

When Recorded Return to:  
SHAW BUILDING GROUP, INC.  
1768 Creek Road  
Sandy, Utah 84093

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12/22/2014 03:56 PM \$105.00  
Book - 10284 Pg - 272-313  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
SHAW BUILDING GROUP  
1768 CREEK RD  
SANDY UT 84093  
BY: SRP, DEPUTY - WI 42 P.

DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
NEWBURY GROVE PUD  
(A Planned Unit Development)

THIS DECLARATION made and executed this 22 day of December, 2014, by SHAW BUILDING GROUP, INC., a Utah Corporation with its principal place of business located in Sandy, Utah, (hereinafter referred to as "Declarant").

**RECITALS**

A. Declarant is the record owner of that certain tract of Property more particularly described in Article II of this Declaration (hereinafter referred to as the "Property").

B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end, and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration and the various Lots now or hereafter contained within the entire tract hereinafter described to the covenants, conditions, restrictions, easements, charges, assessments, obligations, and liens hereinafter set forth.

C. Declarant deems it desirable for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah, as a nonprofit corporation, the NEWBURY GROVE OWNERS ASSOCIATION, INC.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, restrictions, easements, charges, assessments, obligations, and liens hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS**

1.1. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the NEWBURY GROVE OWNERS ASSOCIATION, INC., A UTAH NONPROFIT CORPORATION.

1.2. Association shall mean and refer to the NEWBURY GROVE OWNERS ASSOCIATION, INC., a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Board and may utilize such name that the

Board shall select in any such reincorporation or reorganization. In case of the formation of any such entity, "Association" as used in this Declaration shall refer to that entity.

1.3. Board shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.

1.4. Bylaws shall mean and refer to the Bylaws of the NEWBURY GROVE OWNERS ASSOCIATION, INC., A UTAH NON-PROFIT CORPORATION and any amendments made thereto. A copy of which is attached hereto as Exhibit "B".

1.5. Common Areas shall mean and refer to that part of the Property which is not included within the Lots, which is owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto including but not limited to private utility lines and fixtures and other personal property owned by the Association when the context so requires. The Common Areas shall also include any portion of the Property which is designated as "Road" or "Private Street". The Common Areas are specifically described and identified in the Plat as "COMMON AREA".

1.6. NEWBURY GROVE PUD shall mean and refer to the PLANNED UNIT DEVELOPMENT described under this Declaration and the Plat.

1.7. Declarant shall mean and refer to SHAW BUILDING GROUP, INC. and its successors, assigns, officers, and authorized agents.

1.8. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and any amendments made thereto.

1.9. Development shall at any point in time mean, refer to, and consist of the Subdivision then in existence.

1.10. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence.

1.11. Lot shall mean and refer to any one of the separately numbered and individually described plots of land described on the Plat: (a) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different lots; and (b) which is intended to be used as the site of a single Living Unit.

1.12. Member shall mean and refer to every person who holds a membership in the Association. However, where a Lot may be owned by more than a single person, the "Member" with regard to representation within the Association shall in no case carry any greater weight than a single person. Likewise, in determining the constitution of a quorum only a single person from each individual Lot shall be counted toward the necessary percentage of Members required.

1.13. Mortgage shall mean any mortgage, deed of trust or trust deed, or the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust.

1.14. Mortgagee shall mean any person named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.15. Owner shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. In no case shall the term "Owner" be construed to include or refer to Declarant.

1.16. Plat shall mean the record of survey map of the Property submitted with respect to the NEWBURY GROVE PUD recorded in the records of the Salt Lake County Recorder ((**Entry No: 11964869 Book 10283 Page 3025**)) and all amendments thereto: "Plat" shall also refer to any additional plat that may be recorded with any Supplemental Declaration.

1.17. Property shall mean and refer to all of the real property which is covered by the Plat.

1.18. Subdivision shall mean and refer to the entire residential development which is created and covered by the Plat.

## **ARTICLE II** **PROPERTY DESCRIPTION**

2.1. Submission. The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of the Declaration consists of the following-described real property situated in Cottonwood Heights City, Salt Lake County, State of Utah. The Property is not a cooperative.

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent that they are located outside the Lots included with the above-described tract; provided, however, that lines and systems specifically conveyed to the Association by Declarant shall not be included within this exclusion.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct a Living Unit on each and every Lot; and (ii) to improve the Common Areas with such facilities, including, but limited to, roads, recreational facilities, walkways and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line; a perpetual easement for such improvement or utility line shall exist. With the exception of such *perpetual* easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments and charges imposed or levied by governmental or quasigovernmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereof; all instruments of record, as of the date of recording of this Declaration, which affect the above-described tract or any portion thereof, including without limitation, any mortgage; all visible easements and rights-of-way; and all easements and rights-of-way of record.

### **ARTICLE III** **MEMBERSHIP AND VOTING RIGHTS**

3.1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

3.2. Voting Rights. The Association shall have the following described two (2) classes of voting membership:

(a) Class A. Class A Members shall be all of the Owners other than the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one (1) Class A vote exist with respect to any Lot.

(b) Class B. The Class B member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for Membership in the Association. The Class B Membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events:

- i. When the total number of votes held by all Class A Members equals or exceeds the total number of votes held by the Class B Member; or
- ii. The expiration of seven (7) years after the date on which the first conveyance to a Lot purchaser is made.

3.3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any Owner of a Lot, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is made by another Owner of that Lot at the meeting, in which case the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.4. Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to such Owner of the applicable Lot conveyed. Each Owner shall file a copy of such conveyance document (or contract) with the Association with a reinvestment fee of \$100.00 to the Association or the manager of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages the Owner's Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Association shall maintain all such information in the

records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as a "Reimbursement Assessment" in accordance with the provisions of Article V.

**ARTICLE IV**  
**PROPERTY RIGHTS IN COMMON AREAS**

4.1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated there from. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee or contract purchaser who resides on such Member's Lot.

4.2. Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_, contained within the Newbury Grove PUD, as identified in the Plat recorded as Entry Number 11964869, in Book 10283 at Page 3025, of the official records of the Salt Lake County Recorder. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas and private streets described and provided for in said Plat, this Declaration, and in the Record of Survey Map in the official record of the Salt lake County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

4.3. Transfer of Title. Within (thirty) 30 days of the following, Declarant agrees to convey to the Association title to the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities, and subject to the easement rights outlined in Section 4.1 above and any liens of any mortgagees on such easement rights): (1) Upon closing on the sale of thirteen (13) lots in the Subdivision.

4.4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas and Private Streets shall be subject to the following:

(a) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(b) The right of the Architectural Control Committee to approve and designate the point of access from a Lot to the Private Streets in accordance with the requirements of Article VIII.

(c) The right of Cottonwood Heights City and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas, the Private Streets and any sewer, water and storm drain trunk lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by (i) all holders of first Mortgages secured by Lots and (ii) by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for that purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

## **ARTICLE V** **ASSESSMENTS**

5.1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the assessments described in this Article, together with the hereinafter provided-for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys' fees, which shall be a charge and continuing lien on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

5.2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development and the interests of the Owners therein paying costs properly incurred by the Association, and the maintenance, operation and care of the Common Areas. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Common Areas; maintenance (including snow removal from portions of Common Areas intended for vehicular or pedestrian traffic), repair and improvements of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration, the Bylaws, or the Articles of Incorporation, including professional services fees incurred for managers, accountants, attorneys, reserve study specialists, or other service professionals.

5.3. Monthly Assessment. Monthly assessment amounts (referred to herein as "Monthly Assessment") shall be based on an annual review of all costs incurred by the Association throughout the prior year, any deficiencies from the prior year, any reasonable estimations of anticipated increases in the current year, and the amount allotted for the Restricted Reserve Fund, as described below. Each Owner shall be assessed an amount equal to 1/13th of the total assessment which amount shall be payable in monthly installments as provided for herein. For Lots not yet sold to Owners by Declarant, Declarant shall contribute 1/5th of the initial monthly assessment payable monthly for each such Lot. Owners who have purchased Lots but not developed will contribute 1/5th of the initial monthly assessment payable monthly for their Lot until Certificate of Occupancy is received. Refer to Section 5.5 below for initial assessment amount.

