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Bylaws Page 1 of 21
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285 W Tabernacle, Ste. 301
St. George, UT 84770

**AMENDED AND RESTATED BY-LAWS
OF
LAVA FALLS AT ENTRADA
HOMEOWNERS ASSOCIATION**

I. NAME, LOCATION AND PURPOSE

1. **Name.** The name of the corporation is Lava Falls at Entrada Homeowners Association, a Utah nonprofit corporation (the "Association").

2. **Principal Office.** The principal office of the Association shall be located at Washington County, Utah, and meetings of Members and Directors may be held at such places within the County of Washington, State of Utah, as may be designated by the Board of Directors.

3. **Registered Office and Agent.** The Acts requires that the Association have and continuously maintain in the State of Utah a registered office and a registered agent. The registered agent must be an individual who resides in the State of Utah and whose business office is identical with the registered office. The initial registered office and the initial registered agent are specified in the Articles of Incorporation and may be changed by the Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law with the Division.

4. **Purpose.** These By-Laws are adopted for the regulation and management of the affairs of Lava Falls at Entrada Homeowners Association, a Utah nonprofit corporation.

5. **Controlling Laws and Instruments.** These By-Laws are controlled by and shall always be consistent with the provisions of the Utah Revised Nonprofit Corporation Act (Utah Code § 16-6a-101, et seq.) ("Nonprofit Act") and the Community Association Act (Utah Code § 57-8a-101 et seq.) ("Association Act") (collectively the "Acts"), the Declaration, and the Articles of Incorporation of the Association filed with the Division of Corporations and Commercial Code of the Utah Department of Commerce (the "Division"), as any of the foregoing may be amended from time to time.

II. DEFINITIONS

Unless otherwise specially provided herein, capitalized terms in these By-Laws shall have the same meaning as given to such terms in the Declaration.

1. **Articles** shall mean and refer to the Articles of Incorporation of Lava Falls at Entrada

Homeowners Association.

2. **Member** shall mean and refer to every person who holds membership in the Association.
3. **Board of Directors** or the **Board** shall mean and refer to the Board of Directors of the Association.
4. **Development** shall mean and refer to the Lava Falls at Entrada, and any expansions thereof.

III. MEETINGS OF MEMBERS

1. **Annual Meeting.** The first annual meeting of the Members shall be held during the month of September at the date and time set by the Board. Thereafter, an annual meeting of the Members shall be held during the same month of each succeeding year. The purpose of the annual meeting shall be the election of the Directors and the transaction of such other business as may come before the Members. If the election of Directors is not filled on the day designated herein for the annual meeting, the Board shall cause such election to be held at a special meeting of the Members as soon thereafter as is convenient.

2. **Special Meetings.** A special meeting of the Members for any purpose or purposes may be called by the President, by the Board, or upon written request of one-fourth (1/4) of the Members who are entitled to vote.

3. **Place of Meeting.** The Board of Directors may designate any place within Washington County, Utah, as the place for any annual meeting or for any special meeting called by the Board and specified in the notice of the meeting. If no designation is made, the place of meeting shall be the registered office of the Association.

4. **Notice of Meetings.** Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date, plus any time added to effectuate delivery under Article XII Section 10. The notice of an annual, regular or special meeting shall include: (a) the names of any known candidate for Director and shall identify any other matter which it is known may come before the meeting; (b) potential conflicting interest transactions of a Director, party related to a Director, or an entity in which the Director is a trustee or has a financial interest, if any; (c) notice of any indemnification or advance of expenses to a Director in connection with a legal "proceeding" as defined in the Acts; (d) notice of any amendment to these By-Laws proposed by the Members and a copy, summary or general statement of the proposed amendment; (e) notice of a proposed plan of merger; (f) notice of a proposed sale of the properties by the Association other than in the regular course of activities; (g) notice of a proposed dissolution of the Association; and (h) any matter a Member intends to raise at the meeting if requested in writing to do so by a person entitled to call a special meeting and the request is received (receipt deemed effective as set forth under Article XII Section 10) by the secretary or president at least ten (10) days before the Association gives notice of the meeting, plus any time added to effectuate delivery under Article XII Section 10. The notice of a special meeting shall state the purpose or purposes for which the meeting is called.

5. **Waiver of Notice.** A Member may waive any notice required by the Acts or by these By-Laws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. A waiver shall be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes; or filing with the corporate records. The delivery and filing required above may not be conditions of the effectiveness of the waiver. A Member's attendance at a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

6. **Quorum.** Except as otherwise provided in the Articles, in the Declaration, or by law, more than fifty percent (50%) of the membership present (by lots) in person, by ballot, or by proxy shall constitute a quorum at any meeting of the Members.

