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Chief Deputy  
Laile H. Lomax

THE UNDERLYING DOCUMENT ATTACHED HERETO IS AN ORIGINAL DOCUMENT SUBMITTED FOR RECORDING IN THE OFFICE OF THE COUNTY RECORDER OF DAVIS COUNTY, UTAH. THE DOCUMENT HAS INSUFFICIENT MARGIN SPACE FOR THE REQUIRED RECORDING ENDORSMENT STAMP. THIS PAGE BECOMES THE FRONT PAGE OF THE DOCUMENT FOR RECORDING PURPOSES.

THE DOCUMENT HEREIN RECORDED IS A Declaration of Covenants  
(Document Type)

Kayscreek Estates Phases One through Phase five  
Tax Serial Number(s)

11-405- 0001 thru 0010  
 11-423- 0201 thru 0207  
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# KAYSCREEK ESTATES HOA CC&R's

*The amended and restated declaration of covenants, conditions, and restrictions for Kayscreek Estates Phases 1 through 5, a Planned Unit Development*

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## 2 DECLARATION

This Declaration is made on the date executed below by the Board of Trustees after being approved by at least

55% of Lot Owners.

### RECITALS

A. The Declaration of Covenants, Conditions, and Restrictions for Kayscreek Estates, Phase One, a P.R.U.D., was recorded July 22, 1997, as Entry No. 1336169, in the Davis County Recorder's Office. This Declaration is binding against all Lots described therein;

B. The Declaration of Covenants, Conditions, and Restrictions for Kayscreek Estates, Phase Two, a P.R.U.D., was recorded June 10, 1998, as Entry No. 1411781, in the Davis County Recorder's Office. This Declaration is binding against all Lots described therein;

C. The Declaration of Covenants, Conditions, and Restrictions for Kayscreek Estates, Phase Three, a P.R.U.D., was recorded June 10, 1998, as Entry No. 1411783, in the Davis County Recorder's Office. This Declaration is binding against all Lots described therein;

D. The Declaration of Covenants, Conditions, and Restrictions for Kayscreek Estates, Phase Four, a P.R.U.D., was recorded December 2, 1998, as Entry No. 1465942, in the Davis County Recorder's Office. This Declaration is binding against all Lots described therein;

E. The Declaration of Covenants, Conditions, and Restrictions for Kayscreek Estates, Phase Five, a P.R.U.D., was recorded April 20, 1999, as Entry No. 1506102, in the Davis County Recorder's Office. This Declaration is binding against all Lots described therein;

F. The Declarations for the phases one through five ("Original Declarations") created the Kayscreek Estates Homeowners Association;

G. This Declaration replaces the Original Declarations and all their amendments and supplements in their entirety;

H. This Declaration shall be binding against all phases within the Project as described in Exhibit "A;"

I. All Owners, guests, invitees, agents, and residents shall abide by the provisions of this Declaration;

J. Under the Original Declarations, declarant rights have expired and there is no additional land;

K. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit "A" and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create servient tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land;

L. Under the Original Declarations Article IX, Section 9.5, the Board of Trustees certifies that more than 55% of the Owners have approved this Declaration;

NOW THEREFORE, for the benefit of the Project and the Owners thereof, the following covenants, conditions, restrictions, and easements shall apply to and be binding on the Project:

### 3 DEFINITIONS

Capitalized terms used in the Governing Documents (including recitals) have the following meanings:



### **3.1 Architectural Committee**

Architectural Committee means the committee created under Declaration Article VI.

### **3.2 Articles**

Articles mean the Articles of Incorporation for the Kayscreek Estates Homeowners Association.

### **3.3 Association**

Association means Kayscreek Estates Homeowners Association. It is intended that the Association be a Utah non-profit corporation.

### **3.4 Board**

Board means the Board of Trustees. The Board governs the property, business, and affairs of the Association.

### **3.5 Bylaws**

Bylaws mean the Bylaws of the Association, as amended or restated from time to time. The Bylaws are attached to this document.

### **3.6 City**

City means Layton City.

### **3.7 Common Areas**

Common Areas mean those areas reserved for use as parks, playgrounds, Kays Creek right of way, pathway and trail way along Kays Creek, pedestrian access corridors, agricultural preserve, and open space areas. The Common Areas specifically include the following parcels:

Phase 1:

Parcels A, B, C, D, E, F, G, H, and J subject to the restrictions set forth herein;

Phase 3:

Parcels A, B, C, and D subject to the restrictions set forth herein;

Phase 4:

Parcels A and B subject to the restrictions set forth herein; and

Phase 5:

Parcels A, B, and C subject the restrictions set forth herein.

### **3.8 Community Associations Act**

Community Associations Act means Utah Code Ann. §§ 57-8a-101 *et seq.*, as amended or replaced from time to time.

### **3.9 Declaration**

Declaration means this document, including all covenants, conditions and restrictions as contained herein, and as amended, supplemented, or restated from time to time.

### **3.10 Dwelling**

Dwelling means the single family residence built on any Lot, including an attached garage.

### **3.11 Family**

Family has the same definition as given to it by the Layton City zoning code as amended from time to time.

### **3.12 Fines**

Fines are a penalty for violation(s) of the Governing Documents that take the form of Individual Assessments.

### **3.13 Governing Documents**

Governing Documents mean the Declaration, Bylaws, Articles of Incorporation, Plat, and Rules and Regulations.

### **3.14 Improvement**

Improvement means all structures and appurtenances of every type and kind, including but not limited to buildings, Dwellings, out building, parking area, driveway, tennis court, hard surfaced area in excess of 100 square feet, walls, curbs, garages, storage buildings, retaining walls, fences, and pools.

### **3.15 Lot**

Lot shall mean any numbered building Lot shown on the Plat.

### **3.16 Majority**

Majority means 55%.

### **3.17 Member**

Member means an Owner.

### **3.18 Nonprofit Act**

Nonprofit Act means Utah Code §§ 16-6a-101 *et seq.*, as amended or replaced from time to time.

### **3.19 Owner**

Owner means the Person having fee simple title to a Lot or a cognizable interest in the land of the law. If a Lot is subject to an executed purchase contract, the contract purchaser shall be considered the Owner. However, the seller and buyer may otherwise agree but must inform the Board in writing of the alternative arrangement.

### **3.20 Person**

Person means an individual, corporation, partnership, association, trustee, or other legal entity.

### **3.21 Plat**

Plat means the plat maps on file with the Davis County Recorder.

### **3.22 Project**

Project means Kayscreek Estates, phases 1 through 5, as shown on the Plat. The project includes the land, buildings, Improvements and structures, easements, rights, appurtenances, and articles of personal property intended for use in connection therewith. Exhibit "A" contains the legal description for the Project.

### **3.23 Resident**

Resident means any Person living or staying at the Project. Residents include without limitation: Owners, tenants, family members of Owners and tenants, and guests staying more than a week.

### **3.24 Rules and Regulations**

Rules and Regulations mean the recorded Rules and Regulations for the purpose of the administration, control, and regulation of the Association.

### **3.25 Trustee**

Trustee means a member of the Board.

## **4 HOMEOWNERS ASSOCIATION**

### **4.1 Association**

The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the State of Utah.

The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated Association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated Association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated Association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated Association.

Failure of the Association to maintain its corporate status will not result in dissolution of the Association. The Association may renew its corporate status, reinstate its corporate status, or incorporate without Owner approval.