5.4. Restricted Reserve Fund. Declarant shall establish the amount to be allotted to a separate fund and account from each Monthly Assessment to cover major repairs or replacement of the Common Area improvements or infrastructure. The initial allotted amount shall be 10% of the Annual Assessments and adjusted upon completion of the Common Areas and a certified reserve study. Said amount shall be based on the expected useful life of the Common Area improvements and infrastructure and the anticipated repair and replacement costs. This fund (referred to herein as the "Restricted Reserve Fund") shall be administered by the Board, but shall not be refunded except by a unanimous vote of all Members of the Association.

5.5. Assessment. As of the date under Section 5.10, each Lot shall be subject to a Monthly Assessment of not more than one hundred and fifty dollars (\$150.00) per month. From and after the date set under Section 5.10. The Monthly Assessment may be increased by the Board up to twenty percent (20%) per calendar year without Owner approval. Any amount in excess of a twenty percent (20%) increase will require that the change is assented to by not less than a majority of the Members, other than the Declarant, present in person or represented by proxy at a meeting duly called for such purposes. The Board may from time to time and in its discretion set the amount of the Monthly Assessment at any sum not in excess of the then applicable maximum amount.

5.6. Initial Assessment. An initial assessment shall be due and payable from each Owner, whether as a first time or subsequent Owner, on the date the closing occurs on the Lot, or if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto. The amount of the initial assessment shall be two (2) times the amount of the then-current Monthly Assessment referred to in Section 5.5.

5.7. Special Assessments. From and after the date set under Section 5.10. the Association may levy special assessments (referred to herein as "Special Assessments") for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by the Monthly Assessments; or (b) the cost of any construction, reconstruction or unexpectedly required repair or replacement in connection with the Common Areas. Any Special Assessments must be assented to by not less than a majority of the Members, other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each Class of Members), present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose.

5.8. Reimbursement Assessment on Specific Lot. In addition to the Monthly Assessment and any Special Assessments authorized above, the Board may levy at any time assessments (referred to herein as "Reimbursement Assessments") (a) on each Lot specifically benefited by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on each Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on each Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to the provisions of this Declaration. The aggregate amount of any such Reimbursement Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs and attorneys' fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such Reimbursement Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefited.

5.9. Uniform Rate of Assessment. Unless provided otherwise herein, assessments shall be fixed at a uniform rate for all Lots conveyed to or occupied by an Owner.

5.10. Monthly Assessment Due Dates. The Monthly Assessments provided for herein shall commence as to all Lots on the date a deed is delivered to the purchaser of the first Lot purchased, or if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto, or the date of occupancy agreement, or the date the Owner actually takes possession of a Lot, whichever first occurs. The first Monthly Assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy as the case may be. Thereafter all Monthly Assessments shall be due and payable on the first day of each month.

5.11. Assessment Due Date. Any assessment, provided for herein, that is not paid within ten (10) days of due date thereof shall be deemed late and subject to a late fee in an amount set forth by resolution of the Board.. At least fifteen (15) days prior to the effective date of any change in the amount of the Monthly Assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned. The failure of the Association to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment, but the date when the payment shall become due in such case shall be deferred to a date ten (10) days after notice of such assessment shall have been given to the Owner in the manner provided in the Declaration.

5.12. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

5.13. Effect of Non-Payment; Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, including attorneys' fees, be, constitute and remain a continuing lien on the affected Lot; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments became due. If the assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every expense incurred by the Association in enforcing its rights. Other remedies allowed by the Community Association Act may be exercised by the Association in collection unpaid assessments, including but not limited to, restricting access to Common Areas and collecting the rental proceeds from the tenant of an Owner leasing his/her Lot.

5.14. Power of Sale; Trustee. The Association's legal counsel may be appointed as trustee in any foreclosure proceedings and the Declarant and Association hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-32 to the Association's legal counsel, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration.



5.15. Tax Collection by County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it may be obligated to pay property taxes to Salt Lake County. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Salt Lake County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

5.16 Annual Budget. Annual budget shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided that first fiscal year shall begin on the date of recordation of this Declaration. On or before December 15th of each fiscal year the Association shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year.

The operating budget for the first fiscal year shall be prepared and furnished to each Owner within thirty (30) days of such Owner's initial purchase. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessments for the upcoming fiscal year and as the major guideline under which the Development shall be operated during such annual period.

## **ARTICLE VI** **DUTIES AND POWERS OF THE ASSOCIATION/BOARD OF DIRECTORS**

6.1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, the Bylaws, or this Declaration; the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Areas conveyed to it by Declarant.
- (c) The Association shall maintain, repair, and replace all landscaping and improvements in the Common Areas.
- (d) The Association shall provide mowing and trimming of all lawns within the Subdivision.
- (e) The Association shall provide snow removal within the Subdivision on all Common Areas intended for vehicular traffic. In addition, the Association shall provide snow removal from any sidewalk running parallel to the street.
- (f) Unless otherwise agreed to in writing by the Association, each Owner's responsibility to care for his/her Lot shall include, but not be limited to, the following items:
  - i. Each Owner shall have the obligation to provide exterior maintenance of his Living Unit including but not limited to painting, repair, replacement and care of roofs, gutters, down spouts, exterior building surfaces, and landscaping installed by an

Owner or his predecessor in title. Each Owner shall paint, repair, and otherwise maintain the exterior and interior of the Owner's Living Unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems.

ii. In the event that the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Reimbursement Assessment as provided herein.

(g) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(h) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

(i) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent may be an independent contractor and not an agent or employee of the Association.

**6.2. Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles of Incorporation and its Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under the Utah Community Association Act and by virtue of this Declaration or the Bylaws, including the power to levy and collect assessments as herein provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and/or repairing such Lot or any improvement thereon, if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of the provisions of this Declaration. The Association shall have the right to permit access to the Subdivision through any and all entrances, subject to governmental requirements, and to close all or any portion of a Private Street to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right therein to any person or the public. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration, the Rules and Regulations, the Architectural Guidelines, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas (and exterior repairs of Living Units to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety (90) days written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

i. Construction, maintenance, repair and landscaping of the Common Areas (and exterior repairs of Living Units upon Lots to the extent necessitated by the failure of Owners of such Lots to perform such repairs) on such terms and conditions as the Board shall deem appropriate.

ii. Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board and the Owners;

iii. Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board may from time to time deem necessary or desirable;

iv. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem necessary or desirable;

v. Fire, police and such other protection services as the Board may deem necessary or desirable for the benefit of the Owners or any of the Property; and

vi. Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

(c) The Board may delegate by resolution or contract to a 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 One Thousand Dollars (\$1,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

6.3. Association Rules. The Board from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations (referred to herein as "Rules and Regulations") governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; (e) the use of Living Units for business or rental purposes; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents. The Board may also adopt guidelines (referred to herein as "Architectural Guidelines") for the construction of Living Units. Rules and Regulations and/or Architectural Guidelines adopted by the Board may be enforced in accordance with the provisions herein regarding the enforcement of land use restrictions.

6.4. Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee or the Managing Agent.

6.5. (Intentionally Left Blank and Reserved for Future Use).

6.6. (Intentionally Left Blank and Reserved for Future Use).

6.7. Board of Directors. The affairs of the Association shall be governed by a Board elected by the Association. The number of persons on the Board may be changed by amendment to the Bylaws of the Association. The Board shall have the power to manage the affairs of the Association in accordance with this Declaration and the Bylaws and to exercise all Association duties and obligations not specifically reserved to the Owners. The Declarant may appoint and remove all members of the Board, all officers of the Association and exercise all powers and responsibilities delegated by this Declaration to the Association, its officers and the Board as long as Declarant is the holder of any Class B stock in the Association.

(a) The Common Areas of the Subdivision shall be managed, operated, and maintained by the Association through the Board exclusively as agent of, and in the name of, the Association and any act performed by the Board pursuant to this Declaration or the Bylaws, as the same may be amended from time to time, shall be deemed to be performed by the Board for and on behalf of the Association as its agent. The Association shall be responsible to keep all such Common Areas in good, clean, attractive, safe and sanitary condition, order, and repair; provided however, that each Owner shall keep their Lot and Living Unit in a clean, sanitary, and safe condition. The Association shall be responsible for the maintenance and repair of any improvements within the Common Area.