7. **Proxies.** At any meeting of the Members a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. All proxies shall be filed with the secretary of the Association before or at the time of the meeting. Unless otherwise provided therein no proxy shall be valid after eleven (11) months from the date of its execution.

8. **Ballots at Meetings.** A written ballot, if delivered by the Association to every Member entitled to vote on the matter or matters therein as described in Article III Section 9, may be used in connection with any annual, regular, or special meeting of Members, thereby allowing Members the choice of either voting in person or by written ballot delivered by a Member to the Association in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Article III Sections 9 and 9.1 and shall be counted equally with the votes of Members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

9. **Ballots Without a Meeting.** The Association may utilize ballots without a meeting to take any action that may be taken at any annual, regular or special meeting of the Members provided the Association delivers a written ballot to every member entitled to vote. Any ballot utilized without a meeting shall be valid only when (a) the time by which all ballots must be received has passed so that a quorum can be determined and (b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

9.1 All solicitations for votes by written ballot shall: (a) set forth each proposed action, (b) provide for an opportunity to vote for or against each proposed action, (c) indicate the number of responses needed to meet the quorum requirements; (d) state the percentage of approvals necessary to approve each matter other than election of Directors; (e) specify the time by which a ballot must be received by the Association in order to be counted; and (f) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

9.2 Any written ballot shall comply with the requirements in this Section and shall be counted equally with the votes of Members in attendance (by person, by ballot, or proxy) at any meeting for every purpose, including satisfaction of a quorum requirement.

9.3 Members shall be provided a fair and reasonable amount of time before the day on which the Association must receive ballots. An amount of time is considered to be fair and reasonable if (a) Members are given at least fifteen (15) days from the day on which the notice is mailed, if the notice is mailed by first-class or registered mail; (b) Members are given at least thirty (30) days from the day on which the notice is mailed, if the notice is mailed by other than first-class or registered mail; or (c) considering all the circumstances, the amount of time is otherwise reasonable.

10. Revocation of Proxy or Ballot. A proxy or ballot may be revoked, prior to the time the proxy is exercised or the ballot counted, by (a) the Member attending the meeting and voting in person, or (b) the Member signing and delivering to the secretary or other person authorized to tabulate proxy or ballot votes (i) a writing stating that the appointment of proxy or ballot is revoked, or (ii) a subsequent proxy form or ballot. A proxy or ballot shall automatically cease upon the conveyance by a Member of the Lot of the Member and the transfer of the membership on the books of the Association. The death or incapacity of the Member appointing a proxy or issuing a ballot does not affect the right of the Association to accept the proxy's authority or count the ballot unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority or the ballot is counted.

11. Cumulative Voting. At each election for Directors the vote attributable to a Lot may be accumulated by the Member or Members and entitled to half of the same by giving one candidate as many votes as the number of the Directors to be elected multiplied by the number of votes concerned shall equal, or by distributing the total votes so determined among any number of candidates. A plurality shall be sufficient for the election of a candidate.

12. Written Consents Without a Meeting. Unless prohibited by the Articles of Incorporation, any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice, if one (1) or more consents in writing, setting forth the action taken, are signed by the members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted. Directors may not be elected by written consent, except by unanimous written consent of all Members entitled to vote for the election of Directors. Any action taken under this Section is not effective unless all written consents are received within a sixty (60) day period and have not been revoked. A written consent may be given by electronically transmitted facsimile or other form of communication providing the Association with a complete copy of the written consent, including a copy of the signature to the written consent.

13. Necessary Vote. Except as concerns the election of Directors and except with respect to those proposals which under the Articles, under the Declaration, or by law require a greater proportion for adoption, the affirmative vote of a majority of all those which members present in person or represented by ballot, or by proxy are entitled to cast at a meeting shall be sufficient for the adoption of any matter voted on by the Members.

14. Telecommunications. Any or all of the Members may participate in an annual, regular or special meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting by a means permitted under this Section is considered to be present in person at the meeting.

15. Record Date/Members List.

15.1 The record date for the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose for the taking of any other lawful action shall be as set forth in Subsection 15.2 below, unless the Board of Directors, in advance of sending notice, sets a date by resolution as the record date for any such determination of Members. Such record date shall not be more than sixty (60) days prior to the meeting of Members or the event requiring a determination of Members.

15.2 Members entitled to notice of a meeting of the Members are the Members of the Association at the close of business on the business day preceding the day on which notice is effective, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held. Members entitled to vote at a meeting of the Members are the Members of the Association on the date of the meeting, and who are otherwise eligible to vote. The record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action are Members of the Association at the later of (a) the close of business on the day on which the Board of Directors adopts the resolution relating to the exercise of the right; or (b) the close of business on the sixtieth (60th) day before the date of the exercise of the right. A record date fixed under this Section may not be more than seventy (70) days before the meeting or action requiring a determination of Members occurs. A determination of members entitled to notice of or to vote at a meeting of Members is effective for any adjournment of the meeting unless the Board of Directors fixes a new date for determining the right to notice or the right to vote.

