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AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
COLONY POINTE  
(INCLUDING BYLAWS)  
A PLANNED UNIT DEVELOPMENT

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter “Declaration”) is made on the date evidenced below by Colony Pointe Homeowners Association, Inc. (hereafter “Association”).

**RECITALS**

A. The property subject to this Declaration is the Colony Pointe PUD in Utah County, Utah. Exhibit “A” of this Declaration further defines the property subject to this Declaration. All Lots therein are part of the Association and each Owner of a Lot is a member thereof. The Association is created as a planned development and contains certain Common Area and easements for the benefit of the Owners of Lots therein.

B. The Association desires to continue to provide for the preservation and enhancement of the property values and improvements of the Property and for maintenance of the Common Area.

C. This Amended and Restated Declaration of Covenants, Conditions and Restrictions supersedes and replaces all prior declarations, and amendments or supplements thereto, recorded against the subdivision, specifically the Declaration of Covenants, Conditions and Restrictions for Colony Pointe recorded March 14, 2005 as Entry No. 26126:2005, records of the Utah County Recorder, Utah (the “Original Declaration”);

D. Pursuant to Article III, Section 37 of the Original Declaration, the undersigned hereby certifies that all of the requirements to amend the Declaration have been satisfied and that at least a majority of the Owners of the Lots have voted to approve this Declaration and Bylaws.

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

**ARTICLE I - DEFINITIONS**

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

**1.1** “*Accessory Building*” shall mean any exterior structure containing at least 20 square feet (other than the primary structure), and which requires a building permit, and shall not include any outbuilding, shed or shack for which a building permit is not required.

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

**1.3** “*Architectural Review Committee*” shall mean the person or persons appointed by the Board to review the designs, plans, specifications, homes, architecture, fencing, and landscaping within the planned unit development (the “ARC”).

**1.4** *“Assessment”* means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of the Governing Documents or applicable law, including (1) annual/regular assessments; (2) special assessments; and (3) individual assessments as set forth below.

**1.5** *“Association”* means and refers to the Colony Pointe Homeowners Association, Inc., or any successor incorporated or unincorporated association of the Lot Owners acting under this Declaration.

**1.6** *“Board” or “Board of Directors”* shall mean and refer to the Board of Directors of the Association, as established in accordance with the Bylaws.

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

**1.8** *“Common Area”* means, refers to, and includes: (a) The real property and interests in the real property which comprise the Project and which is and are submitted to this Declaration, excluding all Lots as defined herein; (b) All common areas and facilities designated as such on the Plat and all property on the Plat excluding the Lots; (c) In general, all apparatus, installations and facilities included within the Project and existing for common use, including by way of illustration but not limitation the pool, clubhouse, walking trails, entry and entry monument; (d) The Project’s roads, (except public roads when the context requires for maintenance responsibility purposes); (e) All other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; (f) All common areas as defined in the Act, whether or not enumerated herein.

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

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

**1.11** *“Community Wide Standard”* means the standard of conduct, maintenance, or other activity generally prevailing in the community, as set forth in the Governing Documents or as defined or dictated by the Board from time to time.

**1.12** *“Entry”* shall mean the entry way into the Community.

**1.13** *“Entry Monument”* shall mean the monument identifying the Planned unit development and surrounding landscaping and planter area located at the Entry to the Project.

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

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

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

**1.17 “Lot”** shall mean and refer to any residential lot or parcel of land shown upon the recorded Plat, including any Improvements thereon, with the exception of the Common Area.

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

**1.19 “Member”** means a person who holds membership in the Association by virtue of his or her ownership of a Lot.

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

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

**1.22 “Owner”** means the record owner of fee simple title to any Lot, as shown in the records of the County Recorder, but does not include a tenant, contract purchaser, or holder of a leasehold interest or person holding only a security interest in a Lot.

**1.23 “Parking Pad”** shall mean and refer to a cement or concrete, (or other construction material approved in writing by the ARC) parking pad constructed or installed on a Lot for the purpose of parking or storing of a recreational or commercial vehicle.

**1.24 “Parking Pad Fence”** shall mean and refer to the cinder block, vinyl or wood (or other construction material approved by the ARC in writing) fence surrounding the Parking Pad.

**1.25 “Plat” or “Map” or “Record of Survey Map”** (these terms may be used interchangeably herein) means the Record of Survey Maps for the Colony Pointe Plat A, Plat B, and Plat C subdivisions recorded at the Recorder's Office of Utah County, as the same may be amended or substituted.

**1.26 “Property” or “Project”** means all of the real property and interests described in the Plats, including all Lots, Common Area, easements, and open space.

**1.27 “Rules and Regulations”** means those rules and regulations adopted by the Board from time to time as it deems necessary or prudent for the enjoyment, or furthering the purposes, of the Property and Association.

**1.28 “Unit”** shall mean a single-family residential dwelling unit on the Property and constructed upon a numbered Lot reflected on a recorded Plat.

