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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CREEKSIDE AT THE HIGHLANDS  
(INCLUDING BYLAWS)  
A PLANNED UNIT DEVELOPMENT

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by Creekside Subdivision, LLC, a Utah limited liability company (hereafter "Declarant") and is consented to by all owners of record.

### RECITALS

A. The Declarant is the owner of certain land in Salt Lake County, Utah, shown on the Record of Survey Maps of Creekside at the Highlands to be recorded in the Recorder's Office of Salt Lake County, state of Utah, (the Recorder's Office) concurrently herewith.

B. It is the intention of the Declarant to develop the land subject to this Declaration as a residential planned unit development and to insure a uniform plan and scheme of development, and unto that end the Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens (collectively, the "Covenants"), as set forth herein for the following primary purposes:

(1) To insure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined).

(2) To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, and the maintenance of the Common Areas and the buildings in the Community, including but not limited to easements, charges and liens, herein below set forth, and for the creation of an Association to be delegated and assigned the powers of maintaining and administering the Common Areas (as hereinafter defined) and other improvements, and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created upon the Property designated by this Declaration; which association shall be incorporated under the laws of the state of Utah as a nonprofit corporation for the purpose of exercising the functions mentioned herein.

C. The Community is not a condominium or cooperative project.

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

### ARTICLE I - DEFINITIONS

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

1.1 "**Act**" shall mean the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.

1.2 "**Additional Land**" means any land that may be annexed to this Declaration thereby expanding the community as set forth in Article VII.

1.3 **“Assessment”** means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of the Governing Documents or applicable law.

1.4 **“Association”** means and refers to the Creekside at the Highlands Association, Inc., or such successor incorporated or unincorporated association of the Lot Owners acting under this Declaration.

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

1.6 **“Bylaws”** means the Bylaws of the Association (initially attached hereto as **Exhibit B**), as they may be amended from time to time.

1.7 **“Common Area”** means, refers to, and includes: (a) The real property and interests which are submitted to this Declaration or which comprise the Project, excluding all Lots as defined herein; (b) All common areas and facilities designated as such on the Plat and all property on the Plat excluding the Lots; (c) All Limited Common Areas and facilities (except when the context otherwise requires for maintenance or use purposes); (d) In general, all apparatus, installations and facilities included within the Project and existing for common use; (e) The Project’s roads (except the public roads when the context requires for maintenance purposes); (f) All portions of the Project not specifically included within the individual Lots; (g) All other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; (h) All common areas as defined in the Act, whether or not enumerated herein, but excluding Limited Common Areas when the context requires for maintenance or use purposes.

1.8 **“Common Expenses”** means all sums which are required by the Association and the Board to perform or exercise its functions, duties, or rights under the Act or the Governing Documents.

1.9 **“Community”** means all of the land described in the Plats, including any property annexed into the Project.

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

1.11 **“Declarant”** means Creekside Subdivision, LLC, a Wyoming limited liability company, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof; except that Declarant also means any builder to which Declarant expressly assigns certain Declarant rights as to a particular Lot or Lots.

1.12 **“Declarant Control Period”** means the time between the date of recordation of this Declaration with the Recorder's Office and the date on which the administrative control of the Association is turned over to the Owners (as stated in Section 7.1 below).

1.13 **“Eligible Holder”** shall mean any holder, insurer, or guarantor of a first Mortgage who makes a written request to the Association to receive any of the notices or rights to vote provided

to Eligible Holders under this Declaration. The request shall state the name and address of the Eligible Holder and the Lot number to which the Eligible Holder's mortgage interest applies.

**1.14 "Fines"** shall mean and refer to fines levied by the Association against an individual or entity for violations of the Governing Documents. Fines shall be enforced and collected consistent with the Act and are deemed an assessment herein and may be collected as such.

**1.15 "Governing Documents"** shall mean and refer to a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, rules and regulations, and architectural or design guidelines.

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

**1.17 "Limited Common Areas"** means all of the real property identified as limited common area on the Plat or herein. Limited Common Areas are Common Areas limited to the use of a certain Lot or Lots to the exclusion of other Lot Owners.

**1.18 "Lot"** shall mean and refer to any residential lot or parcel of land, upon which a Living Unit could be constructed in accordance with applicable ordinances and laws, shown upon the recorded Plat as existing for private use and ownership, including any Improvements thereon.

**1.19 "Manager" or "Managing Agent"** shall mean and refer to the person or entity retained to manage the Property and the Association according to the direction of the Board.

**1.20 "Mortgage"** means any mortgage or deed of trust encumbering any Lot and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument and/or security arrangement, has been recorded among the Recorder's Office.

**1.21 "Mortgagee"** means the person or entity secured by a Mortgage.

**1.22 "Owner" or "Member"** means the person or entity owning the publicly-recorded fee title to any Lot as shown in the records of the county recorder's office, but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Lot.

**1.23 "Plat" or "Map" or "Record of Survey Map"** (these terms may be used interchangeably herein) means the Record of Survey Map entitled Creekside at the Highlands recorded at the Recorder's Office of Salt Lake County, as the same may be amended or substituted, together with any plat map representing land annexed into the Property hereafter.

**1.24 "Property" or "Project"** means all of the real property described in the Plat(s), including all of the real property described in attached **Exhibit A** and all Lots, Common Area, easements and open space.

1.25 **“Rules and Regulations”** means and refers to those rules and regulations adopted by the Board from time to time that are deemed necessary by the Board for the enjoyment of, or furthering the purposes of, the Property and Association.

1.26 **“Turnover Meeting”** means the meeting of the Association at which Board members are elected by the Owners pursuant to this Declaration.

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

## ARTICLE II - PROPERTY DESCRIPTION

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

2.2 **Description and Legal Status of Lots.** The Map shows the Lots and building designations, their locations, dimensions from which its areas may be determined together with the Definitions above, and the Common Areas. All Lots are residential Lots. All Lots shall be capable of being independently owned, encumbered, and conveyed.

2.3 **Form of Lot Conveyance - Legal Description of Lot.** Each conveyance or installment contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the number shown on the Record of Survey Map with appropriate reference to said Map and to this Declaration, as each shall appear on the records of the County Recorder, state of Utah, and in substantially the following form:

Lot \_\_\_\_ shown on the Record of Survey Map for Creekside, appearing in the records of the County Recorder as Entry No. \_\_\_\_ Map No. \_\_\_\_, and as identified in the Declaration of Covenants, Conditions and Restrictions appearing as Entry No. \_\_\_\_ in Book \_\_\_\_ at Pages \_\_\_\_ of the official records of the County Recorder, as may be amended, and the Plat. This conveyance is subject to the provisions of the aforementioned Declaration, including any amendments thereto.

