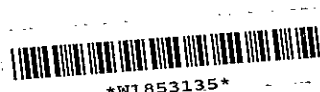


When Recorded, Return To:
Bryan B. Todd, Esq.
Parsons Behle & Latimer
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, Utah 84145-0898



**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
THE HIGHLANDS AT WOLF CREEK RESORT SUBDIVISION
EDEN, UTAH PHASE 1 LCR**

THIS DECLARATION ("Declaration") is made as of JUNE 6, 2002, by WOLF CREEK PROPERTIES, LC, a Utah limited liability company ("Declarant").

- A. Declarant is the owner of the Property (as defined below).
- B. Declarant intends to develop the Subdivision (as defined below) on the Property, and to develop and convey all of the Lots (as defined below) subject to a general plan of development.
- C. All of the Lots shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the Covenants (as defined below) set forth below, all of which are created for the mutual benefit of the Lots. It is the intention of the Declarant in imposing the Covenants to maintain a generally uniform pattern of development, to protect and enhance the property values and aesthetic values of the Lots by eliminating inconsistent uses or improvements, all for the mutual protection and benefit of the owners of the Lots. The Covenants are intended to, and shall in all cases, run with the title of the land, and be binding upon the successors, assigns, heirs, lien holders, and any other person holding any interest in the Lots, and shall inure to the benefit of all other Lots in the Subdivision. The Covenants shall be binding upon the Declarant as well as its successors in interest, and may be enforced by the Declarant or by any Owner. Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarant from the completion of the Subdivision improvements, or from using any Lot owned by the Declarant as a model home, temporary construction or sales office, nor limit Declarant's right to post signs incidental to sales or construction which are in compliance with applicable ordinances.
- D. This Declaration and the Property shall be subject in all respects to the Master Declaration defined below.

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DOUG CROFTS, WEBER COUNTY RECORDER
06-JUN-2002 4:41 PM FEE \$83.00 DEP
REC FOR: STEVEN ROBERTS

22-195-0001 to 0008
22-194-0001 to 0009

**ARTICLE I
DEFINITIONS**

Unless the context clearly requires the application of a more general meaning, the following terms, when used in this Declaration, shall have the following meanings:

- 1.1. **"Architectural Committee"** shall mean the Architectural Committee created under this Declaration.
- 1.2. **"Association"** shall mean The Highlands at Wolf Creek Homeowners Association, Inc. The Association shall constitute a "Neighborhood Association" as defined in the Master Declaration, and the "Member Representative" / "Neighborhood Representative" of the Association under the Master Declaration shall be elected by the Board defined below.
- 1.3. **"Board"** shall mean the Association's board of Trustees.
- 1.4. **"Building Pad"** shall mean the area designated on the Plat for the location of the Dwelling Unit and all other structures on each Lot.
- 1.5. **"By-Laws"** shall mean the By-Laws of the Association, as the same may be amended from time to time. The initial Bylaws are attached hereto as **Exhibit C**.
- 1.6. **"Covenants"** shall mean the covenants, conditions, restriction, equitable servitudes and other provisions contained herein.
- 1.7. **"Dwelling Unit"** shall mean the single-family residence built or to be built on any Lot.
- 1.8. **"Family"** shall mean one household of persons related to each other by blood, adoption or marriage, or one group of not more than five people not so related living together as a unit who maintain a common household.
- 1.9. **"Improvement"** shall mean any structure or appurtenance of any kind, including but not limited to buildings, Dwelling Units, garages, storage buildings, walkways, retaining walls, sprinklers, pipes, driveways, landscaping, pools, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.
- 1.10. **"Limits of Disturbance Area"** shall mean the area designated on the Plat for each Lot which is the outer limit of the area which may be disturbed by construction activity, and also the limit of the portion of the Lot which may be irrigated for landscaping purposes.
- 1.11. **"Lot"** shall mean any building lot shown on the Plat. Within each Lot there is a designated Building Pad, Limits of Disturbance Area, and Reserved Open Space Area.
- 1.12. **"Master Declaration"** shall mean a Master Declaration of Covenants, Conditions, and Restrictions for Wolf Creek Resort to be recorded hereafter. Declarant shall have the right to record the Master Declaration against the Property, in such form and substance as Declarant may desire, and the Property and all parts thereof shall be subject thereto in all respects.

- 1.13. **"Member"** and **"Membership"** shall have the meanings given them in the By-Laws.
- 1.14. **"Owner"** shall mean the person or persons having title to any Lot. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of an obligation.
- 1.15. **"Person"** shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.
- 1.16. **"Plat"** shall mean the official plat of the Subdivision as approved by Weber County and recorded in the office of the Weber County Recorder, as it may be amended from time to time. The Plat and all matters shown thereon are incorporated into this Declaration by reference.
- 1.17. **"Property"** shall mean the real property located in Wolf Creek Resort in Eden, Weber County, Utah, legally described in the attached **Exhibit A**.
- 1.18. **"Reserved Open Space"** shall mean the area on each Lot as shown on the Plat in which no disturbance of the natural vegetation is permitted and no irrigation is permitted.
- 1.19. **"Subdivision"** shall mean the residential subdivision to be developed on the Property, and all Lots and other property within the same, as shown on the Plat. The Subdivision shall constitute a "Neighborhood" as defined in the Master Declaration.
- 1.20. **"Trustees"** shall mean the duly elected and acting board of trustees of the Association.

ARTICLE II ASSOCIATION

To effectively enforce these Covenants, Declarant has created the Association as a Utah non-profit corporation. The Association shall be comprised of the Owners, and is established to perform the following functions and exercise the following rights and powers for the benefit of the Owners and the enforcement of these Covenants. Membership in the Association shall be an appurtenance to the Lot, and is transferable only in conjunction with the transfer of the title to the Lot. The Association shall have and exercise, as necessary, the following powers:

2.1. **Enforcement Powers.** The Association shall have the power to enforce these Covenants by actions in law or equity brought in its own name, the power to retain professional services needed for the enforcement of these Covenants and to incur expenses for that purpose. The officers of the Association shall have the authority to compromise claims and litigation on behalf of the Association resulting from the enforcement of these Covenants. The Trustees shall have the exclusive right to initiate enforcement actions in the name of the Association, however this shall not limit the individual rights of Owners to personally enforce these Covenants in their own name. The Association may appear and represent the interests of the Subdivision at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners. Owners may appear individually.

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2.2. **Maintenance of Entry Landscaping.** The Association is the beneficiary of the easements reserved on the Plat, for such purposes as are indicated thereon, as well as the purpose of installing and maintaining a landscaped entry and buffer area. The maintenance of these landscaped areas is the responsibility of the Association, which has the power to contract for maintenance services, install and modify landscaping and other entry features, and to purchase water for irrigation purposes independently from the water purchased for use on the balance of those Lots.