## ARTICLE II - PROPERTY DESCRIPTION

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

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

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

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

**2.4 Use and Occupancy.** Except as otherwise expressly provided in the Governing Documents, the Owner(s) of a Lot shall be entitled to the exclusive use and benefits of ownership of such Lot. Each Lot, however, shall be bound by, and the Owner shall comply with, the restrictions contained below and all other provisions of the Governing Documents of the Association for the mutual benefit of the Owners.

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

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

(b) Utility and Entry Monument Easements. Easements for utilities, the Entry Monument, drainage systems and facilities, and irrigation are reserved hereby and on the recorded Plat. An Owner may not do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. If a drainage channel is altered by an Owner, the Association expressly reserves the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass. In addition, the easement and right of way area of or on each Lot, including by way of illustration but not limitation, the Entry Monument, in whole or in part, utilities, drainage systems and facilities, and irrigation, and all improvements within said area shall be maintained continuously by the Owner of the property, at his or her sole expense, excepting those improvements for which a public authority or utility company is expressly responsible. Each Lot Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot. The Association may make changes to the Common Area as it sees fit to benefit the Community, however, no Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the Common Area or Facilities, including but not limited to the construction or installation of any additions, the extension or enclosure of any existing structures not shown on ARC approved plans and specifications, without the prior written consent of the ARC.

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

### **ARTICLE III – RESTRICTIONS ON USE**

#### **3.1 Residential Use.**

Lots shall be used for residential purposes in accordance with, and subject to, the Governing Documents. No resident may operate a commercial trade or business in or from a Unit with employees of any kind. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Unit. No commercial trade or business may be conducted in or from a Unit unless (a) the business activity conforms to all home occupation and zoning requirements governing the Project; (b) the operator has a city issued business license; (c)

the business activity satisfies any guidelines adopted by the Board, as they may be modified from time to time; and (d) the resident has obtained the prior written consent of the Board. Notwithstanding the foregoing, the leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

### **3.2 Lease Restrictions.**

All leases shall be in writing and be subject to the Governing Documents and any failure by the lessee to comply with the terms of such documents shall be a default under the Lease. No Owner may lease or rent a Unit until the Owner has owned the Unit for a period of one (1) year. Lot Owners shall not be permitted to lease their Lots for an initial term of less than 6 months. No Unit shall be leased for short term, transient, hotel, vacation, seasonal or corporate use purposes. Individual rooms may not be rented to separate persons without written consent of the Board. Occupancy of a Unit shall be limited to a Single Family per residence. All lease agreements shall contain as an attachment to the lease agreement, a copy of the current Rules and Regulations of the Association, and the Owner shall also provide the tenant a copy of this Declaration. Within 30 days of a Unit being rented, the Owner must provide the Association with a copy of the signed lease agreement and the name(s) of all tenants, including the tenants' family members who will occupy the Unit, and the Owner must keep such information updated with the Association within 15 days of any change.

### **3.3 Animals.**

3.3.1. Large animals as that term is defined by Lehi City Ordinance are not allowed. No pets, animals, livestock, or poultry of any kind may be commercially bred at the planned unit development. Domestic pets as defined by Lehi City Ordinance per lot are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts may constitute a nuisance: (1) causing damage to the property of anyone other than the pet owner; (2) causing unreasonable fouling of the air by odors; (3) causing unsanitary conditions; (4) running loose throughout the Planned unit development and not in a cage or on a leash and under the control of a responsible person; (5) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (6) molesting or harassing passersby by lunging at them or chasing passing vehicles; (7) attacking or threatening to attack people or other domestic animals; (8) otherwise acting so as to bother, annoy or disturb the sensibilities of a reasonable person or interfering with the right of residents to the peaceful and quiet enjoyment of their property; or (9) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from the Common Areas.

3.3.2. An Owner may be required to remove a pet upon receipt of a written notice from the Board given pursuant to enforcement of the Governing Documents. Additionally, the Board may apply for appropriate judicial relief in the event that Owners violate this Article. The Board shall have the express authority and right to promulgate rules, beyond those stated herein, regarding the keeping of pets.



**3.4 Temporary Structures.**

No temporary structure including motor vehicles, trailers, tents, shacks, garages, barns or other outbuildings shall be used as a residence on any Lot at any time.

**3.5 Offensive or Unlawful Activities.**

No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted on any Lot or other portion of the Common Areas, nor shall anything be done in or placed upon any Common Area which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

**3.6 Rubbish and Trash.**

No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure which is screened from public view at all times except 24 hours before, and 24 hours after, trash collection. All such waste and garbage must be promptly and periodically removed.

**3.7 Vehicles in Disrepair.**

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

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

**3.8 Parking and Storage of Vehicles.**

3.8.1 The driving, parking, standing, and storing of motor vehicles in, on or about the Community shall be subject the parking rules and regulations adopted by the Board from time to time. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any driveway or Unit or to create an obstacle or potentially dangerous condition. No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed. All garages shall be used primarily for the parking and storage of vehicles. Overnight parking on the street is not allowed (defined as parking on the street between midnight and 5:00 am).