The affairs of the Association shall be governed by a Board as provided in the Bylaws.

The Association shall be comprised of all Owners within the Project, and is established to perform the following functions and exercise the following rights and powers for the benefit of the Owners and enforcement of these covenants. Membership in the Association is deemed an appurtenance to the Lot, and is transferrable only in conjunction with the transfer of the title to the Lot. The Association shall have and exercise the powers granted in the Governing Documents, by law, or required to operate the Association.

## **5 COMPLIANCE AND ENFORCEMENT**

### **5.1 Compliance**

Each Owner or Resident of a Lot shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for a legal action maintainable by the Association or an Owner.

### **5.2 Remedies**

Violation of any provisions of the Governing Documents, or of any decision of the Association made pursuant to such documents, shall give the Board acting on behalf of the Association, the right, in addition to any other rights set forth in the Governing Documents, or under law, to do, any or all of the following after giving notice and an opportunity to be heard:

- To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;
- To levy reasonable Fines pursuant to a schedule of Fines adopted by a majority vote of homeowners at the annual meeting;
- To bring suit or action against an Owner on behalf of the Association and other Owners to enforce the Governing Documents. In any such action, the prevailing party shall be entitled to all costs and expenses of litigation including but not limited to reasonable attorney's fees.

### **5.3 Action by Owners**

Subject to any limitation imposed under the Governing Documents or Utah law, an Owner may bring an action against any Owner(s) or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

#### **5.4 Injunctive Relief**

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

#### **5.5 Hearing**

Owners are entitled to notice and a hearing prior to the implementation of any remedy. When a hearing is requested or required, the hearing shall be conducted in accordance with the Bylaws of the Association.

#### **5.6 Variances**

Variances to the provisions contained in this Declaration may be granted when strict application would create an unforeseen or unreasonable hardship to the Owner of a Lot, however, any hardship cannot be self-created, solely economic in nature, or generally present with respect to a majority of Lots. The Board cannot grant a variance that has the effect of modifying zoning or building code regulations. The burden of obtaining a variance is entirely on the applicant. The granting of a Variance is within the sound discretion of the board.

### **6 ASSESSMENTS**

#### **6.1 Covenant for Assessment**

By accepting a deed or other conveyance, each Owner covenants and agrees to pay the Association all regular assessments, special assessments, emergency assessments, individual assessments, late penalties, and collection costs (including reasonable attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for assessments by abandonment of their Lot, failure of the Association to maintain the Common Areas, or non-use of the Common Areas. Upon request, an Owner or buyer is entitled to a timely statement from the Association setting forth all amounts due. The amounts set forth in the statement shall be binding upon the Association.

#### **6.2 Annual Budget**

The Board shall prepare an annual budget for the Association. The annual budget shall provide for: the maintenance, repair, and replacement of the Common Areas; and the administration, management, operation, and reserves of the Association. The budget shall be approved by a majority vote of those in attendance at the annual meeting. If the Association fails to adopt an annual budget, the last adopted budget shall continue in effect.

#### **6.3 Regular Assessment**

The Board shall fix the amount of the regular assessment for each Lot by dividing the total budget by the number of Lots. The Association may collect the regular assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis. Written notice of the regular assessment amount and payment schedule shall be sent to Owners at least 30 days in advance of the beginning of the fiscal year for which the regular assessment will be due. Apart from the initial notice of regular assessment, the Association is not obligated to send periodic invoices for regular assessments. If the Board fails to fix a regular assessment, the amount of the last regular assessment and payment schedule will continue in effect.

#### **6.4 Special Assessment**

The Association may levy a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, maintenance, repair, or replacement of the Common Areas. A special assessment must be approved in an annual meeting by a Majority of Owners present.

#### **6.5 Individual Assessment**

Any expenses attributable to less than all the Lots may be assessed exclusively against the affected Lots. Individual assessments include, without limitation:

- Assessments levied against a Lot to reimburse the Association for costs incurred in correcting a violation of

- the Governing Documents;
- Fines, late fees, interest, collection costs (including attorney's fees);
- Services provided to a Lot due to an Owner's failure to maintain, for emergency repairs, or to protect the health, safety, and welfare of adjoining Lots and Common Areas;
- Any charge described as an individual assessment by the Governing Documents.

#### **6.6 Apportionment of Assessments**

Regular and special assessments will be assessed equally to all Lots. Individual assessments shall be apportioned exclusively to the Lots benefitted or affected.

#### **6.7 Nonpayment of Assessment**

Assessments not paid within 30 days after the due date will be late and subject to interest and a late fee as stated in the collection policy. Late fees may only be charged once per missed payment.

#### **6.8 Application of Partial Payment**

Partial payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

#### **6.9 Lien for Assessment**

All assessments, late fees, interest, and collection costs (including attorney's fees) not timely paid shall be a charge and continuing lien upon each Lot against which the assessment is made. The Association shall file a notice of lien with the county recorder in accordance with the collection policy as evidence of nonpayment.

#### **6.10 Enforcement of Lien**

Regardless of the existence of a lien the Association shall not exercise the right to foreclose.

### **7 MAINTENANCE**

#### **7.1 Maintenance of all Common Areas and Other Association Property**

The Association will own, operate and maintain the Common Areas. The Association shall have the authority to assess its Members for the costs of said maintenance and for restoring any damage to any such property owned by the Association.

#### **7.2 Maintenance of Lots**

It is the obligation of the Owner of each Lot to maintain his Lot and the Improvements to the Lot in a good state of repair and in an attractive, safe, and healthy condition

#### **7.3 Alterations of Exterior Appearance**

Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Architectural Committee. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in exterior color schemes or materials will be made without the previous consent of the Architectural Committee.

#### **7.4 Repair Following Damage**

In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Committee, provided however that alterations or deviations from the original approved exterior plans will require review. Nothing in this Declaration is intended to prevent an owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before reconstruction begins. Such temporary measures may be taken without the consent or approval of the Committee, provided that any such measures must be of a temporary nature, and

repair or reconstruction must begin as soon as circumstances will permit.

## **8 COMMON AREAS AND EASEMENTS**

### **8.1 Common Areas**

Common Areas are restricted to the uses defined in the Governing Documents. Ownership of the underlying fee of the Common Areas shall remain with the Association.

### **8.2 Owners Right of Enjoyment**

The Project will have permanent open spaces and other common areas and facilities as designated in the Governing Documents for the benefit of all Owners. Every Owner shall have a non-exclusive right and easement for the use, benefit and enjoyment in and to the Common Area and such nonexclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth.

An Owners rights to use the Common Area shall be subject to the following:

- Any Rules or Regulations now or hereafter adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area;
- The right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosure;
- The right of the Association to dedicate or transfer all or any part of the Common Area to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the Members; and further subject to the written consent of the transferee or any relevant municipality; provided, however, no dedication, transfer, mortgage, or determination as to the purposes or as to the conditions thereof, shall be effective unless a Majority of the Owners consent to such dedication, transfer, purpose and conditions;
- The right of the Association, acting by and through its Board, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, or any other person; provided, however, that no such license, right-of-way or easement shall be unreasonably and permanently inconsistent with the rights of the Members to the use and enjoyment of the Common Area.