15.3 The Association shall only be required to prepare a list of the names of the Members as provided for in Article XII Section 1.3.

16. Adjournment of Members' Meetings. Members present in person, by ballot, or by proxy at any meeting at which a quorum or reduced quorum, as the case may be, was present may adjourn the meeting from time to time, without notice other than announcement at the meeting, for a total period or periods not to exceed forty-five (45) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall be the same as the quorum requirement of the meeting so adjourned, and any business may be transacted which might have been transacted at the adjourned meeting.

17. Order of Business. The order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) election of Directors, if applicable; (d) report of finances; and (e) any other Association business.

18. Expenses of Meetings. The Association shall bear the expenses of all regular and annual meetings of Members and of special meetings of Members.

19. Signature of Members. Except as otherwise provided in the Acts, all votes, consents, written ballots, waivers, proxy appointments, and proxy or ballot revocations shall be in the name of the Member and signed by the Member with a designation of the Member's capacity; i.e., owner, partner, president, director, member, trustee, conservator, guardian, etc.

IV. BOARD OF DIRECTORS

1. Number, Tenure and Qualifications. The affairs of the Association shall be managed by a Board of Directors composed of three (3) individuals, but which may be as few as one (1) and shall be one (1) initially. The Directors shall be classified with respect to the time for which they shall severally hold office, by dividing them into three classes, to be known as classes "A", "B", and "C". Of the Directors first chosen, Class A shall consist of one (1) Director to hold office for one (1) year; Class B shall consist of two (2) Directors, each to hold office for two (2) years; and Class C shall consist of two (2) Directors, each to hold office for three (3) years. At each annual election, the successor(s) to the class of Directors whose terms shall expire in that year shall be elected to hold office for the term of three (3) years. Any change in the number of Directors may be made only by amendment of the Articles. Each Director shall hold office until his term expires and until his successor has been duly elected and qualifies. Notwithstanding anything herein contained to the contrary, Declarant reserves the right to appoint the members of the Board of Directors, or their successors until the occurrence of the event mentioned at the outset of this Article IV Section 1.

2. Qualifications of Directors. A Director must be a natural person eighteen (18) years of age or over and an Owner of a Lot within the Property or, if the Owner of any such Lot is a partnership, corporation, or limited liability company, must be a designated representative of such partnership, corporation, or limited liability company. If a Director conveys or transfers title to his Lot, or if a Director who is a designated representative of a partnership, corporation, or limited liability company ceases to be such designated representative, or if the partnership, corporation, or limited liability company of which a Director is a designated representative transfers title to its Lot, such Director's term as Director shall immediately terminate and a new Director shall be selected as promptly as possible to take such Director's place. Any Director no longer qualified to serve under the standards provided for in this Section 2 may be removed by a majority vote of the Directors then in office.

3. Compensation. The Board may provide by resolution that the Directors shall be paid their expenses, if any, by attendance at each meeting of the Board. Directors shall not be paid any salary or other compensation for their services as Directors and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their status as Directors.

4. Removal of Directors By the Members. At any meeting of the Members, the notice of which indicates such purpose, any or all of the Directors may be removed, with or without cause, by the affirmative vote of Members holding a majority of the voting interests of all Members; and a successor may be then and there elected to fill the vacancy thus created.

5. **Resignation of Directors.** Any Director may resign at any time by giving written notice to the president, to the secretary, or to the Board of Directors stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective. A Director who resigns may deliver to the Division a statement setting forth (a) that person's name; (b) the name of this Association; (c) information sufficient to identify the report or other document in which the person is named as a Director or officer; and (d) the date on which the person ceased to be a Director or officer or a statement that the person did not hold the position for which the person was named in the corporate report or other document.

6. **Vacancies in the Board of Directors.** Any vacancy occurring in the Board of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members. A Director elected by the Board of Directors to fill the vacancy of a Director elected by the voting Members may be removed without cause by the voting Members, but not the Board of Directors. Should any vacancy of the Board of Directors remain unfilled for a period of two (2) months, the Members may, at a special meeting of the Members called for that purpose, elect a Director to fill such vacancy by a majority of the votes which Members present at such meeting, or represented by proxy or ballot, are entitled to cast.

V. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

1. **Powers.** The Board of Directors shall have power to:
 - (a) adopt and publish rules and regulations governing the use of the Common Areas, and personal conduct of the Members and their guests thereon, and establish penalties for the infractions thereof;
 - (b) suspend the voting rights and the rights to use recreational facilities which may be provided of a Member during a period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days from infraction of published rules and regulations;
 - (c) exercise for the Association of powers duties, authority vested in or delegated to the Association and not reserved to the membership by other provisions of these By-Laws, the Articles, or the Declaration;
 - (d) declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from four (4) consecutive regular meetings of the Board of Directors without cause; and
 - (e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.
2. **Duties.** It shall be the duty of the Board of Directors to:
 - (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote;

- (b) supervise all officers, agents, employees of the Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
 - (i) Fix the amount of the monthly assessment against each Lot and to send written notice of such assessment to every Owner subject thereto as provided in the Declaration.
 - (ii) Foreclose the lien against any Lot for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- (d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability, hazard and other insurance on property owned by the Association as required by the insurance provisions of the Declaration;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) cause the Common Areas to be maintained, and, also, if an Owner of any Lot shall fail to maintain his Lot and the Living Unit located thereon in a manner satisfactory to the Architectural Control Committee and/or the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board, shall have the right, through its agents or employees, or through an independent contractor, to enter upon his Lot and to repair, maintain and restore the Lot and the exterior of the Living Unit and any other improvements erected thereon.

3. **Appointment of Committees.** The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint one (1) or more committees which shall consist of two (2) or more Directors and which, unless otherwise provided in such resolution, shall have and may exercise the authority to make recommendations (but not final decisions) to the Board of Directors in the management of the Association, except authority with respect to those matters specified in the Acts as matters which such committee may not have and exercise the authority of the Board of Directors.

4. **General Provisions Applicable to Committees.** The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him by law. The provision of these By-Laws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of the Board of Directors shall be applicable to meetings of committees of the Board of Directors.

VI. NOMINATION AND ELECTION OF DIRECTORS

1. **Nomination.** Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be

appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among Members.

2. **Election.** Elections to the Board of Directors shall be made by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles.

VII. MEETING OF DIRECTORS

1. **Regular Meetings.** A regular meeting of the Board of Directors shall be held without notice other than this section immediately after, and at the same place as, the annual meeting of the Members. The Board of Directors may provide by resolution the time and any place within the State of Utah or the holding of additional regular meetings without notice other than such resolution.

2. **Other Regular Meetings of Directors.** The Board of Directors may hold other regular meetings and may, by resolution, establish in advance the times and places for such regular meetings. The resolution of meeting schedule shall be given to all Members of the Association at least forty-eight (48) hours (plus any time added to effectuate delivery under Article XII Section 10) before the first meeting scheduled. No prior notice of any regular meeting need be given after establishment of the time and place thereof by such resolution.

3. **Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the president or any three (3) Directors. The person or persons calling a special meeting of the Board may fix any place within the State of Utah as the place for holding such meeting. Special Meetings of the Board of Directors may be called by the president or any two (2) members of the Board of Directors other than the President.

4. **Open Meetings/Member Right to Participate.** Except as provided in Article VII Sections 5 and 6, a Board meeting, whether in person or by means of electronic communication, at which the Board can take binding action shall be open to each Member or the Member's representative if the representative is designated in writing. At each meeting, the Board shall provide each Member a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the meeting. A Director may not avoid or obstruct the requirements of this Section. However, nothing in this Section shall affect the validity or enforceability of an action of a Board.

5. **Closed Meetings.** The Board may close a meeting to: (a) consult with an attorney for the purpose of obtaining legal advice; (b) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (c) discuss a personnel matter; (d) discuss a matter relating to contract negotiations, including review of a bid or proposal; (e) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (f) discuss a delinquent assessment or fine.

If after a vote of the majority of all other Directors, it is determined that a Director has not

maintained the confidentiality of any matter covered in the previous paragraph that is addressed at a closed meeting (“Confidential Matter”), the non-offending Directors may take one of the two following steps: (1) exclude the offending Director from any closed meetings at which that matter is addressed, or (2) create a committee to address the Confidential Matter and exclude the offending Director from that committee.

6. Notice to Directors of Board Meetings. In the case of all meetings of the Board of Directors for which notice is required by these By-Laws, notice stating the place, day and hour of the meeting shall be given not less than two (2) nor more than thirty (30) days before the date of the meeting (plus any time added to effectuate delivery under Article XII Section 10), by mail, fax, electronic means, telephone or personally, by or at the direction of the persons calling the meeting, to each member of the Board of Directors. If by telephone such notice shall be deemed to be effective when given by telephone to the Director. If given personally, such notice shall be deemed effective upon delivery of a copy of a written notice to, or upon verbally advising, the Director or some person who appears competent and mature at his home or business address as either appears on the records of the Association.

Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice to the Director or waiver of such meeting.

7. Notice to Members of Board Meetings. At least forty-eight (48) hours before an open Board meeting (plus any time added to effectuate delivery under Article XII Section 10), the Association shall give written notice of the meeting via email to each Member who requests notice of a meeting, unless: (a) notice of the meeting is included in a meeting schedule that was previously provided to the Member; or (b) the meeting is to address an emergency and each Director receives notice (receipt deemed effective as set forth under Article XII Section 10) of the meeting less than forty-eight (48) hours before the meeting. The notice to the Members shall: (a) be delivered to the Member by email, to the email address that the Member provides to the Board or the Association (or via mail if requested in writing by the Member); (b) state the time and date of the meeting; (c) state the location of the meeting; and (d) if a Director may participate by means of electronic communication, provide the information necessary to allow the member to participate by the available means of electronic communication.

8. Proxies. For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Director may be considered to be present at a meeting and to vote if the Director has granted a signed written proxy: a) to another Director who is present at the meeting; and b) authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this Section 8 and as permitted by Section 16, Directors may not vote or otherwise act by proxy.

9. Telecommunications. The Board of Directors may permit any Director to participate in a regular or special meeting of the Board by, or conduct the meeting through the use of, any means of communication by which all Directors participating may hear each other during the meeting. A Director so participating in such a meeting is considered to be present in person at the meeting.

10. **Quorum.** A majority of the Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Directors at a meeting at which a quorum is present shall constitute the act of the Board of Directors unless the act of a greater number is required by law.

11. **Adjournment of Directors' Meetings.** Directors present at any meeting of the Board of Directors may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than announcement at the meeting, for a total period or periods of not to exceed thirty (30) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

12. **Vote Required at Directors' Meetings.** At any meeting of the Board of Directors, if a quorum is present, a majority of the votes present in person or by proxy, if applicable, and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation, or these By-Laws.

13. **Vacancies.** Any vacancy on the Board may be filled by the affirmative vote of a majority of the remaining Directors, even though such remaining Directors constitute less than a quorum. A Director thus selected to fill a vacancy shall serve for the unexpired term of his predecessor in the office.

14. **Officers at Meetings.** The president shall act as chairman and the Board of Directors shall appoint a secretary to act at all meetings of the Board of Directors.

15. **Waiver of Notice.** A waiver of notice of any meeting of the Board of Directors, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting unless (a) at the beginning of the meeting or promptly upon the Director's later arrival the Director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and, after objecting, the Director does not vote for or assent to action taken at the meeting, or (b) the Director contemporaneously requests that the Director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or (c) the Director causes written notice of the Director's dissent or abstention as to any specific action to be received by (i) the presiding officer of the meeting before adjournment of the meeting; or (ii) the Association promptly after adjournment of the meeting.

16. **Dissent or Abstention.** The right of dissent or abstention pursuant to Article VII Section 15 is not available to a Director who votes in favor of the action taken.

17. Action of Directors Without a Meeting.

17.1 **By Written Consent.** Any action required or permitted by the Nonprofit Act, Declaration, Articles or these By-Laws, that may be taken at a Board of Directors meeting may be taken without a meeting if all Directors consent to the action in writing. Action is taken under

Subsection 17.1 at the time the last Director signs a writing describing the action taken, unless, before that time, any Director revokes a consent by a writing signed by the Director and received by the secretary or any other person authorized by these By-Laws or the Board of Directors to receive the revocation. Action under this Subsection 17.1 is effective at the time it is taken, unless the Board of Directors establishes a different effective date.

17.2 With Advance Notice. Any action required or permitted by the Nonprofit Act, Declaration, Articles or these By-Laws that may be taken at a Board of Directors meeting may be taken without a meeting if notice is transmitted in writing to each Director and each Director, by the time stated in the notice: (a) (i) signs a writing for such action; or (ii) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and (b) fails to demand in writing that action not be taken without a meeting.

The notice required by Subsection 17.2 shall state: (a) the action to be taken; (b) the time by which a Director must respond to the notice; (c) that failure to respond by the time stated in the notice will have the same effect as: (i) abstaining in writing by the time stated in the notice; and (ii) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and (d) any other matters the Association determines to include.

Action is taken under this Subsection 17.2 only if at the end of the time stated in the notice: (a) the affirmative votes in writing for the action received by the Association and not revoked pursuant to this Subsection equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Directors then in office were present and voted; and (b) the Association has not received a written demand by a Director that the action not be taken without a meeting other than a demand that has been revoked pursuant to this Subsection.

A Director's right to demand that action not be taken without a meeting shall be considered to have been waived unless the Association receives such demand from the Director in writing by the time stated in the notice transmitted pursuant to this Subsection and the demand has not been revoked.