3.8.2 Parking of boats; trailers; oversized/commercial vehicles (vehicles wider or longer than a standard parking space, 19 feet maximum, any vehicle that has more than two axles, or vehicles weighing more than 6,000 pounds); vehicles displaying commercial advertising, logos, or business names exceeding three square feet per side or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle; truck campers; motor homes; RVs; and like vehicles and equipment shall only be allowed for periods of less than 24 hours and for no more than two 24 hour periods in any given seven day period, unless stored on a properly constructed Parking Pad provided (a) the vehicle is in good running condition and properly licensed and registered, (b) the Parking Pad is located in the rear yard (i.e., behind the front of the house), and (c) a proper Parking Pad Fence has been installed. A 24 hour period shall begin upon the first instance of parking of the vehicle and shall expire 24 hours later regardless of whether the vehicle is parked continuously for 24 hours. Eighteen-wheel semi-trailers and similar oversized transportation devices are not allowed.

3.8.3 Vehicles parked in violation of the Governing Documents may be immobilized, impounded, or towed without further notice and at the owner's sole risk and expense.

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

No clothes lines, clothing racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located on the Property, unless the same are not visible from any street. No garments, rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless the same are not visible from any street.

### **3.10 Signs.**

No sign, advertisement, poster, flag or banner of any kind may be displayed to the public view on or from any Unit or Lot or the Common Area for more than one 48 hour period in any given 30 day period, except that the following may be displayed if the prior approval of the Board is obtained: (1) Not more than one "for sale" sign, not exceeding two feet by three feet, may be temporarily placed on a Lot; (2) Political signs may be temporarily placed on a Lot for up to two weeks before and one week after an election; and (3) other signs not exceeding one square foot may be placed on a Lot. The Board may require a sign to be removed at any time. No offensive or obnoxious signs may be displayed, as determined by the Board.

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

Satellite antennas or dishes, such as Direct Broadcast Satellite ("DBS") antennas/dishes one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the dish and any wires are installed so as to not be visible from the streets. If locating the dish so that it is not visible from the streets precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets possible. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner.

The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. The terms “dish” and “antenna” are to be used interchangeably in the interpretation of the above policy.

### **3.12 Noise Disturbance.**

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

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

Nothing shall be done or kept within any Lot or on the Common Areas which will increase the cost of insurance to the Association or to other Owners. No Owner shall permit anything to be done or kept within his or her Lot or Common Areas which will result in cancellation of insurance on any Lot.

### **3.14 Association Rules and Regulations.**

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

## **ARTICLE IV - ARCHITECTURAL CONTROL**

**4.1 Architectural Review Committee.** The Board shall appoint an Architectural Review Committee (“ARC”) or act as the ARC itself and such ARC shall have the purpose of and responsibility and authority to promulgate and administer design guidelines for the Association and to review all applications for construction on or modification or improvement of any Lot. The Board shall determine the number and qualifications of the members of the ARC.

**4.2 Submission to ARC.** No building, fence, wall, Improvement or other structure shall be commenced, erected or maintained upon the Properties, including any Lot, nor shall any grading or removal of natural vegetation, or exterior addition to the Properties or any Lot, or change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the ARC as to qualifications determined by the ARC. Such approval shall be solely at the discretion of the ARC as it deems appropriate from time to time.

**4.3 Application.** The Owner shall submit two complete sets of plans and specifications for the proposed improvement or improvements. Such written application shall include, in detail and as applicable, the following: (a) An overall view of the proposed improvement or

improvements. (b) The location of said improvement or improvements on the Lot and the location of the proposed improvement or improvements relative to other improvements on said Lot. (c) Floor plans for each floor level. (d) The basic structural system of the improvement or improvements and the materials to be used in the construction thereof. (e) Elevations. (f) Provision for temporary and permanent parking of vehicles in connection with construction and use of the facility. (g) Design and layout of proposed utility connections. (h) Proposed time schedule for construction to completion. (i) A survey acceptable to the ARC locating Lot corners and the proposed building position. (j) A landscaping plan which includes as a part thereof, a planting plan, irrigation plan, and grading plan.

#### **4.4 Review, Approval.**

4.4.1. The ARC shall, within a period not to exceed 30 days, determine whether an application of an Owner is complete for the purposes of subsequent, substantive review by the ARC.

4.4.2. If the ARC has not acted within the 30 day period, the applicant may in writing request that the ARC provide a written determination either that the application is: (i) complete for the purposes of allowing subsequent, substantive ARC review; or (ii) deficient with respect to a specific design review application requirements.

4.4.3. Within 15 days of receipt of the Owner's request under 6.4.2, the ARC shall either send a written notice to the Owner advising that the application is deficient with respect to specified design review criterion, or send a written notice to the Owner accepting the application as complete for the purposes of further substantive review by the ARC. If notice is not so given by the ARC within 15 days, the application shall be considered complete for purposes of further substantive review.