All of the foregoing rights specified in this section shall inure to the benefit of, and be enforceable by, the Association, its respective successors and assigns, against any Member of the Association, or any other person, violating or attempting to violate any of the same, either by action at law for damages or suit in equity to enjoin a breach or violation, or enforce performance of any term, condition, provision, rule or regulation. Further, the Association shall have the right to abate and remove any such breach or violation by any Member at the cost and expense of such Member.

### **8.3 Easements to City**

Perpetual easements are granted to the City over the following parcels:

#### **Phase 1**

- Parcels A and B to be used for park, playground, and open space purposes;
- Parcels C and D to be used for pedestrian access ways connecting park areas within the Project;
- Parcel E to be used for park, playground, agricultural, and open space purposes;
- Parcels F, G, and J to be used for the right of way for the existing Kays Creek and for a pathway and trail along the existing Kays Creek;

#### **Phase 3**

- Parcel A to be used for park, playground, and open space purposes;
- Parcels B and C to be used for pedestrian access ways connecting park areas within the Project and for open space and park purposes;
- Parcel D to be used for the right of way for the existing Kays Creek and for a pathway and trail along the

existing Kays Creek;

**Phase 4**

Parcel A to be used for park, playground, and open space purposes;

Parcel B to be used for pedestrian access ways connecting park areas within the Project, and for open space and park purposes;

**Phase 5**

Parcel A to be used for agricultural preserve and open space purposes;

Parcel B to be used for park, playground, and open space purposes;

Parcel C to be used for the right of way for the existing Kays Creek and for a pathway and trail along the existing Kays Creek.

**8.4 Common Area Rules**

**8.4.1 Damage**

Anyone caught damaging any part of the common area including but not limited to: fences, play structures, sprinkler systems, trees, landscaping, or electrical boxes shall be responsible for the cost of repairing the damage. If the damage is caused by a minor, their legal guardian shall be held responsible for the cost to repair the damage.

**8.4.2 Pets**

Dogs are required to be on a leash at all times when not enclosed in a fenced yard. Owners are required to clean up after their pets as quickly as possible.

**8.4.3 Motorized Vehicles**

No motorized vehicles are allowed on common areas except when used for maintenance of the common areas.

**8.4.4 Excessive Digging in Playgrounds**

Excessive digging in the play areas is not allowed. Digging should be limited to simple beach or sand toys. Any holes or piles created during play should be flattened before leaving the play areas.

**9 ARCHITECTURAL COMMITTEE**

**9.1 Architectural Committee Created**

The Architectural Committee (Committee) will consist of at least three members, at least one of whom is a member of the Board of Trustees of the Homeowners Association. In the absence of an Association elected Committee, the Board of Trustees shall serve as the Committee.

**9.2 Approval by Committee Required**

All Improvements and structures visible from a public street adjacent to the home must be approved by the committee prior to construction. All approvals by the Architectural Committee shall be given in writing and shall not be unreasonably delayed.

**9.3 General Design Review**

The Committee will use its best efforts to provide a consistent pattern of development, and consistent application of standards of this Declaration. It is the Committee's responsibility to apply the standards in a manner that results in a high quality, attractive, and well-designed community. The Committee shall maintain a list of Architectural Guidelines to facilitate the maintenance of these standards.

**9.4 Trustees and Committee Not Liable**

The Trustees, the Committee, and its members shall not be liable to the applicant for any damages, or to the Owners of any Lots for their actions, inactions, or approval or disapproval of any set of plans submitted to the

Committee for review. In the absence of bad faith or malicious actions, Owners shall have no claim against the Trustees or Committee member. Each Owner has the right to enforce the covenants against every other Owner, and may seek independent redress if it believes the Committee has acted improperly.

### **9.5 Limitations on Review**

The Committee's review is limited to those matters expressly granted in this Declaration. Committee has no authority over enforcement of building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or Improvement of real property and has no liability to any Owner whose plans were approved in a manner that included any such violation.

## **10 RULES REGULATIONS AND RESTRICTIONS**

### **10.1 Restrictions on all Lots**

#### **10.1.1 City Ordinances**

All city ordinances regarding private home ownership are hereby adopted and may be made more restrictive by these covenants.

#### **10.1.2 Zoning**

No Lot may be occupied in a manner that is in violation of any statute, law or ordinance, including zoning, health, or fire codes.

#### **10.1.3 Right to Farm Notice**

Owners are notified that farming/agricultural land use is and will continue to be an activity in the area and Owners hold the Association harmless for objectionable noises and odors.

#### **10.1.4 No Mining Uses**

No mining, drilling, prospecting, mineral exploration or quarrying activity shall be permitted at any time.

#### **10.1.5 No Business or Commercial Uses**

No portion of Project may be used for any commercial business use, except Owners may rent their homes or may have home occupations in accordance with City ordinance. Certain portions of the Common Areas have been reserved for agricultural use. Commercial agricultural uses may be permitted in those Common Areas reserved for such.

#### **10.1.6 Restrictions on Signs**

The Project may be identified by permanent signs as part of the entry structure or entry bridges. Signs identifying the Owners name and or address may be placed on the lot and are subject to the review of the Architectural Committee. No other signs are permitted except signs placed by the City, Association, or temporary signs placed by the Owner.

#### **10.1.7 Restrictions Livestock, Poultry and Pets**

No animals of any kind may be raised, bred, or kept on any lot except as permitted by City ordinances. Pets are restricted to Owner's control, meaning on leash or lead, within a vehicle, within the residence of the Owner, or within fenced confines on the premise of the Owner. No fierce, dangerous or vicious animals and no animal nuisances shall be allowed including, but not limited to, barking, or other offensive conditions. Kennels or dog runs must comply with City ordinances.



## **10.2 Storage and Vehicles**

### **10.2.1 Storage of Waste**

No open storage of waste is permitted, including, without limitation: accumulations of lawn, tree, or landscape clippings or trimmings except compost piles contained in a composting container; accumulations of construction debris or waste, household refuse, recyclable materials, or garbage except as stored in enclosed containers.

### **10.2.2 Open Storage**

The storage or accumulation of any material, or equipment on the Lot in a manner that is visible from a public street is not permitted. This includes, without limitation: storage of any building materials except during active construction; storage of farm, construction or landscaping equipment; storage of interior, lawn, or garden furniture except during season of use; and storage of composting containers. Under no circumstances shall Lots be used for storage yards or service yards.

### **10.2.3 Enclosed Garbage and Recycling Containers**

If enclosed garbage and recycling containers are stored outside, they must be stored behind the front line of the house.

### **10.2.4 Vehicle Parking and Storage**

Any vehicle may be stored behind the front line of the house. Boats, campers, camper shells, trailers, recreational vehicles, all-terrain vehicles, inoperable or unregistered vehicles, or any vehicle larger than a 1 ton pick-up truck may not be parked in front of the front line of the house or on the street, except for temporary loading and unloading (no more than 72 hours). No vehicle may be parked on the front or side lawns.

### **10.2.5 Vehicles Restricted to Roadways**

No motor vehicle may be operated on the Project except on improved roads and driveways. No motorized vehicles are allowed on the common areas, including but not limited to the walking path, except for maintenance and work purposes.

## **10.3 Quiet Enjoyment**

### **10.3.1 No Noxious or Offensive Activity**

No noxious or offensive activity may be carried out on any Lot, including creation of loud or offensive noises or odors that detract from reasonable enjoyment of nearby Lots.

