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Salt Lake City, UT 84117

**BYLAWS**

**OF**

**THE JOSHUAS HOA, INC.**

A UTAH NONPROFIT CORPORATION

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## ARTICLE 1 - DEFINITIONS

The definitions contained in or adopted by the Amended and Restated Declaration of Covenants, Conditions & Restrictions of The Joshua's at Southgate Subdivision ("Declaration"), recorded as Entry Number 20170007780, February 22, 2017 in the office of the Washington County Recorder, state of Utah, as may be amended from time to time, shall be applicable to these Bylaws.

## ARTICLE 2 – NOTICE, AFFAIRS, ELECTRONIC MEANS

### 2.1 Notices.

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

### 2.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to Owners, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring Owners to furnish the Association with a current email address.

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

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

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

record, vote, ballot, proxy, or instrument required or permitted to be transmitted by an Owner or by the Association

### **ARTICLE 3 – ASSOCIATION MEETINGS, VOTING, QUORUM**

3.1 Annual Meetings. The Association membership shall meet annually each year on the day and at a time and place within the state of Utah stated in the notice of such meeting.

3.2 Special Meetings. The Association, by and through the Board, shall notice, hold and conduct a special meeting of its Members: (1) on call of the President or a majority of the Board, or (2) if the Association receives one or more written demands for the meeting that state the purpose or purposes for which the meeting is to be held, and are signed and dated by Owners in Good Standing holding at least 25% of the voting rights of the Association. When a special meeting is demanded by the members, the Board shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the demand and if notice of the meeting is not given by the Board within 30 days after the date the written demand is delivered to an Association officer, a person signing the demand may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

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

3.4 Voting. Each Lot shall be allocated one vote.

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

3.6 Quorum of Owners.

3.6.1 “Quorum” means the minimum number of Owners (when duly represented in person or by proxy at a meeting or casting a written ballot in an action by written ballot or consenting to an action without a meeting) necessary to make the proceedings valid.

3.6.2 At an annual meeting of the Association, the Owners that are represented for any purpose at the annual meeting shall constitute a quorum, except for matters requiring a higher quorum as provided in the Declaration or these Bylaws. For any other meeting of the Association or action taken without a meeting, and except as otherwise provided in the Declaration or these Bylaws, Owners holding one-third (1/3) of the voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum.

3.6.3 If any meeting of Owners cannot be organized because of a lack of quorum, the Owners who are present may adjourn the meeting to a time at least 48 hours from the time of the meeting at which a quorum was not present and Owners holding twenty percent (20%) of the voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum at such adjourned meeting.

3.6.4 When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

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

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

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

3.10 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of Owners may be taken without a meeting if the Association causes to be delivered a written ballot to every Owner entitled to vote on the matter not less than fifteen (15) days prior to the date on which the ballots must be received by the Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting

at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Board members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting of Owners and may be described as such in any document. The Board may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

3.11 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of Owners may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, are signed by Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty (60) day period. Any such writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date. Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose. Unless the written consents of all Owners entitled to vote have been obtained, notice of any Owner approval under this section shall be given to all Owners at least 10 days before the consummation of the transaction, action, or event authorized by the Owner action. The notice shall contain or be accompanied by the same material that would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the Owners for action.

3.12 Voting by Fiduciaries and Joint Owners. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Unit owned or held by such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Unit in such capacity. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote of the Unit may be exercised by any one of the Owners, in the absence of protest by a co-owner prior to the tallying of votes, so long as only one vote for such Unit is cast. In the event of a protest prior to the vote tally, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners prior to the vote tally, or the casting of more than one ballot or vote for the Unit and such ballots or vote conflict, the vote of the Unit shall be disregarded completely with respect to the matter.

**ARTICLE 4 – BOARD OF DIRECTORS – SELECTION, ELECTION, TERM OF OFFICE**

4.1 Number, Term and Qualifications.

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

4.1.2 Members of the Board shall serve for a term of two (2) years. Elections shall be staggered so all Board members are never elected in the same year.

4.1.3 All Board members must be an Owner or the spouse of an Owner of a Lot. A representative of an entity which owns a Lot may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Lot.