4.4.4. If the ARC fails to approve or deny a complete application within 30 days, the applicant may send a demand to the ARC requesting that the ARC approve or deny the application within 30 days of the date the ARC receives the demand. The failure of the ARC to take final action, approving or denying the application, within 30 days of receiving the demand shall constitute an approval of the application. Failure of the ARC to act on an application shall not be deemed to constitute an approval of any act prohibited by the Governing Documents.

4.4.5. The ARC is expressly empowered and authorized to refuse to approve any plans and specifications for whatever reasons it deems prudent and, in so doing, shall have the right to take into consideration, among other things, the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure or modification so planned, on the outlook from neighboring properties or the street.

**4.5 Review Fee.** The Association may charge a fee for the actual cost of reviewing and approving plans for the construction or improvement of a Lot, including any costs charged to the Association by any other party, but the Association shall not charge a fee that exceeds such costs.

**4.6 Architectural Committee Disapproval and Policy.** The ARC shall not give its consent to the proposed improvement unless, in the opinion of the ARC, the improvement is appropriately designed and the design, contour, material, shapes, colors, and general character of the improvement shall be in harmony with existing structures on the Lot and on neighboring Lots

and with the surrounding landscape and the improvements shall be designed and located upon the Lot so as to minimize intrusion to the natural land forms and vegetation cover. Nothing herein shall be deemed to require unvaried appearance or strict uniformity in design or to limit the ability of the ARC to allow a contrast and diversity of architecture within the Community in the manner the ARC deems appropriate, so long as the Improvements within the Community are aesthetically pleasing and congruent and not harshly contrasting or discordant, all as determined solely by the ARC.

Additionally, the ARC shall have the right to disapprove any application for the following reasons: (a) the application and plans and specifications are not of sufficient detail, or are not in accordance with the provisions herein; (b) if the design and the plans for construction do not include sufficient safeguards for preservation of the environment and safety of the surrounding areas; (c) if the proposed project would create disturbances that would materially interfere with the enjoyment of surrounding properties; or (d) for any other reason the ARC may deem in the best interest of the Community. The decision of the ARC shall be final, binding, and conclusive on all of the parties affected.

**4.7 Preliminary Approval.** A person may submit preliminary sketches of a proposed project to the ARC for informal and preliminary approval or disapproval. All preliminary sketches shall be submitted in duplicate and shall contain a proposed site plan together with sufficient general information on all aspects that will be required to be in the complete plans and specifications to allow the ARC to act intelligently to give an informed and preliminary approval or disapproval. The ARC shall not be finally committed or bound by any preliminary or informal approval or disapproval.

**4.8 Non-Waiver.** The approval of the ARC of any plans, drawings, or specifications, or granting of a variance, for any work done or proposed or in connection with any other matter requiring the approval of the ARC under these restrictions shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification, or matter whenever subsequently or additionally submitted for approval.

**4.9 Limitation on Liability.** The ARC or Board shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of engineering, structural safety, proper drainage, or conformance with building or other codes. Neither the Board nor ARC shall be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made or arising out of, or in any way connected with, the performance of the ARC's duties hereunder.

**4.10 Variances.** The ARC may, in it and the Board's discretion, by the unanimous vote of the members of the ARC and the unanimous vote of the members of the Board, allow reasonable variance as to any of the requirements contained in Article IV of this Declaration on such terms and conditions as the ARC and Board may require. Any variance must also comply with any relevant City ordinance. No variance shall be effective unless in writing.

**4.11 Interpretation.** All questions of interpretation or construction of any of the covenants, restrictions and terms in Article IV of this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes.

**4.12 Enforcement.** Any construction, alteration, or other work done in violation of this Declaration shall be considered to be nonconforming. Upon written request from the ARC an Owner shall at his own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

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

**4.14 Minimum Dwelling Requirements.** No dwelling shall be constructed or altered unless it meets the following minimum requirements:

- 1) Only single family residential dwellings are allowed.
- 2) The height of any dwelling shall not exceed two stories above ground.
- 3) No slab on grade dwellings are permitted.
- 4) A basement is required for each dwelling, unless otherwise determined by the ARC.
- 5) Each dwelling shall have a private garage for not less than two motor vehicles, unless otherwise determined by the ARC.
- 6) The dwelling exteriors, in their entirety, must consist of maintenance free stucco and/or masonry, unless another construction material is approved by the ARC in writing. No aluminum or vinyl is permitted.
- 7) Any detached accessory building must conform in design and materials with the primary residential dwelling. Any and all accessory building plans must be submitted, reviewed and approved in advance. The maximum height of an accessory building shall be ten (10) feet; however, the ARC may grant an exception at its sole discretion.
- 8) All front yards of Lots shall be fully landscaped within 9 months of the initial occupancy permit being issued. Landscaping and all grading and drainage shall be designed in such a way to control water run-off so that any Lot within the planned unit development will not be adversely affected by another. Furthermore, the grading must conform with Lehi City ordinances and may not be altered without the prior written consent of the ARC. All landscaping must conform to any landscaping guidelines as may adopted by the ARC from time to time.