6.8. Authority of the Board. In addition to any other authority or power of the Board enumerated elsewhere in this Declaration or the Bylaws, the Board shall have, and is hereby granted, the following authority and powers to perform their duties:

(a) The authority, without the vote or consent of the Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar nonexclusive easements over, under, across and through the Common Areas.

(b) The authority to execute and record, on behalf of all the Owners, any amendment to the Declaration or Plat which has been approved by the vote or consent necessary to authorize such amendment.

(c) The power to sue and be sued.

(d) The authority to enter into contracts which in any way concern the Association, so long as any vote or consent of the Owners necessitated by the subject matter of the agreement has been obtained.

(e) The power and authority to convey or transfer any interest in real property authorized by the Owners having an interest therein.

(f) 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.

(g) The authority to license persons not otherwise entitled to use any of the recreational areas and facilities to use the same from time to time as the Board deems appropriate upon payment of fees prescribed by it to help defray the cost of maintenance thereof.

(h) The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed at any given time the sum of \$5,000.00 without the prior written approval of a majority of the Owners present in person or by proxy at a meeting duly called at which a quorum is present.

(i) The authority to promulgate such reasonable Rules and Regulations, and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to insure that the Common Areas are maintained and used in a manner consistent with the interest of the Owners.

(j) The power and authority to levy fines against Owners who are in violation of any provision or portion of the Association's Declaration, Bylaws, or rules, regulations, resolutions and/or policies.

(j) 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 as agent of the Association.

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.

(g) 6.9. Managing Agent. The Board may carry out any of its functions which are capable of delegation through a Managing Agent. The Managing Agent may be an independent contractor and not an agent or employee of the Association. The Managing Agent so engaged shall be responsible for managing the Association for the benefit of the Owners and shall, to the extent permitted by law and the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself. Any agreement for such professional management of the Association which may be entered into by the Board or the Association. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

## **ARTICLE VII** **USE RESTRICTIONS**

7.1. Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any Lot or Living Unit except as provided in Rules and Regulations adopted by the Board. Each Living Unit shall be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

- (a) No fractional portion of a Living Unit shall be leased and no transient housing is permitted. No Unit may be rented for a period of less than thirty (30) consecutive days and an Owner may not rent less than the entire Unit. No seasonal Ski Rentals are permitted.

## 7.2. Building Features and Materials.

(a) Living Unit Location. Each Living Unit shall be oriented as approved by the Architectural Control Committee and in accordance with the requirements of any applicable public agency. Owner accepts the fact that any other Owner of property may change, impair, obstruct or otherwise affect any view that such Owner may have enjoyed at the time of the purchase of his Lot.

(b) Garages. Garages must be fully enclosed, accommodate a minimum of two cars, and be equipped with an automatic garage door opener. Garage doors will be approved by the Architectural Control Committee. Carports or any temporary structure are not acceptable substitutes for garages.

(c) Exterior Building Wall Materials. With the exception of dormers, pop-outs, chimneys, or bays that have been approved by the Architectural Control Committee for alternative finishes, the exterior finish of all Living Units shall be composed of Masonry of a type, design and color as approved by the Architectural Control Committee. Any alternative finish shall consist of stucco, wood, or cementitious siding.

(d) Roof Soffit and Fascia. Roofing material shall be restricted to lifetime 50 year Certanteed Presidential or GAF Grand Canyon architectural grade fiberglass or other materials approved by the Architectural Control Committee. Fascia and soffit materials shall be fabricated of aluminum, copper, wood or cementitious material, and in colors approved by the Architectural Control Committee.

(e) Accessory Structures. Patio structures, trellises, sunshades, gazebos, sheds, and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures and materials approved for the Living Unit and shall be integral to the architecture of the house and are subject to prior approval of the Architectural Control Committee, and Cottonwood Heights City.

(g) Chimneys. Chimneys of approved exterior materials may not exceed the height required by appropriate governmental agencies. Exposed metal flues are not acceptable; all chimneys shall be covered with a hood to hide the flue system.

(h) Fences and Walls. Subject to the exceptions set forth below and except as to fences installed by Declarant, fencing may be installed by each Lot Owner on side yards and shall be constructed of a dark colored wrought iron, dark colored aluminum, or masonry, in accordance with the approval by the Architectural Control Committee.

- i. Fences shall not extend past the mid-point of any Living Unit and shall not exceed six (6) feet in height.

(i) Window Coverings. All window coverings whether interior or exterior are subject to prior approval of the Architectural Control Committee.

(j) Mechanical Equipment. Air conditioning units are not permitted on roofs or through windows. No swamp coolers shall be allowed.

(k) Gas and Electric Meters. Meter locations are to be designed into the architecture of the Living Unit.

(l) Exterior Lighting. All exterior lighting shall be subject to approval by the Architectural Control Committee and, subject to the following provisions:

i. All outside lights on all homes shall be of consistent finish and style.

ii. Street lighting and any replacements thereto shall remain as originally installed in terms of location and style.

iii. No landscape lighting shall be allowed prior to review and approval by the Architectural Review Committee.

(m) Landscape Site Preparation Guidelines. All demolition, clearing, grubbing, stripping of soil, excavation, and compaction and grading must be performed within the confines of a Lot with approval of the Architectural Control Committee.

(n) County and Other Approval. Approval of any improvements by the Architectural Control Committee does not waive the requirement for any other required public agency review or permit approval process. By approving plans, the Architectural Control Committee takes no responsibility for plan conformity to any other criteria other than the requirements of this Declaration and any Architectural Guidelines.

(o) Patio Covers. All awnings, pergolas, gazebos, trellises and patio covers are subject to prior approval of the Architectural Control Committee.

(p) Clothes Lines. No clothes lines shall be installed or maintained outside any Living Unit.

### 7.3. Landscaping and Common Areas Improvements.

(a) Any landscaping or yard improvements are subject to prior approval of the Architectural Control Committee. This restriction includes, but is not limited to, sports courts, pools, pet accommodations, hot tubs, fire pits and trees.

(b) Except for the construction of a Living Unit which is approved in accordance with the procedures set forth in Article VIII, each Owner shall be restricted from removing or modifying trees (4 inches in caliper or larger) which are located upon and naturally grow upon such Owner's Lot, unless the same shall be dead or dying and the removal has been approved by the Architectural Control Committee. Each such Owner shall be responsible at his own cost and expense to maintain and water all such trees, including any which Declarant may have installed upon such Lot during development of the Subdivision or which are installed by Owner (or predecessor) after approval by the Architectural Control Committee in accordance with the requirements of Article VIII. All trees, shrubs and other vegetation (excluding annuals) to be installed to the front of any Living Unit or the side yard of any Lot abutting a Private Street shall be approved by the Architectural Control Committee prior to installation. The addition to, modification of or removal of trees and other approved vegetation (including removal of the same because of death which is not thereafter replaced by substitute approved vegetation) without the prior approval of the Architectural Control Committee shall be deemed a violation of the requirements of Owner to maintain the same and the Architectural Control Committee shall have the right to require Owner to restore such area to its prior approved condition at the sole cost of Owner. In the event Owner fails to restore such area as required herein, the Association shall have the right to restore the same and the cost of such restoration together with administrative expenses equal to ten percent (10%) of such costs, shall be added to and become part of the Reimbursement Assessment to which such Lot is subject. The provisions of this Section relating

to the removal of trees and shrubs shall not be applicable or binding upon Declarant with respect to the initial clearing, grading and landscaping of the Property including the development of Common Areas and the installations of utilities serving the Subdivision.

(c) No portion of the Lot outside the Living Unit or approved Accessory Structures shall be used for storage of equipment or personal belongings.

7.4. Recreational Vehicles. No boats, recreational vehicles, trailers, large trucks and commercial vehicles belonging to Owners or other residents of the Property shall be parked within the Subdivision, except temporary parking not to exceed twenty-four (24) hours. No motor vehicles of any kind shall be repaired in the Subdivision. These restrictions shall not apply to emergency repairs to vehicles. Any motor vehicle must be kept in an enclosed garage.

