



W3263402

E# 3263402 PG 1 OF 72
Leann H. Kilts, WEBER COUNTY RECORDER
14-Nov-22 10:01 AM FEE \$384.00 DEP T
REC FOR: HELGESEN HOUTZ & JONES
ELECTRONICALLY RECORDED

2022 RESTATED AND AMENDED

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

OF

NEWTOWNE SQUARE

AT

COLONIAL SPRINGS

(a Planned Unit Development)

TABLE OF CONTENTS

ARTICLES

1	DEFINITIONS	2
2	PROPERTY DESCRIPTION	4
3	THE ASSOCIATION.....	5
4	PROPERTY RIGHTS IN COMMON AREAS AND UNITS.....	7
5	ASSESSMENTS	9
6	OPERATION AND MAINTENANCE	13
7	INSURANCE	14
8	PARTY WALLS.....	18
9	DAMAGE OR DESTRUCTION.....	19
10	CONDEMNATION	20
11	TERMINATION.....	22
12	GENERAL USE RESTRICTIONS.....	23
13	RENTAL RESTRICTIONS.....	28
14	MORTGAGEE PROTECTION.....	31
15	REINVESTMENT FEE	33
16	DISPUTE RESOLUTION.....	35
17	ELECTRONIC NOTIFICATION AND VOTING.....	37
18	SOLAR PANELS.....	38
19	MISCELLANEOUS	40
EXHIBIT "A"	Legal Description	
EXHIBIT "B"	Bylaws	
EXHIBIT "C"	Maintenance Chart	
EXHIBIT "D"	Satellite Policy	
EXHIBIT "E"	Record Retention Policy	

**2022 RESTATED AND AMENDED
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
NEWTOWNE SQUARE
AT COLONIAL SPRINGS**

(a Planned Unit Development)

This 2022 Restated and Amended Declaration of Covenants, Conditions and Restrictions of Newtowne Square at Colonial Springs (“2022 Restated Declaration”) is made effective as of the date of the recording in the Weber County Recorder's Office by The Newtowne Square at Colonial Springs Owners Association, a Utah nonprofit corporation (“Association”).

RECITALS

- A. Capitalized terms in this 2022 Restated Declaration are defined in Article I.
- B. The enabling Declaration of Covenants, Conditions and Restrictions of Newtowne Square at Colonial Springs was filed for record on June 28, 2002, as Entry No. 1858393, in Book 2243, pgs. 847-887 in the office of the County Recorder of Weber County, Utah (the “Enabling Declaration”).
- C. Multiple amendments to the Enabling Declaration have been recorded thereby creating and adding additional provisions to the Association’s governing documents.
- D. Newtowne Square at Colonial Springs (“Newtowne Square”) is a planned unit development consisting of 182 Units as more particularly described and set forth in Exhibit “A” attached hereto.
- E. Not less than two-thirds (2/3) of the Association’s Unit Owners have consented to and approved this 2022 Restated Declaration.

NOW, THEREFORE, to accomplish the Owners' objectives, this 2022 Restated Declaration is hereby adopted. The Enabling Declaration, all amendments thereto, and the Association Bylaws are hereby restated, replaced and amended by this 2022 Restated Declaration and the exhibits attached hereto. It is the intent of the Owners that this 2022 Restated Declaration replace all prior documents recorded against Lots within Newtowne Square and that this 2022 Restated Declaration be the sole set of covenants governing the Project.

Regardless of any language herein to the contrary, the following are not renounced, rescinded, revoked, replaced or amended: the Plat (as defined herein); the submission and dedication of the real property described in Exhibit “A” to the provisions of this 2022 Restated Declaration; the ratification, approval and incorporation of Newtowne Square at Colonial

Springs Owners' Association, Inc., a Utah nonprofit corporation, and the Articles of Incorporation on file with the State of Utah; and, any other provision, paragraph, or section that is required to maintain the legal status of the Project which, if repealed, would nullify or impair the legal status of the Project.

It is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used subject to the following 2022 Restated Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Association and all Lot Owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

The statements set forth in the above Recitals are hereby approved and accepted as being accurate and shall constitute part of this 2022 Restated Declaration.

ARTICLE 1 DEFINITIONS

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated.

- 1.1 **"Act"** shall mean and refer to the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.
- 1.2 **"Articles"** or **"Articles of Incorporation"** shall mean and refer to the Articles of Incorporation of the Association which shall be filed with the Utah State Department of Commerce, Division of Corporations, and Commercial Code at or about the time this Declaration is recorded.
- 1.3 **"Association"** shall mean and refer to the Newtowne Square at Colonial Springs Owners Association, Inc., a Utah nonprofit corporation.
- 1.4 **"Board of Directors"** or **"Board"** shall mean and refer to the governing board of the Association which shall be appointed or elected in accordance with the Declaration, the Articles of Incorporation and Bylaws of the Association.
- 1.5 **"Building"** shall mean and refer to a residential structure (zero lot line) located on a Lot in the Project.
- 1.6 **"Building Exteriors"** shall mean and refer to those portions of the Units which are open to the elements such as roofs, soffit, facade, exterior walls, exterior doors, but excluding any window glass.
- 1.7 **"Bylaws"** shall mean and refer to the Bylaws of the Association, attached hereto as Exhibit "B".

- 1.8 **“Common Areas”** shall mean and refer to that part of the Property which is not included within the Units, including roadways, parks, detention basins within the Project and all improvements other than utility lines now or hereafter constructed or located thereon and subject to the easements herein described.
- 1.9 **“Common Expense Fund”** shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.
- 1.10 **“Common Expenses”** shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Project and Association as described in Article V hereof and which determine the assessments made to Owners.
- 1.11 **“Declaration”** and **“2022 Restated Declaration”** shall mean and refer to this 2022 Restated and Amended Declaration of Covenants, Conditions and Restrictions of Newtowne Square at Colonial Springs, as the same may hereafter be modified, amended and supplemented.
- 1.12 **“Eligible Mortgagee”** shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Article 14.1 of this Declaration.
- 1.13 **“First Mortgage”** shall mean any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.
- 1.14 **“First Mortgagee”** means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.
- 1.15 **“Limited Common Areas”** shall mean any Common Areas designated as reserved for use by the Owner of a certain Unit or Units to the exclusion of the other Owners in the Project and shall include those patios, porches and driveways located on a Lot which are appurtenant to the Building. Such Limited Common Area is permanently assigned to a specific Unit as an appurtenance to such Unit for the exclusive use of the Owner of the Unit.
- 1.16 **“Lot”** shall mean and refer to the separate parcel of residential real property which is identified on the Plat Map created for the construction of a Building. The term “Lot” does not include any Common Area.
- 1.17 **“Manager”** shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and Project.

- 1.18 **“Member”** shall mean and refer to every person who holds membership in the Association.
- 1.19 **“Mortgage”** shall mean any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.
- 1.20 **“Mortgagee”** shall mean a beneficiary of a Mortgage as well as named Mortgagee.
- 1.21 **“Owner”** shall mean the person or persons owning in fee simple a Unit in the Project, as such ownership is shown by the records of the County Recorder of Weber County, State of Utah. The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or non-judicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).
- 1.22 **“Party Wall”** shall mean and refer to a wall, including without limitation a foundation wall, that forms part of a Unit and is located on or adjacent to a boundary line between two or more adjoining Lots owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Units, which wall may be separated by a sound board between two or more Units
- 1.23 **“Plat”** shall mean and refer to the plats for Newtowne Square at Colonial Springs recorded in the office of the County Recorder of Weber County, Utah, and all amendments thereto.
- 1.24 **“Project”** shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.
- 1.25 **“Property”** shall mean and refer to the entire tract of real property now or hereafter covered by the Plats. A description of the real property covered by the Plat on the effective date of this Declaration is set forth in Article II of this Declaration.
- 1.26 **“Unit”** shall mean and refer to the real property consisting of a Building and Lot as shown on the Plat. Except where the context specifically otherwise requires, reference to a Unit shall include reference to the Building thereon.

**ARTICLE 2
PROPERTY DESCRIPTION**

- 2.1 **Property.** The Property initially associated with the Project which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions easements and restrictions of this Declaration and the Plat consists of the following described real property situated in Weber County, State of Utah: See **Exhibit “A” attached**

**ARTICLE 3
THE ASSOCIATION**

- 3.1 **Membership.** Each Owner shall be entitled and required to be a Member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by such Owner. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of such Unit shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association and membership in the Association may not be transferred except in connection with the transfer of a Unit. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The term "available" as used in this Section shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances and as set forth in the Community Association Act and the Revised Nonprofit Corporation Act.
- 3.2 **Board of Directors.** The Owners shall have the exclusive right to elect and remove all members of the Board of Directors as provided in the Bylaws.
- 3.3 **Votes.** Each Member shall be entitled to one (1) vote in connection with the ownership of her or his Unit. The number of votes appurtenant to each Unit shall be permanent and shall not change in the event an Owner modifies a Unit to increase or decrease the size of his Unit relative to other Units. In the event that there is more than one Owner of a particular Unit, the votes relating to such Unit shall be exercised as the Owners may determine among themselves. No Unit shall have more than one (1) vote, regardless of the number of persons having an ownership interest in the Unit. The votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the votes involved shall be counted to determine whether a quorum exists and until the vote is verified, the ballot cast in connection with the vote shall be a provisional ballot.
- 3.4 **Maintenance of Building Exteriors and Yards.**
- (a) **Association.** It is intended by the Declaration that the Buildings and the Front Yard of all Lots and Units shall present a uniform, neat and well-cared-for appearance. To achieve this stated purpose, the Association shall maintain all Building Exteriors

as follows: paint, stain, repair, replacement and care of roofs, gutters, downspouts, fences, exterior building surfaces, and other exterior fixtures and improvements.

- (b) **Unit Owners.** The Association's maintenance shall not include maintenance, repair or replacement of the garage doors used for vehicle access, exterior entry doors (front or rear), window glass on any Building or utility lines from the point that they begin to serve exclusively any one Unit, all of which shall be the sole responsibility of the Unit Owner. Additionally, each Owner shall be responsible for the maintenance, repair and (if necessary) replacement of all concrete located on that Owners Lot and on the Limited Common Area associated with a Lot. These areas shall include, but are not limited to, (i) the foundation of a Unit, (ii) the porch connected to a Unit, and (iii) the driveway and patio associated with a Unit, whether located on a Lot or on the Limited Common Area associated with a Lot.
 - (c) **Door Colors.** Garage doors must be the same color as originally installed (white or tan) and shall match the color of neighboring garage doors. Front doors may only be the following colors: black, brown, white, tan, brick red, cranberry, or stained natural wood. Front screen doors may only be in the following colors: black, white, tan, brown, or cranberry.
 - (d) **Landscaping.** The Association shall prepare, improve, install and shall maintain all landscaping, trees, shrubs, grass, walks and steps located in the Front Yard of each Unit. The "Front Yard" shall be defined herein as that point from the lateral fence (which may be located at or about the front corner of each Building) or if no fence is constructed, from the front corner of each Building to the street but not including the driveway or walkway of any Unit. The Association shall have the right of entry to any Unit to perform emergency repairs or do other work necessary for maintenance of the Building Exteriors.
 - (e) **Maintenance Chart.** Attached hereto as Exhibit "C" is a Maintenance Chart setting forth the maintenance, repair and replacement responsibilities of each Unit Owner and the Association relating to the Units, Buildings, Lots, Common Areas and Limited Common Areas. In the event of a conflict between any of the provisions set forth in the body of this 2022 Restated Declaration and those set forth in the Maintenance Chart (Exhibit "C"), the Maintenance Chart shall control.
 - (f) **Damage by Owners.** In the event that the need for maintenance or repair of the Building Exteriors or Front Yard is caused through the willful or negligent acts of its Owner(s), or through the willful or negligent acts of the guests, tenants or invitees of the Owner(s) of the Unit needing such maintenance or repair, the cost of such exterior maintenance shall be immediately due and payable from such Owner and added to and become a part of the assessment to which such Unit is subject.
- 3.5 **Professional Management.** The Association may carry out, through a Manager, those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be

responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

ARTICLE 4
PROPERTY RIGHTS IN COMMON AREAS AND UNITS

- 4.1 **Description of Buildings and Units.** Each Building is a two-story residence of wood frame construction, erected on concrete slab with composition roof and attached garage and driveway and shall be constructed in conjunction with two, three, or four other Units with a zero lot line between each Unit. Each Unit is separately metered and wired for electricity. Culinary and secondary water is metered in common with all other Units in the Projects. Each Unit is connected to a public sewage disposal system.
- 4.2 **Easement of Enjoyment.** Each Member shall have an undivided interest, right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress to and from its Unit over and across such Common Areas. Each Owner shall also have the exclusive right to use and enjoy the Unit's Limited Common Area for the Owner's exclusive use. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any guest, invitee, tenant, lessee, contract purchaser, or other person who occupies or utilizes such Member's Unit.
- 4.3 **Easements for Encroachments.** It is intended that one wall of each exterior unit and both walls of interior units shall be located at or on the property line as shown on the Plat Map and may be common walls with adjoining units. In the event the construction, reconstruction, repair, shifting, settlement or any other movement of any portion of the improvements causes any part of a Unit built in substantial accord with the boundaries for such Unit as depicted on the Plat to encroach upon the Common Areas, or upon an adjoining Unit, or if any part of the Common Areas encroaches or shall encroach upon a Unit for any such reasons, an easement for such encroachment and for the maintenance of the same shall and does hereby exist. There is also hereby created an easement for any encroachment by any footing, foundations, roof overhang or other architectural appurtenances upon an adjoining Unit or any part of the Common Areas.
- 4.4 **Limitation on Easement.** A Member's equal, undivided interest, right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:
- (a) The right of the Association to suspend a Member's voting right in the Association upon notice and a chance for hearing for any period during which
 - (i) an assessment on such Member's Unit remains unpaid;

- (ii) for a period not exceeding sixty (60) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and
 - (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;
- (b) The right of the Association to
 - (i) impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas; and
 - (ii) allocate and/or assign specific parking spaces as may be available to each Owner as may be reasonably necessary.
- (c) The right of Harrisville City, Weber County, the State of Utah or any other governmental or quasi-governmental body having jurisdiction over the Property, to ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection and providing other governmental or municipal service;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument signed by Members holding sixty-seven percent (67%) or more of the total votes of the Association agreeing to such dedication or transfer has been recorded, except that the Board shall have authority to transfer to such public agencies, authorities or utilities, permits, licenses, easements and rights-of-way which are intended to benefit and which do not have any substantial adverse effect on the use or enjoyment of the Common Areas by the Members.

4.5 **Form for Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

Lot No. ____ of Newtowne Square at Colonial Springs, PRUD, according to the Record of Survey Map filed for record as Entry No. ____ in Book ____ of Plats at Page ____, together with the appurtenant undivided ownership interest in the "Common Areas," all of which are defined and described in the Declaration of Covenants, Conditions and Restrictions of Newtowne Square at Colonial Springs. and the Exhibits attached thereto, filed for record as Entry No. ____ in Book ____ at Pages ____ through _____, of Official Records.

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

- 4.6 **Transfer of Title.** The Common Areas is owned by the Members of Association as tenants in common with an equal undivided interest therein. No Owner shall bring any action for partition or division of any part of the Common Area. It being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation, management, use, and enjoyment of the Common Area.

ARTICLE 5 ASSESSMENTS

- 5.1 **Agreement to Pay Assessments.** Each Owner of any Unit, by the acceptance of instruments of conveyance and transfer therefor, whether or not it is expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article 5. There shall be no waiver or right of set-off due to claims an Owner may have against the Association. In any event, all Units shall be allocated the then applicable assessments upon conveyance of the Unit.
- (a) The annual assessment may be increased fifteen percent (15%) over the prior year's assessment only by a vote of at least fifty-one percent (51%) of the votes of Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (b) The Board may fix the annual assessment at an amount not in excess of the maximum annual assessment set forth herein without a vote of the Members.
- 5.2 **Annual Assessments.** Annual assessments shall be computed and assessed against all Units in the Project as follows:
- (a) **Common Expense.** Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, the Building Exteriors, and furnishing common utility services and other common items to the Units. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments on the Common Areas (and the Units until the Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs, maintenance and cleaning of the Common Areas and Building Exteriors; landscaping; snow removal, wages of Association employees, fees for a Manager; trash removal from Common Areas; utility charges, including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas and Building Exteriors that must be replaced on a periodic basis; and any other expenses and liabilities which may be

incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Common Expenses shall also include those assessments imposed upon the Association by virtue of its membership in the Colonial Springs Association as governed by Umbrella Declaration of Covenants, Conditions, Restrictions and Reservation of Easements For Colonial Springs, and its articles and bylaws. The aggregate of all such items shall constitute the Common Expenses, and all funds received from assessments under this Article 5.2 (a) shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

- (b) **Apportionment.** Common Expenses shall be equally assessed and equally apportioned among and assessed to all Units and their Owners.
- (c) **Annual Budget.** Annual assessments shall be determined on the basis of a fiscal year beginning January 1st and ending on the following December 31st. On or before December 1st of each year thereafter, the Board of Directors shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.
- (d) **Notice and Payment.** Except with respect to the first fiscal year, the Board of Directors shall notify each Owner in writing as to the amount of the annual assessment against his or her Unit on or before December 15th each year for the fiscal year beginning on the following January 1st. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. All unpaid installments of any annual assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such installment became due until paid. The Board of Directors shall also have the right to assess a late fee of up to fifty dollars (\$50.00) per month for each assessment not paid within ten (10) days of the due date. The failure of the Board of Directors to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of Owner from the obligation to pay such assessment or any other assessment.
- (e) **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Directors may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Article 5.3 below, except

that the required vote set forth therein shall be by at least fifty percent (50%) of the voting power of the Association in person or by proxy at a meeting called for such purpose. Notwithstanding the foregoing, the Association may levy an additional assessment without a vote of the Owners so long as such additional assessment is only to cover the cost of utility rate increases which take effect after the annual budget is prepared.

- 5.3 **Special Assessments.** In addition to the annual assessments authorized by this Article, the Board of Directors may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least fifty percent (50%) of the voting power of the Association in person or by proxy at a meeting called for such purpose, special assessments, payable over such periods as the Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners equally and uniformly. Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from the date such portions become due until paid and a late fee of not more than \$50.00. All funds received from assessments under this Section shall be part of the Common Expense Fund.
- 5.4 **Uniform Rate of Assessment.** The amount of any annual or special assessment against each Unit shall be fixed at a uniform rate and equally allocated to each Unit. Annual assessments may be collected on a monthly basis and special assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the special assessment.
- 5.5 **Notice and Quorum for Any Action Authorized Under Sections 5.1 and 5.3.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.1 or 5.3 of this Article shall be sent to all Members no less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast forty percent (40%) of all the votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned and the notice requirement of this section shall not apply. The required quorum at the subsequent meeting shall be fifty percent (50%) of the required quorum at the preceding meeting. No such adjourned meeting shall be held more than sixty (60) days following the preceding meeting.
- 5.6 **Lien for Assessments.** All sums assessed to Owners of any Unit within the Project pursuant the provisions of this Article 5, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To

evidence a lien for sums assessed pursuant to this Article 5, the Board of Directors may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Association, or its attorney, and may be recorded in the office of the County Recorder of Weber County, State of Utah. The Association shall have the power to conduct non-judicial foreclosure in order to collect delinquent Assessments as authorized by Utah Code Section 57-8a-302. Each Owner hereby appoints the Association's attorney, Richard W. Jones, as trustee, or such substitute trustee as is designated pursuant to Utah Code Section 57-1-22. Additionally, such Owner empowers such trustee to enforce a lien and to foreclose the lien by the private power of sale provided in Utah Code Section 57-1-27, or by judicial foreclosure. Each Owner further grants to the trustee the power and authority to sell the Lot of any defaulting Owner to the highest bidder to satisfy such lien as provided for in Utah Code Sections 57-8a-301 through 306. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorney fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessment against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Directors shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association.

- 5.7 **Personal Obligation of Owner.** The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney fees.
- 5.8 **Personal Liability of Purchaser.** The personal obligation of an Owner to pay unpaid assessments levied against his Unit as described in Article 5.7 shall pass to successors in title and shall remain the personal obligation of the owner. A lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit except for foreclosure by a First Mortgagee, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.
- 5.9 **Reserves and Working Capital.** In addition to its day-to-day operating funds, the Association shall establish the following funds:
- (a) **Reserve Fund.** The Association may in its sole discretion establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Building Exteriors the Association is

obligated to maintain, repair or replace. The reserve fund shall be maintained out of regular assessments for Common Expenses.

- (b) **Working Capital Fund.** The Association shall establish and maintain for the Project, a working capital fund equal to at least two monthly installments of the annual assessment of each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Unit. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet initial operating expenses and unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any regular assessment. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners.

5.10 **Evidence of Payment of Annual and Special Assessments.** Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such Member or other person a written certificate stating

- (a) that all annual and special assessments (including interest, costs and attorney fees, if any, as provided in Section 5.2 above) have been paid with respect to any specified Unit as of the date of such certificate, or
- (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorney fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser or Mortgagee on, the Unit in question.

ARTICLE 6 OPERATION AND MAINTENANCE

6.1 **Maintenance of Units.** Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Unit. The Association shall have no obligation regarding maintenance or care of any Unit except as expressly set forth in Articles 3.4, 6.2, Exhibit "C", and elsewhere in this Declaration. Each Owner is responsible to both landscape and maintain the back patio of their Unit.

6.2 **Operation and Maintenance by Association.** The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and generally in good condition and repair. The expenses incurred by the

Association for such purposes shall be paid for with funds from the Common Expense Fund. Notwithstanding the foregoing, the association shall not be responsible for snow removal from the driveway or walkways of any Unit.

All fencing within the Project was initially installed by the developer. Irrigation water is provided through an irrigation system initially installed by the developer. Each Unit has a stubbed connection provided. The Association shall be responsible for the continual upkeep, repair, maintenance, and eventual replacement of the irrigation system in the Front Yard of each Unit.

- 6.3 **Utilities.** The Owner shall pay for all utility services furnished to each Unit including a pro-rata share of all utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered (either directly or through membership in an association created for the purpose of administering such common utilities for one or more related developments) and charge an appropriate share to each Unit and Owner as part of the Common Expenses.

The Association may, in its discretion, undertake to meter each Unit individually for any common utilities, whether privately or through a municipal utility. In such event, the Unit Owner shall pay the actual costs of such utility services attributable to such Owner's Unit

ARTICLE 7 INSURANCE

NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.

- 7.1 **Insurance.** The Board shall obtain insurance as required in this Restated Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Restated Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

7.2 **Property Insurance.**

- (a) The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.
- (i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise

permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

- (ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage.
 - (iii) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
 - (iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property’s insurable replacement cost but not more.
- (b) **Owner Responsibility for Payment of Deductible.** If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
- (i) The Association’s policy provides primary insurance coverage, and:
 - (a) the Owner is responsible for the Association’s policy deductible; and
 - (b) the Owner’s policy, if any, applies to that portion of the loss attributable to the Association’s policy deductible.
 - (ii) An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit (“Unit Damage”) as part of a loss, resulting from a single event or occurrence, that is covered by the Association’s property insurance policy (“a Covered Loss”) is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage (“Unit Damage Percentage”) for that Unit to the amount of the deductible under the Association’s property insurance policy; and
 - (iii) If an Owner does not pay the amount required under Subsection b) above within 30 days after substantial completion of the repairs to, as applicable,

the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.