9) No fence or similar structure shall be built in any front yard to a height in excess of four (4) feet, nor shall any fence or similar structure be built in any side or rear yard in excess of six (6) feet. The fencing in the rear yard of all Lots backing onto the open space park separating the Lot from the park shall be 6' tan semi-private vinyl fencing. The semi-private fencing is to remain uniform both in appearance, construction material and quality of construction, additional fencing inside or outside of the semi-private fencing is not allowed, and privacy fencing replacing the semi-private fencing will not be allowed. Only vinyl fencing is permitted in other areas. Chain link fencing is not allowed on intersecting lots lines. Some chain link fencing may be allowed on the perimeter of the development with prior written approval of the ARC. Any fencing or similar structure using other construction materials requires the prior written approval of the ARC. If there is a dispute as to what constitutes the front, side or rear yards, the decision of the ARC shall be final, binding and conclusive. If corner lots are fenced, the fencing will be installed so water utilities are accessible from the City right of way.

10) The following conditional uses may also be allowed with Board approval: (a) Swimming pool, cabana, equipment building/other outdoor recreational activities (e.g., tennis courts, basketball court, soccer pitch, batting/pitching apparatus, etc.); and (b) Accessory Buildings, permanent storage sheds, detached garage structures, workshops, detached conservatories/greenhouses etc. No tin sheds are allowed.

## **ARTICLE V - MAINTENANCE OBLIGATIONS**

### **5.1 *Owner's Responsibility.***

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

5.1.2 Common Improvements on a Lot. If an Owner purchases a Lot which includes a common improvement, including by way of illustration but not limitation an Entry, Entry Monument, planter, planter box, planter strip, perimeter fence, wall, street light, exterior lighting or other landscaping treatment of any kind, shall, at the Owner's sole expense, maintain such common elements in good condition, and may not improve the Lot or place any plant, hedge, tree, bush, shrub or object, natural or artificial, behind, to the side or in front of such improvement or feature or so as to impair, obstruct, block or impede the view or purpose of the Entry, Entry Monument or other improvement, planter box, landscaping strip, or any such special landscaping feature.

### **5.2 *Maintenance by Association.***

5.2.1 Common Area. The Association shall maintain the Common Areas of the Property, unless otherwise stated in this Declaration. However, if the Common Areas are damaged by the willful misconduct or negligence of an Owner, their guests, tenants, or invitees,

the Owner shall be responsible for all such damage. The Association shall also maintain all Common Area amenities which may be installed from time to time.

5.2.2 Landscaping Maintenance of 1500 North, 900 North and 1700 West Streets. The area of landscaping or City parkstrip along 1500 North (lots 48 and 140-142), 900 North (lots 4, 5, and 6), and 1700 West (lots 42, and lots 1-4) shall be considered common area and shall be maintained by the Association. All other Lots along 1500 North, 900 North and 1700 West streets will be considered as fronting the respective street and therefore the maintenance of the park strip shall be the responsibility of the respective Lot Owner.

5.2.3 Street Trees. The planting of trees shall be done in accordance with the Street Tree Planting Plan promulgated by the Board and as amended from time to time by the Board.

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

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

## **ARTICLE VI - ASSESSMENTS**

**6.1. Covenant for Assessments.** Each Owner, by acceptance of a deed hereafter conveying any Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments, as provided for and defined below: Annual Assessments, Special Assessments, and Individual Assessments.

The Board shall determine whether installments of Annual Assessments are levied and collected on a monthly, quarterly, semi-annual, annual or other basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty. No member may exempt itself from liability for Assessments by abandonment of any Lot owned by such member.

Each Lot Owner shall pay an equal share of the Annual Assessments and Special Assessments.



## 6.2. Annual Budget and Assessment.

6.2.1. Adoption of Budget. The Board shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect. The Board shall present the adopted budget to Association members at a meeting of the members.

### 6.2.2. Determination of Annual Assessment.

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

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

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

**6.3. Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of fulfilling the purposes of the Association and carrying out this Declaration, and including, but not limited to: (a) The improvement and maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums; (c) The costs of utilities and other services which may be provided by the Association for the Community; (d) The cost of labor, equipment, insurance, materials, management, legal and other professional and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; and (e) The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements as provided below; and (f) Any other items properly chargeable as a Common Expense of the Association.

**6.4. Special Assessments.** In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time (“Special Assessment”) for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association

which cannot be paid for through other types of Assessments. The Board may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Member may only be levied if it is first voted upon by the Members and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum of Members representing at least 30% of the total Association voting rights cast a vote.

**6.5. Individual Assessments.** Any expenses which are not common expenses and which benefit or are attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefitted (“Individual Assessments”). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents, and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses, other than common expenses, relating to the cost of maintenance, repair, replacement and reserves of the Lots which may be incurred by the Association.