7.5. Pets. No animals other than small household pets shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. Whenever a pet is allowed to leave a Living Unit, it shall be kept on a leash or in a carrier. No animals may be bred for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. The exterior structure for the care, housing or confinement of any such pets shall be maintained by Owner and approved by the Architectural Control Committee and in no case shall such structure be placed other than behind the Living Unit. Any Owner or other resident within the Development who violates this Section shall be subject to such penalties or fines as the Board by resolution or as regulation may provide. The term "small household pets" shall be limited to small to medium sized domesticated dogs, cats, common household birds, and fish. No dogs that exceed 55 pounds and 21 inches in height measured at the back hips may be kept in or on a Lot. No dog of any breed that is commonly known as an aggressive breed shall be allowed including but not limited to pit bulls or Rottweiler. Owners shall be responsible for the immediate removal of any animal excrements left by the pet of said Owner in the Common Areas. Any exceptions are subject to prior approval of the Architectural Control Committee.

7.6. Common Areas. The Common Areas of the Development shall be improved and used only for the following purposes:

- (a) Vehicular and pedestrian access to and from and movement within the Development, and space for temporary vehicular parking.
- (b) Recreational use by Owners and occupants of Living Units and their guests.
- (c) Beautification of the Development.
- (d) Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association, following consultation with the Architectural Control Committee.

7.7. Exterior Fires. No exterior fires, other than those contained within receptacles (such as fire pits), or manufactured and sold for grilling or barbecuing purposes, shall be allowed.

7.8. Insurance. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance covering the Living Unit and Lot. An Owner may be required to obtain flood insurance as a condition to obtaining any financing covering any improvements upon a Lot.



7.9. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated, or maintained in or adjacent to any Lot without prior approval of the Board.

7.10. Maintenance and Repair. No Living Unit, building, structure (including interiors thereof), or landscaping upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Architectural Control Committee, each such building, structure, or landscaping at all times shall be kept in good condition and as appropriate, adequately painted or otherwise finished by its Owner. Such obligation shall extend, but shall not be limited to, the painting, repair, replacement and care of roofs, gutters, down spouts, and exterior building surfaces.

7.11. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the employment of occupants of other Living Units or Lots. Without any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or in Living Units. Usage of any outdoor sport courts or swimming pools shall not be allowed prior to 7:00 a.m. or after 10:00 p.m.

7.12. Antennas/Satellite Dishes. No Citizen Band, Ham, or other radio antennas shall be installed or maintained on any Lot or Living Unit. Television Antennas shall only be allowed in the attic area of a Living Unit. No large satellite dishes shall be installed or maintained on any Lot or Living Unit. Installation of any Antenna or Satellite Dish that is visible from the exterior of a Living Unit is subject to prior approval of the Architectural Control Committee.

7.13. Right of Entry. During reasonable hours, any member of the Architectural Control Committee or any member of the Board, or any officer or authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the improvements thereof, to ascertain whether or not the provisions of this Declaration and the Rules and Regulations of the Board or of the Association have been or are being complied with.

7.14. Signs. No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except:

- (a) Such signs as may be required by legal proceedings.
- (b) Construction identification signs, placed and maintained only during construction of a Living Unit, not exceeding four feet wide and four feet high, for each Living Unit.
- (c) A "For Sale" or "For Rent" sign, to the extent permitted by the Architectural Control Committee.

7.15. Trash Containers and Collection. Insofar as possible, all refuse containers shall be stored at the side of a Living Unit or in the garage except to make them available for collection and then only for the shortest time reasonably necessary to effect such collection.

7.16. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

- (a) Declarant, so long as it has any interest in any of the Property;
- (b) The Association; or

(c) An Owner.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorneys' fees. In no case shall this Declaration create any direct right of action by any Owner independent of the Association.

7.17. Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, as long as Declarant is the holder of any Class B stock, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by the Declarant, even though said activity is expressly restricted herein.

### **ARTICLE VIII** **ARCHITECTURAL CONTROL**

8.1. Architectural Control Committee. The Board shall appoint a three-member Committee (referred to herein as the "Architectural Control Committee"), the function of which shall be to insure that all improvements and landscaping within the property harmonize with existing surroundings and structures. The Architectural Control Committee need not be composed of Owners. If such an Architectural Control Committee is not appointed, the Board itself shall perform the duties required of the Architectural Control Committee.

8.2. Submission to Committee. No Living Unit, accessory building or structure or addition to a Living Unit and no landscape additions and changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of any court enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee. All such plans and specifications shall be consistent with Architectural Guidelines which shall be from time to time adopted by the Board.

8.3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Architectural Control Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Subdivision.

8.4. Approval Procedure. Any plans and specifications submitted to the Architectural Control Committee shall be submitted on a form provided by the Architectural Control Committee and in duplicate. A preliminary review of design drawings will be required with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association and the remaining set of plans will be returned to the property owner. All plans and specifications shall be approved or disapproved by the Architectural Control Committee in writing within thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

8.5. Architectural Review Fees. The following architectural review fees (made payable to the Association) are required with the submittal of plans and specifications: \$100.00 for architectural, landscaping, fencing, and lighting drawings.

8.6. Bond/Security Deposit. The Architectural Control Committee will require that an Owner post a bond, cash security deposit or irrevocable letter of credit in a form satisfactory to the Architectural Control Committee, in an amount not to exceed \$1,000.00, in favor of the Association, as a condition to approving any proposed work or improvement. No person shall commence any work or improvement until any and all such bonds, security deposits and letters of credit have been properly posted with the Architectural Control Committee. The deposit is intended to assure the proper clean-up of dirt and debris and the repair of any damage to the landscaping, streets or other property within the Subdivision, caused by Owner or his agents in the construction of improvements.

8.7. Address for Submittal. Plans and specifications for the construction and installation of any and all improvements within Newbury Grove PUD shall be submitted to the President of the Association or a member of the board or the person designated by Resolution of the Board and approved by the Architectural Control Committee (prior to submittal to any required governmental agency).

8.8. Construction. Construction of any improvements on any Lot is subject to prior approval of the Architectural Control Committee. Once the Lot is purchased, a home must be built on said Lot with construction commencing within three (3) months of original purchase and completion and occupancy within twelve (12) months of the original purchase, even if ownership of the Lot changes.

(a) Once begun, any improvements, construction, landscaping, or alterations approved by the Architectural Control Committee shall be diligently prosecuted to completion:

i. The exterior construction of all structures on any Lot shall be completed within a period of ten (10) months following the original purchase date of a Lot.

ii. If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall, subject to approval of the Board, be entitled to temporary use and occupancy of unimproved portions of the Common Areas in the vicinity of the activity.

(b) Owners and their builders shall clean up all trash and debris on the construction site at the end of each day. Trash and debris shall be contained in construction dumpster and kept off of the street. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Owners and builders are prohibited from dumping, burying or burning trash anywhere on the Lot.

(c) Each Owner and builder shall be responsible for providing adequate sanitary facilities for any construction personnel. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Architectural Control Committee.

(d) Construction crews shall not park on, or otherwise use, other lots or any open spaces. All construction vehicles and machinery shall be parked only in areas designated by the Architectural Control Committee.

8.9. Minimum Living Unit Size. Excluding garage and unfinished interior space, each Living Unit shall be not less than 1,925 square feet above ground in size (Excluding any interior space below ground). Two-Story Living Units will have a minimum "footprint" of not less than 1,600 square feet on the main floor (Excluding any interior space below ground).

8.10. Replacement after Loss of Living Unit. In the event of loss or destruction of any Living Unit, the replacement structure shall be generally consistent in style, size, and orientation as the original Living Unit.

8.11. Landscaping. All landscaping shall be completed prior to occupancy of the Living Unit, unless otherwise approved by the Architectural Control Committee.

8.12. Failure to Complete Construction or Landscaping. Failure of an Owner to complete the construction or landscaping as required in this Article shall result in damages to the Association and shall be grounds for assessing fines in the amount of \$500 per month, that the construction or landscaping remains incomplete.

8.13. Liability for Damages. The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII.

8.14. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

## **ARTICLE IX** **INSURANCE**

The Association shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Insurance premiums shall be paid by the Association as a common expense.

9.1 Property Insurance. Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "The Newbury Grove Owners Association for use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear".

9.2 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

9.3 Directors and Officers Insurance. A Directors' and Officers' liability policy or policies to protect the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project's documents, and breach of contract (if available). In the discretion of the Board, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

9.4 Other Insurance. The Association may also purchase other types of insurance for the Association in the discretion of the Board, including but not limited to, workers compensation, theft and embezzlement of Association funds, earthquake insurance, and flood insurance.