- (c) **Claims Under the Deductible.** If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's policy deductible:
- (i) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible;
 - (ii) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and
 - (iii) the Association need not tender the claim to the Association's insurer.
- (d) **Deductible Notice.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Restated Declaration.
- (e) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

7.3 **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

7.4 **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Restated Declarant, the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the governing documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any

Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

- 7.5 **Theft and Embezzlement Insurance.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board of Directors members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, (c) officers, directors, and employees of any Manager of the Association, and (d) coverage for acts.
- 7.6 **Worker's Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.
- 7.7 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Mortgagee.
- 7.8 **Named Insured.** The named insured under any policy of insurance shall be the Association; Each Owner shall also be an insured under all property and CGL insurance policies.
- 7.9 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the entire voting interest of the Association, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.
- 7.10 **Right to Negotiate All Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Restated Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance

and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

- 7.11 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 7.12 **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective affiliates, agents and employees.
- 7.13 **Applicable Law.** This Restated Declaration is specifically subjecting the Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE 8 PARTY WALLS

- 8.1 **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of a Unit and placed on the dividing line between two Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- 8.2 **Repair and Maintenance.** Each Unit may share one party wall, a common roof, a common exterior back wall, and a common exterior front wall, with an adjacent Unit. The Owners acknowledge that certain repairs or maintenance to the roof or exterior walls of the Units may become necessary, which repairs or maintenance cannot be performed on one Unit only, but may necessarily involve the other attached Unit. Therefore, all repairs to the roof and to the surface of the exterior walls of all Units will be made by the Association out of Association funds.
- 8.3 **Destruction of Party Wall, Common Roof or Exterior.** If a party wall or common improvement is damaged or destroyed by the fault or negligence of one of the Owners, such damage shall be repaired by the Owner (unless the damage is covered by the Association's and Owner's insurance) to a condition equal to or better than immediately prior to the damage, and the negligent Owner or Owner at fault shall pay for any and all costs incurred to cure the damage. Should a party wall be damaged or destroyed by any cause other than by default or by an act of negligence of an Owner of the adjacent Unit, the damage shall be rebuilt or repaired to a condition equal to or better than immediately prior to the damage, at the joint expense of the Owners of the two affected Units, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Units. Should a common roof or any part of the exterior wall(s) be damaged or destroyed by any cause other than by fault or by an act of negligence of an Owner of the adjacent Unit, the damage shall be rebuilt or repaired by the Association

to a condition equal to or better than immediately prior to the damage, at the expense of the Association, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Units.

ARTICLE 9 DAMAGE OR DESTRUCTION

- 9.1 **Damage to Common Area.** Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Area, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article 7 hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practicable. The Property shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy a Special Assessment for the deficiency and proceed with such restoration and repair.
- 9.2 **Damage to Buildings.** Except as otherwise provided in this Declaration, in the event of any destruction of any Building(s), it shall be the duty of the Owner(s) of the Building(s) to restore and repair the same to its/their former condition, as promptly as practical, under the supervision of the Board. The proceeds of any insurance maintained pursuant to Article 7 hereof for reconstruction or repair of the Property shall be made available for such purpose, unless otherwise provided herein. The Building(s) shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than the estimated cost of restoration and repair, the Owner(s) of the Building(s) shall be responsible for the deficiency, and the Board shall have the power to levy a Special Assessment to secure payment of the deficiency. In the event more than one Building is damaged or destroyed, the available insurance proceeds shall be allocated according to the estimated costs of repair and restoration of each Building.
- 9.3 **Alternate Plans for Restoration and Repair.** Notwithstanding the provisions of Section 8.1 and 8.2, the Association shall have the right, by a vote of seventy-five percent (75 %) of the Association, to make alternate arrangements respecting the repair, restoration or demolition of the damaged portion of the Property. The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocation of any necessary Assessments. Any plan adopted pursuant to this subparagraph shall be adopted within sixty (60) days of the damage or destruction and shall be supported by the vote of any Owner whose Building has been physically damaged, to the extent the proposed plan affects the reconstruction of such Building.
- 9.4 **Appraisal of Damages.** In the event the parties affected by damage or destruction to the Property cannot agree, within twenty (20) days of the date of the damage, on the estimated cost of repair or the allocations referred to in this Article 9, the Association shall appoint

three (3) independent appraisers having at least five (5) years full-time appraisal experience in Weber County, Utah, to appraise the damage and establish allocations among various damaged portions of the Property. Within forty-five (45) days after the selection of the appraisers, a majority of the appraisers shall set the estimated cost of repairs and allocations. If a majority of the appraisers are unable to agree within the stipulated period of time, the average of the three (3) appraisals shall be utilized. If, however, the low appraisal and/or the high appraisal are/is more than fifteen percent (15%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one appraisal is disregarded, the average of the two remaining appraisals shall be utilized. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be utilized. The cost of the appraisals required by this subparagraph shall be paid by the Association and reimbursed by the Owners through an Extraordinary Assessment.

- 9.5 **Interior Damage.** With the exception of any casualty or damage insured against by the Association pursuant to Article 7 of this Declaration, restoration and repair of any other damage to the exterior or interior of any individual Building, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, and personal property shall be made by and at the individual expense of the Owner of the Building so damaged. In the event of a determination to rebuild the Property after partial or total destruction as provided in this Declaration, such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Board.

ARTICLE 10 CONDEMNATION

- 10.1 **Condemnation.** If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof: and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.
- 10.2 **Proceeds.** All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "**Condemnation Award**") shall be made payable to the Association and shall be distributed by the Board of Directors, on behalf of the Association as herein provided.

- 10.3 **Complete Taking.** In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Units immediately prior to the condemnation. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.
- 10.4 **Partial Taking.** In the event less than the entire Project is taken by power of eminent domain, the following shall occur.
- (a) **Allocation of Award.** As soon as practicable, the Board of Directors shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:
- (i) The total amount apportioned to the taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken).
 - (ii) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Units that have not been taken.
 - (iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit.
 - (iv) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;
 - (v) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;
 - (vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and
 - (vii) No provision of this Article 10 or any other provision of this Declaration, the Articles or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

- (b) **Continuation and Reorganization.** If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:
- (i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate;
 - (ii) If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue.
 - (iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Directors, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas;
 - (iv) The Board of Directors, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 10(4)(b); provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Directors shall defer thereto and proceed in accordance therewith.
- (c) **Repair and Reconstruction.** Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article 9 hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

ARTICLE 11 TERMINATION

- 11.1 **Required Vote.** Except as otherwise expressly provided in this Declaration, the Project may be terminated only by agreement of all Owners of the Units.
- 11.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by all of the Owners. Such an agreement to terminate must also be approved by the holders of all liens affecting any of the Units. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in Weber County, Utah and is effective only on recordation.

- 11.3 **Sale of Project.** A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 11.4 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 11.1 and 11.2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each Unit. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.
- 11.5 **Proceeds of Sale.** Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

ARTICLE 12 GENERAL USE RESTRICTIONS

- 12.1 **Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interest of the Owners. The Association shall also have authority to assess fines against Owners who violate the Association's governing documents, as further described in the Act.
- 12.2 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their nature and with the rules, regulations and use restrictions applicable to Units. No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas. Provided, however, vending machines, mailing or packaging and similar services approved by the Board, in its sole and absolute discretion, may be made available within the Common Areas.
- 12.3 **Use of Units.** The Units within the Project may be used and shall limited in their uses as follows:

- (a) **Use of Buildings.** No Building shall be occupied and used except for single-family residential purposes by the Owners, their tenants, and social guests. An Owner shall have the right to rent out their Unit to a tenant or tenants, only under such terms and conditions as set forth hereinafter. Any tenant shall occupy the Unit subject to all terms and conditions of the Declaration. In no event shall any Unit be rented without the advance written notice to the Association as provided herein. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in the Unit may conduct such business activities with the Unit so long as:
- (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, smell or customer and/or employee traffic from outside the Unit;
 - (ii) the business activity conforms to all zoning requirements for the Property;
 - (iii) the business activity is a type which is consistent with the residential character of the Property; and
 - (iv) the business activity does not increase traffic, constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the property, as may be determined in the sole discretion of the Board.
- (b) **Nuisances.** No noxious, illegal, or offensive activities shall be carried on in any Building, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same (i.e.; hot tubs, trampolines greater than 3' in diameter, etc.), or which will impair the structural integrity of any building.
- (c) **Signs.** No Signs advertising any business shall be displayed on any portion of the Property. No signs advertising Units for sale or rent may be displayed on the Property or on any portion of the Property, unless first approved by the Board, and unless such signs comply with any and all local ordinances.
- (d) **Animals.**
- (i) No animals or birds of any kind shall be raised, bred, or kept in any Building, or on any portion of the Property; except that no more than two (2) usual and ordinary household pets such as dogs, cats, or birds, may be kept, provided that they are not kept, bred or maintained for any commercial purposes and they are kept under reasonable control at all times.

- (ii) All dogs shall be kept on a leash at all times when the dog is outside of the Unit.
- (iii) Owners shall prevent their pets from soiling any portions of the Common Area and in the event a pet does soil a portion of the Common Area, the Owner or person in control of such pet shall immediately clean up after the pet.
- (iv) The Board is authorized to require DNA testing of any animal that is present in the Common Areas at any time. If an animal is observed in the Common Areas, the Board may require the pet's Owner, or if the animal belongs to a tenant, the tenant's landlord, to provide a DNA sample from the animal observed in the Common Areas. Failure or refusal to provide a DNA sample to the Board within five (5) days of a written request from the Board shall result in a special assessment against the tenant and the Unit Owner, jointly and severally, in the amount of \$350.00. In the event a DNA test indicates, confirms or identifies that a specific animal has soiled or otherwise left animal droppings in the Common Areas, the Unit Owner of the Unit where the animal is kept or housed shall pay a special assessment to the Association in the Amount of \$350.00, and shall also be liable to pay all costs and fees incurred in any manner whatsoever by the Association in connection with the DNA testing. In the event the Board enlists legal counsel to assist the Board in enforcing this section, the violating tenant and Unit Owner shall be jointly and severally liable to pay all attorney fees incurred by the Association, regardless of the filing of a complaint or not.
- (v) The Board may enact reasonable rules respecting the keeping of animals within the Project, including noise restrictions, and may designate certain areas in which animals may not be taken or kept, or they may require that specific animals not be allowed on any part of the Property.
- (vi) It is intended that all permitted pets shall be small household pets less than 20 lbs., to be kept indoors and not left outdoors overnight and such shall, at no time, become a nuisance to the other Owners within the Project.
- (e) **Garbage and Refuse Disposal.** All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall be kept in sanitary containers with lids that prevent rodents, animals and fowl from gaining entrance. No equipment, debris, junk or storage piles may be kept outside of the Building.
- (f) **Rooftop Antennas.** No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any Unit or elsewhere without prior written approval of the Board in accordance with the Association's Satellite Dish Antenna Policy which is set forth in Exhibit "D", attached hereto. The Association has the

right and option to install satellite or cable service lines and antennas as needed throughout the Project in connection with its development.

- (g) **Clothesline.** No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes.
- (h) **Power Equipment and Car Maintenance.** No power equipment or car maintenance of any nature shall be permitted on the Property. Provided however, car washing or polishing may be done by an Owner, but only in the driveway appurtenant to that Owner's Unit.
- (i) **Recreational Vehicles.** No boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property shall be parked or stored in or upon any of the Common Areas or the driveways of any Unit. Any boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property must fit within and be stored and kept within the Owner's garage.
- (j) **Parking Restriction.** An Owner or an Owner's guest may park one (1) standard size vehicle in front of the Owner's garage. No parking shall be permitted on streets within Newtowne Square between the hours of midnight (12:00 AM) and 7:00 AM. No Owner, resident or tenant of Newtowne Square may park in or use Common Areas designated for visitor or guest parking for the parking of their vehicle. All parking regulation shall be strictly enforced.
- (k) **Window Covers.** Curtains and drapes (with a white lining), shutters, or blinds of a neutral color may be installed as window covers, subject to the Board's absolute discretion. No window shall be covered with aluminum foil or similar material. No window tinting or mullions shall be allowed without the prior written approval of the Board.
- (l) **Sculptures/Flags.** No outdoor sculptures, flag poles and/or flags shall be permitted in the Common Areas.
- (m) **Fences.** The original fencing established and installed by developer as part of the original Project design shall be preserved and maintained by the Owners and by the Association, as the case may be according to the location of such fencing. Thereafter, all new and/or additional fencing/barriers must be approved by the Board as provided herein.
- (n) **No Patio/Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture and portable barbecue grills in good condition, which may be maintained on backyard patios.
- (o) **No Hazardous Materials.** No Owner shall cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in such Owner's Unit in violation of any Environmental Law. If any Hazardous Substance is used, stored,

generated or disposed of on or in any Owner's Unit, or if an Owner's Unit becomes contaminated in any manner by such Owner (or its lessee), such Owner shall indemnify and hold harmless all other Owners from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses including, without limitation, a decrease in the value of the non-contaminated Units, damages caused by loss or restriction of usable space, or any damages caused by adverse impact on the marketing of the non-contaminated Units, and any and all sums paid for settlement of claims, attorney fees, consultant and expert fees.