2.4 **Use and Occupancy.** Except as otherwise expressly provided in the Governing Documents, the Owner(s) of a Lot shall be entitled to the exclusive use and benefits of ownership of such Lot. Each Lot, however, shall be bound by, and the Owner shall comply with,

the restrictions contained below and all other provisions of the Governing Documents of the Association for the mutual benefit of the Owners.

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

(a) Right of Entry. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing maintenance referred to herein and determining whether or not the Lot is in compliance with the Governing Documents or whether the use of the Lot is causing damage or harm to the Common Areas or Limited Common Areas. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(b) Utility Easements. Declarant, its successors and assigns, the Association, or any public utility provider shall have an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary and as may be designated on the plat or separate easement. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot in accordance with the terms herein, except for those improvements for which a public authority or utility provider is responsible. Each Lot Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot.

(c) Common Areas. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas.

**2.6 No Encroachment.** No Lot shall encroach upon an adjoining Lot without the express written consent of the Board. If, however, an encroachment occurs due to the settlement or shifting of a structure/building or any other reason whatsoever beyond the control of the Board or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non-disturbance of the structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

### ARTICLE III – RESTRICTIONS ON USE

#### 3.1 Residential Use.

Lots shall be used for residential purposes in accordance with, and subject to, the other provisions of this Declaration and the Bylaws and rules and regulations adopted pursuant thereto.

Except as provided in this subsection, no trade, craft, business, profession, commercial or similar activities that causes additional pedestrian or vehicular traffic, creates a sight or noise nuisance, shall be conducted on any Lot or in any other portion of the Project.

### **3.2 Lease Restrictions.**

All leases shall be in writing and be subject to the Governing Documents and any failure by the lessee to comply with the terms of such documents shall be a default under the Lease. Lot Owners shall not be permitted to lease their Lots for an initial term of less than thirty (30) days.

### **3.3 Animals.**

3.3.1. The Board shall have the express authority and right to promulgate rules, beyond those stated herein, restricting the keeping of pets.

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

3.3.3. Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Community. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from the Lots, Common Areas and Limited Common Areas.

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

### **3.4 Offensive Activities.**

No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted on any Lot or other portion of the Common Areas, nor shall anything be done in or placed upon any Common Area which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents. Vehicle oil leaks and spills are prohibited and shall be deemed a nuisance and subject to a fine.

### **3.5 Unlawful Activities.**

No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

### **3.6 Rubbish and Trash.**

No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any



part of the Property except in a sanitary container screened from public view, except on trash collection days and the 12 hours before a trash collection day. All such waste and garbage must be promptly and periodically removed.

### **3.7 *Vehicles in Disrepair.***

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

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

### **3.8 *Parking of Automobiles and Other Vehicles.***

Parking on any road within the Property, including public roads, between 10:00 pm and 7:00 am is prohibited and shall be subject to towing at the vehicle owner's expense. Except as otherwise provided in this subsection and subject to the foregoing restriction against overnight parking on roads, parking of boats; trailers; oversized/commercial vehicles (vehicles wider or longer than a standard parking space, 19 feet maximum length, any vehicle that has more than two axles, or vehicles weighing more than 6,000 pounds); vehicles displaying commercial advertising, logos, or business names exceeding three square feet per side or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle; truck campers; motor homes; and like vehicles and equipment anywhere in the Property shall only be allowed for periods of less than 24 hours and for no more than two separate 24 hour or less periods in any given week. Such a 24 hour period shall begin upon the first instance of parking of the vehicle and shall expire 24 hours later regardless of whether the vehicle is parked continuously for 24 hours. There shall be no parking of RVs in the Project for any time period whatsoever. The Board may adopt and amend rules to govern the parking of vehicles in the Common Areas, which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of any rule or of this subsection and the cost of any storage thereof.

### **3.9 *Clothes Lines and Materials.***

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

### **3.10 *Signs.***

Unless written approval is first obtained from the Board, no advertisement or poster of any kind may be posted in or upon the Properties except:

(1) Not more than one (1) For Sale or For Rent sign, not exceeding twenty-four (24) inches in height and eighteen (18) inches long, may be temporarily placed on a Lot by the Owner, resident or a licensed real estate agent;

(2) Political signs may be temporarily placed on a Lot by the Owner or occupant of the Lot unless and until prohibited or otherwise limited by the Board by rule; and

(3) Signs may be placed on the Property by Declarant as set forth in Article VII.

### ***3.11 Antenna and Dish Policy.***

Owners are encouraged to use cable service for television and internet. Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite ("DBS") antennas/dishes one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the dish is installed according to the Design Guidelines and no wires are installed on the exterior of any building. An Owner must submit written notification to the Association within three (3) business days before installing any antenna or dish that is allowed pursuant to this section. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna/dish. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner.

The Owner is responsible for all damage caused by or connected with the dish, for as long as the dish remains, including damage resulting from water entering a building due to the installation or existence of such antenna/dish. By installing a dish, the Owner agrees to hold the Association harmless and indemnify the Association in the event that someone is injured by the dish or in the installation or maintenance of the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein. The terms "dish" and "antenna" are to be used interchangeably in the interpretation of the above policy.

### ***3.12 Noise Disturbance.***

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

### ***3.13 Increase in Insurance Cost.***

Nothing shall be done or kept within any Lot or on the Common Areas, including Limited Common Areas, which will increase the cost of insurance to the Association or to other Owners.

No Owner shall permit anything to be done or kept within his or her Lot or Common Areas which will result in cancellation of insurance on any Lot.

**3.14 Association Rules and Regulations.**

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

**ARTICLE IV - ARCHITECTURAL CONTROL**

**4.1 Modifications.** No building, fence, wall, Improvement or other structure shall be commenced, erected or maintained upon the Properties, including any Lot, nor shall any exterior addition to the Properties or any Lot, or change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board as to qualifications determined by the Board, including but not limited to harmony of external design and location in relation to surrounding structures and topography. Such approval shall be solely at the discretion of the Board as it deems appropriate from time to time. Any such request shall be deemed to have been denied if the relevant Owner, including any subsequent Owner, cannot produce the written approval granted by the Board upon request, and any changes or alterations made by an Owner, or prior Owner, shall be removed and the property restored to its original condition at the request of the Board. In the event the Board fails to approve or disapprove a request by an Owner, the request will be deemed to have been denied.