9.5 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Mortgagee.

9.6 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under the CGL insurance policies.

9.7 Additional Insurance Requirements. The following additional provisions shall apply with respect to insurance:

i. In addition to the insurance described above, the Association shall secure and all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

ii. All policies shall be written by a company holding rating of "AA" or better from Best's Insurance Reports.

iii. The Association shall have the authority to adjust losses.

iv. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

v. Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owner, and their respective trustees, officers, agents, employees, invitees, and tenants; that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by Owners.

9.8 Insurance by Lot Owners. Each Lot Owner shall be responsible for obtaining, at such Lot Owner's expense, insurance against his or her liability, and property insurance covering his or her Lot and Living Unit and other improvements.

**ARTICLE X**  
**RIGHTS OF FIRST MORTGAGEE**

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

10.1. Notice of Default. In the event an Owner neglects for a period of thirty (30) days or more to cure any failure on his part to perform his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's Lot that has requested, in writing, to receive this notice.

10.2. Abandonment, Termination, Etc. Unless all of the holders of first mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission, or otherwise:

(a) To abandon or terminate the Development or to abandon or terminate the arrangement which was established by the Declarant and the Plat;

(b) To partition or subdivide any Lot or the Common Areas;

(c) To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the Common Areas except for the creating of easements and similar purposes consistent with the intended use of the Common Areas; or

(d) To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

10.3. Notice of Substantial Damage or Destruction. If requested in writing by any mortgagee or secured party, the Association shall provide notice in writing in the event that there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction.

10.4. Condemnation of Eminent Domain Proceedings. The Association shall give written notice to all holders of any first mortgage lien or equivalent security interest of any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same.

10.5. Hazard Policy to Include Standard Mortgagee Clause. Each hazard policy of the insurance on the Lots or in favor of the Association on the Common Areas shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

10.6. Rights upon Foreclosure of Mortgage. The lien of the assessments provided herein shall be subordinate to the lien of any First Mortgage upon such Lot; and the holder of a first mortgage on a Lot who comes into possession of the Lot by virtue of foreclosure of such first Mortgage, or in lieu of foreclosure obtains possession by deed or assignment, or any

purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for an adjustment in the allocation of any assessment due to the inadequacy of past assessment amounts and which adjustment is charged equally to all Lots including the mortgaged Lot and is charged after the holder comes into possession of the mortgaged Lot.

10.7. Mortgagees' Rights Concerning Amendments. No amendment to this Declaration, the Bylaws, or the Articles of Incorporation, which materially and adversely impacts the security of the mortgagees, shall be accomplished or effective unless at least two-thirds (2/3) of the mortgagees (based on one vote for each Lot) of the individual Lots have given their prior written approval to such amendment.

10.8. Mortgagees' Rights to Inspect Association Records. The holders of first Mortgages shall have the right upon reasonable notice and during business hours to inspect and copy at their own expense all books and financial records of the Association.

## **ARTICLE XI** **DESTRUCTION OF IMPROVEMENTS**

11.1. Damage to Common Area. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Area, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained as required herein, for reconstruction or repair of the Common Area, shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Common Area shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy a Reimbursement Assessment for the deficiency and proceed with such restoration and repair.

11.2. Damage to Living Units. Except as otherwise provided in this Declaration, in the event of any destruction of any Living Unit or Living Units, it shall be the duty of the Owner(s) of the Living Unit or Living Units to restore and repair the same to its/their former condition, as promptly as practical, under the supervision of the Board. The proceeds of any insurance maintained as required herein, for reconstruction or repair of the Living Unit or Living Units, shall be made available and utilized for such purpose, unless otherwise provided herein. The Living Unit or Living Units shall be reconstructed or rebuilt substantially in accordance with original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than the estimated cost of restoration and repair, the Owner(s) of the Living Unit or Living Units shall be responsible for the deficiency, and the Board shall have the power to levy a Reimbursement Assessment to secure payment of the deficiency. In the event more than one Living Unit is damaged or destroyed, the available insurance proceeds shall be allocated according to the estimated costs of repair and restoration of each Living Unit.

11.3. Alternate Plans for Restoration and Repair. Notwithstanding the provisions of Paragraph 11.1 and 11.2, the Association shall have the right, by a vote of seventy-five percent (75%) of the voting power of the Association, to make alternate arrangements respecting the repair, restoration or demolition of the damaged portion of the Property.

The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocation of any necessary assessments. Any plan adopted pursuant to this subparagraph shall be adopted within sixty (60) days of the damage or destruction and shall be supported by the vote of any Owner whose Living Unit has been physically damaged, to the extent the proposed plan affects the reconstruction of such Living Unit. Any such alternate arrangements shall be subject to the approval of the Architectural Control Committee.

11.4. Appraisal of Damage. In the event the parties affected by damage or destruction to the Property cannot agree, within twenty (20) days of the date of the damage, on the estimated cost of repair or the allocations referred to in this Article, the Association shall appoint three (3) independent appraisers having at least five (5) years full-time appraisal experience in Salt Lake County, Utah, to appraise the damage and establish allocations among various damaged portions of the Property. Within twenty (20) days after the selection of the appraisers, a majority of the appraisers shall set the estimated damages and allocations. If a majority of the appraisers are unable to agree within the stipulated period of time, the average of the three (3) appraisals shall be utilized. If, however, the low appraisal and/or the high appraisal are/is more than fifteen percent (15%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be utilized. The cost of the appraisals required by this subparagraph shall be paid by the Association and reimbursed by the Owners through a Reimbursement Assessment.

11.5. Interior Damage. With the exception of any casualty or damage insured against by the Association pursuant to the provisions of this Declaration, restoration and repair of any damage to the interior of any individual Living Unit, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Living Unit so damaged. In the event of a determination to rebuild the Property after partial or total destruction as provided in this Article, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Control Committee as provided herein.

## **ARTICLE XII** **MISCELLANEOUS**

12.1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if emailed, personally delivered, or mailed, postage prepaid, to the person who appears as a member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing. Each Owner shall register an email address and mailing address with the Association. If a mailing address is not provided, the Lot's address of the Owner shall be used for notice purposes.

12.2. Amendment. Subject to the provisions of Article X of this Declaration, any amendment hereto shall require (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes, which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and so long as the Class B membership exists, (ii) the written consent of the Declarant, which consent shall rest in the unilateral discretion of Declarant. The Declarant alone may amend this Declaration prior to the closing of a sale of the first Lot. This Declaration may also be amended unilaterally at any time and from time to time by the Declarant if such Amendment is (i) necessary to correct typographical errors or inadvertent omissions; (ii) necessary to bring any provision hereof into compliance with any applicable



governmental statute, rule, regulation or judicial determination which shall be in conflict therewith; or (iii) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to his Declaration; provided however, that any such amendment shall not materially adversely affect the title to any Lot unless any such Owner shall consent thereto in writing.

(a) Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the President or Vice President of the Association, and by the Declarant if the Class B Membership then exists. In such instrument the President or Vice President of the Association shall certify that the vote required by this Section for amendment has occurred.

12.3. Consent in Lieu of Voting. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership considered. The following additional provisions shall govern any application of this Section:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

12.4. Lease Provision. Any Owner may lease his Lot and such buildings as are situated thereon; provided, however, that any lease agreement between a Lot Owner and a lessee must be for single-family occupancy, in writing, and must provide, inter alia, that:

(a) The terms of the lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the Bylaws; and any rules and regulations; and that

(b) any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

12.5. Assignability/Transfer of Declarant's Rights. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned. Declarant acknowledges that its rights under this Declaration have been assigned for collateral purposes to Central Bank of Utah/Academy Mortgage (referred to herein as "Lender"). However, in the event that the original Declarant's rights, duties and obligations herein are assigned, foreclosed, sold, or otherwise transferred in any way, any successor in interest shall be bound to proceed with the development of the Subdivision in a manner that is consistent and harmonious with the architectural styles, building size, and building orientation presently planned and contemplated by Declarant.