As used herein, the term "Hazardous Substance" shall mean any pollutants, contaminants, chemicals, waste and any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical or chemical compound or hazardous substance, material or waste, whether solid, liquid or gas, including any quantity of asbestos in any form, urea formaldehyde, PCB's, radon gas, crude oil or any fraction thereof, all forms of natural gas, petroleum products or byproducts or derivatives, radio-active substance, waste waters, sludge, slag and any other substance, material or waste that is subject to regulation, control or remediation under any Environmental Laws.

As used herein, "Environmental Laws" shall mean all local, state and federal laws and regulations which regulate or relate to the protection, clean-up and restoration of the environment; the use, treatment, storage, transportation, generation, manufacture, processing, distribution, handling or disposal or emission, discharge or other release or threatened release of Hazardous Substance or otherwise dangerous substances, wastes, pollution or materials and shall include the Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Atomic Energy Act, Occupational Safety and Health Act, Toxic Substances Control Act, Clean Air Act, Oil Pollution Act of 1990, Comprehensive Environmental Response Compensation and Liability Act and the Hazardous Materials Transportation Act.

- (p) **Irrigation.** The Common Area maintenance plan shall provide for an irrigation system for the Project with restricted watering days for each Unit. Each Unit Owner is bound by the schedules and rules that the Association may establish in connection therewith. Each of the Unit Owners agrees not to water their yards and outdoor landscaping more frequently than four times a week unless otherwise authorized by the Common Area and Maintenance Plan established by and administered by the Association.

- 12.4 **No Warranty of Enforceability.** While the Association has no reason to believe that any of the restrictive covenants contained in this Article 12 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, the Association makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit Owner shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold the Association harmless therefrom.

- 12.5 **Utility Easements.** Easements for installation and maintenance of utilities are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. Easements for the installation, repair and maintenance of utilities are also reserved within each Unit. It is contemplated that telephone, gas, water, fire sprinkling systems, electricity and other utilities may originate in one Unit and terminate in another Unit. A right of access to all such utilities is reserved to the Association and Owners and to all utility suppliers.
- 12.6 **No Further Subdividing.** No Building, Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Board, provided, however, that nothing herein shall be deemed to prevent or require the approval of the Board for the transfer or sale of any Unit to more than one person to be held by them as tenants in common, joint tenants, or otherwise.
- 12.7 **Repair of Buildings.** No improvement upon the Property shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof or the Association as applicable.
- 12.8 **Insurance.** If any activity, materials stored or used on the Property result in an increase in the insurance premium for the Property, the Owner responsible for such increase shall pay the increase in the premium, due at the time the premium is due. The cost of such increase shall be assessed against the Owner responsible therefor and such assessment shall be secured by a lien on such Owner's Unit in favor of the Association in accordance with Article 5.6.
- 12.9 **Improvements and Alterations.** There shall be no excavation, construction or alteration which in any way alters the exterior appearance or structural integrity of any Building, Lot or improvement within the Property nor removal of any Building, Unit or other improvement within the Property (other than repairs or rebuilding) without the prior written approval of the Board.
- 12.10 **General Obligations.** Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration.

ARTICLE 13 RENTAL RESTRICTIONS

- 13.1 **Leasing Restricted.** No Unit within Newtowne Square may be leased unless the lease conforms with the exceptions listed in this Article. All leasing must be consistent with the provisions of this Declaration.
- 13.2 **Thirty Percent Limit.** Not more than thirty percent (30%) of the Units at Newtowne Square shall be occupied by non-Unit Owners at any one time.

- 13.3 **No Short-Term Rentals.** When leases or rentals are permitted, terms shall not be for less than six (6) months. No short-term rentals are permitted such as Airbnb, VRBO, HomeAway, or any other vacation rentals.
- 13.4 **Board Approval.** All leases, subleases, assignments of leases, and all renewals of such agreements shall be first submitted to the Newtowne Square Board who shall determine compliance with this Article 13.
- 13.5 **Notification of Board.** Any Owner desiring to lease his or her Unit or to have his or her Unit occupied by a non-Owner shall notify the Association in writing of their intent to lease their Unit. The Association shall maintain a list of those Owners who have notified it of an intent to lease their Unit and shall grant permission to Owners to lease their Unit in the same order the Association receives the written notice of intent to lease a Unit from the Owners. No permission shall be granted to lease a Unit unless less than thirty percent (30%) of the Units at Newtowne Square are occupied by a non-Owner.
- 13.6 **Exceptions.** The rental restrictions provided herein shall not apply in the following situations:
- (a) A Unit Owner is a member of the United States military and is required to move from the Unit during a period of military deployment and desires to Lease the Unit during the period of deployment;
 - (b) The Unit is occupied by the Owner's parent, child or sibling; The Board may require a Unit Owner to provide documentation that verifies a Unit occupant is a parent, child or sibling of the Unit Owner;
 - (c) An Owner whose employer has relocated the Owner for no less than two years (in other words, if an Owner is relocated by an employer for less than two years they may rent the Unit, but if for more than two years, the Owner may not rent the Unit);
 - (d) A Unit owned by a trust or other entity created for estate planning purposes, if the trust or other estate planning entity was created for the estate of the current resident of the Unit or the parent, child or sibling of the current resident of the Unit; or
 - (e) A Unit Owner moves from a Unit due to temporary (less than two years) humanitarian, religious or charitable activity or service and leases the Unit with the intent to return to occupy the Unit when the humanitarian, religious or charitable service has concluded.
- 13.7 **Grandfather Provision.** Those Units that are Occupied by Non-Unit Owners at the time this Amended Declaration is recorded at the Weber County Records Office may continue to be Occupied by Non-Owner Owners until: (a) the Unit Owner transfers title to the Unit; (b) the Unit Owner occupies the Unit; or (c) an officer, Owner, member, trustee, beneficiary, director, or person holding a similar position of Ownership or control of an entity or trust that holds an Ownership interest in the Unit, occupies the Unit.

- 13.8 **Transfer Defined.** For purposes of Subsection 13.7, a transfer occurs when: (a) the Owner conveys, sells, or transfers a Unit by deed to another person; (b) the owner grants a life estate in the Unit to any person; or (c) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, there is a sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.
- 13.9 **Tracking Rentals.** The Board shall create, by rule or resolution, procedures to determine and track the rentals and Units in Newtowne Square that are exempt under the provisions described in paragraphs 13.5, 13.6 and 13.7 above, and shall ensure consistent administration and enforcement of the rental restrictions in this Amended Declaration.
- 13.10 **Rent Defined.** As used herein, "Rent" (or any variation of the word) or "Lease" (or any variation of the word) means a Unit that is owned by an Owner that is Occupied by one or more Non-Owners while no Owner occupies the Unit as the Owner's primary residence. The payment of remuneration to an Owner by a Non-Owner shall not be required to establish that the Non-Owner is Leasing a Unit. Failure of a Non-Owner to pay remuneration of any kind to the Owner shall not be considered when determining if a Unit is a Rental Unit.
- 13.11 **Non-Owner Defined.** As used herein, "Non-Owner" or "Non-Unit Owner" means an individual or entity that does not hold any interest in the title to the Unit (as used herein synonymous with "lot") as shown on the records of the Weber County Recorder.
- 13.12 **Occupied Defined.** As used herein, "Occupied" means to reside in the Unit for fifteen (15) or more days in any thirty (30) day period. A Unit is deemed to be Occupied by a Non-Owner if the Unit is Occupied by an individual(s) other than the Unit Owner and the Owner is not occupying the Unit as the Owner's primary residence.
- 13.13 **Single Family Defined.** "Single Family" means (a) any number of individuals, related by marriage or adoption, within three generations by blood, and domestic servants for such family, or (b) a group of not more than three persons who are not so related, living together as a single nonprofit housekeeping unit. When a Unit is leased pursuant to an exception contained in this Amended Declaration, it may only be leased to a Single Family.
- 13.14 **Violations.** Any Unit Owner who violates this Article shall be subject to a complaint for damages and/or an injunction and order seeking to terminate the Lease in violation of this Amended Declaration. If Newtowne Square is required to retain legal counsel to enforce this Amended Declaration, with or without the filing of legal process, the violating Unit Owner shall be liable for all costs and expenses incurred by the Association, including but not limited to attorney fees and court costs incurred by the Board in enforcing this Amended Declaration. Additionally, violation of this Article shall subject the violating Unit Owner who fails to cure a violation within five (5) days of the Board sending notice of violation, to an assessment, specific to the Unit Owner's Lot, of \$750.00.

- 13.15 **Severable.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.
- 13.16 **Guests.** Nothing herein shall prohibit an Owner from permitting a guest or visitor from residing in his or her Unit, while the Owner is present.

ARTICLE 14 MORTGAGEE PROTECTION

- 14.1 **Notice of Action.** Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit number or address of the Unit, any such First Mortgage, insurer or governmental guarantor shall be entitled to timely written notice of:
- (a) any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;
 - (b) any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;
 - (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 14.2 below or elsewhere herein.
- 14.2 **Matters Requiring Prior Eligible Mortgagee Approval.** Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Units in the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:
- (a) abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.
 - (b) add or amend any material provision of the Declaration, Articles, Bylaws or Plat. which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

- (i) voting rights;
- (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Areas, or rights to their use;
- (vi) redefinition of any Unit boundaries;
- (vii) convertibility of Units into Common Areas or vice versa;
- (viii) expansion or contraction of the Project (except as allowed herein), or the addition, annexation, or withdrawal of property to or from the Project;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of units;
- (xi) imposition of any restrictions on Owner's right to sell or transfer his or her Unit;
- (xii) a decision by the Association to establish self-management if professional management had been required previously by the Declaration or by an Eligible Mortgagee.
- (xiii) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or
- (xiv) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

14.3 Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during

normal business hours. The Association may make an un-audited financial statement for the preceding fiscal year.

- 14.4 **Subordination of Lien.** The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.
- 14.5 **Payment of Taxes.** In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the insurance described in Section 7.2 lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.
- 14.6 **Priority.** No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas.

ARTICLE 15 REINVESTMENT FEE

15.1 **Statement of Purpose:**

- (a) The Board has observed and determined that over the years an excessive amount of time and expense has been incurred by the Association in connection with the transfer of a unit within the Association from an existing owner to a new owner. Mortgage companies, real estate agents, lenders and underwriters require various forms to be filled out, completed and signed by the Association for the benefit of the parties buying and selling units; and
- (b) The Board and members of the Association have determined that a Reinvestment Fee is appropriate and needed for the use and improvement of the Association's common areas and facilities and is required to benefit the common area property appurtenant to the lots; and

- (c) To offset the additional cost borne by the Association in connection with the upkeep and maintenance of the common area, the members of the Association have determined that a new purchaser of a lot within the Association shall be assessed a non-refundable Reinvestment Fee of \$500.00.
- 15.2 **Reinvestment Fee.** Association hereby adopts a Reinvestment Fee. The amount of the Reinvestment Fee shall be \$500.00. The Reinvestment Fee shall be paid by the purchaser of a unit whenever a unit is sold, transferred or conveyed to a new owner.
- 15.3 **Cap on Fee.** The Reinvestment Fee shall in no event exceed the amount of 0.5% of the value of the unit being transferred.
- 15.4 **Runs with Land.** The Reinvestment Fee and the covenant to pay the Reinvestment Fee runs with the property described in Exhibit "A" and is intended to bind successors in interest and assigns of the real property described in Exhibit "A", attached hereto.
- 15.5 **Only Fee.** The existence of this Reinvestment Fee precludes the imposition of an additional Reinvestment Fee on the property described in Exhibit "A", attached hereto.
- 15.6 **Duration.** The duration of the Reinvestment Fee covenant is for a period of 25 years or until otherwise amended within 25 years.
- 15.7 **Purpose.** The purpose of the Reinvestment Fee required to be paid herein is for the use and improvement of the Association's common areas and facilities and is required to benefit the common area property appurtenant to the units described in Exhibit "A", attached hereto, and to pay for association expenses as defined in UCA 57-1-46.
- 15.8 **Limitations.** The Reinvestment Fee shall not be enforced in the following circumstances or situations:
- (a) an involuntary transfer;
 - (b) a transfer that results from a court order;
 - (c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;
 - (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
 - (e) the transfer of burdened property by a financial institution, except, a financial institution shall be required to pay the Association's costs directly related to the transfer of the burdened property in an amount of \$250.