2.3. **Assessments.** The Association has the power to levy assessments against each Lot as necessary to carry out these functions. All assessments will be equal on all Lots, whether vacant or improved. Assessments will be made annually to meet the anticipated and recurring expenses of the Association including, but not limited to, the costs of landscape maintenance, water for irrigation, reimbursement of expenses incurred by the Trustees and Architectural Committee in performance of their obligations, and enforcement of these Covenants. Notice of the Assessment and the proposed amount of the annual Assessment will be given in advance along with the notice of the annual meeting of the Association, provided that the amount of the proposed assessment may be increased or decreased at the meeting in which it is approved by the Owners. The Association may also levy special assessments to cover unanticipated expenses or shortfalls. No special assessment will be levied without approval of the Owners in a meeting called for that purpose.

2.4. **Assessments Constitute Lien/Mortgagee Protection.** Any validly imposed assessment by the Association shall constitute a lien against the Lots in the Subdivision. The Association shall have the right to foreclose on that lien when any assessment remains unpaid for a period of more than 90 days from the date the assessment was levied, but if the lien is not foreclosed upon, it may be renewed from year to year by recording a new notice of the lien, together with accumulated interest. The lien of the Association against any Lot shall have priority from the date that the first Notice of Lien on a specific Lot is recorded in the office of the Weber County Recorder, and is subordinate to any previously recorded liens or encumbrances filed against that Lot, specifically including any purchase money mortgage or trust deed. Notwithstanding the lien rights of the Association, the obligation to pay assessments is a personal obligation of the Owner of each Lot, and the Association may proceed to collect against the Owner, or the prior Owner of any Lot in the event of a sale. No mortgagee or beneficiary under a Trust Deed who takes title by foreclosure or non-judicial sale, or accepts in deed in lieu of foreclosure or non-judicial sale, shall be held liable for the unpaid assessments of the Owner whose Lot was acquired by the mortgagee or Trust Deed beneficiary.

2.5. **Statement of Account.** Any Owner may request the Association to provide a statement of his account to any lender or prospective buyer of that Lot showing the assessments to be paid in full, or the amount of any past due assessments. The buyer or lender for whom such a statement was prepared will be entitled to rely on its accuracy, and will not be held liable for any amounts not shown on the statement.

2.6. **Indemnity of Association Trustees and Officers.** The Association will shall indemnify the officers, agents and trustees of the association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under this Declaration.

2.7. **Election.** In elections for Trustees, or any other matter which is presented to the Association, each Owner, including the Declarant, shall be entitled to vote as set forth in the By-Laws.

ARTICLE III ARCHITECTURAL COMMITTEE

It is the intention and purpose of these Covenants to impose architectural standards on the Improvements to any Lot of a type and nature that result in buildings which are architecturally compatible in terms of Lot coverage, proportion, materials, colors, and general appearance, while at the same time allowing for diversity in style and design appropriate for the mountain setting. To accomplish this goal, the Declarant hereby establishes the Architectural Committee, which is empowered to oversee and enforce the Architectural Design Standards set forth in this Declaration.

3.1. **Architectural Committee Created.** The Architectural Committee will shall consist of at least three members, one of whom may be a consultant architect, and the others of whom shall be Trustees, officers or members of the Association. The initial committee will consist of three people appointed by the Declarant, who do not need to be Owners. At the time 25% of the Lots are sold to persons other than the Declarant, one member of the Committee will be elected from the Trustees, other than a representative of the Declarant. At the time that 75% of the Lots are sold to persons other than the Declarant, the Owners will elect two members of the Architectural Committee from the Board of Trustees. At the time that 90% of the Lots are sold to persons other than the Declarant, all of the members of the Architectural Committee will be elected by the Owners with the election of the Trustees. In any event, regardless of the number of Lots sold, all members of the Committee will be elected from and by the Owners following the fifth anniversary of the initial recording of this Declaration with the Weber County Recorder.

3.2. **Approval by Committee.** No Improvements of any kind, including without limitation the construction of any Dwelling Unit, garage, out building, parking area, driveway, tennis court, walkway, other hard surfaced area in excess of 100 square feet, swimming pool, outdoor hot tub or spa, fence, wall, curb, pole, trampoline, swing set or playground equipment, satellite dish or antenna, solar panel, outside air conditioning equipment, or any other permanent structure may be constructed, erected, or installed in the Subdivision without the prior written consent of the Architectural Committee. No excavation, grading, filling, draining, landscaping, or installation or removal of existing vegetation shall be made without the advance written consent of the Architectural Committee. No improvement requiring a building permit shall proceed without approval of the Architectural Committee. Approval of the Architectural Committee will be sought in the following manner:

a. **Plans submitted.** Plans for all construction subject to Architectural Committee approval must be submitted to the Architectural Committee for review. It is recommended that a preliminary plan be submitted before the expense of final construction drawings is incurred. The plan must be in sufficient detail to show the location on the Lot of the exterior walls of the Dwelling Unit and all other structures to be built, and include: detailed drawings of all elevations of all structures showing locations of windows, doors, roof pitches, decks and other exterior elements; a list of exterior siding and roofing materials and samples thereof, including color

samples; and a landscape plan showing the location of driveways, walkways, patios, decks and other hard surfaced or irrigated areas and the areas to be disturbed by construction and the means of restoring those areas. The Architectural Committee shall create design guidelines for the Subdivision ("**Design Guidelines**"), and all construction must comply therewith. It shall be the responsibility of each Owner to obtain a copy of the Design Guidelines from the Architectural Committee. The landscape plan must also include the identification and placement of the minimum number of trees and plants and the minimum height requirement from the recommended list of plant species as set forth in the Design Guidelines. In the case of an addition or modification of an existing structure, the Architectural Committee may waive any of the foregoing if it feels they are unnecessary to its review of the remodel or addition.

b. **REVIEW FEE.** THE APPLICANT WILL PAY A REVIEW FEE TO THE ARCHITECTURAL COMMITTEE. THE REVIEW FEE FOR NEW CONSTRUCTION PLANS IS \$500.00. THE FEE FOR REMODEL IS \$250.00. FEES MAY BE INCREASED TO REFLECT THE CHARGES AND EXPENSES OF THE CONSULTING ARCHITECT ON THE ARCHITECTURAL COMMITTEE, AND INCREASES IN THE COST OF LIVING.

c. **Review.** Within 30 days from receipt of a complete submission, the Architectural Committee will review plans and make an initial determination whether or not the plans comply with the conditions imposed by the Declaration. If they do not, the plans will be rejected. If they are in compliance, the Architectural Committee will approve the plans. The Architectural Committee may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The Architectural Committee will review preliminary plans, without fee, and make its comments known to the Owner, provided, however, that no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission. Upon approval, the Architectural Committee and the Owner will each sign a copy of the plans, which shall be left with the Architectural Committee. No construction that is not in strict compliance with the plans so approved will be permitted, and if undertaken, will be subject to removal at the Owner's sole cost.

d. **Written Record.** The Architectural Committee shall maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of five years. The Architectural Committee will also provide evidence of its approval if requested by the Owner.

e. **Failure to Act.** If the has not approved or rejected any submission within 45 days after payment of the review fee and submission of complete plans, the submission shall be deemed to have been disapproved.