12.6. Dissolution. Subject to the restrictions set forth in Article X of this Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of three-fourths (3/4) of the votes of each class membership. Upon dissolution of the Association all of its assets (including the Common Areas) may be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in the Bylaws, the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a non-profit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters and sidewalks on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth herein.

12.7. Declarant's Covenant to Construct Common Areas. Declarant hereby covenants to construct and complete, all Common Areas improvements and amenities indicated on the Plat within four (4) years of the filing of this Declaration in the office of the County Recorder of Salt Lake County, Utah.

12.8. Enforcement by City. If the Association fails to maintain the Common Areas, the common access roadways, along with the curbs, gutters and sidewalk, in good order and condition, Cottonwood Heights shall have the right, but not the obligation, upon giving the Association thirty (30) days' notice in writing, to step in and do the necessary maintenance and management with the same right to lien the Lots and collect the costs thereof against the Owners as the Association has under this Declaration.

12.9. Severability. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

12.10. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender.

12.11. Property Part of Development. The Property shall comprise the Newbury Grove PUD.

12.12. Covenants to Run With Land. This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Declarant, and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

12.13. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

12.14. Disputes with Declarant. No right or cause of action, as against Declarant, shall arise by virtue of this Declaration to the benefit of any individual Owner or group of Owners, whether past or present, or the Association.

(a) Any dispute which shall arise between the Declarant and any individual Owner, group of Owners, or the Association and relating to the Property shall be settled by arbitration before and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be final and may be entered in any court having jurisdiction thereof.

(b) Any dispute which shall arise between the Declarant and present or past individual Owners or groups of Owners of the Association or the Association, shall be subject to the following limitations:

i. If the dispute relates to defects or conditions of any parcel of property and/or the improvements thereon, Declarant reserves the right at its sole option to buy back the subject property and improvements thereon or any portion thereof in full settlement and release of all claims or causes of action arising from defects or conditions of the property or portion of property for an amount equal to the amount of the purchase price plus the cost of any improvements made subsequent to purchase for which clear proof of the costs can be provided.

ii. No dispute, claim or controversy shall be formally commenced, filed or initiated prior to 60 days from the date that Declarant has been served a written notice of claim which clearly enunciates the claimant(s) name(s), address(es), and phone number(s), the circumstances or issues being complained of; the relief sought, and the basis for concluding that Declarant is responsible therefor. In the event that Declarant responds by serving upon the claimant(s) a written proposal for curing the circumstances or issues being complained of within the 60 days, then the time period prior to which any dispute, claim or controversy shall be formally commenced, filed or initiated shall be increased an additional 30 days within which the claimant(s) may respond. In the event that Declarant fails to respond within 60 days or the claimant(s) fail(s) to respond within 30 days as described above, the dispute, claim or controversy may be formally commenced.

iii. No dispute shall be commenced by the Association against the Declarant, the builders of the improvements on the Property, or the Developer without vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

iv. None of the foregoing provisions of this Section 12.14 may be subsequently amended without vote or agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and written consent by the Declarant.

#### 12.15. Lender's Agreement of Subordination

#### 12.16. Other Subordination.

EXECUTED the day and year first above written.

SHAW BUILDING GROUP, INC.

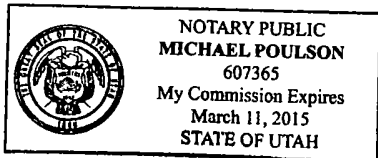
By: Paul L. Shaw

Paul L. Shaw

President

STATE OF UTAH}} ss.  
COUNTY OF SALT LAKE}

On this 22 day of December, 2014, personally appeared before me Paul Shaw, who being by me duly sworn, did say that he is the President of Shaw Building Group, Inc., and that said instrument was executed on behalf of said Shaw Building Group, Inc.



[Signature]  
Notary Public

Residing at: SLC, UT

My Commission Expires: 3/11/15

EXHIBIT 'A'  
LEGAL DESCRIPTION

BEGINNING AT A POINT WHICH IS SOUTH 89°41'22" EAST 1124.10 FEET ALONG THE QUARTER SECTION LINE FROM THE CENTER OF SECTION 34, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING ON THE EAST LINE EXTENDED OF ROYAL OAK ESTATES P.U.D., ON FILE WITH THE OFFICE OF THE SALT LAKE COUNTY RECORDER, AND RUNNING THENCE NORTH 00°32'52" WEST ALONG THE EAST LINE EXTENDED OF SAID ROYAL OAK ESTATES P.U.D. A DISTANCE OF 773.51 FEET TO THE CENTERLINE OF COTTONWOOD CREEK; THENCE ALONG SAID CENTERLINE THE FOLLOWING FOUR (4) COURSES, 1) SOUTH 38°25'48" EAST 84.47 FEET, 2) SOUTH 40°17'55" EAST 102.75 FEET, 3) SOUTH 73°16'48" EAST 65.22 FEET, 4) SOUTH 83°08'00" EAST 20.21 FEET TO THE WEST LINE OF OAK CREEK ESTATES NO. 1 SUBDIVISION, ON FILE WITH THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE SOUTH 00°00'40" EAST ALONG SAID WEST LINE EXTENDED A DISTANCE OF 608.81 FEET TO THE QUARTER SECTION LINE; THENCE NORTH 89°41'22" WEST ALONG THE QUARTER SECTION LINE A DISTANCE OF 194.22 FEET TO THE POINT OF BEGINNING.

CONTAINS        3.018 ACRES; 13 LOTS; 3 OPEN SPACES, 1 DEDICATION

**EXHIBIT 'B'**  
**NEWBURY GROVE OWNERS ASSOCIATION BYLAWS**

**BYLAWS OF THE  
NEWBURY GROVE OWNERS ASSOCIATION, INC.  
A Nonprofit Corporation of the State of Utah**

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act and the Utah Community Association Act, the Board of Directors of the **NEWBURY GROVE OWNERS ASSOCIATION, INC.**, a Utah nonprofit corporation (the "Association"), hereby adopts the following Bylaws:

**RECITALS**

1. The capitalized terms used in these Bylaws bear the same meaning as used in the Declaration of Covenants, Conditions and Restrictions of Newbury Grove PUD (a Planned Unit Development) ("Declaration").
2. These Bylaws are adopted in order to complement the Declaration and to eliminate ambiguity, to further define the rights of the Association and the Lot Owners, to provide for the ability to more easily govern and operate the Association, and to further the Association's efforts to safely, efficiently, and economically provide the high quality living environment desired at the Project.
3. All present and future Lot Owners, tenants, guests, or any other persons who enter the Project are subject to these Bylaws. The mere acquisition or rental of any of the Lots or parts thereof, or the mere act of occupancy or use of any said Lots or part thereof or the Common Areas will signify that these Bylaws are accepted, ratified, and will be complied with by said persons.

**ARTICLE I**

**NAME AND PRINCIPAL OFFICE**

- 1.1 Name. The name of the Association is as follows:

**NEWBURY GROVE OWNERS ASSOCIATION, INC.**

- 1.2 Offices. The office of the Association will be at **1768 Creek Road Sandy, Utah 84093**. This address may be changed by the Board through the annual registry with the Department of Commerce, Division of Corporations.

**ARTICLE II**

**MEMBERS AND MEETINGS**

- 2.1 Membership. The Members of the Association shall be Lot Owners in the NEWBURY GROVE Planned Unit Development. Membership is deemed an appurtenance to each Lot, and shall pass automatically to the Owner of each Lot upon conveyance of title.

- 2.2 Annual Meetings. The annual meeting of the Members shall be held each year at the time and place designated by the Board. The purpose of the annual meeting is to elect Board members and to transact such other business as may become before the meeting. If the election of the Board members cannot be held at the annual meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a special meeting of the Members or at the next annual meeting of the Members. Board members shall continue to serve until their successors have been duly elected or appointed.

2.3 Special Meetings. Special meetings of the Members may be called by a majority of the Board, by the Chairman of the Board, or by the Members of the Association representing a majority of the total voting power within the Association. Any written request for a special meeting presented by the Members shall be delivered to the Chairman of the Association and shall include the original signature of each Member affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct the special meeting within sixty (60) days of receipt of the request.