A Director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this Subsection 17.2 may revoke the vote, abstention, or demand in writing received by the Association by the time stated in the notice transmitted.

Unless the notice transmitted pursuant to Subsection 17.2 states a different effective date, action taken pursuant to this Subsection is effective at the end of the time stated in the notice.

18. General Provisions. A communication under this Section 18 may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation under Subsection 17.2 is considered to be written, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the Association can determine: (a) that the electronic transmission is transmitted by the Director; and (b) the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed. For purposes of this Section 18, communications to the Association are not effective until received.

Action taken pursuant to this Section 18 has the same effect as action taken at a meeting of Directors and may be described as an action taken at a meeting of Directors in any document.

VIII. ARCHITECTURAL CONTROL COMMITTEE

1. **Number, Composition, and Function.** The Board of Directors shall appoint a three-member committee the function of which is to enforce and administer the provisions of the Declaration (relating to control of improvements and landscaping within the property). The committee need not be composed of Members. Members of the committee shall hold office at the pleasure of the Board. If such a committee is not appointed, the Board itself shall perform the duties required of the committee.

2. **Manner of Acting.** The act, concurrence, or determination of any two (2) or more committee members, whether such act, concurrence, or determination occurs at a meeting, without a meeting, at the same time, or at different times, shall constitute the act or determination of the committee.

3. **Compensation.** The Board of Directors may provide by resolution that members of the committee shall be paid specified and reasonable compensation for their services as committee members.

4. **No Liability for Damages.** The committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to Article 15 of the Declaration.

IX. OFFICERS

1. **Number and Qualifications.** The Officers of the Association shall be a President, a Vice-President, a Secretary, and a Treasurer. Any two (2) or more offices, other than the office of President and Secretary, may be held by the same person. Officers need not be Members of the Association.

2. **Tenure.** The Officers of the Association shall be elected by the Board of Directors annually at the first meeting of the Board held after the annual meeting of the Members. If election of Officers does not occur at such meeting it shall be held as soon thereafter as is convenient. Each Officer shall hold office until his successor has been duly elected and qualifies or until he is removed. Any Officer may be removed by the Board whenever in its judgment the best interests of the Association would be served thereby.

3. **Vacancies.** A vacancy in office resulting from death, resignation, removal, or any other cause shall be filled by the Board of Directors for the unexpired portion of the term of the person previously in office.

4. **President.** The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall exercise general supervision and control over all of the property and affairs of the Association. The President shall, when present, preside at all meetings of the Members and of the Board of Directors. If the President is not present then the Vice-

president shall preside. Except in cases where the signing and execution thereof is expressly delegated by the Board of Directors or by the Articles to some other officer or agent of the Association or where required by law to be otherwise signed or executed, the President, together with the Secretary or any other Officer of the Association authorized by the Board of Directors may sign any deeds, mortgages, contracts, or other instruments which the Board of Directors has properly authorized to be executed. The President shall, in general, perform all duties incident to the office of President and such other duties as may from time to time be prescribed by the Board of Directors.

5. **Vice-President.** In the absence of the President or in the event of his death, inability, or refusal to act, the Vice-president shall perform all of the duties of the President. When so acting he shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice-president shall perform such duties as may from time to time be assigned to him by the President or by the Board of Directors.

6. **Secretary.** The Secretary shall keep minutes of meetings of the Members and of the Board of Directors in one (1) or more books provided for that purpose, shall see that all notices are given in accordance with the provisions of these By-Laws, the Declaration, and by law, shall maintain the membership list required by these Articles, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may from time to time be assigned to him by the President or by the Board of Directors.

7. **Treasurer.** As required by the provisions of the Declaration the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board shall determine. The Treasurer shall have the custody of and shall be responsible for all funds of the Association, shall receive and give receipts for money due and payable to the Association, shall deposit all such money in the name of the Association in such banks, trust companies, or other depositories as are selected by the Board, shall perform all accounting, financial record keeping, and similar services which may be necessary or desirable in connection with the Association's affairs, and, in general, perform all duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the President or by the Board of Directors.

8. **Compensation.** Officers shall not be paid any salary or other compensation for their services as such and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their services as Officers.