### **10.3.2 No Hazardous Activity**

No activity is allowed on any Lot that is, or would be, considered by the Board to be unreasonably dangerous or hazardous, or which could cause the cancellation of a conventional homeowner's insurance policy. Such activities include, but are not limited to: storage of caustic, toxic, flammable, explosive, or hazardous materials in excess of customary household uses; discharge of firearms or illegal fireworks; and setting open fires other than those contained in permanently constructed fire pits or commercially made portable fire pits. Any open fires permitted herein shall comply with City ordinances.

### **10.3.3 No Annoying Lights**

Outdoor lighting is subject to Architectural Committee approval. No outdoor lighting is permitted except for lighting that is designed to limit the field of direct light to the confines of the Lot on which it's installed.

### **10.3.4 No Annoying Sounds**

City noise ordinances shall be enforced.

### **10.3.5 No Transient or temporary Lodging Uses**

Lots are to be used for single family residential housing purposes only, and may not be rented in whole or in

part for transient lodging purposes. Boarding houses, "bed and breakfasts", or other uses that provide accommodations to travelers are prohibited. No lease for a Dwelling may be for a period of less than 30 days. Timeshare ownership, halfway houses, and similar uses are prohibited.

## **10.4 Landscaping**

### **10.4.1 Yard Treatments and Landscaping**

Full landscaping is required on all lots with special attention given to all areas visible from the street. Separate entry walkways, exclusive of the driveway, shall be constructed and landscaped from the sidewalk to the front porch and entry. Provisions should be made for spring and summer seasonal color in the ground covers, shrubs and trees. Use of rock and stone as part of the landscaping is encouraged. Automatic irrigation systems must be installed.

### **10.4.2 Landscape Maintenance**

It is the responsibility of the homeowner to maintain their landscape in a pleasing manner. All lawn should be mowed on a regular basis during growing periods. Excessive weeds or overgrowth are not allowed. Every effort should be made to keep plants healthy and watered. Dead growth should be removed as soon as possible.

### **10.4.3 Landscape Modification**

From time to time it may become necessary to modify or replace landscaping. It is the Owners responsibility to make sure any changes are consistent with the majority of the lots in the project. If there are any questions as to the appropriateness of a landscaping plan, the Owner should contact the Architectural Control committee for guidance.

### **10.4.4 Park Strip Trees**

Each street in the project has a designated tree to be planted in the park strip. Each owner is responsible for maintaining at least 1 of these trees per lot, evenly spaced in the park strip. If the trees in the park strip die or are otherwise damaged it is the Owners responsibility to replace the tree as soon as possible. The list of trees approved for each street shall be maintained by the Architectural Committee. After reviewing the growth of these trees it may become necessary to replace the trees with a different variety. The Architectural Committee shall ensure this is done in a consistent manner by identifying a replacement tree for any street affected by an undesirable variety.

### **10.4.5 Fencing**

The addition or modification of fencing of Lots including the precise area to be fenced requires written approval by the Architectural Committee. The area that may be fenced shall be limited to the side yards and rear yards of the Lots. No fencing shall be constructed in the front yard of any Lot. Only white vinyl fencing may be used to fence a lot. Other fence styles may be used by the Association in certain applications in the common areas.

### **10.4.6 Finished Lot Grading**

Owners and builders are responsible to complete the fine grade of the entire Lot so that the finish grading complies with City ordinance and with City approved grading plan for the Project. Copies of this plan are available from the City showing the grading requirements as they relate to a specific Lot.

## **10.5 Restrictions on Exterior Features or Items**

### **10.5.1 Basketball Standards**

Permanent basketball standards on a permanent pole are allowed. Hoops attached to the front of garages or homes are not allowed. Portable basketball standards are allowed.

#### **10.5.2 Sport Courts**

Sport Courts are allowed but must be approved by the Architectural control committee before construction. No lighting is allowed on a sport court.

#### **10.5.3 Pools**

Any pool deeper than two feet deep must be set up or installed behind the lots fence line and follow City rules for installation. No pool shall be kept in front of the lots fence line for more than 24 hours.

#### **10.5.4 Toys and Bikes**

Bikes and toys should be stored behind the lots fence line or in a garage. Bikes and toys should not be left in the front yard for more than 24 hours.

#### **10.5.5 Antennas**

To the extent allowed by law, all antennas must be enclosed within the dwelling. Satellite dishes larger than 1 meter in diameter are prohibited.

#### **10.5.6 Air Conditioners and Evaporative Coolers**

Air conditioners and evaporative coolers, if placed on the roof, shall be located out of view from the street in front of the home. Ground level air conditioning units shall be located outside of the front yard and behind the front line of the house. Window type air conditioners shall not be visible from any public street. Window evaporative coolers are not permitted.

#### **10.5.7 Mailboxes:**

Mailboxes should be constructed for each Dwelling and the mailbox should be located within the parkway area at the back of curb to the specifications of the U.S. Postal Service. In the phase one subdivision, mailbox units for "A" and "B" lots must be constructed of white vinyl post and cross member with two U.S. Postal Service approved mailboxes located on the cross member. In phase two, three, four and five subdivisions, Owners are required to have a mailbox structure adjacent to the shared property line. The mailbox structure shall be constructed of the masonry material used on the front of the residence and be approximately 24" to 28" square and be no more than four ft in height and constructed generally in accordance with the other mailboxes in these phases. The mailbox unit may make provisions for newspaper delivery as well.

#### **10.5.8 Solar panels**

Solar Panels will be permitted only with the written approval of the Architectural Committee.

### **10.6 Construction Requirements and Restrictions**

To minimize inconvenience to adjoining owners during periods of construction within the Project, the following regulations will be enforced and must be made part of a construction contract between an owner and builder of a dwelling or other Improvement to a lot (violations committed by Builder or its employees, subcontractors or others are deemed violations by owner).

#### **10.6.1 Approval Required**

Owners must obtain Architectural Committee approval of any Improvement prior to commencing construction.

#### **10.6.2 Construction Debris Removal**

The Owner must comply with City ordinances requiring the placement and maintenance of a trash container or dumpster on the Lot. The Owner will remove trash at the end of each work day and deposit construction trash, packing material, unusable scraps, and other debris in a suitable container, protected from the wind, and regularly serviced. No trash may be burned, buried, or otherwise disposed of within the Project. No concrete trucks may be cleaned out on the Lot or elsewhere within the Project.

#### **10.6.3 Construction Area Appearance**

The Lot must be maintained in a reasonably organized and neat condition at all times during construction.

Once the Dwelling is enclosed, materials shall be stored inside, and out of sight, whenever practical and possible.

**10.6.4 Hours of Work:**

Daily working hours on the site shall be limited to the period beginning one half hour after sunrise and ending one half hour before sunset, unless otherwise restricted by City ordinances. Builder is responsible for controlling noise emanating from the site.

**10.6.5 Removal of Mud:**

The Owner is responsible for cleaning up and removing any mud, dirt and all debris from the construction site that is deposited on the roadways of the Project.

**10.6.6 Construction Completion**

When construction has started on any residence or other structure, work thereon must be completed within a reasonable length of time not to exceed one year.

**10.6.7 Number of Dwellings**

Only one Dwelling may be constructed per Lot. All Dwellings must have an attached garage for at least 2 cars. Storage buildings, out buildings, or habitable structures are permitted on any Lot subject to review and require written approval by the Architectural Committee.