**6.6. Reserve Funds.**

6.6.1. The Association shall establish and maintain a reserve fund for the purpose of funding repair, replacement and restoration of the Common Areas and other items for which it is responsible to repair or replace, any emergency, unforeseen, unusual, or unanticipated expenditures, and for any other purpose determined from time to time by the Board, by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board in its sole discretion and best business judgment or of an amount and in the manner as may be required by law. The fund shall be conclusively deemed to be a Common Expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

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

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

6.6.4. **Reserve Analysis Report.** The Board shall prepare and update a written reserve analysis, as required by law, and shall annually provide the Lot Owners a summary of the most recent reserve analysis or update, and shall provide a copy of the complete reserve analysis or update to a Lot Owner who requests a copy.

**6.7. Amounts Due on Transfer of Lot.** Each time legal title to a Lot passes from one person to another, within thirty (30) days after the effective date of such title transaction, the new Lot

Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee in the amount determined by the Board from time to time. The following are not subject to the fee: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) 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, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of a Lot owned by a financial institution, except to the extent required for the payment of the Association's costs directly related to the transfer of the property, not to exceed \$250.

**6.8. Nonpayment of Assessments.** The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by the Board, and shall be delinquent if not paid by the 15<sup>th</sup> of the month or within such other period established by the Board from time to time. The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment.

6.8.1. Interest. Delinquent payments shall bear interest from the sixteenth (16<sup>th</sup>) day of the month (the "date of delinquency") at the rate of 18% per annum, or such other rate established by the Board.

6.8.2. Late Charge. Delinquent payments shall be subject to a late charge in the amount determined by the Board from time to time.

6.8.3. Acceleration. If the delinquent installments of any Assessment, including an Annual Assessment, and any charges thereon are not paid in full, the Board, or its authorized agent, may declare all of the unpaid balance of the Assessment to be immediately due and payable upon not less than ten (10) days' written notice to the Owner, and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

6.8.4. Rent Payments by Tenant to Association. If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than 60 days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until all amount due to the Association are paid. Such demand to the tenant shall be made in accordance with the law and any written procedures of the Association. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and any written procedures of the Association.

6.8.5. Remedies, Including Suspension of Membership Rights and Services. All membership rights, including the right of a Member to vote, shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. Any service provided by the Association to the Owners shall also be terminated as to the delinquent Owner at

the discretion of the Board. The Association shall have each and every remedy for collection of assessments provided in the Utah Community Association Act, Utah Code Title 57, Chapter 8a, as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

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

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

**6.11. Appointment of Trustee.** By acceptance of a deed for a Lot, each Owner as Trustor conveys and warrants to Trustee in trust for the Association, as Beneficiary, with power of sale, the Owner's Unit and all improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section and Utah Code Ann. §§57-1-19, et seq., as amended from time to time, the Trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the Trustee by recording an "Appointment of Trustee" on the records of the local County Recorder. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, et seq.

**6.12. Enforcement of Lien.** The lien for nonpayment of assessments may be foreclosed by the Board judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

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

**6.14. Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of the each Owner.

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

## **ARTICLE VII - THE ASSOCIATION**

**7.1 Organization.** The Association has been or will be organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the Division of Corporations and Commercial Code, the Board may re-incorporate the Association without a vote of the Owners. The affairs of the Association shall be governed by a Board of Directors as provided herein and in the Bylaws.

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

**7.3 Voting Rights.** The method of voting shall be as provided in the Bylaws. Each Owner shall have one (1) vote in matters of the Association for each Lot owned as set forth in the Bylaws.

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

7.4.1 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration; the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (1) The Association shall maintain the Common Areas.
- (2) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Property, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- (3) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.
- (4) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Community, subject at all times to direction by the Board of Directors, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board of Directors.

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

- (1) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter into any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoy any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Officers, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

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

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

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

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

**7.5 Adoption of Bylaws.** The Association has adopted Bylaws for the Association which are being recorded simultaneously with this Declaration.

## **ARTICLE VIII - COMPLIANCE AND ENFORCEMENT**

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

**8.2 Remedies.** Violation of any provisions of the Governing Documents, or of any decision of the Association made pursuant to such documents, shall give the Board, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

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

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

**8.2.3** To levy fines. A violation of any specific and express rule, regulation, covenant, restriction, or term of any Governing Document of the Association (a “violation”), and any subsequent occurrence of such violation, shall be subject to a fine in the amount determined by the Board from time to time. A subsequent occurrence of the same violation occurring within 6 months of a prior occurrence is and shall be deemed the same violation for all purposes, including the purpose of notice, and each such subsequent occurrence shall be subject to an immediate fine without further warning or notice;

**8.2.4** To suspend the right to receive, access or use any services or facilities provided by or through the Association until the violation is corrected;

**8.2.5** To suspend the voting rights of an Owner, but not for longer than 60 days except in the case of a continuous violation;

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

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

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

**8.4 Injunctive Relief.** Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.



## ARTICLE IX - INSURANCE

### 9.1 Types of Insurance Maintained by the Association.

9.1.1 The Board shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, (as well as such other insurance as it deems reasonable) property insurance, if required by law or deemed necessary by the Board, as well as liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first-class subdivisions in the county and as consistent with the Act.