3.3 **Variances.** Subject to the remainder of this paragraph, variances from this Declaration may be granted by the Architectural Committee when strict application would create, in its opinion, an unforeseen or unreasonable hardship to the Owner of any Lot. No variance may be granted without the consent of at least 25% of the Owners at a meeting called for that purpose, unanimous consent of the Architectural Committee, and the unanimous consent of the Owners of the adjacent and facing Lots. The Architectural Committee, or the Owners as a whole, cannot grant any variance that has the effect of modifying applicable governmental regulations. The burden of obtaining a variance is entirely on the applicant, including the costs of notice. No

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variance shall be obtained from any governmental body or agency without prior written Architectural Committee approval.

3.4. **Extraordinary Costs.** Whenever it deems appropriate, and with the consent of the Trustees, the Architectural Committee may engage the services of an architect or civil or structural engineer to assist in its review of any plans. All costs of such additional review will be paid by the Applicant, provided that no architect or engineer will be hired without advance notice to the Applicant, and the aspects of the proposal that caused the Architectural Committee to believe that professional review was required, and the estimated cost of that review. If the applicant does not withdraw the proposal within five days after receipt of that notice, he shall be deemed to have consented to the Architectural Committee retaining such professional assistance at his cost. Whenever the Architectural Committee retains outside professional services in its review, the reviewing architect or engineer is acting only in an advisory capacity, and the applicant, for himself and his successors and assigns, waives any and all claims against the Architectural Committee in the event that advice from, or conditions imposed by, the reviewing professional prove ineffective, unnecessary or inappropriate to the circumstances.

3.5. **General Design Review.** The Architectural Committee will use reasonable efforts to provide a consistent pattern of development, and consistent application of the standards of this Declaration. These standards are, of necessity, general in nature, and it is intended that the Architectural Committee should apply them in a manner that results in a high quality, attractive, and well designed community.

3.6. **Not Liable.** The Declarant, the Association, the Trustees, and the Architectural Committee and its members shall not be liable to any applicant for any damages, or to the Owners of and Lots, for their actions, inaction, or approval or disapproval of any plans or other materials submitted to the Architectural Committee for review in the absence of bad faith or malicious actions, and in such event the Owners shall have no claim against such parties as a result of the performance or failure to perform the duties created by this Declaration. Each Owner has the right to enforce these Covenants against every other Owner, however, and may seek independent redress if it believes the Architectural Committee has acted improperly.

3.7. **Limitations on Review.** The Architectural Committee's review is limited to those matters expressly granted in this Declaration. The Architectural Committee shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws, or ordinances affecting the development or improvement of the Property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable laws and codes must be approved by the Architectural Committee prior to construction.

ARTICLE IV RESTRICTIONS ON ALL LOTS

The following restrictions on use apply to all Lots:

4.1. **No Mining, Business or Commercial Uses.** The Property shall be used for residential purposes only, and no mining, drilling, or quarrying activity will be permitted at any time on any

portion. No portion of the Property may be used for any commercial or business use, provided however that nothing in this provision is intended to prevent (a) the Declarant from using one or more Lots for purposes of a construction office or sales office during the actual period of construction of the Subdivision improvements or until 75% of the Lots are sold, or (b) the use by any Owner of his Lot for a home occupation as long as the same has no negative impact upon the community, in the sole discretion of the Architectural Committee. No home occupation will be permitted, however, which requires any employees outside of the Owner's immediate family or household. No retail sales of any kind may be made in the Subdivision.

4.2. **Restrictions on Signs.** No signs will be permitted on any Lot or within the Subdivision, except for traffic control signs placed by governmental authorities of the Association, temporary signs warning of some immediate danger, or signs not in excess of six square feet located on a Lot identifying the contractor and/or architect of any Dwelling Unit while it is under construction on such Lot. Signs indicating a Lot is for sale may be placed in accordance with governmental sign regulations, provided no such sign may exceed six square feet in size. The Declarant may erect a sign of not more than thirty-two square feet in size at the entrance to the Subdivision until 75% of the Lots have been sold announcing the availability of Lots and giving sales information. No permanent signs stating the address or the name of the Owner of the Lot may be installed without the advance consent of the Architectural Committee.

4.3. **Completion Required Before Occupancy.** No Dwelling Unit may be occupied prior to its completion and the issuance of a certificate of occupancy by appropriate governmental authorities. If a temporary certificate of occupancy is issued, it must be converted to a permanent certificate of occupancy no later than 12 months after issuance.

4.4. **Dwelling to be Constructed First.** No garage, storage unit, or other out building may be constructed prior to the construction of the primary Dwelling Unit on the Lot.

4.5. **Animals.** No animals other than ordinary household pets may be kept on any Lot. Horses are expressly excluded.

4.6 **Combination of Lots.** Subject to governmental regulations and approvals, any Owner may combine two or more adjoining Lots, subject to the following:

a. **Dwelling Unit Size and Placement:** The maximum size of a Dwelling Unit on the combined Lots shall not exceed 150% of the average of the maximum allowable Dwelling Unit size permitted on each of the individual combined Lots under this Declaration, the Design Guidelines, or applicable governmental regulations, whichever is the most restrictive. The resulting building mass shall be concentrated approximately at the center of the combined Lots.

b. **Combination Deemed Permanent:** Any combination of Lots shall be deemed to be permanent and combined Lots may not be independently sold once construction has commenced on the Improvements for the combined Lots. The Owner of any Lots that have been combined shall execute and deliver to the Architectural Committee a notice in recordable form containing the name of the Owner and a legal description of the Lots combined, which notice will state that the Lots have been combined and cannot subsequently be subdivided. The Architectural Committee shall record this Notice with the Weber County recorder upon the commencement of

construction of the Dwelling Unit on the combined Lots.

c. **Membership:** Combined Lots shall have only one membership in the Association and one vote.

