLE VI FISCAL YEAR

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

**ARTICLE VII
AMENDMENT TO BYLAWS**

- 7.1 **Amendments.** These Bylaws may be modified or amended either (i) by the affirmative vote of a majority of the members of the Association or (ii) pursuant to a written instrument of consent duly executed by a majority of the members of the Association provided all of the written consents are obtained within a ninety day period.

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

- 8.1 **Compliance.** These Bylaws are set forth in compliance with the requirements of the Declaration.
- 8.2 **Conflict.** These Bylaws are subordinate to and are subject to all provisions of the Declaration, except in those cases where the provisions of the Bylaws are clearly intended to govern (administrative matters). All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration.
- 8.3 **Severability.** If any provisions of these Bylaws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.
- 8.4 **Waiver.** No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.
- 8.5 **Captions.** The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.
- 8.6 **Construction.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; the use of any gender shall be deemed to include both masculine and feminine, and the term "shall" is mandatory and "may" permissive.
- 8.7 **Effective.** These Bylaws shall be effective upon recording in the Office of the County Recorder of Davis County.