2.4 Place of Meetings. Meetings will be held within the State of Utah, at a location chosen by the Board.

2.5 Notice of Meeting. The Board shall cause written or printed notice of the date, time, and place (and in the case of a special meeting, the purpose or purposes) for all meetings of the Members. Such written or printed notice shall be delivered to each Member of record entitled to vote at such meeting not more than thirty (30) nor less than ten (10) days prior to the meetings. Such notice may be hand-delivered, mailed, or emailed. Emailed or mailed notice is deemed delivered when sent electronically or it is deposited in the United States Mail, postage prepaid, addressed to the Member at the last known address, respectively. Each Member shall register his or her mailing address and email address with the Association, and it shall be the obligation of the Member to provide notice of any change of mailing address or email address to the Association. If no address is registered, the Association may mail that Member's notice to the Secretary of the Association as the agent for the Member. Only one notice will be mailed for each Lot. If there are multiple Owners of a Lot, the Owners must designate one of them to receive the notice of the meeting on their behalf.

2.6 Members of Record. Upon purchasing a Lot in NEWBURY GROVE, each Owner shall promptly furnish the Association with a copy of the deed or other instrument under which he or she acquired title to the Lot. For purposes of determining the persons entitled to vote and all other matters before a meeting of the Members, the Association may designate a record date, not more than thirty (30) days nor less than ten (10) days prior to the meeting date to determine the Members entitled to notice and to vote at the meeting. If no record date has been fixed, the record date is deemed to be the date on which notice of the meeting was mailed to the Members. The persons appearing as Members as of the record date are deemed entitled to notice and to vote at the meeting. Persons who become Members subsequent to the record date, or whose ownership is not registered with the Association until subsequent to the record date shall not be entitled to notice, shall not be counted in comprising a majority of the Members, and shall not be entitled to vote at the meeting. This shall not preclude a person who acquires his or her Membership subsequent to the record date from voting the interest of his predecessor under a written proxy.

2.7 Qualified Voters. A Member shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she is in full compliance with all of the terms, covenants, conditions of the Declaration, or these Bylaws, and shall have fully paid his or her share of any assessments (together with any interest and/or late fees) prior to the commencement of the meeting.

2.8 Quorum. Except as may otherwise be provided herein or by statute, more than fifty-five percent (55%) of the Owners present or represented at any meeting shall constitute a quorum for the adoption of decisions. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no



earlier than 48 hours, and no later than thirty (30) days after the time set for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. A quorum for the transaction of business at the rescheduled meeting shall be twenty-five percent (25%) of the Owners present or represented at the original meeting.

2.8 Proxies. At each meeting of the Members, each Member entitled to cast a vote shall be entitled to vote in person or by written proxy. All proxies must be in writing, signed by the Member as shown on the records of the Association. When a Membership is jointly held, the proxy must be signed by all of the joint owners of the Membership. Proxies must be presented to the Secretary of the Meeting at the beginning of the meeting. The Secretary of the Meeting will make an entry of proxies in the minutes of the meeting.

2.9 Voting Rights. Each Owner shall be entitled to one (1) vote for each Lot in which such Owner holds an ownership interest. When more than one (1) Owner owns an interest in a Lot, any Owner of such Lot may exercise the vote for such Lot on behalf of all co-Owners of the Lot. In the event of two (2) conflicting votes by co-Owners of one (1) Lot, no vote shall be counted for that Lot. In no event shall fractional votes be exercised in respect to any Lot.

2.10 Simple Majority. Unless a greater vote is required by Utah law, the recorded Declaration, these Bylaws, or the Articles of Incorporation, any matter placed before the Members for a vote shall pass if there is an affirmative vote of the majority of the votes entitled to be cast by the Members. Election of Directors and other matters may be voted by secret ballot or by show of hands or such other means as the officer conducting the meeting shall determine.

2.11 Waiver of Irregularities. Any inaccuracies, irregularities, or errors in any call for a meeting or notice of meeting, inaccuracies or irregularities in the determination of a the presence of a majority of the votes entitled to be cast or acceptance of proxies are deemed waived unless there is an objection stated at the meeting prior to the vote being taken.

2.12 Informal Action. Unless otherwise provided under these Bylaws or the Declaration, any act which is required to be taken or approved at a meeting may be taken or approved without a formal meeting if Members holding a majority of the total voting power within the Association consent to the action in writing prior to the action being taken. The Members may hold meetings for which formal notice was not given if the Members waive notice prior to the meeting.

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

3.1 General Powers. The Board shall have authority to manage and control the property and affairs of the Association. The Board may exercise all powers conferred upon them by law, by the Articles of Incorporation, by the Declaration or by these Bylaws, provided however, that those powers which are specifically reserved to the Members by law, the Articles of Incorporation or the Declaration shall be exercised only by the Members. The Board may delegate to the Officers or other appropriate persons such of its powers as are appropriately delegated.

3.2 Composition of Board. The Board shall be composed of no less than three (3) and no more than five (5) members. Declarant alone shall have the right to select the initial Board, none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until the expiration of three (3) years after the first conveyance of title to any Lot or until Declarant voluntarily waives such right, in whole or in part, in writing and requests the Association to elect members of the Board in accordance with the Association's Bylaws, whichever event shall first occur. At or after the first annual meeting of the Association, the members of the Board

shall be elected by the Owners. The term of office of Board members shall not exceed three (3) years with one member serving for three (3) years, one member serving for two (2) years and one member for one (1) year. At each annual meeting the one year term will be voted in by the members of the Association. The Board members shall hold office until their respective successors have been elected and hold their first meeting following the annual meeting of the Association. With the exception of those Board members selected by Declarant, only Owners, spouses of Owners, or a director, officer, manager, member, or beneficiary of an entity that owns a Lot shall be eligible for Board membership.

3.3 Board Meetings. The Board shall have at least two meeting per year. The Board may meet as often as they see fit, and as required by law or the Articles for purposes of approving annual reports, tax returns, and similar matters. Special meetings may be called by the Chairman of the Board or by a majority of the Board by giving notice to the other Board members. Notice of meetings of the Board will be given in writing, by email or by telephone not more than thirty (30) days, and not less than five (5) days prior to the date of the meeting.

3.4 Quorum. A quorum at a meeting of the Board will consist of a simple majority of the Board. Members of the Board may be counted as present if they are participating in the meeting by telephone. No proxies may be given among members of the Board. Actions of the Board may only be taken by formal action of the Board, and no individual Board member shall have the authority to act on behalf of the Association in his or her capacity as a Board member.

3.5 Deadlock. In the event of a deadlock on the Board, the Board shall immediately call for a special meeting of the Members and, at the direction of the Chairman of the Board, either call for the election of a new Board, or submit the matter to the Members for determination.

3.6 Compensation. The Board shall serve without compensation, provided that their reasonable out of pocket expenses for Association business, including the reasonable costs of attending Board meetings, may be reimbursed by the Association.

3.7 Resignation or Removal. Any Director may resign at any time. Any Director may be removed prior to the end of his or her term of office by an affirmative vote of at least 60% of the Association's voting interests.

3.8 Vacancies. Vacancies on the Board will be filled by appointment of a successor by the remainder of the Board, provided that any such appointee will be confirmed or rejected at the next regular meeting of the Members. Any such Director is to fill the balance of the vacant term which he or she has filled, and will stand for election at the expiration of that term.

3.9 Informal Action by Directors. The Directors may take any action they could take in a formal meeting without a formal meeting, provided that the action is authorized in advance in writing signed by a majority of the Board, and further provided that all of the Directors must have been given an opportunity to approve or reject the action. The Directors may waive notice of meetings by signing written waivers at the time of the meeting. Minutes of all Board meetings will be kept, and when a meeting is held without prior notice, the minutes will reflect the written waiver of notice.

## ARTICLE IV OFFICERS

4.1 Number. The Officers of the Association shall consist of a Chairman of the Board, Vice Chair, and Secretary/Treasurer. The Board also may appoint any other officers as it deems appropriate. For purposes of this document the officers will be formally outlined however it is within the rights of the Board to name the officer positions as they see fit.

4.2 Appointment/Tenure. The Officers shall be appointed by the Board at the Board's annual meeting held immediately following the first annual meeting and each subsequent annual meeting of the association. Each officer shall hold office until his successor shall have been duly appointed, or until his earlier death, resignation or removal. All Officers will serve at the pleasure of the Board and may be removed by a majority vote of the Board in a meeting called for that purpose. The officers shall serve for three (3) years.