4.7. **No Re-Subdivision.** No Lot may be re-subdivided without the consent of the Architectural Committee as well as all governmental agencies with jurisdiction in regard thereto. No re-subdivision of any Lot may result in the construction of any additional Dwelling Units within the Subdivision.

4.8. **Underground Utilities.** All gas, electrical, telephone, television, and any other utility lines in the Subdivision are to be underground, including lines within any Lot which service installations entirely within that Lot. No propane tanks or oil tanks may be installed on any Lot except for temporary heat during construction.

4.9. **Service Yards.** All clotheslines, service yards, storage yards, and exterior mechanical equipment must be screened in a manner approved by the Architectural Committee so that they are not visible from adjoining Lot.

4.10. **Maintenance of Property.** All Lots, and the Improvements on them, shall be maintained in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his Lot or the Improvements on it to fall into disrepair.

4.11. **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried out on any Lot or any other part of the Subdivision, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

4.12. **No Hazardous Activity.** No activity may be conducted on any Lot or any other part of the Subdivision that is, or would be considered by a reasonable person to be, unreasonably dangerous or hazardous, or which would cause the cancellation of conventional property casualty insurance. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than property supervised and contained barbecues).

4.13. **No Unsightliness.** No unsightliness shall be permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during the construction of any Dwelling Unit or addition); open storage or parking of farm or construction equipment, inoperable motor vehicles, boats, campers, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading); accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage; lawn or garden furniture except during the season of use; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that it is visible from any other Lot or any street.

4.16. **No Annoying Lights.** Any outdoor lighting on any Lot shall be subject to approval by the Architectural Committee, and no outdoor lighting shall be permitted on any Lot except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on

which it is installed. Whenever possible, efforts should be made to insure that indoor lighting is not unreasonably offensive to surrounding property owners. No excessively bright indoor lighting, such as industrial lights, floodlights, workroom, lights, or fluorescent lights, are permitted after dark.

4.17. **No Annoying Sounds.** No continuously barking dogs, loud speakers, or other noise making devices may be used or maintained on any Lot which would disturb other property owners, or which create noise that might reasonably be expected considered to be unreasonably or annoyingly loud from adjoining Lots, may be maintained or used on any Lot, except for security or fire alarms.

4.18. **Sewer Connection Required.** All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Dwellings Units must be connected to the sanitary sewer system.

4.19. **Drainage.** No Owner shall alter the direction of natural drainage from his Lot, nor shall any Owner increase the amount of natural storm run-off leaving his Lot.

4.20. **Vehicles Restricted to Roadways.** No motor vehicle will be operated in the Subdivision except on improved roads and driveways. No snowmobiles or motorcycles will be operated on any Lot except for ingress and egress or while loading the equipment for lawful transport on public streets. The operation of any vehicle on the Reserved Open Space portion of any Lot is strictly prohibited, even during periods of construction.

4.21. **Kennels.** No kennel or dog run may be placed closer than 50 feet to any Dwelling Unit other than that of the Owner of the Kennel.

4.22. **No Transient Lodging Uses.** The Lots are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding house, "bed and breakfast," or other uses for providing accommodations to travelers. No lease of any Lot shall be for a period of less than 30 days. No Lot shall be subjected to time interval ownership.

ARTICLE V RESTRICTIONS ON IMPROVEMENTS

All Improvements on any Lot shall be subject to the following restrictions and architectural design standards (the "Architectural Design Standards"):

5.1. **Number of Buildings.** Only one Dwelling Unit may be constructed on any Lot. All Dwellings shall have an attached garage, which shall not exceed 700 square feet in area. No other storage building, outbuilding or habitable structure shall be permitted on any Lot.

5.2. **Placement of Buildings.** Within each Lot, as shown on the Plat, there is an area marked as the Building Pad. All Dwelling Units, garages and other structures, including any above grade decks or balconies, shall be confined to the Building Pad area.

5.3. **Building Size.** The sizes of the Lots within the Subdivision were intentionally varied.

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The variations in Lot sizes and Building Envelopes (as depicted on the Recorded Plat) within the Subdivision are intended to preserve view corridors, open space, and cluster the structures, and to maintain an appropriate limit on Lot coverage. No Dwelling Unit may be constructed which is not within the Building Envelope. The maximum floor area for any one level of each home may not exceed 2500 square feet unless a written variance is granted at the sole discretion of the Architectural Committee. This square footage excludes garages, which may not exceed 700 square feet unless varied per the above.

5.4. **Building Setback and Placement.** All portions of the Dwelling Unit are to be within the Building Pad designated for the applicable Lot as shown on the Plat, which will dictate the minimum front, rear and side yard setbacks.

5.5. **Building Height.** No structure on any Lot may exceed 22 feet in height as measured at the natural grade on the Lot prior to construction to a point halfway between the eaves and the ridge line of the roof. The maximum ridgeline height will be 30 feet above natural grade, with the intention being to have the building mass follow the natural, existing contour of the land. No garage may exceed one story.

5.6. **No Used or Temporary Structures.** No previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained on any Lot.

5.7. **Fire Sprinklers.** All Dwelling Units will be equipped with an automatic fire sprinkler system in accordance with governmental requirements or, in the absence of governmental requirements, a system that meets standard 13-D of the National Fire Protection Association for residential applications.

ARTICLE VI LANDSCAPING

The intent of this Declaration is to conserve water and preserve the natural vegetation and condition on the Property to the extent possible, given the construction of the Subdivision. All landscaping on the Lots shall blend in with the natural surroundings, and is subject to the following landscaping standards:

6.1. **Limits of Disturbance Area.** All construction activity, including excavation, storage or waste of excavated material, construction access, and any other construction activity shall be confined to the Limits of Disturbance Area for the Lot. Prior to the commencement of construction, the Owner will physically mark the Limits of Disturbance Area on the Lot and maintain such marking throughout all construction activities.

6.2. **Re-vegetation.** By the end of the first summer following completion of any construction the Owner will re-grade and re-vegetate the area disturbed by construction on his Lot. Within the Limits of Disturbance Area for his Lot, the Owner shall plant lawns and gardens, plant shrubbery, trees or other ornamental plantings or replace natural species, as set forth in the Design Guidelines. Agricultural or farming use on any Lot is prohibited. Any vegetable garden must be screened from view by permitted plant types. Starter garden boxes are prohibited if

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visible from other Lots or the street. Within the Limits of Disturbance Area, subject to approval of the Architectural Committee, the Owner may construct decks on grade, pools, or similar improvements that do not extend significantly above the existing grade.