X. ASSESSMENTS

1. As more fully provided in the Declaration, each Member (subject to exceptions provided for Declarant) is obligated to pay to the Association monthly and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made, provided, however, that such lien shall be subordinate to the lien of any first mortgage. Any assessment which is not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum together with a late payment service charge equal to five percent (5%) of each delinquency, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot, and interest, late payment service fee, costs,

and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

XI. AMENDMENTS

1. **Amendment/Conflict.** These By-Laws may be amended, at any regular, annual, or special meeting of the Board of Directors, by a vote of the majority of the Board of Directors. The Members may amend the By-Laws even though the By-Laws may also be amended by the Board of Directors. Amendments to the By-Laws by Members shall be made in accordance with the Acts. In the case of any conflict between the Articles and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

XII. BOOKS AND RECORDS

1. Books and Records.

1.1 The Association shall keep as permanent records: (a) minutes of all meetings of its Members and Board of Directors; (b) a record of all actions taken by the Members or Board of Directors without a meeting; (c) a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the Association; (d) a record of all waivers of notices of meetings of Members and of the Board of Directors or any committee of the Board of Directors; and (e) a copy of the Declaration, as the same may be amended.

1.2 The Association shall maintain appropriate accounting records.

1.3 The Association or its agent shall maintain a record of its Members in a form that permits preparation of a list of the name and address of all Members: (a) in alphabetical order, by class, and (b) showing the number of votes each Member is entitled to vote.

1.4 The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

1.5 The Association shall keep a copy of each of the following records at its principal office: (a) its Articles of Incorporation; (b) its By-Laws; (c) resolutions adopted by its Board of Directors relating to the characteristics, qualifications, rights, limitations, and obligations of Members; (d) the minutes of all Member meetings; (e) records of all actions taken by Members without a meeting; (f) all written communications to Members generally as Members for a period of three (3) years; (g) a list of the names and business or home addresses of its current Directors and officers; (h) a copy of its most recent annual report; and (i) all financial statements prepared for periods ending during the last three (3) years.

2. Inspection of Records.

2.1 A Director or Member is entitled to inspect and copy any of the records of the

Association described in Subsection 1.5: (a) during regular business hours; (b) at the Association's principal office; and (c) if the Director or Member gives the Association written demand, at least five (5) business days before the date on which the Member wishes to inspect and copy the records.

2.2 In addition to the rights set forth in Subsection 2.1, a Director or Member is entitled to inspect and copy any of the other records of the Association: (a) during regular business hours; (b) at a reasonable location specified by the Association; and (c) at least five (5) business days before the date on which the Member wishes to inspect and copy the records, if the Director or Member: (i) meets the requirements of Subsection 2.3; and (ii) gives the Association written demand.

2.3 A Director or Member may inspect and copy the records described in Subsection 2.2 only if: (a) the demand is made: (i) in good faith; and (ii) for a proper purpose; (b) the Director or Member describes with reasonable particularity the purpose and the records the Director or Member desires to inspect; and (c) the records are directly connected with the described purpose.

2.4 Notwithstanding any other provision in these By-Laws, for purposes of this Section: (a) "Member" includes: (i) a beneficial owner whose membership interest is held in a voting trust; and (ii) any other beneficial owner of a membership interest who establishes beneficial ownership; and (b) "proper purpose" means a purpose reasonably related to the demanding Member's or Director's interest as a Member or Director.

2.5 The right of inspection granted by this Section may not be abolished or limited by the Articles of Incorporation or these By-Laws.

2.6 This Section does not affect: (a) the right of a Director or Member to inspect records relating to ballots; (b) the right of a Member to inspect records to the same extent as any other litigant if the Member is in litigation with the Association; or (c) the power of a court, independent of this Article, to compel the production of corporate records for examination.

2.7 A Director or Member may not use any information obtained through the inspection or copying of records permitted by 2.2 for any purposes other than those set forth in the demand made under 2.3.

2.8 The Association may redact the following information from any document the Association produces for inspection or copying (a) a Social Security number; (b) a bank account number; or (c) any communication subject to attorney-client privilege.

- 2.9 In a request to inspect or copy documents, a Member may:
- (a) elect whether to inspect or copy the documents;
 - (b) if the Member elects to copy the documents, requests hard copies or electronic scans of the documents; or
 - (c) subject to Subsection 2.10, requests that:
 - (i) the Association make the copies or electronic scans of the requested documents;
 - (ii) a recognized third-party duplicating service make the copies or electronic scans of the requested documents; or
 - (iii) the Member be allowed to bring any necessary imaging equipment to the place of

inspection and make copies or electronic scans of the documents while inspecting the documents.

2.10 If the Association produces the copies or electronic scans, the copies or electronic scans shall be legible and accurate and the Member shall pay the Association the reasonable cost of the copies or electronic scans, which may not exceed: (a) the actual cost that the Association paid to a recognized third party duplicating service to make the copies or electronic scans; or (b) if an employee, manager, or other agent of the Association makes the copies or electronic scans, ten cents (\$.10) cents per page and fifteen dollars (\$15) per hour for the employee's, manager's, or other agent's time making the copies or electronic scans.