ARTICLE 16
DISPUTE RESOLUTION

- 16.1 **Introduction.** It is in the best interest of the Members, the Association, the Board, and the officers (the "Parties") to encourage the amicable resolution of disputes arising out of the legal rights and obligations described in this Declaration without the emotional and financial costs of litigation. The Board, the Association and each Member agrees that before filing suit in any court it will first submit to the Alternative Dispute Resolution Procedures set forth below, (the "ADR Procedures"), with respect to any claim, grievance or dispute arising out of or relating to the Declaration, Bylaws, or rules and regulations (the "Claims"); provided, that a Party may demand arbitration prior to complying with the ADR Procedures if demanding arbitration is required to satisfy the statute of limitations for the Party's Claim. In such an event, the Party demanding arbitration shall simultaneously stay the arbitration until the ADR Procedures have been satisfied.
- 16.2 **Exceptions.** Notwithstanding the foregoing, the ADR Procedures shall not be required for the following Claims unless all Parties to the matter agree to submit the matter to the ADR Procedures:
- (a) any suit between Members which does not include the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Association;
 - (b) any suit in which any indispensable party is not bound by this Article 16;
 - (c) any collection activity, action or suit brought by the Association against an Owner involving the collection of delinquent Assessments or fines;
 - (d) actions by the Association to collect Assessments or other amounts due from any Owner; and
 - (e) actions brought by the Association to obtain a temporary restraining order, preliminary injunctive relief, or other preliminary equitable relief and such ancillary relief as the Association may deem necessary in order to enforce the provisions of this Declaration (an "Enforcement Action").
- 16.3 **Procedure for Disputes Between Members.**
- (a) **Good-Faith Discussion.** The aggrieved Party ("Complainant") shall attempt to resolve the Claim with the other Party ("Respondent") through good-faith discussion.
 - (b) **Submission of Complaint.** If the Claim is not resolved through good-faith discussion, Complainant shall provide the Board and each Respondent with a written statement of the material facts of the Claim (the "Complaint"). The Complaint shall include the following:

- (i) the nature of the Claim, including the parties involved and the Respondent's role in the Claim;
- (ii) a brief description of the discussions of the parties and their attempts to resolve the Claim informally;
- (iii) copies of relevant documents supportive of Complainant's position; and
- (iv) Complainant's proposed resolution or remedy.

The Complaint must include all Claims that exist between the Parties at that time. Any Claim not included in the Complaint is expressly waived by the Complainant. Respondent shall have fifteen (15) days from receipt of the Complaint to file a response (the "Response") with the Complainant and the Board. The Response must include any Claim that the Respondent has concerning the Complainant at the time that the Response is submitted to the Board. Any Claim that is not included in the Response is expressly waived by the Respondent. The Response shall include any documents, descriptions, explanations or other material supporting the Response.

16.4 **Review by Board.** The Board shall undertake a reasonable review of the Complaint and the Response and shall issue a written decision, including an explanation of the reasons for the decision, within thirty (30) days of receipt of the Response. A copy of the decision shall be sent to the Parties promptly via first class mail. The Board's decision shall be the final and binding resolution of the Claims submitted in the Complaint and the Response unless within thirty (30) days from the date that the decision is mailed either Party delivers to the Board and all other Parties a Notice of Objection to the Board's Decision and Intent to Submit to Mediation.

16.5 **Mediation.**

- (a) Within thirty (30) days of receipt of the Notice of Objection to the Board's Decision and Intent to Submit to Mediation, the Board shall contact the Parties with proposed mediation dates and a list of potential mediators. A neutral third-party or professional mediator that has been agreed to by the Parties shall conduct the mediation.
- (b) The mediation shall be held in the State of Utah at a location agreed upon by the Parties. Unless otherwise agreed by the Parties, the mediation shall take place no later than three (3) months from the date of the Board's decision. If the Parties do not agree to extend this period and mediation does not occur within this time period, then this requirement is deemed to be satisfied.
- (c) Unless otherwise agreed by the Parties, all fees and costs of the mediation shall be borne by the Party submitting the Notice of Objection to the Board's Decision and Intent to Submit to Mediation.

16.6 **Arbitration.**

- (a) All Claims between the Parties not otherwise resolved shall be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Unless otherwise agreed upon by the Parties in writing, demand for arbitration must be made within thirty (30) days of the mediation or the expiration of the period for holding the mediation as set forth above. Failure to demand arbitration within 30 days is an express waiver of the Notice of Objection to the Board's Decision and Intent to Submit to Mediation, and upon such waiver the Board's decision becomes the final and binding resolution of the Claims.
- (b) In no event shall a Party be entitled to demand arbitration of a Claim after the time for taking legal action on the Claim has expired.
- (c) The arbitration shall be held in the State of Utah at a location agreed upon by the Parties or determined by the arbitrator.
- (d) The prevailing Party in the arbitration shall be awarded its reasonable attorney fees and costs associated with the dispute. Punitive damages, however, shall not be awarded in any dispute. Judgment upon the award rendered by the arbitrator may be entered in any court within the State of Utah.

16.7 **Procedure Subject to Change by Board.** The procedures outlined in this Article 16 may be amended from time to time by the Board without the consent of the Owners, as the Board deems necessary, in light of experience, to better accomplish the amicable resolution of disputes arising out of the legal rights and obligations described in the governing documents; provided, such modifications shall not take effect until three months after a copy of the new procedures is delivered to the Owners.

16.8 **Procedure for Disputes Between the Association and Members.** Subject to the provisions of Section 16.2, any Member who has a dispute with the Association, the Board, or an officer, or any officer of member representing one of these groups, and who is not satisfied with the decision of the Association or the Board, shall follow the procedures outlined in Section 16.3 above.

ARTICLE 17 ELECTRONIC NOTIFICATION AND VOTING

17.1 **Notification by Mail, Website and Email.** Any notice permitted or required under the provisions of this 2022 Restated Declaration, the Bylaws or the Association rules, to be delivered by the Board or from the Association to the Owners, may be delivered either personally, by U.S. mail, or by electronic means.

17.2 **Mail.** If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Owner at the address given by such person to the Association for the purpose of service of such notice or to the Unit of such person if no address has been given. Such

addresses may be changed by Owner from time to time by notice in writing to the Association.

- 17.3 **Electronic.** If notice is by electronic means, any notice delivered by the Association to Owners under the provisions of this 2022 Restated Declaration or these Bylaws may be sent by electronic means, including text message, email, or the Association's website. The Association shall maintain records of all notices sent to Members by electronic means, including the electronic address to which notice was sent. When a notice is sent electronically, the Association shall first compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of well-known electronic forms, such as Face book, Instagram, etc.) and the Association shall send notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner. A member may, by written demand, require the Association to provide notice to the Lot Owner by mail.
- 17.4 **Personal.** If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Unit, or by securely attaching a copy of the notice to the front entry door of the Owner's Unit.
- 17.5 **Electronic Voting.** The Board may permit members to vote on all matters on which members are permitted to vote by use of electronic ballots and may authorize any manner of electronic voting which permits the Board to verify that one vote is received from each Lot or Unit that votes.

ARTICLE 18 SOLAR PANELS

- 18.1 **Installation Conditions.** Owners of Lots within Newtowne Square may install solar panels on the roof of their Unit only upon receiving prior written approval from the Board. Installation of solar panels must comply with the following requirements:
- (a) The installation of solar panels constitutes an exterior modification that impacts the appearance of Units within Newtowne Square as well as maintenance costs incurred by the Association. Accordingly, plans and specifications showing the nature, kind, height, materials, color, specific location and the licensed installer of proposed solar panels must first be submitted to and approved in writing by the Board before any solar panel installation work commences.
 - (b) Solar panels may only be installed on the roof of a Unit and may not extend beyond the roof line of the Unit.
 - (c) The installation must be as inconspicuous as possible so as to blend with the existing roof elevation. The use of low-profile mounting brackets is encouraged.

- (d) Solar panels must be black in color (or, upon written approval from the Board, must match the color or shade of the existing shingles).
- (e) The Unit Owners must obtain all applicable permits prior to the start of any solar panel installation.
- (f) Solar panels must be installed in accordance with applicable building codes and city ordinances.
- (g) As required by Utah law (Utah Administrative Code R156-55a-301) solar panels must be installed by a Utah licensed "solar photovoltaic contractor" who is currently certified by the North American Board of Certified Energy Practitioners (NABCEP).
- (h) Solar panels must be properly maintained, repaired, and replaced at the Owner's sole expense.
- (i) If at any time a solar panel on a Unit ceases to function, is damaged, or is broken or disfigured, the Unit Owner shall promptly replace the solar panel or remove it from the roof, repair any damage to the roof and restore the roof to its original appearance.
- (j) The Association also recommends that any solar panels installed within the Association have a twenty-five (25) year warranty on both the product installed and the labor of the installer.

- 18.2 **Roof Damage.** Pursuant to the 2022 Restated Declaration as well as the Maintenance Chart (attached to the Restated Declaration as Exhibit "C"), the Association will cover a portion of the expenses related to roof replacement. However, the Association will not pay any expenses related to roof damage or repairs caused by or related to the installation, existence or removal of solar panels. All expenses related in any manner to the existence of solar panels which are incurred during or in relation to roof replacement, including but not limited to electrical connections or disconnections, power outages, panel removal and safe storage, panel re-installation, roof damage, and panel damage, are the responsibility of the Owner of the Unit upon which the solar panels are located.
- 18.3 **Roof Restoration.** The Association shall not be responsible for any damage to a roof, the Unit, or any other property caused by solar panel installation, existence or removal. When solar panels are removed from a roof, the Owner removing the solar panels will be solely responsible for all costs and expenses associated with such removal, including the costs and expenses associated with repairing any holes or other damage to the roof.
- 18.4 **Purchase of a Unit with Solar Panels.** When a Unit is purchased on which solar panels have been installed, the purchasing Unit Owner is responsible for any and all costs and expenses associated with the maintenance, removal or repair of the solar panels. The purchasing Unit Owner shall also be responsible for all roof repair or restoration costs described herein. If solar panels have been removed before the Unit was purchased, the

purchasing Owner shall be responsible for all costs and expenses associated with any damage caused by or resulting from the installation, existence or removal of the solar panels.

- 18.5 **Definition.** As used herein, the term “Solar Panel” shall mean a panel designed to absorb the sun's rays as a source of energy for generating electricity or heating.
- 18.6 **Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

ARTICLE 19 MISCELLANEOUS

- 19.1 **Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing.
- 19.2 **Term.** This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of forty (40) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods often (10) years each, unless there is an affirmative vote to terminate this Declaration by sixty-seven percent (67%) of the votes of the Members cast at an election held for such purpose or otherwise approved in writing by such Member& within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.
- 19.3 **Amendment.** Except as provided in elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of at least fifty-one percent (51%) of the total votes of the Association, which vote may be accomplished with or without a meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Weber County Recorder of an instrument executed by the Association. In such instrument an officer or Board member of the Association shall certify that the vote required by this Section for amendment has occurred.
- 19.4 **Rights of Action.** The Association and any aggrieved Owner shall have a right of action against any Owner(s), resident, or tenant who fails to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association. The prevailing party in any action between the Association and an Owner shall be entitled to recover all attorney fees and costs incurred in pursuing such action.
- 19.5 **Interpretation.** The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural

shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to effect all of its purposes.