9.1.2 The Board may purchase, maintain in force, and pay the premiums for, if and as it deems reasonable, the following types of insurance:

(a) Director's and Officer's Insurance. Directors and officers (D & O) liability insurance coverage.

(b) Fidelity. Fidelity insurance or bond covering all Board members, officers, employees and other persons handling or responsible for the funds of, or administered by, the Association, in such amounts as the Board of Directors deems appropriate, but no less than a sum equal to three months aggregate assessments on all units plus reserve funds. Where the Managing Agent has the responsibility for handling or administering funds of the Association, fidelity coverage shall include coverage for its officers, employees, and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bond or insurance shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or Managing Agent, as the case may be, at any given time during the term of each bond or policy. The bonds or policies shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The bonds or policies shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association or insurance trustee.

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

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

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

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

4) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or

Association may deem necessary or appropriate from time to time, including directors and officers liability insurance.

## **ARTICLE X - AMENDMENT AND DURATION**

### **10.1 Amendments.**

(a) How Proposed. Amendments to the Declaration shall be proposed to the membership by and through the Board upon the request of (1) a majority of the Board of Directors, or (2) Owners holding thirty percent (30%) or more of the voting rights of the Association, in which case the Board shall cause the amendment to be proposed to the membership within 65 days of receipt of such request. The Board shall cause the proposed amendment to be appropriately reduced to writing, which shall then be included in the notice of any meeting at which action is to be taken thereon or attached to any request for vote on or consent to the amendment

(b) Approval Required. This Declaration, as well as the Plat, may be amended, and any provision, covenant, condition or restriction whatsoever, may thereby be added, modified or deleted, if such amendment is approved by Owners holding sixty percent (60%) of the voting rights of the Association.

(c) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration, is acknowledged, and is recorded in the appropriate County Recorder's Office.

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

## **ARTICLE XI - MISCELLANEOUS PROVISIONS**

**11.1 Priority of Governing Documents.** In the event of any conflict between or among this Declaration and any other Governing Document, the document in the highest priority beginning with the first document listed hereinafter shall prevail (as to any such conflict) over any later listed document: this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations.

**11.2 Recovery of Costs and Attorney Fees.** The Association shall be entitled to recover its costs and attorney's fees incurred for enforcement of this Declaration regardless of whether any lawsuit or other action is commenced. Such costs and attorney's fees shall automatically be and

constitute an assessment against the Owner and the Lot. Additionally, the prevailing party shall be entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

**11.3 Invalidity; Number; Captions.** The invalidity of any part of this Declaration shall not affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

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

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

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

**11.7 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items,

acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Board except where powers are expressly restricted.

**11.8 Premises Liability.** The Association and the Board is and shall remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities and an Owner shall defend, indemnify and hold harmless the Association and Board against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

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

IN WITNESS WHEREOF, Colony Pointe Homeowners Association, Inc. has executed this Declaration this 13 day of JULY, 2017.

COLONY POINTE HOMEOWNERS ASSOCIATION, INC.

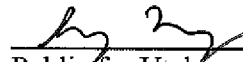
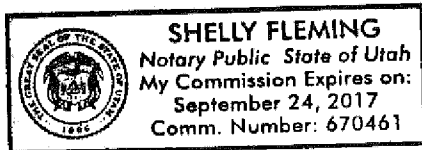


By: MIKE CARLSON  
Its: PRESIDENT

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

The foregoing instrument was acknowledged before me on this 13 day of July, 2017 by

Notary

  
Public for Utah

## EXHIBIT A

### (LEGAL DESCRIPTION)

Lots 1 through 43, and Lots 44A, 45A, 46A, and 47, COLONY POINTE PLAT A subdivision, according to the official plat thereof recorded with the office of the Utah County Recorder, state of Utah.

Lots 48 through 151, and Lot 152A, COLONY POINTE PLAT B subdivision, according to the official plat thereof recorded with the office of the Utah County Recorder, state of Utah.

Lots 301 through 305, COLONY POINTE PLAT C subdivision, according to the official plat thereof recorded with the office of the Utah County Recorder, state of Utah.

Serial #'s 65:111:0001 through 65:111:0013,  
65:111:0016 through 65:111:0045,  
65:111:0047,  
65:111:0048,  
65:111:0052,  
65:129:0048 through 65:129:0152,  
65:252:0301 through 65:252:0305

**EXHIBIT B**  
**BYLAWS**  
**OF**  
**COLONY POINTE HOMEOWNERS ASSOCIATION, INC.**

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**ARTICLE 1 - DEFINITIONS**

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

**ARTICLE 2 - MEETINGS OF ASSOCIATION**

2.1 Place of Meeting. The Association shall hold meetings at such suitable place as may be designated by the Board from time to time.

2.2 Annual Meetings. Each regular annual meeting of the members shall be held each year on the day and at a time and place within the state of Utah selected by the Board.