2.11 If a Member requests a recognized third-party duplicating service make the copies or electronic scans the Association shall arrange for the delivery and pick up of the original documents; and the Member shall pay the duplicating service directly. If Member requests to bring imaging equipment to the inspection, the Association shall provide the necessary space, light, and power for the imaging equipment.

3. Scope of Inspection Right. A Director or Member's agent or attorney has the same inspection and copying rights as the Director or Member. The right to copy records under Section 2 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means. The Association may comply with a Director's or Member's demand to inspect the record of Members under Article XII Section 1.3 by furnishing to the Director or Member a list of Directors or Members that: (a) complies with Article XII Section 1.3; and (b) is compiled no earlier than the date of the Director's or Member's demand. Concerning financial statements, by no later than fifteen (15) days after the day on which the Association receives a written request of any Member (receipt by the Association deemed effective as set forth under Article XII Section 10), the Association shall mail to the Member the following that show in reasonable detail the assets and liabilities and results of the operations of the Association: (a) the Association's most recent annual financial statements, if any; and (b) the Association's most recently published financial statements, if any. Without consent of the Board of Directors, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a Member's interest as a Member.

4. Annual Report. The Board of Directors shall cause to be prepared and distributed to each Member, and any first mortgagee of a Member who has filed a written request therefor, not later than ninety (90) days after the close of each fiscal year of the Association, an annual report containing (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year, (c) a statement of changes in financial position for such fiscal year, and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses of current Members, may be found. The Board shall also annually distribute to the Members a summary of the latest reserve analysis or update and a full copy to any Member making such request.

5. Statement of Account. Upon payment of a reasonable fee to be determined by the Association and upon written request of an Owner of a Lot or any person with any right, title or

interest in a Lot or intending to acquire any right, title or interest in a Lot, the Association shall give, within ten (10) days after the receipt of such request (receipt by the Association deemed effective as set forth under Article XII Section 10), a written statement of account setting forth the amount of unpaid assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Lot and the Living Unit thereon, and the amount of the assessments for the current fiscal period of the Association payable with respect to the Lot and the Living Unit thereon. Such statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other assessments have been levied.

6. Annual Corporation Reports. The Association shall file with the Division, within the time prescribed by law, annual corporate reports in such form and containing the information required by law and shall pay the fee for such filing as prescribed by law.

7. Shares of Stock and Dividends Prohibited. The Association shall not have or issue shares of stock and no dividends shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Directors or officers. Notwithstanding the foregoing, the Association may issue certificates evidencing membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

8. Limited Liability. The Association, the Board of Directors, the Architectural Control Committee, and any agent or employee of the Association, the Board of Directors, or the Architectural Control Committee, shall not be liable to any person for any actions or for any failure to act in connection with the affairs of the Association if the action taken or failure to act was in good faith and without malice.

9. Right to Inspect. Notwithstanding the other provisions of this Article, unless otherwise provided in these By-Laws, a right of a Member to inspect or receive information from the Association applies only to a voting Member of the Association.

10. Manner of Giving Notice. Notwithstanding any other provision in the Declaration, Articles, By-Laws or Rules and Regulations, the Association may provide notice to Owners by electronic means, including text message, email, or the Association's website, except that an Owner may, by written demand, require the Association provide notice to that Owner by mail. Any notice required to be given will be deemed received and effective upon the earlier to occur of the following:

- (a) when sent by facsimile, the notice is deemed effective when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;
- (b) when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed effective at the earliest of the following: (i) when received; (ii) six (6) days after it is mailed; or (iii) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;

- (c) when sent via electronic means such as an e-mail, text message or similar electronic communication, the notice is deemed effective within twenty-four (24) hours of being sent and a rejection or undeliverable notice is not received by the sender;
- (d) when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;
- (e) when hand delivered, the notice is deemed effective immediately upon delivery; or
- (f) when delivered by other means, the notice is deemed effective upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.

XIII. MISCELLANEOUS

1. The fiscal year of the Association shall begin on the first (1st) day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

2. **Right of Indemnification.** The Association shall indemnify any Director, officer, employee, fiduciary and agent (including without limitation the property manager) to the fullest extent allowed the Acts, or any replacement Sections thereof.

3. **Authority to Insure.** The Association may purchase and maintain liability insurance on behalf of any Director, officer, employee, fiduciary and agent against any liability asserted against him and incurred by him in such capacity or arising out of his status as such, including liabilities for which he might not be entitled to indemnification hereunder.

Exhibit A
(Legal Description)

These Amended and Restated By-Laws for Lava Falls at Entrada affects the following real property, all located in Washington County, State of Utah:

All of Lots 1 through 14, Lava Falls at Entrada Amd (SC), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: SC-LFAE-1 through SC-LFAE-14