6.3. Landscape Maintenance Equipment Storage. When not in use, landscape maintenance equipment shall be stored in a manner so the equipment is not visible from other Lots. This includes but is not limited to gardening tools, wheelbarrows, lawnmowers, debris and trash receptacle containers. Use of plastic garden sheeting and protective plant covers is not permitted on the visible side of any Lot unless reasonably screened and of transparent or clear materials.

6.4 Sprinkler Systems. All Lots shall have sprinkler systems. Permanent underground sprinkler systems are required within the portion of the Limits of Disturbance Area which is covered with lawn, to provide irrigation during re-vegetation and beyond. Outside of any lawn areas, sprinkler systems may be used as necessary to establish healthy growth of plants, which may not require long-term irrigation. No sprinkler system may extend beyond the Limits of Disturbance Area.

6.5 Reserved Open Space. The balance of the Lot that is not Building Pad or Limits of Disturbance Area is Reserved Open Space. It is the intention of this Declaration that the Reserved Open Space is left in its undisturbed, natural condition. No existing vegetation (other than noxious weeds) may be removed from this portion of any Lot. No grading, excavating, or filling is permitted. No new vegetation may be planted except for replacement of the existing plants with similar plants, or the addition of native species that will grow on the site, given the available water and exposure. No portion of the Reserved Open Space may be irrigated, provided that any new plantings of native species may be irrigated as needed to establish natural growth. No structures of any kind are permitted in the Reserved Open Space, including without limitation, pools, tennis courts, decks, spas, swing sets, trampolines, play ground equipment, or dog runs. No vehicles will be used, operated or stored on any Reserved Open Space.

6.6. Fences. Perimeter fencing shall not be permitted in the Subdivision except for such perimeter fencing as Declarant or the Association may install along Subdivision boundaries. Limited interior fencing may be permitted subject to advance written approval by the Architectural Committee, in its sole discretion. No chain link or other wire fencing shall be permitted.

6.7. Driveway Access. Individual driveway accesses to each Lot must be approved by the Architectural Committee as part of the site plan approval for the Lot. Driveways must be located in a manner to minimize cuts and fills and the need for retaining walls. No driveway may exceed 15% slope. Driveways shall be wide enough to permit two cars to be parked side by side in front of the garage entrance. Cut and fill slopes must be promptly re-vegetated.

ARTICLE VII OWNERS' MAINTENANCE OBLIGATIONS

It is the obligation of each Owner to maintain his Lot at all times in order to preserve and enhance the enjoyment of the Subdivision:

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

7.2. **Repair by Association.** In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is of a dangerous, unsafe, unsanitary, or unsightly condition, the Association may give written notice to the Owner describing the condition complained of and demanding that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Lot and take corrective action to abate the condition. All reasonable costs of abatement shall be charged to the Owner thereof, who shall promptly reimburse the same. Unpaid amounts will bear interest at a rate of interest equal to the prevailing "prime" rate or equivalent thereof in effect in the State of Utah, plus 2%.

7.3. **Alterations of Exterior Appearance.** The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Architectural Committee. No subsequent exterior alterations, improvements or remodeling may be made without the advance consent of the Architectural Committee.

7.4. **Repair Following Damage.** In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Architectural Committee. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Architectural Committee, provided that any such measures must be of a temporary nature, reasonable in nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which remains un-repaired after 90 days following the occurrence of damage shall be deemed a nuisance which may be abated by the Association.

ARTICLE VIII GENERAL PROVISIONS

These Covenants may be enforced as follows:

8.1. Remedies.

(a) Any single or continuing violation of the Covenants may be enjoined in an action brought by the Association or any Owner. In any action brought to enforce these Covenants, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys fees and costs of court.

(b) The Association may impose the following fines in connection with any violation hereunder:

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Original Violation:	\$50.00
First Recurrence of same violation:	\$100.00
Second Recurrence of same violation:	\$250.00
Third Recurrence of same violation:	\$500.00
Subsequent Recurrences of same violation:	\$1,000.00

The foregoing amounts may be adjusted by the Association for inflation. The failure to cure a violation within ten (10) days (or such longer period as the Board shall grant in its sole discretion) after receipt of notice of the imposition of a fine related thereto shall constitute a recurrence of such violation. Any fine which is not paid within thirty (30) days after notice thereof is issued shall bear interest from such date at the Default Rate, and there shall be added thereto reasonable attorneys' fees (whether or not legal action is commenced) and, if legal action is commenced, the costs of such action. All fines and charges (collectively, "Charges") related to a Lot, the occupants thereof or a particular Owner shall be the personal obligation of such Owner and shall be secured by a lien that may be foreclosed as a mortgage under Utah law.

(c) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These Covenants are to be construed as being in addition to those remedies available at law.

(d) the remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(e) The failure to take enforcement action shall not be construed as a waiver of the Covenants in the future or against other similar violations.

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

8.3. **Limited Liability.** Neither the Declarant, the Trustees, or the Architectural Committee or its individual members, nor any other Owner shall have personal liability to any other Owner for action taken or inaction under these Covenants, provided that any such action or inaction is the result of the good faith exercise of their judgment or authority under these Covenants, and without malice.

8.4. **Term of Covenants, Renewal.** This Declaration, as it may be amended, shall remain in effect for a term of 50 years from the date this Declaration is Recorded. After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by a majority of the then Owners has been recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reasons of applicable law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration

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without the consent of the holder of such easement.

8.5. Amendment. Until termination of the Class "B" Membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor or mortgage loans, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (iv) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner thereof shall consent in writing. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than Declarant, and Declarant's consent, so long Declarant owns any property subject to this Declaration. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

8.6. Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Subdivision is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the Covenants against his Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any Lot.

8.7. Reservation of Easements. For the mutual benefit and convenience of all of the Owners, each Lot is burdened by an easement five feet in width around the perimeter of the Lot for the installation and maintenance of utility services to the Subdivision. The Owner grants the right to public utilities to enter upon each Lot for purposes of utility installation, meter reading, and maintenance, and the right to public agencies providing utility-type services and emergency and public safety services to enter on to the Lot as needed to perform their functions.

8.8. Notices. All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

8.9. Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Subdivision. Paragraph headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

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**ARTICLE IX
EXPANSION OF SUBDIVISION**

9.1. **Expansion of Subdivision.** At any time within a period of seven years from the date this Declaration is recorded, the Declarant may add any additional land adjacent to the Property which may be owned or acquired by Declarant during such time period to this Declaration and cause the same to become a part of the Subdivision by recording a subdivision plat describing the additional land and the Lots created on it, and a Supplemental Declaration hereto stating that it is the intention of the Declarant to add such additional land to the Subdivision, and to have that land be subject to these same Covenants.