**4.2 Detached Sheds.** No detached shed shall be constructed or placed upon the Property.

**4.3 Design Guidelines.** Design and construction of the Lots and Units shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design criteria which the Board is hereby empowered to adopt (referred to as "**Design Guidelines**"), to expand, clarify, and otherwise provide for the harmony and compatibility of the Improvements constructed within the Project. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction. All Owners shall comply with and are bound by the design restrictions herein and the Design Guidelines, if and when such are adopted, except as provided below.

**4.4 Declarant Exempt.** This Article IV shall not apply to the Declarant or Lots owned by the Declarant.

## ARTICLE V - MAINTENANCE OBLIGATIONS

### 5.1 *Owner's Responsibility.*

5.1.1 Lots. Except to the extent that the Association is responsible therefore under Section 5.2, maintenance of the Lots and Units shall be the responsibility of the Owner(s) thereof, who shall maintain such Lots and Units in good condition and repair. Any fixture, pipe, conduit, or other utility device or apparatus that services only one Lot shall be the responsibility of that Lot's Owner to maintain, repair, and replace. Each Unit and Lot shall be maintained so as to not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Unit or Lot.

#### 5.1.2 Fences and Fenced-in Areas.

(a) No fence shall be installed upon a Lot unless approved in advance by the Architectural Review Committee in accordance with Article IV. In any case where a fence is installed, the Owner whose Unit directly enjoys the benefit of the fence or fenced enclosure shall be responsible for all maintenance, repair and replacement of the fence and all landscaping and improvements within the area enclosed by such fence, including sprinkler lines, fixtures, and accessories. Prior to installation of such a fence, the Owner shall separate the area enclosed by the fence from the Common Area irrigation system and water supply and shall do so in a good and workmanlike manner such that sprinkler lines are capped or modified as appropriate. The cost of repair and maintenance of a fence between two Lots shall be shared by the Owners who make use of the fence in proportion to such use.

(b) No Separate Property Right Created. Any area enclosed by a fence shall retain its original status as Common Area, Limited Common Area, or a Lot, as the case may be, and shall not be deemed to be part of a Lot or an interest in real property only by virtue of its being enclosed by a fence. The applicable Owner shall merely enjoy a temporary revocable license to enjoy such enclosed area for his or her exclusive use but no further property right is or shall be created and no guarantee, covenant or promise that such a license shall continue to exist for any period of time is created hereby.

(c) Additional Requirements. No lock shall be permitted on any gate and if a lock is placed on any gate, it may be removed (by destroying the lock) by the Association and the Lot Owner shall be responsible for any costs incurred the Association in such removal. No additional concrete may be installed by an Owner within a fenced area. The Board may adopt rules from time to time further regulating fences and clarifying or otherwise expanding the provisions of this Section 5.1.2 and may impose additional requirements for an Owner to continue to keep a fence or obtain approval to install a fence.

5.1.3. Limited Common Area; Shared Driveways. Each Lot Owner shall, at its own cost, maintain, repair, replace, and keep in a clean, sanitary and attractive condition at all times, the Limited Common Areas appurtenant to his or her Lot. Any driveway shared by two or more Lots shall be maintained, repaired and replaced by the Owners of such Lots with each such

Owner sharing equally in the costs thereof, unless otherwise agreed in writing as to a given driveway by all of the Lot Owners sharing such driveway.

5.1.4. Snow Removal. As necessary, each Lot Owner shall be responsible to clear snow and ice from his or her Lot and Limited Common Area, including driveway, and from any walkway or entryway servicing only his or her Unit.

**5.2 Maintenance by Association.** The Association shall maintain the Common Areas of the Property, including Common Area amenities which may be installed from time to time, unless otherwise stated in this Declaration, and shall also provide for care, maintenance, repair and replacement of the exterior surfaces of the Living Units and the roofs, gutters and downspouts thereon (but not including glass surfaces or the replacement of glass, doors, door frames, windows, window frames and also not including sealing, repairing or otherwise fixing foundations). However, if the Common Areas or a Living Unit is damaged by the willful misconduct or negligence of an Owner, their guests, tenants, or invitees, the Owner shall be responsible for all such damage.

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

Additionally, the Association, by and through the Board, may assume the Owner's general maintenance responsibility over a Lot if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within fourteen (14) days after mailing of such written notice, then the Association may proceed to maintain the Lot. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall constitute an assessment and collected in the same manner as assessments pursuant to this Declaration.

**5.3 Party Walls.**

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

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

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

5.3.4. Arbitration. In the event any dispute arises concerning a Party Fence or a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

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

## ARTICLE VI - ASSESSMENTS

### **6.1. Covenant for Assessments.**

(a) Each Owner, by acceptance of a deed hereafter conveying any Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

- (1) Annual common assessments (the "Annual Assessment") as provided below.
- (2) Special assessments ("Special Assessments") as provided below.
- (3) Individual assessments ("Individual Assessments") as provided below.

(b) No Owner may exempt him or herself from liability for Assessments by abandonment of any Lot owned by such Owner.

### **6.2. Annual Budget and Assessment.**

6.2.1 Adoption of Budget. The Board shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, among other things, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

#### 6.2.2 Determination of Annual Assessment.

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

period.

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

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

**6.3. Apportionment of Assessments.** Subject to Subsection (d) of this section, assessments shall be apportioned as follows:

(a) Annual and Special Assessments. Subject to subsection (d) below, all Lots shall pay equal Annual Assessments and Special Assessments, all commencing upon the date the Lots are made subject to this Declaration.

(b) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lot(s) benefitted or to which the expenses are attributable as provided for below.

(c) Payment of Assessments. Installments of Annual Assessments shall be levied and collected on a monthly basis. However, upon resolution of the Board, installments of Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

(d) Declarant Assessment Apportionment. Notwithstanding anything herein to the contrary, any Lot owned by Declarant shall be exempt from payment of Assessments until a Unit on a Lot receives a certificate of occupancy, except that any model home owned by Declarant shall be exempt from all Assessment obligations until it is sold to the first consumer purchaser.