4.3 Duties of the Chairman of the Board. The Chairman of the Board shall preside at meetings of the Board and at meetings of Members. He/She may sign, on behalf of the Association, all legal documents approved by the Board, including deeds and mortgages and other contracts and shall have such other powers and responsibilities as assigned to him/her in the Declaration. The Chairman of the Board shall supervise and be primarily responsible for the day to day operation of the Association's affairs, including the firing and termination of employees and subordinates. In the event that the Chairman of the Board resigns or is removed from his/her office, he/she will still retain his/her position as a Director until such time as he/she is removed by the Members or resigns as a Director.

4.4 Duties of the Vice Chair. The Vice Chair will perform the duties of the Chairman if the Chairman is not available, and shall perform such other duties as designated by the Board.

4.5 Duties of the Secretary/Treasurer. The Secretary/Treasurer is responsible to keep accurate records of the Members of the Association and the transfer of their interests to others, to keep minutes at the meetings of the Members and the Directors, and cause notice of any meetings to be issued as called for in these Bylaws, to file annual reports, keep the accounts of the Association and to perform all other assignments designated to the Secretary/Treasurer by the Board.

4.6 Compensation. The Officers will serve without compensation, provided that their reasonable out of pocket expenses in performing their duties for the Association will be reimbursed. The Board may fix such other compensation as it finds appropriate given the responsibility of the Officers.

4.7 Subordinate Officers. The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. Subordinate officers need not be Board members of the Association.

4.8 Resignation. Any officer may resign at any time by delivering a written resignation to any member of the Board or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery.

## **ARTICLE V COMMITTEES**

5.1 Designation of Committees. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall include at least one (1) Board member. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any committee at any time.

5.2 Proceeding of Committees. Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

5.3 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority granted by the Board.

5.4 Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any member of any committee designated by the Board previously.

5.5 Vacancies. If any vacancy shall occur in any committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

## **ARTICLE VI RECORDS AND AUDITS**

6.1 General Records. The Association shall keep detailed records of the actions of the Board and the Manager, minutes of the meetings of the Board and minutes of the meetings of the Association. The Association shall maintain copies of the Declaration, Bylaws, other rules, regulations, or resolutions concerning the Property, amendments or supplements to such documents, and the books, records, financial statements and current operating budget of the Association. The Association shall also maintain a list of Owners entitled to vote at meetings of the Association and a list of all Mortgagees of Lots entitled to use and who have given the Association written notice of such Mortgagee's right and intention to vote.

6.2 Financial Records. The Board or its designee shall keep financial records sufficient for proper accounting purposes.

6.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot. Such account shall designate the name and address of the Member(s), the amount of each assessment against such Members, the dates and amounts in which the assessment comes due, the amounts paid upon the account and the balance due on the assessments.

6.4 Reports and Audits. An annual financial statement consisting of a balance sheet and income and expense statement for the preceding fiscal year shall be rendered by the Board to all Members. Upon request of sixty-seven percent (67%) of the Members, the Members may, at the expense of the Association, obtain an audit or review of the books and records pertaining to the Association and furnish copies thereof to the Members. Any Member at his/her own expense may obtain an audit or review of the books and records pertaining to the Association with a certified and licensed public accountant.

6.5 Notice of Sale, Mortgage, Rental, or Lease. Immediately upon the sale of any Lot, the Member shall promptly inform the Association's Secretary or Manager of the name and address of said purchaser.

6.6 Availability of Records. The Association shall make available to Members for inspection, current copies of the Declaration, Bylaws, other rules, regulations, or resolutions concerning the Property, amendments or supplements to such documents, and the books, records, financial statements and current operating budget of the Association. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The Association may charge a reasonable fee for furnishing copies of such documents, information, or records.

6.7 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 subsections a. and b. of this Section, or current or pending litigation.
- d. Documents concerning existing or potential litigation, mediation, arbitration, or administrative proceedings.
- e. Disclosure of information in violation of law.
- f. Documents concerning existing or potential matters involving federal, state or local administrative or other formal proceedings before a governmental tribunal for enforcement of the Declaration, Bylaws or rules and regulations.
- g. 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.

- h. Documents, correspondence, or other matters considered by the Board in executive session.
- i. Files of individual Owners, other than those of a requesting Member or requesting Eligible Mortgagee of an individual Member, including any individual Member's file kept by or on behalf of the Association.

**A R T I C L E   V I I**  
**I N D E M N I F I C A T I O N**

7.1 Indemnification against Third Party Actions. The Association shall defend and indemnify the Officers and Directors against all actions, claims, and suits brought by third parties against them individually which arise from the exercise of their obligations and duties as Officers and Directors to the fullest extent provided under Utah law. This shall include all civil, administrative, criminal, or investigative actions whether brought by an individual or a governmental agency. The indemnification shall extend to the payment of reasonable attorneys fees incurred in the defense of such action, including fees for independent counsel, and the payment of any fine, settlement, or judgment.

7.2 Indemnification against Member Actions. The Association shall defend and indemnify the Officers and Directors against all actions, claims, and suits brought by Members of the Association against them individually which arise from the exercise of their obligations and duties as Officers and Directors to the fullest extent provided under Utah law. This shall include all civil, administrative, criminal, or investigative actions whether brought by an individual or a governmental agency. The indemnification shall extend to the payment of reasonable attorneys fees incurred in the defense of such action, including fees for independent counsel, and the payment of any fine, settlement, or judgment.

7.3 Request for Indemnification. When any Officer or Director of the Association receives notice of any action referred to above, he or she must give notice to the Chairman of the Board and to the Board, stating the nature of the claim, the claimant, and providing all pertinent information about the claim. The Board, in the case of an action against an officer or employee, or against a single Director, may vote to indemnify the officer, employee or Director. In the event that the action is against the Board as a whole, or names more than a single Director individually, and the claim is entirely covered by and within the policy limits of the Association's insurance coverage, the Board may vote to indemnify itself and the individuals named. In the event that the claim exceeds the limits of any insurance coverage, or is not covered, the Board may not agree to indemnify itself without presenting the matter to the Association for a vote at a special meeting called for that purpose.

7.4 Liability Insurance. The Board may cause the Association to purchase liability insurance in a reasonable amount necessary to cover general liability of the Association and to specifically cover the indemnity obligations described above.

**A R T I C L E   V I I I**  
**W a t e r   D r a i n a g e   S y s t e m**

8.1 Water Drainage System. All components of the storm water drainage system shall be owned, operated and maintained by the Newbury Grove HOA. Those components to include: The Storm Tech CDS water quality treatment separator for oil and water; the permeable brick pavers for the street and sidewalk; the catch basins and associated piping; the water detention basin (pond) with emergency overflow structure; and pipe discharge into Little Cottonwood Creek with associated riprap.

**ARTICLE IX**  
**(Intentionally Left Blank**  
**and Reserved For Future Use)**

**ARTICLE X**  
**(Intentionally Left Blank**  
**and Reserved For Future Use)**

**ARTICLE XI**  
**MISCELLANEOUS**

8.01 Amendment. These Bylaws may be amended by the Members of the Association from time to time as the Members see fit by a fifty-five percent (55%) majority vote at a meeting called for that purpose.

8.02 Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

8.03 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 in these Bylaws, 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 are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

8.04 Conflicts. These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

Adopted this 22 day of DECEMBER, 2014.

By:

  
Name: Paul L Shaw

Title: Chair of the Board

Attest:

By:

  
Name: Laurie Shaw

Title: Secretary

**EXHIBIT 'C'**  
**LIVING UNIT ORIENTATION - % of Ownership**

<b>LOT</b>	<b>ADDRESS: Newbury Grove Lane</b>	<b>% Of Ownership</b>
1	8191 S	7.692
2	8177 S	7.692
3	8165 S	7.692
4	8153 S	7.692
5	8139 S	7.692
6	8127 S	7.692
7	8118 S	7.692
8	8132 S	7.692
9	8142 S	7.692
10	8154 S	7.692
11	8166 S	7.692
12	8178 S	7.692
13	8192 S	7.692



EXHIBIT 'D'  
NEWBURY GROVE PUD PLAT

Recorded December 19, 2014  
Entry # 11964869 Book 10283 Page 3025