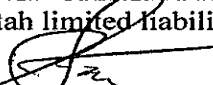
9.2. **Expansion of Architectural Committee.** In the event that the Declarant is no longer able to appoint at least one member of the Architectural Committee at the time of the expansion of the Subdivision, the Architectural Committee will be increased by one member at the time of the expansion, and the Declarant will be able to appoint one member, provided that when 75% of the Lots in the expanded area are sold to third parties, the right of the Declarant to appoint a member to the Architectural Committee will cease.

9.3. **No Obligation to Expand.** The Declarant reserves the right to add some or all of the additional land to the Subdivision, but is under no obligation to do so. The additional land, if not added to the Subdivision, may be developed in a manner that is different from that described in this Declaration.

9.4. **Expansion in Phases.** The Declarant may exercise its right to expand the Subdivision in one or more phases or stages, and the addition of some of the expansion area does not obligate the Declarant to add the balance of the land to the Subdivision.

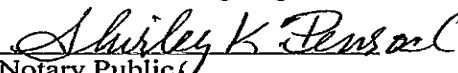
EXECUTED as of the date stated above.

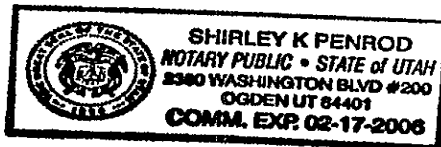
WOLF CREEK PROPERTIES, LC,
a Utah limited liability company

By: 
Name: Steven Roberts
Its: member

STATE OF UTAH)
 : ss.
COUNTY OF Weber)

On June 6, 2002, appeared before me Steven Roberts and acknowledged that he executed the foregoing instrument in the capacity indicated.


Notary Public



455383.2

E# 1853135 BK2237 PG2463

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

E# 1853135 BK2237 PG2464

455383.2

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BOUNDARY DESCRIPTION

PART OF THE EAST 1/2 OF SECTION 22, AND PART OF THE WEST 1/2 OF SECTION 23, T7N, R1E, SLB&M. BEGINNING AT A POINT SOUTH 990.45 FEET AND EAST 2,749.56 FEET FROM THE CENTER OF SECTION 22; (BASIS OF BEARING: N 89°14'39" W FROM THE CENTER OF SECTION 22 TO THE W 1/4 CORNER OF SECTION 22); THENCE AS FOLLOWS:

		COURSES:
NORTHWESTERLY	72.40 FT.	ALONG THE NORTH SIDE OF ELKHORN DRIVE; ALONG A CURVE TO THE LEFT TO A REVERSE CURVE; (R=666.00, Δ=06°13'42", T=36.23, CH=72.36, CHB=N60°26'34"W); THENCE;
NORTHWESTERLY	67.69 FT.	ALONG SAID CURVE TO A NON RADIAL LINE RUNNING NORTHWESTERLY (R=1463.00, Δ=02°39'03", T=33.85, CH=67.68, CHB=N62°13'53"W); THENCE;
N 08°00'00" W	894.33 FT.	THENCE;
N 40°00'00" E	60.87 FT.	THENCE;
S 89°27'26" E	256.83 FT.	THENCE;
N 77°36'26" E	193.63 FT.	THENCE;
S 85°54'59" E	89.26 FT.	THENCE;
N 31°02'33" E	148.04 FT.	TO A NON TANGENT CURVE TO THE RIGHT; THENCE;
SOUTHEASTERLY	74.45 FT.	ALONG SAID CURVE TO A NON RADIAL LINE; (R=330.00, Δ=12°55'36", T=37.38, CH=74.29, CHB=S51°54'15"E) THENCE;
S 50°20'22" W	82.42 FT.	THENCE;
S 03°52'06" W	375.33 FT.	THENCE;
N 75°54'39" W	32.61 FT.	TO A TANGENT CURVE TO THE LEFT; THENCE;
NORTHWESTERLY	54.21 FT.	ALONG SAID CURVE TO A NON RADIAL LINE; (R=210.00, Δ=14°47'30", T=27.26, CH=54.06, CHB=N83°18'24"W); THENCE;
S 16°27'44" E	63.40 FT.	THENCE;
S 10°59'41" W	166.20 FT.	THENCE;
S 00°25'45" E	160.29 FT.	THENCE;
S 46°48'48" E	359.01 FT.	THENCE;
S 06°21'14" W	232.56 FT.	THENCE;
N 83°56'51" W	84.64 FT.	TO THE MOST NORTHERLY CORNER OF LOT 5 OF ELKHORN SUBDIVISION, PHASE 1; THENCE;
N 82°17'10" W	63.68 FT.	ALONG NORTH BOUNDARY OF ELKHORN SUBDIVISION PHASE 1; THENCE;
N 67°26'40" W	128.35 FT.	ALONG NORTH BOUNDARY OF ELKHORN SUBDIVISION PHASE 1; THENCE;
N 05°52'06" E	106.09 FT.	ALONG NORTH BOUNDARY OF ELKHORN SUBDIVISION PHASE 1; THENCE;
N 84°41'43" W	75.38 FT.	ALONG NORTH BOUNDARY OF ELKHORN SUBDIVISION PHASE 1; THENCE;
N 51°37'08" W	142.52 FT.	ALONG NORTH BOUNDARY OF ELKHORN SUBDIVISION PHASE 1; THENCE;
S 32°53'34" W	127.52 FT.	TO THE POINT OF BEGINNING. Et 1853135 BK2237 PG2465
		CONTAINS: 582,067 SQ. FT. / 13.362 ACRES



EXHIBIT B
BY-LAWS
OF
THE HIGHLANDS AT WOLF CREEK
HOMEOWNERS ASSOCIATION, INC.

ARTICLE I.
NAME, PRINCIPAL OFFICE AND DEFINITIONS

Section 1.01 Name. The name of the corporation is: The Highlands At Wolf Creek Homeowners Association, Inc. (the "**Association**").

Section 1.02 Principal Office. The principal office of the Association shall be located at 3900 North Wolf Creek Drive, Eden, UT 84310. The Association may have such other offices, either within or outside Utah, as the Board may determine or as the affairs of the Association may require.

Section 1.03 Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Declaration to which these By-Laws are attached unless the context indicates otherwise.