**6.4. Purpose of Assessments.** Annual and Special Assessments levied by the Association shall be used for payment of Common Expenses and other expenses incurred by the Association for the general benefit of all Lots, including, but not limited to: (a) The improvement and maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums for coverage of Common Areas and Association coverage; (c) The costs of utilities and other services which may be provided by the Association for the whole Community; (d) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; and (e)

The cost of funding reserves established by the Association for the general benefit of all Lots, including a general operating excess and a reserve for replacements as provided below.

**6.5. *Special Assessments.*** In addition to the Annual Assessments authorized in this article, the Association may levy a Special Assessment from time to time against all Owners for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be reasonably paid for through other Assessments. Subject to the foregoing, the Board may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment greater than \$500 per Owner may only be levied if it is first voted upon by the Owners, and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum of Owners representing at least 30% of the voting rights of Owners cast a vote. The written consent of Declarant as long as Declarant owns at least one Lot must also be obtained prior to levying any Special Assessment.

**6.6. *Individual Assessments.*** Any expenses which are not common expenses and which benefit or are attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefitted. Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association; (2) Expenses relating to, or incurred because of, a Lot(s) which may be incurred by the Association but which are not part of the Annual Assessment or a Special Assessment.

**6.7. *Nonpayment of Assessments.*** The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by the Board, and shall be delinquent if not paid after 30 days or within such other period established by the Board from time to time (the "date of delinquency"). The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment.

6.7.1 Interest. Delinquent payments shall bear interest beginning thirty days after the date of delinquency at the rate established by the Board.

6.7.2 Late Charge. Delinquent payments shall be subject to a late charge of Ten Dollars (\$10.00), or such other amount as determined by the Board from time to time.

6.7.3 Acceleration. If paid by installments, may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days written notice to the Owner. If, however, the assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

6.7.4 Rent Payments by Tenant to Association. If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than 60 days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner,



beginning with the next monthly other periodic payment, until all amount dues to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association.

6.7.5 Remedies, Including Suspension of Membership Rights and Services. All membership rights, including the right of a Member to vote, shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. Any service provided by the Association to the Owners shall also be terminated as to the delinquent Owner at the discretion of the Board. The Association shall have each and every remedy for collection of assessments provided in the Utah Community Association Act, Utah Code Title 57, Chapter 8a, as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

6.8. *Lien.* The Annual Assessment and all other Assessments imposed together with damages, fines, interest, costs of collection, late charges, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for enforcement of the Governing Documents shall be a charge and continuing lien upon each of the Lots against which the assessment or charge is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment.

6.9. *Personal Obligation and Costs of Collection.* Assessments imposed under this Declaration, together with late charges and interest at a rate to be established by the Board, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

6.10. *Appointment of Trustee.* The Declarant, the Association and each Owner hereby appoints Curtis G. Kimble, Esq., attorney of the Association, or such other attorney who has been retained by the Association at the time a foreclosure is initiated, as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., as may be amended from time to time. The Association may, without amendment or supplement to this Declaration, appoint a successor trustee at any time by filing for record in the office of the county recorder a substitution of trustee.

**6.11. Enforcement of Lien.** The Declarant hereby conveys and warrants pursuant to U.C.A. § 57-1-20 and 57-8a-402 (or other applicable section of the Act) (as the same may be amended from time to time) to the trustee, Curtis G. Kimble, Esq., the attorney of the Association, with power of sale, each Lot and all improvements to each Lot for the purpose of securing payment of Assessments under the terms of the Declaration. The lien may be foreclosed judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

**6.12. Subordination of Lien to Mortgages.** The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as follows: the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability or lien for any Assessments thereafter becoming due.

**6.13. Reserve Funds.**

(a) The Association shall establish and maintain a reserve fund for repairs and replacement of the Common Areas and areas for which it is responsible to maintain, for any emergency, unforeseen, unusual, or unanticipated expenditures, and for any other purpose determined from time to time by the Board by the allocation and payment to such reserve funds of an amount to be designated from time to time by the Board in its sole discretion and best business judgment or of an amount and in the manner as may be required by law.

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

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

**6.14. Amounts Due on Transfer of Lot.** Each time legal title to a Lot passes from one Owner to another, within thirty (30) days after the effective date of such title transaction, the new Lot Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee in the amount of \$450, or such other amount determined by the Board from time to time.

**6.15. Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or

perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of the each Owner.

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

## **ARTICLE VII - DECLARANT RIGHTS AND CONTROL AND EXPANSION OF PROPERTY**

**7.1 Administrative Control of Association.** Declarant shall assume full administrative control of the Association through a Declarant-appointed interim Board, which shall serve until the Turnover Meeting (the "Declarant Control Period"). The Turnover Meeting shall be held upon the earlier of the following:

(a) Twenty years from the recording of this Declaration; or

(b) Seven years after the Declarant has conveyed one hundred percent (100%) of all of the Lots in the first recorded Plat (the first phase), unless additional land has been annexed into the Property by that time, in which case seven years after the Declarant has conveyed one hundred percent (100%) of all of the Lots in such annexed property, unless additional land has been annexed into the Property by that time, in which case, twenty years from the recording of this Declaration.

The Declarant, however, may elect to relinquish control of the Association at an earlier time by written notice to Owners and the Turnover Meeting shall be held within ninety (90) days of such notice.

**7.2 Other Rights.** In addition to any other rights under this Declaration or the Bylaws, as long as Declarant owns at least one (1) Lot within the Property, Declarant:

(a) Sales Office and Model. Shall have the right to maintain a sales office and model in one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) For Sale and Other Signs. May maintain a reasonable number of For Sale and other signs, the size of which may be determined by Declarant, at reasonable locations on the Property.

(c) Approval of Amendments. Consistent with the amendment provisions of this Declaration and Bylaws, for two years after the Declarant has conveyed one hundred percent (100%) of all of the Lots in the first recorded Plat (the first phase), unless additional land has been annexed into the Property by that time, in which case two years after the Declarant has conveyed one hundred percent (100%) of all of the Lots in such annexed property, unless additional land has been annexed into the Property by that time, in which case for so long as the Declarant owns at least one Lot within the Property, the approval of the Declarant shall be required in order to adopt any amendment to the Declaration or Bylaws of the Association.