- 19.6 **Covenants to Run with Land.** This Declaration and all of the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of all parties who acquire any interest in a Unit or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.
- 19.7 **Lists of Owners and Eligible Mortgagees.** The Board shall maintain up-to-date records showing:
- (a) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him;
 - (b) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and
 - (c) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Weber County. The Board may, for all purposes, act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Weber County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Board is otherwise advised.
- 19.8 **Registered Agent.** The registered agent for service of process for any action involving Newtowne Square shall be that person listed on the records of the State of Utah, Division of Corporations and Commercial Code.
- 19.9 **Effective Date.** This Declaration and any amendment or supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Weber County, Utah.

CERTIFICATION

It is hereby certified that Owners representing sixty-seven percent (67%) or more of the voting interests in Newtowne Square have voted to approve this 2022 Restated Declaration.

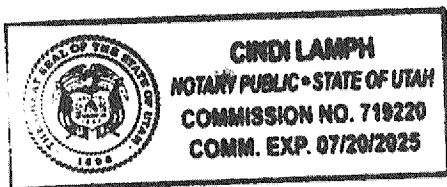
IN WITNESS WHEREOF, this 10 day of November, 2022.

NEWTOWNE SQUARE AT COLONIAL SPRINGS OWNERS ASSOCIATION

By: Tracy Townsend
Its: President

STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

On this 10 day of November, 2022, personally appeared before me, Tracy Townsend, the signer of the above instrument, who duly acknowledged to me that she executed the same in the capacity indicated.



Cindi Lamph
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

All of lots 1 through 34, New Towne Square at Colonial Springs SAP Phase 01, and common area, Harrisville City, Weber County, Utah.

All of lots 35 through 66, New Towne Square at Colonial Springs SAP Phase 01, and common area, Harrisville City, Weber County, Utah.

All of lots 67 through 109, New Towne Square at Colonial Springs SAP Phase 01, and common area, Harrisville City, Weber County, Utah.

All of lots 110 through 147, New Towne Square at Colonial Springs SAP Phase 01, and common area, Harrisville City, Weber County, Utah.

All of lots 148 through 182, New Towne Square at Colonial Springs SAP Phase 01, and common area, Harrisville City, Weber County, Utah.

17-267-0001-0035; 17-289-0001-0033; 17-295-0001-0044; 17-326-0001-0039
17-327-0001-0036

EXHIBIT "B"

BYLAWS

BYLAWS
of
NEWTOWNE SQUARE
at
COLONIAL SPRINGS OWNERS ASSOCIATION, INC.

ARTICLE 1
NAME AND LOCATION

- 1.1 The name of the corporation is Newtowne Square at Colonial Springs Owners Association, Inc. (“Association”). The principal office of the Association shall be located at the home of the Association president or property manager, The meetings of Members and Directors may be held at such places in Weber County, State of Utah, as may be designated by the Board of Directors.

ARTICLE 2
APPLICATION OF BYLAWS

- 2.1 All present and future owners, mortgagees, lessees and occupants of any Unit or Building and any other persons who may use the facilities or the Project in any manner are subject to these Bylaws, the Umbrella Declaration of Covenants, Conditions and Restrictions for Colonial Springs (“Declaration”) and all rules made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that the provisions of the Declaration and these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with. Certain capitalized terms in these Bylaws shall be defined in accordance with the definition for such terms set forth in the Declaration.

ARTICLE 3
MEETINGS OF MEMBERS

- 3.1 **Annual Meetings.** The annual meeting of the Members shall be held on the second Tuesday of each January, at the hour of 7:00 o’clock p.m. at the Project or some reasonable location in Weber County, Utah or on such other annual date and time fixed by the Board of Directors. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.
- 3.2 **Special Meetings.** Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote twenty-five percent (25%) of all of the votes of the membership.
- 3.3 **Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Association or person authorized to call the meeting, by electronic means, personally, or by mailing a copy of such notice, postage prepaid, at

least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's electronic address or mailing address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

- 3.4 **Quorum.** At any meeting of the Members, the presence of Members holding, or holders of proxies entitled to cast, more than twenty-five percent (25%) of the total votes of the Association shall constitute a quorum for the transaction of business, except with respect to questions for which, by express provision of the Restated Declaration, the Articles of Incorporation, these Bylaws or the statutes of the State of Utah, a different quorum is required, in which case such express provisions shall govern and control the question of whether there is a quorum. In the event a quorum is not present at a meeting, the Members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a later date. Notice thereof shall be delivered to the Members as provided above. At the reconvened meeting, the Members and proxy holders present shall constitute a quorum for the transaction of business except with respect to questions for which, by express provision of the Declaration, the Articles of Incorporation, these Bylaws or the statutes of the State of Utah, a different quorum is required, in which case such express provisions shall govern and control the question of whether there is a quorum.
- 3.5 **Voting.** At all meetings of Members, each Member may vote in person or by proxy. Each Member shall have one (1) vote, though no more than one (1) vote per each Unit may be cast.
- 3.6 **Action Taken Without a Meeting.** Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if the following requirements are met:
- (a) A written ballot is distributed to every Member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the Member to return the ballot to the Association.
 - (b) The number of votes cast by ballot within the specified time equals or exceeds the quorum required to be present at a meeting authorizing the action.
 - (c) The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.
 - (d) The written ballot distributed to Members affords an opportunity for the Member to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the Association and further provides that the vote of the Members shall be cast in accordance with the choice specified.

- 3.7 **Proxies.** At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member himself or by his attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act shall indicate the name of the secretary of the Association, or such other officer or person or who may be acting as the secretary at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent Members vote as specified in the form of proxy. If a Unit is jointly held, the instrument authorizing a proxy to act must have been executed by all Owners of such Unit or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

ARTICLE 4 BOARD OF DIRECTORS

- 4.1 **Number.** The affairs of this Association shall be managed by a Board of Directors (hereafter “Directors”) who must be Members of the Association. At each annual meeting of the Association at which a quorum is present, a majority of the members present at the meeting may vote to adjust the size of the Board to consist of either three (3), five (5) or seven (7) Board members, but no sitting and duly elected Board member whose term has not expired may be removed from the Board due to a vote to reduce the size of the Board. No two (2) Board Members may reside in the same Unit or be business partners or share an ownership interest in a business that owns one or more Units. If an Owner is a corporation, partnership, limited liability company, or trust, one such officer, partner, member, manger, agent, trustee, or beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate.
- 4.2 **Term of Office.** Directors shall each be elected for a two (2) year term. When there are three (3) Directors, with Directors being elected on alternating years. For instance, when there are five (5) Directors, two (2) Directors shall be elected one year, and three (3) Directors shall be elected the following year.
- 4.3 **Removal.** Any Board member may be removed from the Board of Directors, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the Members which elected such Director and shall serve for the unexpired term of his/her predecessor.
- 4.4 **Compensation.**
- (a) Board members may be compensated for their services as described herein and shall be reimbursed for all expenses reasonably incurred in connection with Board business and approved by the Board. Board members who do bookkeeping services for the association (paying bills, receiving monthly payments from association

members, preparing tax returns, etc.) or who provide other services sometimes provided by a professional management company, shall only be paid pursuant to a written contract entered into with the Association that specifically describes the services to be performed and the amount of compensation to be received.

- (b) In addition to the foregoing, based on the extensive time commitment required of members of the Board, Board members may be compensated for attendance at Board meetings: (i) Each board member's compensation shall be equivalent to one-half (1/2) the amount of the regular monthly HOA fee assessment; (ii) The Association president, secretary and treasurer shall receive compensation equal to 100 % of the amount of the regular monthly HOA fee assessment.

4.5 **Action Taken Without a Meeting.** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

4.6 **Closed Board Meetings.** The Board may close a Board 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.

ARTICLE 5 NOMINATION AND ELECTION OF DIRECTORS

5.1 **Nomination.** Nomination for election to the Board of Directors shall be made by a nominating committee from the respective Members. Failure to select or appoint a nominating committee shall result in nominations from the floor at the annual meeting.

5.2 **Election.** Election to the Board of Directors shall be by the secret written ballot of each Member. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**ARTICLE 6
MEETING OF DIRECTORS**

- 6.1 **Regular Meetings.** The Board of Directors shall hold a regular meeting at least quarterly, without notice, at such place and hour as may be fixed from time to time by resolution of the Board of Directors.
- 6.2 **Special Meetings.** Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days' notice to each Director.
- 6.3 **Quorum.** A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors.
- 6.4 **Electronic Attendance.** Board members may participate in meetings of the Board via any form of electronic means wherein all Board members present can hear each other and reasonably communicate. When a Board member is permitted to participate in a Board meeting via electronic means, the Members of the Association shall also be permitted to participate electronically in the same manner, though Members may only be permitted to speak during the open forum portion of the Board meeting unless otherwise invited.

**ARTICLE 7
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

- 7.1 **Powers. The Board of Directors shall have power to:**
- (a) Adopt and publish rules and regulations governing the use of the Common Areas, and the personal conduct of the Members and their guests thereon, and to establish penalties of the infraction thereof;
 - (b) Suspend the voting rights of a Member during any 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 an opportunity for hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
 - (c) Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles, or the Declaration;
 - (d) Declare the office of a member of the Board of Directors to be vacant in the event a member shall be absent from three (3) consecutive regular meetings of the Board

of Directors or in the event such member shall be absent from twenty-five percent (25%) of the regular board meetings during any twelve (12) month period; and

- (e) Employ a Manager, an independent contractor, and such other employees as they deem necessary, and to prescribe their duties.

7.2 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 and employees of this 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 annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;
 - (ii) Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
 - (iii) Foreclose at its discretion the lien against any Unit for which assessments are not timely paid and/or to bring an action at law against the Owner personally obligated to pay the same.
- (d) Issue, or 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 of Directors 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 and hazard insurance on property owned by the association, and adequate officers and Directors indemnity insurance, and all other insurance required by the Declaration;
- (f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (g) Cause the Common Areas and the Building Exteriors to be maintained;
- (h) Permit First Mortgagees of Units in the Project to pay taxes or other charges which are in default and which may or have become a charge against the Common Areas of the Association;

- (i) Assess and collect all assessments referred to or authorized in the Declaration.

**ARTICLE 8
OFFICERS AND THEIR DUTIES**

- 8.1 **Enumeration of Officers.** The officers of this Association shall be a President and Vice President, a Secretary, and a Treasurer, and such other officers as the Board of Directors may from time to time by resolution create, all of whom shall at all times be Members of the Board of Directors.
- 8.2 **Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.
- 8.3 **Term.** The officers of this Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his or her successor is elected and has qualified, unless he or she shall sooner resign, or shall be removed by a vote of the Board, or otherwise disqualified to serve.
- 8.4 **Special Appointments.** The Board of Directors 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 of Directors may, from time to time, determine.
- 8.5 **Resignation and Removal.** Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- 8.6 **Vacancies.** A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.
- 8.7 **Multiple Offices.** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant Section 8.4 of this Article.
- 8.8 **Duties.** The duties of the officers are as follows:
 - (a) **President:** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board of Directors are carried out; shall sign all leases, mortgages, promissory notes, checks, deeds and other written instruments.

- (b) **Vice President:** The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
- (c) **Secretary:** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.
- (d) **Treasurer:** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall, together with the President, sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit or review of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures, and deliver a copy of each to the Members.

ARTICLE 9 INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall provide any indemnification required or permitted by the laws of Utah and shall indemnify Directors, officers, agents and employees as follows:

- 9.1 **Third Party Litigation.** The Association shall indemnify any Director or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was such Director or officer or an employee or agent of the Association, or is or was serving at the request of the Association as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.
- 9.2 **Association Litigation.** The Association shall indemnify any Director or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a

judgment in its favor by reason of the fact that he is or was such a Director or officer of an employee or agent of the Association, or is or was serving at the request of the Association as Director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or malfeasance in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought, or any other court having jurisdiction in the premises, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court shall deem proper.