**10.6.8 Underground Utilities**

All gas, electrical, telephone, television and any other utility lines servicing a lot must be underground.

**10.6.9 Sewer Connection Required**

All Lots must be served by sanitary sewer service -- no cesspools, septic tanks, or other types of waste disposal systems are permitted. All Dwellings must be connected to the sanitary sewer system. Part of the Association is serviced by a sewage lift station operated by the City that facilitates a connection to the city sewer system. This service may cause additional costs to the association or those serviced by the lift station.

**10.6.10 Setbacks Established**

Minimum front yard, rear yard and side yard setbacks have been established for each lot within phase one and are described in notes contained on the Plat for phase one. Homes shall comply with the prescribed setbacks.

Minimum front yard, rear yard and side yard setbacks have been established for each lot within phases two, three, four, and five and are described in notes contained on the Plats for those phases. Homes shall comply with the prescribed setbacks.

**10.6.11 Basement Finished Floor Minimum Elevations Established**

Phase 1, Lots 21-30 and 145-149 are restricted to a finished basement floor elevation to be not lower than 3 1/2 feet below the top back of curb. All other Lots are restricted to a finished basement floor elevation to be not lower than 4 1/2 feet below the top back of curb. In Phases 2, 3, 4, and 5, all lots are restricted to a finished basement floor elevation to be not lower than 4 1/2 feet below the top back of curb. Builders and contractors are cautioned to not establish the finished floor elevation of the lowest level, which is basement level, until they have located and determined the installed elevations of both the land drain lateral and the sanitary sewer drain lateral.

**10.6.12 Dwelling Size**

In phase one, the ground floor area of the main structure of a one-story (rambler), not including open porches and garages, shall be not less than 1,000 square feet. In phases two, three, and four, the ground floor area of the main structure of a one-story (rambler), not including open porches and garages, shall be not less than 1,500 square feet. In phase five, the ground floor area of the main structure of a one-story (rambler), not including open porches and garages, shall be not less than 1,500 square feet. In the phase one, a two-story

home shall have not less than 1,000 square feet above ground. In phases two, three, and four, a two-story home shall have not less than 2,000 square feet above ground. In phase five, a two-story home shall have not less than 1,800 square feet above ground. In phase one, three and four level homes must have not less than 1,000 square foot finished. In the phases two, three and four subdivisions, three and four level homes must have not less than 2,000 square feet finished. In phase five, three and four level homes must have not less than 1,800 square feet finished. In phase one, a 2 car attached garage with not less than 400 square feet is required. In phases two, three, four and five, three car garages are mandatory unless lot configuration would prohibit constructing a plan with a three car garage, in which case the Architectural Committee shall allow plans with 2 car garages.

#### **10.6.13 Dwelling Height**

No structure shall exceed 2 stories above ground level for living space or be more than 35 feet in height, without prior written approval of the Architectural Committee.

#### **10.6.14 Roof Design**

No more than 1 roof pitch may be used on any structure unless approved by Committee. Eaves and roofs must overhang by at least 18 inches. Mansard, fake mansard, A-frame, gambrel, flat, curvilinear, and domed roof designs are prohibited.

#### **10.6.15 Temporary or Prefab Housing**

No prefabricated or temporary structure may be installed or maintained on any lot for the purpose of providing housing or living accommodations. Shed kits or pre-fabricated sheds are allowed as long as they are used for storage purposes only and meet the architectural guidelines for sheds.

#### **10.6.16 Driveways**

Every garage shall be serviced by a driveway, which shall be of sufficient width and depth so as to park 2 vehicles side by side completely out of the street right of way. All driveways to be constructed only of concrete or other material as approved in advance by the Architectural Committee

#### **10.6.17 Garages**

Enclosed garages are required. In the case of 3-car garages facing the street, the front of the 3<sup>rd</sup> garage space shall be located on a different plane, minimum 2 ft. differential, than the larger 2-car space area. The 3<sup>rd</sup> garage shall be located on a plane no more than 10 ft. in depth greater than the majority of the front elevation. Where feasible, side entry garages are encouraged. Carports are not allowed.

#### **10.6.18 Preservation & Maintenance of Irrigation and/or Drainage Ditches**

Along the rear lines of certain Lots there are existing irrigation supply and/or drainage ditches which continue to be used on a seasonal basis to carry irrigation water to adjoining agricultural properties. These ditches constitute a continuing easement over and across the named Lots and are not to be altered, filled-in, fenced in, or impaired in any way. Reasonable access must be provided to the users of these ditches for the purpose of maintenance and repair. This paragraph applies to any Lots bordering irrigation supply and drainage ditches.

## **11 GENERAL PROVISIONS**

The covenants, conditions, and restrictions contained in this Declaration may be enforced as follows:

### **11.1 Severability**

Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

**11.2 Limited Liability**

Neither the Trustees nor the Architectural Committee or its individual members, nor any other Owner shall have personal liability to any other Owners for actions or inactions taken under these covenants, provided that any such actions or inactions are in good faith and without malice.

**11.3 Amendment**

At any time while this Declaration is in effect, the Majority of Owners of the Lots may amend the provisions of this Declaration. Any amendment must be in writing, approved by a Majority of the Owners at the time of the amendment and recorded.

**11.4 Constructive Notice**

Every person who owns, occupies, or acquires any right, title or interest in any lot in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions and restrictions against his lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any lot.

**11.5 Liberal Interpretation**

The provisions of this Declaration shall be interpreted liberally. Paragraph headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

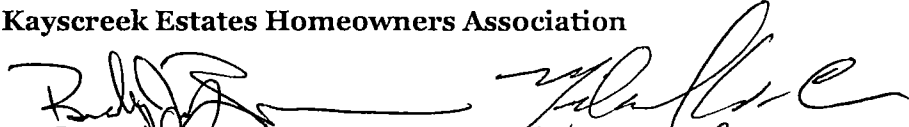
**11.6 Mortgagees Protection Plan**

The breach of any of the foregoing covenants shall not defeat or render invalid the lien of any mortgage or deed of trust lien on the Project that is made in good faith and for value; provided, however, that all of the covenants contained herein shall be binding upon and effective against any owner of a lot whose title thereto is acquired by foreclosure or trustee's sale, from and after the date of such foreclosure, or trustee's sale..

IN WITNESS WHEREOF, the Association has caused this Declaration to be executed by its duly authorized officers.

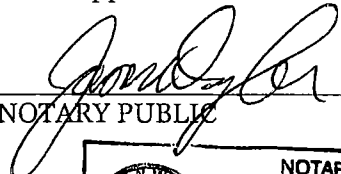
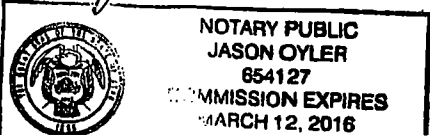
DATED: 8/16/11

**Kayscreek Estates Homeowners Association**

  
By: Bradley Seth Farmer Michael W. Crippen  
Its: President Its Vice President

STATE OF UTAH )  
County of Davis ) :ss.

On this 16<sup>th</sup> day of August, 2011, personally appeared before me Brad Farmer and Michael Crippen who being by me duly sworn, did say that they are the agent of the Association authorized to execute this Declaration and did certify that more than 55% of the Lots approved this Declaration.