(d) The Act. The Declarant, the Declarant-appointed Board and the Association is exempted from all procedures, requirements and obligations imposed by the Act to the extent allowed by the Act during the Development Period and all rights authorized to be reserved by a declarant under the Act are hereby deemed reserved by the Declarant. The Declarant and the Declarant-appointed Board are exempt from association rules and the rulemaking procedure under Utah Code Ann. § 57-8a-217 and all rights under that section are hereby reserved by Declarant.

**7.3 Easements Reserved to Declarant.** Declarant reserves unto itself and its successors and assigns:

(a) Non-exclusive easements and rights of way over any strips or parcels of land designated or to be designated on the Plat as drainage and utility easements, sewer easements, drainage and sewage easements, open space, common area or otherwise designated as an easement area over any road or on the Property, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

(c) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Common Area or Lot and grade a portion of such Common Area or Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Common Area or Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(d) Declarant further reserves unto itself, for itself and any builder, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the

Property, other than those Lots conveyed to Owners, for all purposes necessary or appropriate to the full and final completion of construction of the Community.

The Declarant will take reasonable steps to avoid unduly interfering with the beneficial use of the Lots by Owners.

**7.4 Pre-Litigation Requirements.** Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant's contractors, or any other person or entity involved in the construction of the Units unless and until all of the following requirements have been satisfied:

7.4.1 The Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "Litigation Budget");

7.4.2 A copy of the opinion letter described above has been provided to all Owners, and, after the Owners have had a reasonable period of time to review the opinion letter, the decision to file the subject action has been approved by Owners (excluding Declarant) who collectively hold at least sixty percent (60%) of the total votes in the Association; and

7.4.3 The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget as set forth in the opinion letter obtained pursuant to subsection 7.4.1 above.

If any claims or actions falling within the scope of this Section 7.4 are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section 7.4, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. For purposes of clarity, this Section 7.4 and the requirements set forth herein shall not apply to any actions or legal proceedings filed by the Association to recover payment of any type of assessment or other amounts required to be paid by Owners to the Association under this Declaration, nor does this Section apply to claims or actions that individual Owners may file relating solely to their own properties. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

**7.5 Expansion of Property, Discretion to Expand Community.** Declarant reserves the right at its sole discretion to expand the Properties to include additional land by unilateral action of the Declarant without the consent of the Owners for a period of ten (10) years from the date of

recording this Declaration in the office of the County Recorder, state of Utah. It is currently contemplated that a total of 76 Lots and Units will comprise the Project, with 26 in the first phase, and others in subsequent phases, as determined by Declarant. No representations, promises, or guarantees are being made in that regard, however.

**7.6 No Limitations on Amount of Expansion.** There are no limitations on the maximum or minimum amount of the above property which may be added. There may be more than one expansion and the expansion may be made as to any amount or in any order.

**7.7 Process for Expansion.** Expansion shall occur by the Declarant recording: (1) an additional plat or plats creating additional phases for lots in the Project; and (2) a declaration of annexation which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a declaration of annexation, the property described therein shall be subject in all respects to this Declaration.

**7.8 Limitations on Expansion.**

(a) Any additional properties annexed hereto by the Declarant shall be for any purposes as determined solely by Declarant, including residential purposes or otherwise. Any additional properties annexed hereto by the Declarant may or may not be architecturally compatible with the existing Living Units and may or may not be of similar quality. The Declarant makes no assurances that any Living Unit constructed on any additional properties annexed hereto by the Declarant will be substantially or in any way identical to the Living Units depicted in the plat. No assurances are made as to the improvement or as to the location of said improvements which shall be made on the additional land.

(b) The Declarant shall have the sole discretion as to the development of the Common Area in any expansion area or additional land and may (or may not) include any facilities or amenities thereon that Declarant deems necessary. Such common areas, if any, shall be managed and maintained by the Association.

(c) All taxes and other assessments relating to property to be added must be paid or provided for by the Declarant prior to the addition of the property. Liens arising in connection with Declarant's interest in the property to be added must not adversely affect the rights of existing Lot Owners or the priority of existing first mortgages on the Property.

## **ARTICLE VIII – THE ASSOCIATION**

**8.1 Organization.**

(a) The Association has been or will be organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time).

(b) 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. However, the Board, upon its own motion, may re-incorporate the Association without a vote of the Owners. 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.

(c) The affairs of the Association shall be governed by a Board as provided herein and in the Bylaws.

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

**8.3 Voting Rights.** The method of voting shall be as provided in the Bylaws. Voting rights within the Association shall be allocated as follows:

(a) Lots. Subject to any rights granted to Declarant, each Owner shall have one (1) vote in matters of the Association for each Lot owned as set forth in the Bylaws.

(b) Declarant. For each Lot owned, the Declarant shall have five (5) votes.

**8.4 Powers, Duties and Obligations.** The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers, including without limitation:

8.4.1 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation 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:

(1) The Association shall maintain the Common Areas.

(2) 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 Property, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

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

(4) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Community, 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.

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

(1) The Association shall 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 enjoy any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Officers, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(2) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Areas, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Lot on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

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

B. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Officers may deem desirable.

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

(4) Telecommunications/Fiber Optic/Related Contracts. The Board shall have the power, in its own discretion and subject to federal law, to enter into, accept an assignment of, or otherwise cause the Association to comply with contracts with Telecommunication Service providers and Telecommunication Facilities owners (both, a "Telecommunication Provider"),



pursuant to which the Telecommunication Provider serves as the exclusive provider of Telecommunication Services and/or Telecommunication Facilities to each Lot in the Properties. The Board shall also have the power to enter into or contract on behalf of the Association for similar bulk rate service contracts of any nature deemed in the Association's best interests.

**8.5 Adoption of Bylaws, Appointment of Interim Board of Directors.** The Association has adopted Bylaws for the Association which are being recorded simultaneously with this Declaration. Declarant has appointed an interim Board of Directors of the Association, which shall serve until their successors have been elected at the Turnover Meeting as provided above.