4.2 Nomination. Nomination for election to the Board shall be made in the manner determined by the Board, which may include a nominating committee, nominations from the floor at a meeting, or the requirement that nominations (including self-nominations) for positions on the Board be made by petition filed with the secretary of the Association at least thirty days prior to the annual meeting of the Association, which petition shall be signed by the nominee named therein indicating his or her willingness to serve as a member of the Board, if elected. The Board may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Board. The Board or, if established, the nominating committee, shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies. Self-nomination of candidates who qualify for election shall be permitted, provided they comply with any procedures for self-nomination stated herein or promulgated by the Association at least 30 days before the applicable meeting.

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

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

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

4.6 Removal of Board Members.

4.6.1 At any annual or special meeting, any one or more of the Board members may be removed, with or without cause, by a majority of the voting interests of the Owners. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Board member whose removal has been proposed by the owners may be given an opportunity to be heard at the meeting.

4.6.2 A Board member who is delinquent in the payment of an Assessment for longer than three months, is absent from three (3) consecutive regular meetings of the Board, or is absent from more than 25% of the regular Board meetings held in any 12 month period, shall be deemed to have tendered his or her resignation, and upon acceptance by the Board his or her position shall be vacant. The vacancy shall be filled as provided in Section 4.4 above.

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

### **5.1 Organizational Meeting**

5.1.1 Location, Date and Time. The first meeting of a newly-elected Board shall be held at such place, date and time as shall be fixed by the Board members at the meeting at which the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

5.1.2 Procedure and Business. Until the election of new officers, those existing officers that continue to serve on the Board shall remain in their positions, and the organizational meeting shall be chaired by the president, or in the absence of such person, the vice president, or in the absence of such person, the secretary. At the organizational meeting, the Board elect officers in accordance with Section 7.2 below and may conduct any other Association business.

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

5.3 Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) Board members, after not less than 48 hours' notice to each Board member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.7 below. The notice must state the date, time, and place of the meeting.

5.4 Meeting Procedure. Formal rules of order shall only apply to any Board or Association meeting inasmuch as one or more rules of order are adopted by the Board by resolution. Meetings of the Board shall be conducted by the President. A decision of the Board may not be challenged because the appropriate rules of order were not used. A decision of the Board is deemed valid without regard to any procedural errors related to the rules of order unless the error appears on the face of a written instrument memorializing the decision.

5.5 Open Meetings; Executive Sessions.

5.5.1 Open Meetings. Except as provided in subsection 5.5.3, all meetings of the Board shall be open to Owners. At each meeting, the Board shall provide each Owner a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the meeting. Beyond such comment period, no Owner shall have a right to participate in the Board meeting unless the Owner is also a member of the Board. The president or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting. The Board may adopt policies governing meetings of the Board from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Board shall also supersede these Bylaws to the extent the policy restates then current Utah law. "Meeting" means a gathering of a Board, whether in person or by means of electronic communication in real time under Section 5.6, at which the Board can take binding action.

5.5.2 Notice of Board Meetings to Owners. At least 48 hours before a Board meeting, the Association shall give written notice of the meeting via email to each Owner who requests notice of a Board meeting ("Meeting Notice"), unless notice of the meeting is included in a meeting schedule that was previously provided to the Owner, or the meeting is to address an emergency, and each Board member receives notice of the meeting less than 48 hours before the meeting. A Meeting Notice shall: (i) be delivered to the Owner by email, to the email address that the Owner provides to the Association; (ii) state the time and date of the meeting; (iii) state the location of the meeting; and (iv) if a Board member may participate by means of electronic communication under Section 5.6 below, provide the information necessary to allow the Owner to participate by the available means of electronic communication.

5.5.3 Executive Sessions. In the discretion of the Board, the Board may close a Board meeting and adjourn to executive session 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

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

5.6 Meetings by Telephonic or Electronic Communication in Real Time (e.g., by Conference Call or Skype). In the event of an emergency, or by decision of the Board, and to the fullest extent allowed by law, meetings of the Board may be conducted by means of electronic communication that allows all members of the Board participating to be able to communicate



orally in real time.