ARTICLE II.
MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES

Section 2.01 Membership. The Association shall have two classes of Membership, Class "A" and Class "B". The Class "A" Members shall be the Owners. The sole Class "B" Member shall be the Declarant. The Class "B" membership shall terminate upon the earlier of: two years after expiration of the Class "B" Control Period; or when, in its discretion, Declarant so determines and declares in a Recorded instrument. The "**Class "B" Control Period**" shall be the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board as provided herein. The Class "B" Control Period shall terminate on the first to occur of the following:

- (a) when 90% of the total number of Lots (as the Subdivision may be amended from time to time) have certificates of occupancy issued thereon and have been conveyed to Class "A" Members;
- (b) December 31, 2032; or
- (c) When, in its discretion, the Class "B" Member so determines.

Section 2.02 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

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Section 2.03 Annual Meetings. The Association's first meeting, whether a regular or special meeting, shall be held within one year after the date of the Association's incorporation. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

Section 2.04 Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 10% of the total Class "A" votes of the Association.

Section 2.05 Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 30 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice shall be deemed to be delivered when deposited with a mail carrier in accordance with **Section 6.5** hereof and addressed to the Member at his address as it appears on the Association's records, with postage prepaid.

Section 2.06 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Any Member who attends a meeting waives notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

Section 2.07 Voting. The Members, including the Declarant, shall be entitled to cast one vote for each Lot owned, provided that in the case of a Lot with multiple Owners/Members, the Owners will agree among themselves how the vote applicable to that Lot will be cast, and if no agreement can be reached, no vote will be received related to that Lot. Any of the multiple Owners/Members for a Lot appearing at the meeting in person or by proxy shall be deemed to be acting with proper authority for all of the other Owners of that Lot unless the other Owners are also present or have filed written objections to that Owner's representation of the other Owners of the Lot in question.

Section 2.08 Proxies. Members may vote in proxy or by such proxy form as may be designated by the Board.

Section 2.09 Quorum. For purposes of any Association meeting, a quorum shall consist of the Members actually in attendance at such Association meeting.

Section 2.10 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

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Section 2.11 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, prior notice, or a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest date consent, dated, and delivered to the Association. Such consents, as filed with the minutes of the Association, shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving written consent authorization for any action, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

**ARTICLE III.
BOARD OF TRUSTEES: SELECTION, MEETINGS, POWERS**

Section 3.01 Governing Body. The Board shall govern the Association's affairs. Each trustee shall have one vote. Except with respect to the Class "B" Member's appointees, trustees shall be Owners.

Section 3.02 Number of Trustees. The Board shall consist of three to seven trustees, as provided herein. The initial Board shall consist of three trustees.

Section 3.03 Trustees During Class "B" Control Period. Trustees appointed by the Class "B" Member pursuant to **Section 3.5** hereof shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

Section 3.04 Nomination and Election Procedures.

(i) **Nominations and Declarations of Candidacy.** Prior to each election of trustees, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a trustee may file as a candidate for any position Class "A" votes shall fill. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of trustees in a fair, efficient and cost-effective manner. Nominations also shall be permitted from the floor. Except with respect to Class "B" Member selected trustees, nominations for election to the Board may also be made by a nominating committee. The nominating committee, if any, shall consist of a chair person, who shall be a member of the Board, and three or more Members. The Board shall appoint members of the nominating committee not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election. The nominating committee may make as many nominations for election to the Board as it shall in its discretion determine. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(ii) **Election Procedures.** Each Member may cast all of its votes for each position to be filled from the slate of candidates on which such Member is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Trustees may be elected to serve any

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number of consecutive terms.

Section 3.05 Election and Term of Office. Except as these By-Laws may otherwise specifically provide, election of trustees shall take place at the Association's annual meeting. Notwithstanding any other provision of these By-Laws:

(i) Within 30 days after the time that Class "A" Members other than Declarant first own 25% of the Lots, or whenever the Class "B" Member earlier determines, the President shall call for an election at which the Members may elect one of the three trustees. The remaining two trustees shall be appointees of the Class "B" Member. The Members' trustee shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (ii), whichever is shorter. If such trustee's term expires prior to the happening of the event described in subsection (ii), a successor shall be elected for a like term.

(ii) Within 30 days after the time that Class "A" Members other than Declarant own 50% of the Lots, or whenever the Class "B" Member earlier determines, the Board shall be increased to five trustees. The President shall call for an election at which the Members may elect two of the five trustees. The remaining three trustees shall be appointees of the Class "B" Member. The Members' trustees shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (iii) below, whichever is shorter. If such trustees' terms expire prior to the happening of the event described in subsection (iii) below, successors shall be elected for a like term.

(iii) Within 90 days after termination of the Class "B" Control Period, the President shall call for an election by which the Members shall be entitled to elect three of the five trustees. The remaining two trustees shall be appointees of the Class "B" Member. Trustees elected by the Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting is scheduled to occur within 90 days after termination of the Class "B" Control Period, this subsection shall not apply and trustees shall be elected in accordance with subsection (iv) below.

(iv) Not later than the first annual meeting after the termination of the Class "B" Control Period, the Board shall be increased to seven trustees and an election shall be held. Six trustees shall be elected by the Members. Three trustees shall serve a term of two years and three trustees shall serve a term of one year, as such trustees determine among themselves. Until termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint one trustee. Upon termination of the Class "B" membership, the trustee elected by the Class "B" Member shall resign and the remaining trustees shall be entitled to appoint a trustee to serve until the next annual meeting, at which time the Members shall be entitled to elect a trustee to fill such position. Such trustee shall be elected for a term of two years. Upon expiration of the term of office of each trustee elected by the Members, Members entitled to elect such trustee shall be entitled to elect a successor to serve a term of two years. Trustees elected by the Members shall hold office until their respective successors have been elected.

Section 3.06 Removal of Trustees and Vacancies. By the vote of Members holding a

majority of the votes entitled to be cast for the election of such trustee, the Members may remove, with or without cause, any trustee they elected. Any trustee whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a trustee, a successor shall be elected by the Members entitled to elect the trustee so removed to fill the vacancy for the remainder of the term of such trustee. Any Member-elected trustee who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the trustees present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a trustee, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such trusteeship may elect a successor for the remainder of the term. The Class "B" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a trustee appointed by or elected as a representative of the Class "B" Member or Declarant.

Section 3.07 Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

Section 3.08 Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the trustees shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

Section 3.09 Special Meetings. The Board shall hold special meetings when the President or Vice President or any two trustees signs and communicates written notice of such.

Section 3.10 Notice; Waiver of Notice.