2.3 Special Meetings. The Association, by and through the Board, shall notice, hold and conduct a special meeting of its members (1) on call of the President or two or more members of

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

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

2.5 Voting. Each Lot shall be allocated the voting rights set forth in Section 7.3 of the Declaration.

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

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

## 2.8 Quorum of Owners.

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

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

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

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

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

2.11 Meeting Procedure. Formal rules of order shall only apply to any Association meeting inasmuch as one or more rules of order are adopted by the Board by resolution. Otherwise, the President shall conduct meetings according to the procedure he or she deems fit. A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

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



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

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

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

#### 3.1 Number, Term and Qualifications.

3.1.1 The affairs of the Association shall be governed by a Board of Directors composed of five Board members.

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

3.1.3 All Board members must be an Owner or the spouse of an Owner of a Lot, except that a husband and wife may not serve on the Board at the same time. A representative of an entity which owns a Lot, and only one such representative, may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Lot. **All members wishing to run for the board of directors must be in good standing with the HOA which means, but is not limited to: current on HOA dues and no current violations pending against the lot.**

3.2 Vacancies. Vacancies on the Board shall be filled until the next annual meeting by vote of a majority of the remaining Board members even though they may constitute less than a quorum. Each person so elected shall be a Board member until a successor is elected at the next

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annual meeting.

3.3 Removal of Board members.

3.3.1 Any Board member may be removed, with or without cause, by the affirmative vote of the majority of the entire Board. The vacancy shall be filled as provided in Section 3.2 above.

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

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

4.1 Nomination.

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

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

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

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

5.1 Organizational Meeting.

5.1.1 Location, Date and Time. The first meeting of a newly-elected Board shall be held within fourteen (14) days of election at such place, date and time as shall be fixed by the Board members at the meeting at which the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

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

5.2 Regular Meetings. Regular meetings of the Board shall be held at such place and hour as may be fixed from time to time by the Board, and if so fixed, no notice thereof need be given. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on

the next day which is not a legal holiday, or at another date and time agreed upon by the Board with notice to all members of the Board.

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

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

5.5 Open Meetings; Executive Sessions.

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

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

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

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

5.6 Meetings by Telephonic or Electronic Communication. In the event of an emergency, or by decision of the Board, meetings of the Board may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Board participating to hear each other simultaneously or otherwise to be able to communicate during the meeting. The requirement in Section 5.5.1 that Board meetings be open to Owners shall not apply to such

meetings.

#### 5.7 Action Taken Without a Meeting.

5.7.1 The Board shall have the right to take any action in the absence of a meeting which they could take at a meeting or that is required to be taken at a meeting in the Governing Documents if each and every member of the Board does one of the following in writing: (1) votes for the action, (2) votes against the action and waives the right to demand that action not be taken without a meeting, or (3) abstains from voting and waives the right to demand that action not be taken without a meeting.

5.7.2 An action taken pursuant to this section may not be effective unless the Association receives writings satisfying subsection 5.7.1 and: (i) describing the action taken and (ii) signed by all directors. A writing may be received, signed and transmitted electronically pursuant to Section 11.2 below and an email originating from a known sender's account shall constitute and fulfill the requirement of a signed writing from such sender.

5.7.3 Action is taken under this section only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the directors then in office were present and voted.

5.7.4 Any action so taken shall have the same effect as though taken at a meeting of the Board members.

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

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

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

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

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

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

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

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

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

7.1 Designation and Qualification.

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

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

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

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

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

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

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

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

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

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

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

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

incident to the office of secretary,

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

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

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

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

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

### **9.1 General Records.**

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

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

(c) The Board shall maintain a list of Owners. The list of Owners may specify whether the Owner is an Owner in Good Standing or a Suspended Owner.

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

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



### 9.3 Financial Reports and Audits.

(a) Upon written request by an Owner or mortgagee of a Lot, an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to the person(s) making the request within ninety (90) days after the end of each fiscal year.

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

### 9.4 Inspection of Records by Owners.

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

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

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

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

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

(a) Personnel matters relating to a specific identified person or a person's medical records.

(b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(c) Communications with legal counsel that relate to matters specified in this section, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.

- (d) Disclosure of information in violation of law.
- (e) Documents, correspondence or management or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session held in accordance with these Bylaws.
- (f) Documents, correspondence or other matters considered by the Board in executive session held in accordance with these Bylaws and the minutes of any executive session.
- (g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

**ARTICLE 10 - AMENDMENTS**

Approval of a majority of the voting rights of the Members is required for approval of any amendment to these Bylaws, except that the approval of members representing at least 60% of the total voting rights of the Association shall be required for any material change to the Bylaws pertaining to voting rights. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder’s Office. No action to challenge the validity of an adopted amendment may be brought more than two (2) years after the amendment is recorded.

**ARTICLE 11 - MISCELLANEOUS**

11.1 Notices.

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

11.1.2 Owners.

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

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

(c) If a Lot is jointly owned, notice shall be sent to a single address, of which

the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the Lot shall be sufficient.

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

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

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

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

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

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers on this 12 day of JULY, 2017.

(Sign):   
(Print Name): MIKE CARLTON, President