5.7 Action Taken by Board without a Meeting (e.g., by Email).

5.7.1 Notice, Response. Any action or decision required or permitted to be taken at a Board meeting may be taken without a meeting if, either:

(a) All members of the Board vote in favor of the action or decision in writing (e.g., via email). Such action or decision is deemed taken at the time the last Board member submits a vote describing the action or decision, unless prior to that time, any Board member revokes their vote. Or,

(b) If less than all Board members consent to the action in writing, then: (i) if notice is given in writing to each member of the Board, (ii) if no Board member makes a written demand that the action be taken only at a meeting, and (iii) if each Board member, by the deadline stated in the notice, either votes for or against the action, abstains in writing from voting, or fails to respond or vote.

5.7.2 Consent of Notice. The notice required by Subsection 5.7.1(a) (the "Notice" shall state (i) the action to be taken; (ii) the time by which a Board member must respond to the Notice; (iii) that failure to respond by the time stated in the Notice will have the same effect as abstaining in writing by the time stated in the Notice and failing to demand in writing by the time stated in the Notice that action not be taken without a meeting; and (iv) any other matters the Association determines to include.

5.7.3 Electronic Transmission. An electronic transmission communicating a vote, abstention, demand, or revocation is valid for all purposes and is considered to be written. Signed, and dated for purposes of this Section 5.7 if the electronic transmission is delivered with information from which the Association can determine the date it is sent and that the electronic transmission is transmitted by the person (e.g., if sent from a Board member's known email account). The date on which an electronic transmission is sent is considered the date on which the vote, abstention, demand, or revocation is signed.

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

5.8 Quorum and Acts. At all meetings of the Board, a majority of the existing Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time without further notice. At any such adjourned meeting any business which might have

been transacted at the meeting as originally called may be transacted.

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

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

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

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

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

6.4 Conflicts of Interest.

6.4.1 A conflict of interest or conflicting interest transaction includes a contract, transaction, or other financial relationship between the Association and (1) a Board member, (2) a party related to a Board member, or (3) an entity in which a Board member is a director or officer or has a financial interest.

6.4.2 A Board member shall avoid conflicts of interest or conflicting interest transactions, unless: (1) the material facts as to the Board member's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Board, (2) the Board in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative

vote of a majority of the disinterested Board members (even if the disinterested Board members are less than a quorum), and (3) the conflicting interest transaction is fair as to the Association.

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

### **7.1 Designation and Qualification.**

(a) **Designation.** The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The Board may designate the office of assistant treasurer and assistant secretary and the Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

(b) **Qualifications.** The president and vice-president shall be Board members (and shall cease to be an officer upon ceasing to be on the Board). Any Board member may be an officer of the Association.

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

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

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

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

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

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

7.6 **Duties of Officers.** Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and by the Board, to the extent not inconsistent with these Bylaws or the Declaration. The Board may delegate any powers or duties of officers to other persons or agents as the Board deems necessary or appropriate from time to time. Any principal officer may prepare, execute, certify, and record amendments to the Declaration or these Bylaws on

behalf of the Association in accordance with the amendment provisions of the Declaration or these Bylaws. The general duties of the officers are as follows:

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

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

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

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

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

Each Board member, committee member and officer of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities reasonably incurred by him or her in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Board member or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Board member or officer or person may be entitled by law or agreement or vote of the members or otherwise. No member of the Board or any committee of the Association, and no officer of the Association shall be personally liable to the Association or its Members or to any Owner for damages for breach of fiduciary duty, mistake of judgment, negligence, tortious acts or other conduct but this Article shall not eliminate or limit the liability of such for acts or omissions that involve intentional misconduct, fraud or a knowing violation of law. No member of the Board or any committee of the Association, and no officer of the Association shall be

personal liable in contract under any agreement, instrument or transaction entered into by them on behalf of the Association. Further, no member of the Board or any committee of the Association, and no officer of the Association shall have any personal liability arising out of the use, misuse or condition of the Project or any part thereof that might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as Directors, officers or committee members. When a member of the Board is sued for liability for actions undertaken in his or her role as a member of the Board, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, until and unless it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

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

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

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

9.1.1 **Permanent Records.** The Association shall keep (or cause to be kept) as permanent records: (1) The Declaration, Bylaws and Articles of Incorporation, (2) minutes of all meetings of the Association and of the Board; (3) a record of all actions taken by the Association members of the Board without a meeting; (4) a record of all actions taken by a committee of the Board in place of the Board on behalf of the Association; and (5) a record of all waivers of notices of meetings of members and of the Board or any committee of the Board.