- 9.3 **Expenses.** To the extent that a Director or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.2 or 9.3 of this Article 9, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by him in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 9.4 of this Article 9.
- 9.4 **Determination of Right to Indemnity.** Any indemnification under Section 9.2 or 9.3 of this Article 9 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 9.2 or 9.3 of this Article 9. Such determination shall be made (i) by the Board of Directors of the Association by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, and such a quorum of disinterested Directors so directs, by independent legal counsel (who may be regular counsel for the Association) in a written opinion; and any determination so made shall be conclusive.
- 9.5 **Advance of Expenses.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the Director or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article Nine.
- 9.6 **Other Indemnification Rights.** Agents and employees of the Association who are not Directors or officers of the Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board of Directors of the Association.
- 9.7 **Benefitted Parties.** Any indemnification pursuant to this Article Nine shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue

as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

ARTICLE 10 COMMITTEES

- 10.1 The Association shall appoint a nominating committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE 11 BOOKS AND RECORDS

11.1 Accounting.

- (a) The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.
- (b) At the close of each fiscal year, the books and records of the Association shall be reviewed by an independent public accountant approved by the Association, and financial statements shall be audited by said accountant and distributed to all Owners.

- 11.2 **Inspection of Records.** The membership register, books of account and minutes of meetings of the Association, of the Board of Directors and of committees of the Board of Directors and all other records of the Project maintained by the association or Manager shall be made available for inspection and copying by any member of the Association or his duly appointed representative at any reasonable time and for a non-commercial purpose reasonably related to his interest as a Member, at the office where the records are maintained. Upon receipt of an authenticated written request from a Member along with the fee prescribed by the Board of Directors to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Member a copy of any and all records requested. The Board of Directors shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;
- (b) Hours and days of the week when such an inspection may be made; and
- (c) Payment of the cost of reproducing copies of documents requested by a Member.

Every member of the Board of Directors, subject to the conditions set forth above, shall have the absolute right at any reasonable time to inspect and make copies of all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association.

**ARTICLE 12
ASSESSMENTS**

- 12.1 All Assessments shall be made in accordance with the general provisions of the Declaration. The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Board of Directors in assessing Common Expenses against the Units and Owners, the Treasurer shall keep an accurate record of such assessments and of the payments thereof by each Owner.

**ARTICLE 13
CORPORATE SEAL**

- 13.1 The Association may, but shall not be obligated to, have a seal in circular form having within its circumference the words: Colonial Springs Association, Inc.”, or in lieu thereof the word “SEAL” may be placed adjacent to the signature of an authorized officer of the Association.

**ARTICLE 14
AMENDMENTS**

- 14.1 **Amendment Procedure.** These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of the Members of the Association.
- 14.2 **Conflict.** 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.

EXHIBIT “C”

MAINTENANCE CHART

MAINTENANCE AND RESPONSIBILITY CHART

The following chart shows the division of responsibility for maintenance, repair, and replacement of property between the Newtowne Square at Colonial Springs Owners Association and the Lot Owners.

	EXTERIOR	HOA	OWNER
1.	Maintenance and repair of roof (for damages covered by individual HO6 and HOA Master Insurance Policies see Article 7 of the Restated Declaration).	X	
1.a	Replacement of roof (shingles, felt, but not plywood) due to normal wear and tear.	X	
2.	Maintenance and repair of exterior building surfaces (siding) (for damages covered by individual HO6 and HOA Master Insurance Policies see Article 7 of the Restated Declaration).	X	
2.a	Replacement of exterior building on Units due to normal wear and tear (siding only; no plywood or material beneath the siding).	X	
3.	Maintenance, repair, and replacement of Association's signage.	X	
4.	Maintenance, repair, and replacement of outside secondary water spigots.	X	
5.	Maintenance, repair, and replacement of driveways, front steps, porches, patios, and individual walkways.		X
6.	Maintenance, repair, and replacement of rain gutters and down spouts.	X	
7.	Maintenance, repair, and replacement of a Unit's concrete foundation.		X
7.a	Maintenance, repair and replacement of patio		X
8.	Maintenance, repair, and replacement of exterior and interior doors, hinges, frames, thresholds, locks, and doorbells.		X
9.	Maintenance, repair, and replacement of garage floors, garage doors, and garage door frames.		X
10.	Maintenance, repair, and replacement of windows, shutters, sliding glass doors, French doors, screens, and frames.		X
11.	Maintenance, repair, and replacement of window wells and window well covers.		X

12.	Maintenance, repair, and replacement of all lights attached to exterior walls.		X
13.	Maintenance of gas and electricity connections from the meters to the unit.		X
14.	Maintenance of culinary water system from the outside entry, through the foundation, and throughout the unit. This includes outside faucets and hose bibs. Any damage caused by this portion of water system is the liability of unit owner to the extent not covered by the Association's insurance.		X
15.	Maintenance, repair, and replacement of phone lines, TV cables, air conditioning, and satellite dishes.		X
16.	Maintenance, repair, and replacement of all Unit owner improvements, such as skylights, windows, attic vents, fans, heat tape, ornamental railings, and similar items.		X

	INTERIOR	HOA	OWNER
17.	All interior painting, decorations, and furnishings from the inside of the unfinished walls and ceilings. This includes all appliances, such as dishwashers, garbage disposals, ranges, refrigerators, microwaves, furnaces, exhaust fans, attic vents, air conditioners, water heaters, and telephone and computer networks.		X
18.	Maintenance, cleaning, and repair of venting and fireplaces.		X
19.	Maintenance, repair, and replacement of the electrical system from the city electric meter to the breaker panel and to all outlets, including switches and light fixtures.		X
20.	Maintenance, repair, and replacement of plumbing fixtures, such as sinks, basins, toilets, and all interior pipes and valves.		X
21.	Repair of cracks or other damage to interior walls, floors, or ceilings caused by normal unit settling.		X
22.	Repair of damage resulting from static water or seepage of water from any underground source, except water from sprinkler system failures.		X
23.	Repair of damage resulting from surface water.		X
24.	Insurable Damage under \$10,000 = Individual Owner's Insurance Policy Insurable Damage over \$10,001 = Association's Master Policy Insurance	X	X

	GROUNDS	HOA	OWNER
25.	Maintenance of lawn and replacement of original trees and shrubs.	X	
26.	All flowers (planted by owners) abutting a unit.		X
27.	Maintenance, repair, and replacement of private roadways, playground, curbs, and gutters.	X	
28.	Maintenance, repair, and replacement of individual walkways servicing one unit.		X
29.	Maintenance and utilization of sprinkler system within the Association.	X	
30.	Snow removal: Association roadways, parking lots and common area walkways.	X	
31.	Snow removal: driveways and individual walkways.		X

	OTHER	HOA	OWNER
32.	Garbage collection.	X	
33.	Maintenance and repair of water system from the point a water pipe enters a Unit and throughout the entire Unit.		X
33.a	Maintenance and repair of water system located within the Common Area	X	
34.	Any damage to a unit or common area, not otherwise covered by insurance, caused by a contractor hired by an Owner.		X
35.	Any damage in, on, or to a unit is the sole responsibility of the Owner, except as otherwise stated herein.		X
36.	Fences installed originally by developer	X	
37.	Mailboxes (\$40 Fee for Key Replacement)	POST OFFICE	
38.	Streetlights	X	

Exhibit “D”

Satellite Policy

Newtowne Square Satellite Dish Antenna Policy

Any unit owner wishing to use or install a satellite dish or antenna (hereinafter "Dish") on their dwelling should consult with the Association Board prior to installation. The objective of this policy is maintain visual attractiveness.

A Dish must be one meter or less in diameter, and designed to receive direct broadcast satellite service, including direct to home satellite service, or to receive or transmit fixed wireless signals via satellite. Dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via MMDS (wireless cable) or to receive or transmit fixed wireless signals other than via satellite may also be considered.

The Board will consider a properly completed *Newtowne Square Satellite Dish Antenna Approval Form* on the reverse side of this document as a request for Dish installation. A decision on whether to approve the location of the Dish will be discussed by the Board at the next regularly scheduled Board meeting after the request has been received.

Consideration will be given to each request according to the prioritized list of acceptable locations listed below. These prioritized locations have been established to help Newtowne Square meet FCC regulations, and to minimize any negative visual impact the Dish may have on the appearance of the Newtowne Square community.

The dwelling owner is to have a professional representative from his/her desired satellite service provider conduct a site survey to check the listed areas to determine where an acceptable signal can be received, and fill out that part of the form prior to submission.

A dwelling owner wishing to install a Dish should consider the first area listed below before any other location. If, and only if, the first area cannot receive an acceptable signal, he/she may consider the second area. If, and only if, the second area cannot receive an acceptable signal, he/she may consider the third area. If, and only if, the third area cannot receive an acceptable signal, he/she may consider the fourth area.

The same prioritized list of locations applies to all dwellings. They are:

- First Area:** Wholly within the dwelling's deck or patio area.
- Second Area:** On the dwellings rear roof not visible from the street in front of the dwelling.
- Third Area:** The rear exterior wall of the dwelling.
- Fourth Area:** On the roof of the dwelling in an area that is least likely to be observed from the street.

Approval will be based on the requested location for the Dish. If the dwelling owner changes the desired location after approval has been granted, for whatever reason, another Approval Form will need to be submitted indicating the new location, and the reason for the change. If none of the prioritized areas can receive an acceptable signal, the Board will consider another location in an area that is least likely to detract from the visual appearance of the community.

In some cases, the Board may be willing to consider an alternate location to the prioritized list of areas even if an acceptable signal can be received in at least one of those areas. This option would be considered only if the Board believes that the alternate location provides a better overall visual impact for the community than do those locations on the prioritized list.

In some cases the Board may ask a dwelling owner to paint the antenna to match the surrounding building and/or plant bushes or shrubs that could help to minimize the visual impact to the Newtowne Square community.

The installation of a Dish which receives a signal, but does not transmit, may be done by the dwelling owner or his/her designee. However, any Dish which also transmits RF radiation must be installed by a professional installer. That installer must provide documentation certifying that the installation has been done in such a way, as to be safe to all residents.

A violation of any part of this policy will result in a fine being assessed to the dwelling owner in the amount of \$50.00 for each week of violation. If the fine is not paid within thirty (30) days, interest will be charged at the legal rate.

Newtowne Square Satellite Dish Antenna Approval Form

A dwelling owner wishing to use a satellite dish or antenna is asked to complete this form, submit it to the Board for approval, and receive written approval from the Board before installation of a Dish. The process for approval is as follows:

1. The dwelling owner desiring to install a Dish must first read and understand the *Newtowne Square Satellite Dish Antenna Policy* on the reverse side of this document. Questions should be directed to a member of the Board.
2. The dwelling owner contacts her/his desired satellite service provider and requests a site survey.
3. The site survey is performed by a service provider representative to determine which prioritized area can receive an acceptable signal.
4. The service provider must complete the site survey portion of this document, provide his company contact information, and sign the document in the appropriate places.

5. The dwelling owner completes the form (including any information needed to justify a request for use of an Alternate Area), signs the agreement, and submits the form to the Board.

6. The Board reviews the request at the next regularly scheduled meeting, determines if changes must be made, or what conditions may apply, and votes on the request.

7. If the proposal is accepted, the approval form is signed by the appropriate members of the Board and a copy is returned to the dwelling owner. *(If rejected, the form is returned with an explanation of what must be modified in order to gain approval.)*

8. The Board President and the Dwelling Owner sign the Satellite Agreement

9. The dwelling owner may then proceed with the Dish installation, following the instructions and conditions established by the committee.

Name of Newtowne Square Dwelling Owner _____ Dwelling #: _____ Phone #: _____

First Area: Wholly within the deck or patio area of the dwelling.