## **ARTICLE IX - COMPLIANCE AND ENFORCEMENT**

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

**9.2 Remedies.** Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

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

**9.2.2** To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

**9.2.3** To levy fines, and a violation of any specific and express rule, regulation, covenant, restriction, or term of any Governing Document of the Association (a "violation"), and any subsequent occurrence of such violation, shall be subject to a fine in the amount determined by the Board from time to time. A subsequent occurrence of the same violation occurring within 12 months of a prior occurrence is and shall be deemed the same violation for all purposes, including the purpose of notice, and each such subsequent occurrence shall be subject to an immediate fine without further warning or notice;

**9.2.4** To terminate the right to receive utility services paid for by assessments, if any, to terminate the right of access to and use of recreational and service facilities of the Association, if any, until the correction of the violation has occurred;

9.2.5 To suspend the voting rights for any violation of any of the Governing Documents, but not for longer than 60 days except in the case of a continuous violation; or

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

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

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

9.4 *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.

## ARTICLE X - INSURANCE

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

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

(b) Property. Blanket property insurance or guaranteed replacement cost insurance with not less than 100% of the full replacement cost for the physical structure of all Townhomes, limited common areas appurtenant to a dwelling on a Lot, and Common Areas, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, and including coverage for any fixture, improvement, or betterment installed at any time to an

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

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

(d) Miscellaneous Items. The following provisions shall apply to all insurance coverage of the Association:

1) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

2) Deductible. The Association shall pay for the deductible on any claim made against the Association's property insurance policy for a covered loss incurred to the Common Area, except where the claim is made because of the negligence or willful acts of an Owner or occupant, including a guest, invitee, or visitor, as determined by the Board. In such cases, the corresponding Owner shall pay the deductible amount.

3) Special Endorsements. Each policy shall contain or provide those endorsements commonly purchased by the other community association in the county.

4) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or Association may deem necessary or appropriate from time to time, including directors and officers liability insurance.

## **10.2 Lot Owner Insurance Responsibility.**

10.2.1. Master Policy Deductible. For covered losses to Lots, the Association's policy is primary but the Townhome Lot Owner is responsible for the Association's policy deductible (which shall be an automatic Assessment against such Owner 30 days after substantial completion of the repairs to, as applicable, the Lot, a dwelling on the Lot, or the limited common area appurtenant to the Lot) as follows:

(a) If a loss occurs that is covered by the Association's policy and by a Lot Owner's policy, the Association's policy provides primary insurance coverage and the Lot

Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

(b) If a Lot, or Limited Common Area or facility appurtenant to a Lot, suffers damage as part of a covered loss, the Lot Owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to Lot damage for that Lot to the amount of the deductible under the Association's policy. The amount of the deductible under the Association's policy shall be determined by the Board from time to time. The Association shall provide notice to the Lot Owners of any change in the amount of the deductible.

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

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

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

## ARTICLE XI - AMENDMENT AND DURATION

### 11.1 *Amendments.*

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

(b) Approval Required. This Declaration may be amended, and any provision, covenant, condition or restriction whatsoever, may thereby be added, modified or deleted, if such amendment is approved by Owners holding sixty percent (60%) of the voting rights of the Association. Notwithstanding the foregoing, however, for so long as the Declarant owns a single Lot in the Property, any amendment to the Declaration or Bylaws affecting voting rights must first receive the approval of the Declarant. Failure to receive such approval shall make the amendment null and void.

(c) Declarant Amendments. Notwithstanding the foregoing, the Declarant may unilaterally amend this Declaration, without a vote of and without prior notice to the Owners, at any time until the Turnover Meeting.

(d) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the appropriate County Recorder's Office. An amendment or revocation which only requires the execution of an instrument by Declarant shall be effective when executed by Declarant and recorded with the County Recorder.

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

## ARTICLE XII - MISCELLANEOUS PROVISIONS

**12.1 Invalidity; Number; Captions.** The invalidity of any part of this Declaration shall not impair or affect the validity, enforceability, or effect of the balance of this Declaration. 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 not limit any of the provisions of this Declaration.

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

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

obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

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

**12.5 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Board except where powers are expressly restricted.

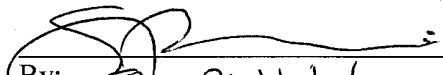
**12.6 Premises Liability.** From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, Declarant shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities; inasmuch as the control, operation, management, use and enjoyment, of the common area shall be within, under, and subject to the Association—and not Declarant, and an Owner shall defend, indemnify and hold harmless the Declarant against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the common area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the common area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

**12.7 Notice of Sale, Mortgage, Rental, or Lease.** Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

[Signature page follows]

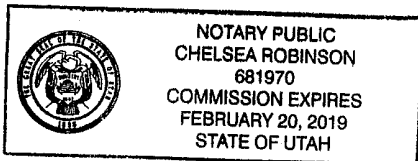
IN WITNESS WHEREOF, Creekside Subdivision, LLC, a Utah limited liability company, has executed this Declaration this 15<sup>th</sup> day of September, 2015.

CREEKSIDE SUBDIVISION, LLC

  
By: Shon Rindlisbacher  
Its: Manager

STATE OF UTAH            )  
  )ss:  
County of Salt Lake    )

The foregoing instrument was acknowledged before me on this 15 day of September, 2015 by Shon Rindlisbacher.



  
Notary Public for Utah

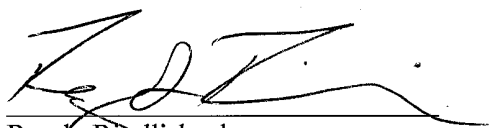
**Lot Owner Consent to Record Declaration**

The undersigned is the owner of the following lots and hereby consents to the adoption and recordation of the Declaration of Covenants, Conditions and Restrictions for Creekside at the Highlands (including Bylaws) against such lots:

Lots 101, 105, and 109 CREEKSIDE AT THE HIGHLANDS PHASE 1 subdivision, according to the official plat thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

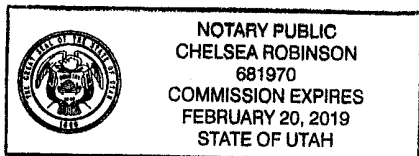
Parcel #'s: 20-35-201-027-0000, 20-35-201-023-0000, 20-35-201-019-0000.

Dated this 15 day of September, 2015.

  
Randy Rindlisbacher

STATE OF UTAH                    )  
  )ss:  
County of Salt Lake        )

Subscribed and sworn to before me on this 15 day of September, 2015 by Randy Rindlisbacher.