(i) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each trustee by: (a) personal delivery; (b) first class mail or air mail, postage prepaid; (c) telephone communication, either directly to the trustee or to a person at the trustee's office or home who would reasonably be expected to communicate such notice promptly to the trustee; or (d) facsimile, computer, fiber optics, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the trustee's telephone number, fax number, electronic mail number, or sent to the trustee's address as shown on the records of the Association. Notices sent by first class mail or air mail shall be deposited with the mail carrier at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(ii) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each trustee not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The

waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any trustee who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 3.11 Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

Section 3.12 Quorum of Board. At all Board meetings, a majority of the trustees shall constitute a quorum for the transaction of business, and the votes of a majority of the trustees present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of trustees, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the trustees present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 3.13 Conduct of Meetings. The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

Section 3.14 Open Meetings; Executive Session.

(i) Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Subdivision which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of **Section 3.15** hereof, all Board meetings shall be open to all Members and, if required by law, all Owners; but attendees other than trustees may not participate in any discussion or deliberation unless a trustee requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(ii) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than trustees, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

Section 3.15 Action Without a Formal Meeting. Any action to be taken at a meeting of the trustees or any action that may be taken at a meeting of the trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the trustees. Such consent shall have the same force and effect as a unanimous vote.

Section 3.16 Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising

all rights of the Association as set forth in the Declaration, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Declaration or Utah law require to be done and exercised exclusively by the Members or the membership generally.

Section 3.17 Duties. Duties of the Board shall include, without limitation:

- (i) preparing and adopting, in accordance with the Declaration, an annual budget and establishing each Owner's assessments;
- (ii) levying and collecting such assessments from the Owners;
- (iii) providing for the operation, care, upkeep, and maintenance of the Common Area;
- (iv) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (v) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's judgment, in depositories other than banks;
- (vi) making and amending use restrictions and rules in accordance with the Declaration;
- (vii) opening bank accounts on behalf of the Association and designating the signatories required;
- (viii) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (ix) enforcing by legal means the provisions of the Declaration and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;
- (x) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (xi) paying the cost of all services rendered to the Association;
- (xii) keeping books with detailed accounts of the Association's receipts and expenditures;
- (xiii) making available to any prospective purchase of a Lot, any Owner, and the holders, insurers, and guarantors of any mortgage (which for purposes of these By-Laws includes any trust deed or similar security instrument) on any Lot, current copies of the Declaration and all other books, records, and financial statements of the Association as

provided in **Section 6.4** hereof;

- (xiv) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Subdivision;
- (xv) indemnifying a trustee, officer or committee member, or former trustee, officer or committee member of the Association to the extent such indemnity is required by Utah law, the Articles, or the Declaration; and
- (xvi) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

Section 3.18 Compensation. Trustees shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any trustee may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other trustees. Nothing herein shall prohibit the Association from compensating a trustee, or any entity with which a trustee is affiliated, for services or supplies furnished to the Association in a capacity other than as a trustee pursuant to a contract or agreement with the Association, provided that such trustee's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested trustee.

Section 3.19 Right of Class "B" Members to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Declarant under the Declaration or these By-Laws, or interfere with development or construction of any portion of the Subdivision, or diminish the level of services the Association provides. The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with **Sections 3.9 and 3.10** hereof and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting; and the Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless such requirements have been met. The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or trustee, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction

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on behalf of any committee, the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 3.20 Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in **Sections 3.17(i)** (with respect to adoption of the budget), **3.17(ii)**, **3.17(vi)**, **3.17(vii)** and **3.17(ix)**. Declarant or its affiliate may be employed as managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

Section 3.21 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (i) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (ii) accounting and controls should conform to generally accepted accounting principles;
- (iii) cash accounts of the Association shall not be commingled with any other accounts;
- (iv) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
- (v) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (vi) commencing at the end of the quarter in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:
 - a) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
 - b) a statement reflecting all cash receipts and disbursements for the preceding period;
 - c) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
 - d) a balance sheet as of the last day of the preceding period; and

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e) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(vii) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (a) a balance sheet; (b) an operating (income) statement; and (c) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first mortgage on a Lot, the Association shall provide an audited financial statement. During the Class "B" Control Period, the annual report shall include certified financial statements.

Section 3.22 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for special assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 50% of the Association's budgeted gross expenses for that fiscal year.

Section 3.23 Rights to Contract. The Association shall have the right to contract with any party for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Members, within and outside the Subdivision. Any common management agreement shall require the consent of a majority of the Board.

Section 3.24 Enforcement. The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation thereof.

Section 3.25 Board Standards. In the performance of their duties, Association trustees and officers shall be insulated from personal liability as provided by Utah law for trustees and officers of non-profit corporations, and as otherwise provided in the Declaration. Trustees are required to exercise the ordinary and reasonable care of trustees of a corporation, subject to the business judgment rule. As defined herein, a trustee shall be acting in accordance with the business judgment rule so long as the trustee: (a) acts within the express or implied terms of the Declaration and his or her actions are not *ultra vires*; (b) affirmatively undertakes to make decisions which are necessary for the continued and successful operation of the Association and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Association. A trustee acting in accordance with the business judgment rule shall be protected from personal liability. Board determinations of the meaning, scope, and application of Declaration provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Declaration.

ARTICLE IV. OFFICERS

Section 4.01 Officers. Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more officers may be held by the same person, except the offices of President and Secretary.

Section 4.02 Election and Term Office. The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

Section 4.03 Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

Section 4.04 Power and Duties. The Association's officers shall each have such powers and duties as generally pertain to their respective officers, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 4.05 Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any time later specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

Section 4.06 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

Section 4.07 Compensation. Compensation of officers shall be subject to the same limitations as compensation of trustees under **Section 3.18** hereof.

ARTICLE V. COMMITTEES

Section 5.01 General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

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**ARTICLE VI.
MISCELLANEOUS**

Section 6.01 Fiscal Year. The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

Section 6.02 Parliamentary Rules. Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law or the Declaration.

Section 6.03 Conflicts. If there are conflicts among the provisions of Utah law, the Articles, the Declaration, and these By-Laws, the provisions of Utah law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

Section 6.04 Books and Records. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Subdivision as the Board shall designate. The Board shall establish rules with respect to:

- a) notice to be given to the custodian of the records;
- b) hours and days of the week when such an inspection may be made; and
- c) payment of the cost of reproducing documents requested.

Every trustee shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a trustee includes the right to make a copy of relevant documents at the Association's expense.

Section 6.05 Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally, sent by U.S. mail, first class postage prepaid:

(i) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member;

(ii) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

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(iii) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6.06 Amendment.

(i) **By Class "B" Member.** Prior to termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these By-Laws. Thereafter, the Class "B" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Lots; provided, however, any such amendment shall not materially and adversely affect the title to any Lot unless the Owner shall consent thereto in writing.

(ii) **By Members Generally.** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(iii) **Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

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