Date tested: Name/signature of the professional conducting the site survey: _____

Can an acceptable signal be received in this area? Yes No (if no, explain why): _____

Second Area: On the dwelling's rear roof not visible from the street in front of the dwelling.

Date tested: Name/signature of the professional conducting the site survey: _____

Can an acceptable signal be received in this area? Yes No (if no, explain why): _____

Third Area: The rear exterior wall of the dwelling. .

Date tested: Name/signature of the professional conducting the site survey: _____

Can an acceptable signal be received in this area? Yes No (if no, explain why): _____

Fourth Area: On the roof of the dwelling in an area that is least likely to be observed from the street.

Date tested: Name/signature of the professional conducting the site survey: _____

Can an acceptable signal be received in this area? Yes No (if no, explain why): _____

Alternate Area: The dwelling owner should describe the alternate area at which he/she proposes to install the dish antenna & why:

Why should this location be considered instead of the other areas listed above? _____

Describe the visual impact on the community if a dish antenna were to be installed in this area: _____

Has this area been tested Yes No; If yes, can an acceptable signal be received in this area? Yes No

Name of person conducting the sight survey: _____ Date tested: _____ Phone #: _____

Company: _____ Address: _____

I certify that I conducted the sight survey, and that the information provided is accurate. Signature: _____

As Dwelling Owner I desire to install a satellite dish antenna at the First Area Second Area Third Area Fourth Area Alternate Area, as described above.

I agree to repair any damages to the dwelling or property which may result from the installation of the dish antenna, and to restore the installation area to match its surroundings when the dish is removed at a later date. I agree that approval from the Board applies to one installation, and that if I wish to change the location, and/or install an additional dish antenna, I should submit another request.

Signature of Dwelling Owner: _____ Date: _____

Board Response: Request Accepted As Is Request Accepted w/ Conditions (see below) Request Rejected

(Explanation for rejection: _____

Signatures: Board President: _____ Secretary: _____ Date: _____

Exhibit “E”

RECORD RETENTION POLICY

Newtowne Square at Colonial Springs Records Retention Policy and Schedule

Introduction: This record retention policy and schedule shall serve as a guideline and is not an exclusive list. Some of the records below may not currently exist, but are listed in the event they exist in the future. The Board shall use its best judgment in determining the retention period for any record not mentioned below. The records described below shall be kept for as long as indicated. Once their retention period has expired, the Board may destroy the documents.

ARTICLE 1 PURPOSE

- 1.1 This Policy is created to establish guidelines for identifying, retaining, storing, protecting and disposing of records of the Newtowne Square ("Association"). This Policy is necessary to ensure that the Association conducts itself in a cost-effective manner while also adhering to legal and business requirements. The record retention schedule shall serve as a guideline and is not an exclusive list. Some of the records may not currently exist but are listed in the event they exist in the future. The Board shall use its best judgment in determining the retention period for any record not identified.

ARTICLE 2 DEFINITIONS

- 2.1 **Association Records.** Association Records are those documents (paper or electronic) that are maintained by the Association in its normal course of business. Such records encompass and include: Association contracts with vendors and third parties, the Association's governing documents consisting of the articles of incorporation, the declaration and its amendments, bylaws, board resolutions, maps of the Association property, rules and regulations, meeting minutes, the Association's financial statements, bank accounts and invoices, correspondence from and approved by the board to the Association members or from an officer to a member when authorized by the board, correspondence to or from the Association's property manager, board approved reports and studies, official filings with the State of Utah or any local or federal governmental entity, and the names and address of Association members. Also, any record identified in the declaration or bylaws of the Association or in U.C.A. § 16-6a-1601(5) of the Utah Revised Nonprofit Corporations Act.
- 2.2 **Not Association Records.** The following are not Association records: Communications between board members or between board members and members of the Association, whether through letter, email, text message or another written form of communication, are not Association Records unless, (1) the board member is using the communication to conduct official Association business, or (2) the communication is sent to or from an account owned and operated by the Association, such as an Association email account. Emails sent from

private email accounts and not being used to conduct official business do not constitute an Association record and the Association and individual board members have no duty to maintain such correspondence. In adopting this policy, the board is of the opinion that board members will be less prone to use emails or electronic communication if the Association's record policy defines all board member emails as constituting records of the Association. This may result in much communication taking place by telephone, which would be an inconvenience to many of the board members and result in less efficiency and making serving on the board a negative experience.

- 2.3 **Official Association Business.** Individual board members may not conduct Association business independent of the board. Board members should act only as a board, and individual board members shall act only when authorized directly by the board or in their capacity as an officer of the Association. While board members may have assignments and undertake correspondence with many people, until the board acts as a whole, the board has not acted and individual communications from board members do not constitute official actions of the board in behalf of the Association. However, if a board member also serves as an officer of the Association, he or she shall have additional duties and authority granted by the board or under the Association Bylaws and therefore is more likely to be acting in an official capacity as an officer of the Association and there is a greater likelihood that an officer's communications, correspondence and documents could qualify as an Association record. An officer's written communications in behalf of the Association regarding Association business to or from third parties who are not members of the Association shall be considered records of the Association.
- 2.4 **Permanent** means that the retention period for that Association Record is permanent.
- 2.5 **Term + "X" years** means the specified number of years beyond the termination of the relationship, contract or coverage.

ARTICLE 3 POLICY

- 3.1 It is the Association's policy to maintain complete and accurate Association Records. Association Records are to be retained for the period of their immediate use unless longer retention is required for historical reference, contractual or legal requirements, or for other purposes as set forth in this Policy.
- 3.2 Association Records that are no longer required or have satisfied their recommended period of retention are to be destroyed in an appropriate manner.
- 3.3 The Board may appoint either one board member or the Association's manager to be the Association record "Managing Agent". The Managing Agent is responsible for ensuring that Association Records of the Association are identified, retained, stored, protected and subsequently disposed of, in accordance with the guidelines set forth in this Policy.

**ARTICLE 4
COMPLIANCE**

- 4.1 This Policy is not intended to be all inclusive, and accordingly may be tailored to meet the specific needs of the Association. The retention periods set forth herein are guidelines based on the current retention periods set forth in federal, state, and local statutes and regulations (none of which explicitly address the Association), and industry custom and practice.

**ARTICLE 5
BOARD MEMBERS**

- 5.1 The Association does not require individual Board members to maintain any Association Records. Board members in their discretion may dispose of documents in their possession that were generated by the Association when the Association has maintained the document as an Association Record. However, when a Board member receives Association Records which were not generated by the Association or not received through the Association, the Board member shall send the originals of such Association Records to the Managing Agent to be maintained in the Association Records. Association Records created by a Board member for their own use as a member of the Board, including but not limited to notes, drafts, emails, summaries, etc., are not Association Records and do not need to be retained for any length of time by a Board member and may be destroyed by a Board member at any time. Emails sent or received by a Board officer are records of the Association only if, (1) the email is sent to the Association membership from the Board, or (2) the email is sent from the Board as the result of an official decision of the board. No Board member shall disclose or provide any Association Record to any Owner outside of the Board but shall direct Owners to make a formal request to the Association pursuant to its records policy.

**ARTICLE 6
OFFICERS**

- 6.1 Communications and documents generated by officers of the Association shall be considered Association records when any one of the following criteria are met:
- (a) Did the communication concern official business of the Association and come within the individual's responsibility as an officer?
 - (b) Did the communication have the ability to bind the Association or involve communications that may lead to binding the Association or implementing or adopting an Association policy?
 - (c) Was the communication, act or document generated, prepared or accomplished as a result of a duty as an officer as set forth in the bylaws?

**ARTICLE 7
ANNUAL PURGE OF FILES**

7.1 The Managing Agent or Board secretary shall conduct an annual purge of the Association Records to be completed within the first quarter of each calendar year.

**ARTICLE 8
DESTRUCTION PROCEDURE**

8.1 All Association Records to be purged or destroyed pursuant to this Policy shall be shredded, or permanently deleted electronically, if stored in an electronic format.

**ARTICLE 9
ONSET OF LITIGATION**

9.1 At such time as the Board or the Association has been served with a lawsuit, or if it is reasonably foreseeable that litigation may be imminent, all Association Records potentially relevant to the dispute must be preserved notwithstanding anything in this Policy to the contrary.

9.2 Therefore, at the direction of the Association's legal counsel the Managing Agent will advise the Board members, and any other person who may maintain Association Records, of the facts relating to litigation. Thereafter, all Association Records potentially relevant to the dispute shall be deemed "held" until such litigation is concluded and all appeal periods have expired. At the conclusion of the litigation the "hold" period will cease and the time periods provided in this Policy will recommence.

**ARTICLE 10
ASSOCIATION RECORD RETENTION AND DESTRUCTION GUIDELINES**

10.1 The Association Records are grouped into functional categories set forth below. Although every conceivable Association Record is not listed, the following list should indicate to which subcategory a particular Association Record relates and how long the record should be retained.

ACCOUNTING RECORDS

Accounts Payable	6 Years
Accounts Receivable	6 Years
Audit Reports	6 Years
Depreciation Schedules	6 Years
Expense Report	6 Years
Financial Statements (Annual)	6 Years

General Ledger	6 Years
Inventory Records	6 Years
Loan Payment Schedule	6 Years
Federal and State Tax Return	6 Years

BANK/FINANCIAL RECORDS

Bank Reconciliation	2 Years
Bank Statements	6 Years
Deposit Tickets	6 Years
Cancelled Checks	6 Years
Cash Receipts and Cash Disbursement Journals	6 Years
Owner Ledgers	6 Years after Owner sells unit
Electronic Payment Records	6 Years
Personal Property Tax Returns	6 Years
Budgets	3 Years
Reserve Study	Retain current study at all times
Retain older reserve studies	10 years

CORPORATE RECORDS

Board Minutes	Permanent
Committee Minutes	Permanent
Member Meeting Minutes	Permanent
Bylaws, Articles and CC&R's	Permanent
Rules and Regulations	Permanent
Policies and Guidelines	Permanent
Record of actions by Board without a meeting	Permanent
Record of Waivers of Notice of Meeting	Permanent
Board Resolutions	Permanent
Business Licenses	6 Years
Contracts	Life + 6 years- longer if warranty
Correspondence from Legal Counsel	6 Years
Certificates of Insurance	6 Years
Insurance Policies	6 Years
Settled Insurance Claims	6 Years
Leases/Mortgages	6 Years following termination
Patents/Trademarks	Permanent
Bids, Proposals	6 Years following termination
Homeowner Records	6 Years following transfer of unit
Vendor Invoices	6 Years
Written Correspondence/Association and Vendors	6 Years
Photographs	6 Years

Annual Reports filed with the Secretary of State	3 Year
Videotapes and Audiotapes of Board Meetings	Until minutes are approved
Proxies and Ballots	Permanent
Proxies and Ballots for Document Amendments	Permanent
Deeds, Easements and Other Real Property Records	Permanent
Association Plat Maps	Permanent
State and Federal Identification Numbers	Permanent

EMPLOYEE RECORDS, IF ANY

Benefits Plans	Permanent
Personnel Files	6 Years following termination
Employment Applications	3 Years
Employment Taxes	6 Years
Payroll Records	6 Years
Pension/Profit Sharing Plans	Permanent

REAL ESTATE RECORDS

Construction Records	Permanent
Warranties	Permanent
Leasehold Improvements	Permanent
Lease Payment Records	Life + 4 Years
Real Estate Purchases	Permanent

OWNER COMMUNICATIONS

Written communications to all Owners generally (including meeting or other notices sent via email, facsimile and regular mail)	6 Years
--	---------

INDIVIDUAL MEMBER FILES

Correspondence to Members individually (not including enforcement letters)	As long as Member owns + 4 years
Enforcement letters (including covenant violation letters, violation letters and delinquency letters)	As long as Member owns + 4 years
Owner Complaints (written)	As long as Member owns + 4 years
Architectural requests and any responses	

from the Association regarding Requests

Permanent

Correspondence between Association and
Members not otherwise listed

As long as Member owns + 4 years

MISCELLANEOUS

Miscellaneous Documents
(not otherwise listed herein)

At Board's Discretion