  
NOTARY PUBLIC  
  
NOTARY PUBLIC  
JASON OYLER  
654127  
COMMISSION EXPIRES  
MARCH 12, 2016

# BYLAWS OF KAYSCREEK ESTATES HOMEOWNERS ASSOCIATION

## 1 BYLAW APPLICABILITY/DEFINITIONS

### 1.1 Definitions

The capitalized terms used in the Bylaws shall have the same meaning given to them in the Declaration, unless otherwise specifically stated.

### 1.2 Bylaw Applicability

The provisions of these Bylaws are binding upon the Association and the Owners. All present and future Owners shall be subject to these Bylaws, as amended from time to time. Acquisition of any Lot constitutes an acknowledgment that the Owner has agreed to and ratified these Bylaws and will comply with them.

## 2 ASSOCIATION

### 2.1 Composition

All of the Owners acting as a group in accordance with the Governing Documents shall constitute the Association. Except for matters specifically reserved for a vote of the Owners, administration of Association affairs shall be performed by the Board on behalf of the Owners.

### 2.2 Annual Meeting

The annual meeting shall be held during the first quarter of the calendar year. The date, time, and place of the annual meeting shall be determined by the Board. The Association shall send notice of annual meetings at least 30 days in advance of the meeting. The notice shall include a description of all items to be voted on. Any agenda items related to financial operations of the association, including but not limited to fees and fines, shall also be included. At the annual meeting the Association shall conduct the following business:

- Roll call and verification of Quorum;
- Approval of minutes from preceding annual meeting;
- Reports of officers;
- Special committee reports;
- Election of Trustees;
- Unfinished business from preceding annual meeting; and
- New business

### 2.3 Special Meeting

Special meetings may be held at any time for any purpose. A special meeting may be called by a Majority of the Trustees or upon petition of at least 10% of the lots. The Association shall schedule a special meeting to occur within 60 days of the request. The Association shall send notice of a special meeting at least 30 days in advance of the meeting. No business may be transacted at a special meeting except as stated in the notice. The notice of a special meeting shall state the date, time, place, and purpose of the meeting and include a description of items to be voted on.

### 2.4 Place of Meeting

Meetings shall be held at a place designated by the Board and stated in the notice of meeting. Meetings shall be held in Davis County.

## **2.5 Conduct of Meeting**

The President shall preside over all meeting of the Association. The Secretary shall keep the minutes of the meeting and take record of all resolutions adopted at the meeting.

## **2.6 Voting**

There is one vote per Lot. If a Lot is owned by more than one Person and a single Owner is present at a meeting, the vote appertaining to that Lot shall be cast by the Owner present. If multiple votes are received for the same Lot all votes appertaining to that Lot shall be invalid.

Except where a greater number is required by the Governing Documents or the Nonprofit Act and elections of Trustees, any decision requiring Owner consent shall be passed by Majority vote of a Owners present or by proxy at a Special or Annual Meeting.

## **2.7 Proxies**

An Owner may vote or otherwise act by proxy. An Owner may appoint a proxy by signing a proxy appointment form. The proxy appointment form may be submitted to the Association in person, by mail, or electronically. The proxy appointment form must name a proxy, be dated, and signed by the Owner. Any proxy appointment form that does not contain a proxies name, date, or signature shall be void. A proxy appointment form is valid until revoked by the Owner's attendance at a meeting, a signed and dated revocation delivered to the Association, a subsequent proxy appointment, notice of death or incapacity of the Owner, or the passage of 11 months.

## **2.8 Mail-in Ballots**

Any action requiring a vote of the Owners, except election of Trustees, may be taken by mail-in ballots. Action by mail-in ballot shall comply with the procedures set forth in Utah Nonprofit Act Section 16-6a-709, as amended from time to time. A combination of mail-in ballots, ballots collected electronically, and ballots cast in person may be used.

## **2.9 Amendments to Governing Documents**

All proposed amendments to governing documents must be presented and discussed at the annual meeting or in a special meeting prior to a binding vote on the proposed amendment.

# **3 BOARD OF TRUSTEES**

## **3.1 Number of Trustees**

There shall be five Trustees.

## **3.2 Selection and Term of Trustees**

Unless appointed by the Board under this Article, Trustees shall be elected by the Owners. The candidates with the most votes shall be elected.

Trustees shall serve staggered terms of three years. Trustees shall hold office until their successor is elected. If the Trustees' terms become non-staggered (*i.e.*, after removal of the entire Board), the initial term of each member (1, 2, or 3 years) shall be decided by vote of the newly elected Trustees at their organization meeting. There is no limit on the number of terms a Trustee may serve.

## **3.3 Interim Vacancies**

If a trustee resigns or is unable to fulfill their current term the remaining trustees shall appoint an owner to complete the remainder of the vacated term.



### **3.4 Removal of Trustees**

A Trustee may be removed with or without cause by vote of a majority of Owners in attendance at an annual meeting or special meeting. The Trustee shall be given an opportunity to be heard at the meeting prior to the vote for removal. At any meeting where a Trustee is removed by the Owners, the Owners must vote to replace the Trustee. The replacement will serve the remaining term of the removed Trustee.

A Trustee may be removed with or without cause by affirmative vote of four board members.

### **3.5 Organization Meeting**

The Trustees shall hold a meeting following the annual owners meeting for the purpose of electing officers within 30 days of the annual meeting.

### **3.6 Regular Board Meetings**

The Board shall hold regular meetings. The Board shall determine frequency, times, and locations of regular meetings. However, the Board shall conduct at least two regular meetings per year. Notice of regular meetings shall be given to each Trustee at least five days prior to the meeting.

### **3.7 Special Board Meetings**

A Trustee may call a special meeting of the Board. Notice shall be given at least three days prior to the meeting. Notice shall state the time, place, and purpose of the meeting.

### **3.8 Conducting Board Meetings**

The President or his or her designee shall preside over meetings of the Board. The Secretary shall take minutes of the Board meetings and shall make record of all resolutions.

### **3.9 Quorum**

A Majority of the Board shall constitute a quorum. A quorum shall be required to conduct business at a meeting. Once established, a Quorum will be present even if Trustees leave. Trustees may attend a meeting telephonically.

### **3.10 Waiver of Meeting Notice**

Trustees may waive notice of meetings in writing. A waiver shall be deemed equivalent to notice. Attendance of a Trustee at a meeting will be considered a waiver of notice, unless the Trustee attends to dispute notice. If all Trustees are present at a meeting, notice of the meeting is waived and any business may be conducted.

### **3.11 Action without Meeting**

Any action by the Board may be taken without a meeting if all the Trustees give written consent to the action. Written consent may be given in person, by mail, or electronically. The Association shall file the written consents with its record of minutes.

### **3.12 Powers and Duties**

The Board shall manage the affairs and business of the Association. The Board is vested with all power and authority necessary to administer the affairs of the Association in accordance with the Governing Documents. The Board may do any act required or allowed by the Governing Documents, the Community Association Act, the Nonprofit Act, or any other rule of law.