  
Notary Public for Utah



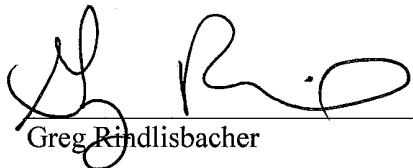
**Lot Owner Consent to Record Declaration**

The undersigned is the owner of the following lots and hereby consents to the adoption and recordation of the Declaration of Covenants, Conditions and Restrictions for Creekside at the Highlands (including Bylaws) against such lots:

Lots 102, 106, and 110 CREEKSIDE AT THE HIGHLANDS PHASE 1 subdivision, according to the official plat thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

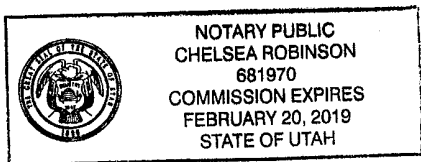
Parcel #'s: 20-35-201-022-0000, 20-35-201-023-0000, 20-35-201-018-0000.

Dated this 15<sup>th</sup> day of September, 2015.

  
\_\_\_\_\_  
Greg Rindlisbacher

STATE OF UTAH            )  
  )ss:  
County of Salt Lake    )

Subscribed and sworn to before me on this 15 day of September, 2015 by Greg Rindlisbacher.



  
\_\_\_\_\_  
Notary Public for Utah

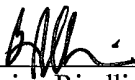
**Lot Owner Consent to Record Declaration**

The undersigned is the owner of the following lots and hereby consents to the adoption and recordation of the Declaration of Covenants, Conditions and Restrictions for Creekside at the Highlands (including Bylaws) against such lots:

Lots 103, 107, and 111 CREEKSIDE AT THE HIGHLANDS PHASE 1 subdivision, according to the official plat thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

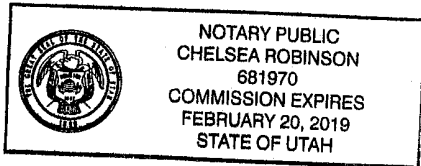
Parcel #'s: 20-35-201-025-0000, 20-35-201-021-0000, 20-35-201-017-0000.


Dated this 15<sup>th</sup> day of SEPTEMBER, 2015.

  
\_\_\_\_\_  
Brian Rindlisbacher

STATE OF UTAH            )  
  )ss:  
County of Salt Lake    )

Subscribed and sworn to before me on this 15 day of September, 2015 by Brian Rindlisbacher.



  
\_\_\_\_\_  
Notary Public for Utah

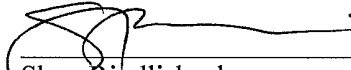
**Lot Owner Consent to Record Declaration**

The undersigned is the owner of the following lots and hereby consents to the adoption and recordation of the Declaration of Covenants, Conditions and Restrictions for Creekside at the Highlands (including Bylaws) against such lots:

Lots 104 and 108 CREEKSIDE AT THE HIGHLANDS PHASE 1 subdivision, according to the official plat thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

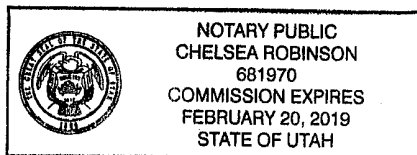
Parcel #'s: 20-35-201-024-0000, 20-35-201-020-0000.

Dated this 15<sup>th</sup> day of September, 2015.

  
\_\_\_\_\_  
Shon Rindlisbacher

STATE OF UTAH            )  
                                  )ss:  
County of Salt Lake    )

Subscribed and sworn to before me on this 15 day of September, 2015 by Shon Rindlisbacher.



  
\_\_\_\_\_  
Notary Public for Utah



**EXHIBIT A**

**(LEGAL DESCRIPTION)**

Lots 101 through 126 and Common Area, CREEKSIDE AT THE HIGHLANDS PHASE 1 subdivision, according to the official plat thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

First Parcel #: 20-35-201-001-0000

**EXHIBIT B**

**BYLAWS**

**OF**

**CREEKSIDE AT THE HIGHLANDS ASSOCIATION, INC.**

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**ARTICLE 1 - DEFINITIONS**

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

**ARTICLE 2 - MEETINGS OF ASSOCIATION**

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

Board, or (2) if the Association receives one or more written demands for the meeting that state the purpose or purposes for which the meeting is to be held, and are signed and dated by members in good standing holding at least 25% of the voting rights of the Association. When a special meeting is demanded by the members, the Board shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the demand and if notice of the meeting is not given by the Board within 30 days after the date the written demand is delivered to an Association officer, a person signing the demand may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

2.4 Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, in a fair and reasonable manner, including by delivering a copy of such notice to each member entitled to vote thereat, in accordance with the notice requirements specified in these Bylaws (including Section 11.1), and sufficiently in advance of the meeting to provide fair and reasonable notice of the meeting, as determined by the Board. Notice shall always be deemed fair and reasonable if given 10 days before the meeting, but shorter notice may also be fair and reasonable when all the circumstances are considered. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the members and, in the case of a special meeting, the purpose of the meeting. Notices of annual meetings shall always be delivered to all Owners via first class mail.

2.5 Voting. Each Lot shall be allocated the voting rights set forth in Section 8.3 of the Declaration. The Board may suspend the voting rights of an Owner who is more than 30 days delinquent in the payment of any assessments, including fines or other charges.

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

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

in determining the proportion of votes given with respect to the matter.

2.8 Quorum of Owners.

(a) At any regular annual meeting of the Association, the Members that are represented for any purpose at the annual meeting shall constitute a quorum, except for matters requiring a higher quorum as provided in the Declaration or these Bylaws. For any other meeting of the Association or for Action by Written Ballot, and except as otherwise provided in the Declaration or these Bylaws, Owners holding one-third (1/3) of the voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum.

(b) The subsequent ratification of an Owner of the action taken at a meeting shall constitute the presence of the person for the purpose of determining a quorum. When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

(c) If any meeting or vote of Members cannot be organized or achieved because of a lack of quorum, Members represented in person, by proxy, or by written ballot, holding twenty-five percent (25%) of the voting rights of all Members, shall constitute a quorum at an adjourned meeting, or subsequent Action by Written Ballot regarding the same issue, held or begun within 30 days, and the following shall apply. For a meeting, the Members who are present may adjourn the meeting, without further notice other than announcement at the meeting, to a time at least 48 hours from the time of the meeting at which a quorum was not present. For an Action by Written Ballot (whether or not conducted in conjunction with an annual meeting), the procedures and time frames in Section 2.12 below shall apply anew.