9.1.2 **Resolutions and Rules.** The Association shall maintain (1) a record of the rules, regulations, and policies adopted by the Association, (2) appropriate accounting records, and (3) a record of its members in a form that permits preparation of a list of the name and address of all members in alphabetical order, and showing the number of votes each member is entitled to vote.

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

9.1.4 **Records at Principal Office.** The Association shall keep a copy of each of the following records at its principal office (copies of such records kept electronically by an Association officer or manager shall satisfy this requirement regardless of where located as long as such electronic records are capable of being transmitted to, or viewed by, others, such as via email from an electronic storage medium or via website): (1) all Governing Documents; (2) the minutes of all Owners' meetings for a period of three years; (3) records of all action taken by

Owners without a meeting, for a period of three years; (4) all written communications to Owners generally as Owners for a period of three years; (5) a list of the names and business or home addresses of the current Board members and officers; (6) a copy of its most recent annual report (annual renewal) delivered to the Division of Corporations under Utah Code Section 16-6a-1607; and (7) all financial statements prepared for periods ending during the last three years that show in reasonable detail the assets and liabilities and results of the operations of the Association.

9.1.5 Form of Records. The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. "Written form" does not mean paper form. The Association may maintain any of its records by retaining an electronic record of the information in the record that: (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise, and (2) remains accessible for later reference.

9.2 Financial Reports and Audits. Upon written request by an Owner or mortgagee of a Lot, an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to the person(s) making the request within ninety days after the end of each fiscal year. From time to time, the Board, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association.

9.3 Inspection of Records by Owners.

9.3.1 Inspection of Records Kept at Principal Office. If an Owner gives the Association written request at least five business days before the date on which the Owner wishes to inspect and copy, or electronically receive, the records, an Owner is entitled to either (1) inspect and copy during regular business hours at the Association's principal office, or (2) receive electronically any of the records in Section 9.1.4 above.

9.3.2 Inspection of Other Records – Proper Purpose Required. An Owner may inspect and copy any of the other records of the Association during regular business hours at a reasonable location specified by the Association only if a written request is made 5 days before the date of inspection and: (1) the request is made in good faith and for a proper purpose; (2) the Owner describes with reasonable particularity the purpose and the records the Owner desires to inspect; and (3) the records are directly connected with the described purpose.

9.3.3 The Board, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this Article, consistent with the Act. The fee may include reasonable personnel costs incurred to furnish the information, consistent with the Act, except the Association may not require an Owner to pay a fee for production of the records in Section 9.1.4, except for copying costs.

9.4 Redaction; Records Not Subject to Inspection. The Association may redact a Social Security number, a bank account number, and any communication subject to attorney-client

privilege from any document the Association produces for inspection or copying. The Board may withhold from inspection or copying any records: (i) considered by the Board in executive session and the minutes of any executive session, or (ii) that in its reasonable business judgment would constitute an unwarranted invasion of privacy (including, if so determined by the Board, a list of phone numbers or email addresses of Owners) or involve pending or anticipated litigation or contract negotiations.

#### **ARTICLE 10 - AMENDMENTS**

Approval of a majority of the voting rights of the Owners is required to amend these Bylaws. An amendment shall not be until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded against the Lots in the records of the County Recorder.

#### **ARTICLE 11 - MISCELLANEOUS**

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

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

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

11.6 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers on this 10 day of APRIL, 2018.

THE JOSHUAS HOA, INC.

Sign: [Signature]  
Print: DANNY L KIRCEY  
Its: \_\_\_\_\_

STATE OF UTAH )  
 )ss:  
County of WASHINGTON )

The foregoing instrument was acknowledged before me on this 10<sup>th</sup> day of  
APRIL, 2018 by RACHEL HEINRICH.



[Signature]  
Notary Public for Utah



**EXHIBIT A**

Legal Description

All Lots and Common Area of THE JOSHUAS AT SOUTHGATE 1 (SG) and THE JOSHUAS AT SOUTHGATE 2 AMD (SG) according to the official plats thereof recorded with the office of the Washington County Recorder, State of Utah.

Parcel Numbers: SG-JSG-1-1 through SG-JSG-1-20 (20 total)  
SG-JSG-2-21 through SG-JSG-2-67 (47 total)