Subject to the limitations contained in the Declaration, Bylaws, or Community Association Act, the Board shall have the following authority: Prepare an annual budget and establish what constitutes a Common Expense;

1. Adopt and amend rules, regulations, policies, and procedures governing the Common Areas, administration of the Association, and to enforce and interpret the Governing Documents;
2. Delegate authority to a managing agent to act on behalf of the Association;
3. Provide for the maintenance, repair, and replacement of the Common Areas;

4. Hire, contract for, and terminate personnel or contractors necessary for the maintenance repair and replacement of the Common Areas and administration of Association business. Provide for the compensation of personnel. Purchase supplies, equipment, and materials for use in the Association.
5. Open and maintain bank accounts on behalf of the Association. Designate authorized signers for the bank accounts;
6. File lawsuits or initiate other legal proceedings on behalf of the Association.
7. Defend lawsuits, administrative actions, and other legal proceedings against the Association;
8. Paying costs of any services rendered to the Project or multiple Owners, but not billed to the Owners individually;
9. Keep books with detailed accounts of the receipts and expenditures of the Association. Make the books available to the Owners as required by the Community Association Act and Nonprofit Act. The books shall be kept in accordance with generally accepted accounting practices. Upon resolution by the Board, retain an independent auditor to audit the books;
10. To lease Common Areas, grant easements, licenses, or permission over, under, and through the Common Areas for durations not to exceed five years. Durations exceeding five years will require approval by the majority of owners at an annual or special meeting;
11. Upon approval by a Majority of the Owners, to convey Common Areas;
12. Create committees;
13. Any other act allowed or required by the Governing Documents, the Community Association Act, or the Nonprofit Act;
14. Any act required to be performed in the name of the Association.

### **3.13 Manager**

The Board may employ a manager to perform such duties and services as the Board shall authorize. The Board may delegate to the manager all powers granted to the Board and officers by the Governing Documents. However, the manager must obtain the Board's written consent to exercise the powers listed as item 2, 6, 7, 8, 11, and 12 in section 3.12 above

### **3.14 Compensation**

Trustees shall not be compensated for their work. However, they may seek reimbursement for actual costs and mileage that are incurred during their service.

### **3.15 Limitation of Liability**

The Trustees shall not be liable to the Owners for any mistake of judgment, negligence, or other errors, unless it was by willful misconduct or criminal conduct. The Association shall indemnify and hold the Trustees harmless against liability to third parties for actions taken on behalf of the Association, while acting in their capacity as Trustee, unless the action constitutes willful misconduct or criminal conduct.

## **4 OFFICERS**

### **4.1 Election and Term of Officers**

The Board shall select officers annually in accordance with the Non-Profit Act.

### **4.2 Removal of Officers**

The Board may remove any officer with or without cause by affirmative vote of a Majority of the Board. If an officer is removed, the Board shall replace them.

### **4.3 Offices**

The Association offices shall be president, vice president, secretary, and treasurer. The Board may appoint assistant officers as it may deem necessary. Except for the president, the same person may hold two offices.

#### **4.3.1 President**

The president shall be the chief executive officer. He shall preside at meetings of the Association and the Board, and shall be a member of all committees. He shall have general and active management of Association business. He shall see that all resolutions and policies of the Association are executed.

#### **4.3.2 Vice President**

The vice president shall perform the duties and exercise the powers of the president in the absence or disability of the president. If the president and vice president are unable to act, the Board shall appoint a Trustee to fulfill the duties on an interim basis.

#### **4.3.3 Secretary**

The secretary shall attend all meetings and take minutes thereof. He shall also make record of all resolutions, rules, policies, and procedures. He shall give or cause to be given notice of all meetings. He shall compile or cause to be compiled a complete list of the owners and their contact information.

#### **4.3.4 Treasurer**

The treasurer shall oversee the finances of the Association. He shall be responsible to ensure that the Association has full and accurate records of income and expenses. He shall give financial reports at regular Board meetings and the annual Owners' meeting.

#### **4.4 Delegation of Duties**

The Association officers may delegate any of their duties to a manager or to committee. However, the officers shall be responsible to oversee and ensure that the duties so delegated are being properly discharged.

#### **4.5 Compensation**

Officers shall not be compensated for their work. However, they may seek reimbursement for actual costs and mileage incurred during their service.

### **5 NOTICE**

#### **5.1 Manner of Notice**

All notices and other communications required under the Governing Documents shall be in writing. Notices to Owners may be delivered using the following methods:

- By professional courier service or First-class U.S. mail, postage prepaid, to the address of the Lot or to any other address designated by the Owner in writing to the Association;
- By hand to the address of the Lot or to any other address designated by the Owner in writing to the Association; or
- By facsimile, electronic mail, or any other electronic means to an Owner's number or address as designated by the Owner in writing to the Association.

Notice to the Association may be delivered using the following methods:

- By professional courier service or First-class U.S. mail, postage prepaid, to the principal office of the Association as designated in writing to the Owners; or
- By facsimile, electronic mail, or any other electronic means to the Associations official electronic contact as designated in writing to the Owners.
- Notices sent via courier or mail shall be deemed received 3 days after being sent. Notices hand delivered or sent via electronic means shall be deemed received upon delivery or being sent.

#### **5.2 Waiver of Notice**

Whenever any notice is required under the Governing Documents, the Community Association Act, or the Nonprofit Act, an owner may waive notice in writing. The waiver may be signed before or after the time for notice. A waiver of notice shall be equivalent to notice.

## **6 FINE PROCESS**

### **6.1 Establishing a violation has occurred**

Before a Fine can be assessed, the board must prove that the violation has occurred.

#### **6.1.1 Burden of Proof**

The Association shall have the burden of proving that a violation has occurred. The Board may not presume that the accused Owner is guilty of the claimed violation.

#### **6.1.2 The Standard of Proof**

The standard of proof shall be a preponderance of the evidence. A single hearsay accusation from a fellow homeowner, from a management firm, or an investigator hired by the HOA in a written format whether or not sworn to shall not be deemed sufficient evidence.

#### **6.1.3 Inspection of the property**

If an inspection of the Owner's property is required by the circumstances, at least two members of the Board shall inspect the property together. The Board shall obtain permission before entering onto the Owners Property. By requesting a Hearing the Owner is deemed to have granted permission for members of the Board to enter onto the Owner's property for inspection purposes. Refusal to allow inspection shall be grounds for the Board to rule against the Owner.

### **6.2 Fine Schedule**

- |   |                                   |
|---|-----------------------------------|
| 1. First Violation  | Written warning.                  |
| 2. Unresolved after 30 days from receipt of written warning           | \$25 Fine                         |
| 3. Unresolved after 60 days from receipt of written warning           | \$50 Fine                         |
| 4. Unresolved 90, 120, 150 days from receipt of first written warning | \$100 Fine for each interval.     |
| 5. Unresolved 6 months or more from receipt of written warning        | \$250 per month until resolution. |

### **6.3 Multiple Infractions**

Only one fine per written notice of infractions may be assessed. No more than one written notice of violations shall be served on a home owner per month. However the incident or matter shall not be considered resolved until all infractions listed on the warning are resolved. For the fine structure to reset, the owner must have corrected the violation and remain in continuous compliance for at least twelve consecutive months.

### **6.4 Notice and Correspondence**

All correspondence related to violations will be sent via certified mail return receipt requested.

### **6.5 Right to Hearing**

An owner who is assessed a fine may request a Hearing to protest or dispute the fine. The request for Hearing must be received within 30 days of the receipt of the fine notice.

## **7 VARIANCE REQUESTS AND HEARINGS**

### **7.1 Fees Suspended**

If a hearing is requested, all fines shall be suspended and no interest or late fees shall accrue related to the fine

until after the hearing has been conducted and a final decision has been rendered by the Board of Trustees.