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

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

2.11 Meeting Procedure. Rules of order may be adopted by resolution of the Board, otherwise, the President shall conduct meetings according to the procedure he or she deems fit. A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

2.12 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association causes to be delivered a written ballot to every Member entitled to vote on the matter



not less than fifteen (15) days prior to the date on which the ballots must be received by the Association in order to be counted ("Action by Written Ballot"). A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Board members, there shall be space on the ballot to write in nominations. Action by Written Ballot may also be used in connection with any annual, regular, or special Association meeting, thereby allowing Owners the choice of either voting in person or by written ballot delivered by an Owner to the Association in lieu of attendance at such meeting. Action by Written Ballot has the same effect as action taken at a meeting of Members and may be described as such in any document. The Board may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

2.13 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice if one or more written consents forms, setting forth the action so taken, are signed by Members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted, provided a minimum of 50% of all Members sign the consent(s). All such writings must be received by the Association within a sixty day period. Any such writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

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

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

(a) The affairs of the Association shall be governed by a Board of Directors composed of three (3) Board members.

(b) After the Declarant Control Period, members of the Board shall serve for a term of two (2) years, except, at the Turnover Meeting, one Board member shall be elected for one

year and two Board members shall be elected for two years. Thereafter, the terms shall be staggered so all Board members are never elected in the same year.

(c) After the Declarant Control Period, one Board member shall thenceforth always be elected from among the Townhome Owners and one Board member from among the Detached Home Owners. The third Board member may be elected from either the Townhome or Detached Home Owners. After the Declarant Control Period, all Board members must be an Owner or the spouse of an Owner of a Lot, except that a husband and wife may not serve on the Board at the same time. A representative of an entity which owns a Lot, and only one such representative, may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Lot.

3.2 Vacancies. After the Declarant Control Period, vacancies on the Board, caused by any reason other than the removal of a Board member by a vote of the Association, shall be filled for the balance of the term by vote of a majority of the remaining Board members even though they may constitute less than a quorum. Each person so elected shall be a Board member until a successor is elected upon expiration of the term for which the person was elected by the other Board members to serve.

3.3 Removal of Board members.

(a) After the Declarant Control Period, at any annual or special meeting, any one or more of the Board members, other than interim Board members, may be removed, with or without cause, by a majority of the voting interests of the Members. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Trustee whose removal has been proposed by the owners may be given an opportunity to be heard at the meeting.

(b) The Board may declare the office of a member of the Board to be vacant in the event such member is absent from three (3) consecutive regular meetings of the Board or from more than 25% of the regular meetings held in any 12 month period. The vacancy shall be filled as provided in Section 3.2 above.

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

3.5 Action Taken Without a Meeting. The Board shall have the right to take any action in the absence of a meeting which they could take at a regular or special meeting if all the Board members agree in writing to take a vote or an action without a meeting. The action being taken shall not require unanimous consent of the Board. Any action so taken shall have the same effect as though taken at a meeting of the Board members.

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

4.1 Nomination.

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

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

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

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

5.1 Organizational Meeting.

(a) Location, Date and Time. The first meeting of a newly-elected Board (which does not include interim Board members during the Declarant Control Period) shall be held at such place, date and time as shall be fixed by the Board members at the meeting at which the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

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

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

5.3 Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) Board members, after not less than three (3) days' notice to each Board member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.7 below. The notice must state the time, place, and purpose of the meeting.

5.4 Meeting Procedure. Unless other rules of order are adopted by resolution of the Board: (a) Meetings of the Board shall be conducted by the President; (b) A decision of the Board may not be challenged because the appropriate rules of order were not used; (c) A decision of the Board is deemed valid without regard to any procedural errors related to the rules of order unless

the error appears on the face of a written instrument memorializing the decision.

## 5.5 Open Meetings; Executive Sessions.

5.5.1 Open Meetings. After the Declarant Control Period and except as provided in subsection 5.5.2, all meetings of the Board shall be open to Lot Owners. However, no Owner shall have a right to participate in the Board meeting unless the Owner is also a member of the Board. The president or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting.

5.5.2 Executive Sessions. In the discretion of the Board, the following matters may be considered in executive session:

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

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

5.6 Meetings by Telephonic or Electronic Communication. In the event of an emergency, or by decision of the Board, meetings of the Board may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

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

5.8 Quorum and Acts. At all meetings of the Board a majority of the existing Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time

to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

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

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

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

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

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

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

## **ARTICLE 7 - OFFICERS AND THEIR DUTIES**

7.1 Designation and Qualification.

(a) Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The Board may designate the office of assistant treasurer

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND BOARD MEMBERS**

Each officer and Board member of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities reasonably incurred by him or her in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Board member or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Board member or officer or person may be entitled by law or agreement or vote of the members or otherwise.

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

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

##### **9.1 General Records.**

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

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

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

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

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

### 9.3 Financial Reports and Audits.

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to all Owners, and to all mortgagees of Lots, who have requested the same in writing within ninety (90) days after the end of each fiscal year.

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

### 9.4 Inspection of Records by Owners.

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

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

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

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



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

- (a) Personnel matters relating to a specific identified person or a person's medical records.
- (b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.
- (c) Communications with legal counsel that relate to matters specified in this section, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.
- (d) Disclosure of information in violation of law.
- (e) Documents, correspondence or management or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session held in accordance with these Bylaws.
- (f) Documents, correspondence or other matters considered by the Board in executive session held in accordance with these Bylaws and the minutes of any executive session.
- (g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

#### ARTICLE 10 - AMENDMENTS

Approval of a majority of the voting rights of the Members is required for approval of any amendment to these Bylaws, except that the approval of Declarant shall also be required for as long as Declarant owns at least one Lot. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder's Office.

Notwithstanding the foregoing, the Declarant may unilaterally amend these Bylaws at any time until the Turnover Meeting, and, for so long as the Declarant owns a single Lot in the Property, any and all amendments must receive the approval of the Declarant. Failure to receive such approval shall make the amendment null and void.

#### ARTICLE 11 - MISCELLANEOUS

##### 11.1 Notices.

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

##### 11.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to the Members, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable, except that notices of annual meetings shall always be delivered to all Owners via first class mail. A Member may require the Association, by written demand, to provide notice to the Member by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring members to furnish the Association with a current email address.

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

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

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

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

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

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

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officer on this 15<sup>th</sup> day of September, 2015.

(Sign):   
(Print Name): Sharon Krollisbacher, President