### **7.2 Hearing Request**

All requests for hearing shall be in writing and shall be mailed, emailed or delivered to the Board of Trustees or the Management Company if one is employed.

### **7.3 Timely Response**

The hearing must be scheduled by the board within 30 days of the owner delivering a written request for hearing to the Board of Trustees.

### **7.4 Presiding Authority**

In all hearings before the Board, the President of the HOA shall preside or the President may designate any other member of the Board as the presiding officer. The presiding officer shall conduct the hearing after the manner of a judge and shall give each side a meaningful opportunity to be heard on all issues then before the Board. One member of the Board shall be chosen by lot to speak for the Owner to prevent insult and injustice.

### **7.5 Time to Present**

Each party shall be given ample time to present their evidence, however, the presiding officer may terminate a witness' testimony when it becomes repetitive. The Board may terminate a hearing if the proceedings become excessively contentious and hostile however, the board must give the Owner a meaningful opportunity to be heard, to present evidence and to call witnesses

### **7.6 Presentation Order**

The HOA shall present first in the case of a claimed violation and shall have the right to rebut evidence presented by the Owner. In hearings where the Owner is requesting a Variance or abatement of fines the Owner shall present first.

### **7.7 Legal Counsel**

An Owner and the Board may be represented by legal counsel. Neither party shall be allowed attorney fees for a Board hearing.

### **7.8 Decision**

To render a decision three members of the Board must agree, and at least three members of the Board must be present at any hearing. The Board is hereby authorized to abate all or part of a homeowner's fines as part of the hearing decision. All Decisions shall be recorded in the Decision Log. Regardless of other considerations, demonstrated and communicated good faith compliance to the requirements noted in violation(s) for a period of 90 days shall result in the complete abatement of all related fines and penalties. The home owner is responsible to notify the board that they achieved compliance.

## **8 DOCUMENT CONTROL**

### **8.1 Purpose**

Document control procedures ensure that contractual obligations entered into by the home owners association are maintained for the entire duration of the contract and are not lost during the transition of successive board members.

### **8.2 Scope**

Documents and contracts that create a financial obligation, financial benefit, affect the use of association resources or establish a mutual understanding between the association and external entities must maintained in accordance with this section of the bylaws.

## **8.3 Requirements**

### **8.3.1 Document Index**

All documents within the scope of this section must be added to an index of documents. The index shall include the name of the document, stakeholders directly involved in the document, effective date, expiration date and the name of the recording secretary. The location of the original document and any maintained copies shall also be included in the index of documents,

The Board shall make the index of documents readily available to members of the association.

### **8.3.2 Preservation and Retention of Documents**

The recording secretary shall preserve at least two copies of documents. The local copy of the document shall be kept at a ready location that allows for the timely retrieval as needed by the board. A second copy shall be kept in a geographically separate location to reasonably ensure its preservation.

Documents must be retained for five years after their effective duration. Documents that create a disposition of the association's real property shall be kept as long as the association exists.

### **8.3.3 Request for Documents by Association Members**

All documents within the scope of this section shall be produced for any member of the association within 15 calendar days of a written request to the board.

## **9 RECORDS OF BOARD ACTIONS**

### **9.1 Purpose**

Recording Board actions provides objective evidence that the Board members act in good faith while executing their duties in accordance with the Governing Documents. Such records also allow for the consistent application of covenants when issues arise based on prior decisions.

### **9.2 Scope**

Material decisions made by the board on the behalf of members, in their interest, that affect one or more members or the association as a whole shall be recorded.

### **9.3 Requirements**

#### **9.3.1 Decision Log**

The board shall maintain a decision log that includes the subject of the decision, a brief description of the decision, stakeholders directly affected by the decision, the date of the decision and the name of the recording secretary.

#### **9.3.2 Decision Narratives**

For each logged decision, a narrative shall be created that explains the decision in enough detail to allow for independent review by the HOA membership. The narrative shall include but is not limited to:

- Factors considered in the decision
- Persons providing information relevant to the decision
- Members present during the decision

- Dissenting views of board members (if any)
- Anticipated consequences of the decision

### **9.3.3 Requests for Decision Records**

All records within the scope of this section shall be produced for any member of the association within 15 calendar days of a written request to the board.

## **10 PROCUREMENT OF SERVICES LEGAL OR OTHERWISE**

### **10.1 Purpose**

A process to ensure fair procurement and execution of service provider contracts reduces the likelihood of unexpected loss due to poor service provider performance.

### **10.2 Scope**

The procurement of any goods or services provided to the HOA in excess of \$1000 shall be subject to the provisions of this section.

### **10.3 Requirements**

#### **10.3.1 Request for Quotes**

Whenever feasibly possible, quotes from at least three qualified service providers shall be considered prior to the establishment of contractual obligation between the HOA and a service provider.

Elements of a request for quote shall include but are not limited to:

- Services to be provided
- Exclusions of services to be provided
- Criteria used to determine the successful execution of service
- Prior performance

#### **10.3.2 Evaluation of Quotes**

The Board shall agree upon objective criteria that will be used to award service provider contracts. The Board shall record the selection of service providers

## **11 FINANCES**

### **11.1 Fiscal Year**

The fiscal year of the Association shall be the calendar year.

### **11.2 Checks, Agreements, Contracts**

All contracts deeds, leases, and other instruments shall be executed by two officers. All checks may be executed by any person authorized by the Board.

### **11.3 Availability of Records**

Association financial records shall be available as provided by the Community Association Act and Nonprofit

Act.

## 12 AMENDMENT TO BYLAWS

### 12.1 Amendments

These Bylaws may be amended by a Majority vote of Owners . . .

### 12.2 Recording

Any amendment to these Bylaws shall become effective on the date it is recorded in the Davis County Recorder's Office.

## 13 MISCELLANEOUS

### 13.1 Office

The principal office of the Association shall be located at any place within the State of Utah which may be designated from time to time by the Board.

### 13.2 Conflicts

The Bylaws are subordinate to any conflicting provisions in the Community Association Act, the Nonprofit Act, the Articles, the Plat, or the Declaration. The Bylaws are superior to the rules, regulations, and policies of the Association.

### 13.3 Severability

If any provision of these Bylaws is held by a court of law to be invalid, the validity of the remainder of these Bylaws shall not be affected.

### 13.4 Captions

The captions contained in these Bylaws are for convenience only. The captions shall not be used to interpret, limit, or enlarge the provisions of these Bylaws.


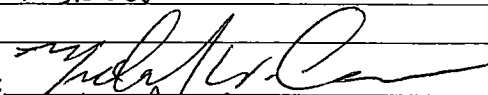
### 13.5 Gender, etc.

Whenever the context so requires, the singular shall include the plural and vice versa. The use of any gender shall include all genders.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers.

DATED: 5/16/12

### Kayscreek Estates Homeowners Association

  
 By: \_\_\_\_\_  
 Its: Donald Alan Farmer  
 \_\_\_\_\_  
 Its: President  
 \_\_\_\_\_  
 By:   
 Its: Vice President  
 \_\_\_\_\_

STATE OF UTAH

)  
:ss.



County of Davis

On this 10<sup>th</sup> day of August, 2011, personally appeared before me Brad Farmer and Michael Crippen who being by me duly sworn, did say that they are the agents of the Association authorized to execute these Bylaws and did certify that more than 55% of the Lots approved these Bylaws.

Jason Oyler  
NOTARY PUBLIC

