

# BYLAWS

## THE COMMUNITIES AT DEER CREST OWNERS ASSOCIATION, INC.

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## 1 RECITALS

- A. WHEREAS, a plat entitled "THE COMMUNITIES AT DEER CREST" (the "2005 Plat") was recorded in the Cache County recorder's office on November 1, 2005, as entry no. 903427, the recordation of which initially formed the Association; and
- B. WHEREAS, the Association was formally organized as "DEER CREST COMMUNITIES OF LOGAN HOMEOWNERS' ASSOCIATION, LLC," a Utah limited liability company, registered on November 2, 2005, as entity no. 6043025-0160; and
- C. WHEREAS, a "DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR THE COMMUNITIES AT DEER CREST" (the "Declaration") was recorded in the Cache County recorder's office on November 4, 2005, as entry no. 903772; and
- D. WHEREAS, pursuant to Article 5.1 of the Declaration, the Association was reorganized as "THE COMMUNITIES AT DEER CREST OWNERS ASSOCIATION, INC.," a Utah nonprofit corporation, as required by the Declaration,<sup>1</sup> registered on February 6, 2007, as entity no. 6481777-0140, which entity was allowed to expire on June 7, 2010; and
- E. WHEREAS, pursuant at least in part to the foregoing reorganization, the 2005 Plat was amended as "THE COMMUNITIES AT DEER CREST (2007 AMENDMENT)" (the "2007 Plat") and recorded in the Cache County recorder's office on October 2, 2007, as entry no. 955932; and
- F. WHEREAS, pursuant to the expiration of the nonprofit Association, it was reincorporated as "THE COMMUNITIES AT DEER CREST OWNERS ASSOCIATION, INC.," a Utah nonprofit corporation, registered on December 14, 2023, as entity no. 13732606-0140, and amended on December 20, 2023; and
- G. WHEREAS, by virtue of being organized as a Utah nonprofit corporation, the Association is subject to the Nonprofit Act as such is defined herein below; and
- H. WHEREAS, pursuant at least to Utah Code 57-8a-102(2), the Association is also subject to the Utah Community Association Act (the "Act"); and
- I. WHEREAS, the Association has never filed bylaws as required by the Act;<sup>2</sup> and
- J. WHEREAS, the Act and the Nonprofit Act permit the Board to adopt and file the Association's initial bylaws;<sup>3</sup> and
- K. WHEREAS, the Nonprofit Act permits bylaws to "contain any provision for managing the business and regulating the affairs of the nonprofit corporation that is not inconsistent with law or the articles of incorporation;"<sup>4</sup>

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<sup>1</sup> Decl., Recitals(D).

<sup>2</sup> UCA 57-8a-216(1)(a).

<sup>3</sup> UCA 57-8a-216(1) and 16-6a-206(1).

<sup>4</sup> UCA 16-6a-206(2).

- L. THEREFORE, the Board hereby adopts and authorizes the filing of these initial Bylaws by recordation against all Lots and real property within the Association (see **Exhibit G**) in the recorder's office of Cache County, Utah, which Bylaws shall become effective as of the date of their recordation.

## 2 DEFINITIONS

For purposes of these Bylaws, the following terms shall have the following meanings. Other capitalized terms used herein that are not defined in this Article shall have the meanings set forth in the Declaration.

- A. "**Act**" means the Utah Community Association Act, Utah Code Sections 57-8a-101 *et. seq.*, as it may be amended from time to time.
- B. "**Action**" or "**action**" means an official action taken, decision made, or thing done by the Association or Board. A "**proposed action**" means a formal proposal to take an action in accordance with these Bylaws and applicable law. An action may only be taken in a meeting of Members, as an action by written ballot, in a Board meeting, or as an action without a Board meeting in accordance with these Bylaws and applicable law.
- C. "**Articles**" or "**Articles of Incorporation**" means the most recent articles of incorporation or merger of the Association as they may be amended or restated from time to time, and as duly filed with the state in which the Association is incorporated.
- D. "**Association**" means THE COMMUNITIES AT DEER CREST OWNERS ASSOCIATION, INC. as it may be reincorporated or otherwise recognized from time to time, and, as the context may require, the property, Directors, Officers, Managers, or other agents of the Association.
- E. "**Attorney-in-Fact**" and "**attorney-in-fact**" mean an individual who is authorized to act as an agent of a Person or an estate as evidenced by a duly executed Power of Attorney, Designation of Agent, Letter Testamentary, Letter of Administration, or similar authorizing document. An attorney-in-fact may act on behalf of an Owner or, if the attorney-in-fact represents a deceased Owner's estate may act with respect to the deceased Owner's Dwelling as if the Owner, for purposes of all meetings, proxies, and voting described in the Governing Documents but not for purposes of eligibility requirements.
- F. "**Board**" or "**Board of Directors**" means the governing body, regardless of name, with primary authority to manage the affairs of the Association. The Board is also occasionally referred to as the "Board of Trustees" in the Declaration.
- G. "**Bylaws**" means these bylaws of the Association as they may be amended or restated from time to time, and as duly recorded in the recorder's office of the county in which the Association is located.
- H. "**Declaration**" means the declaration of covenants, conditions, and restrictions of the Association as they may be amended or restated from time to time and as duly recorded in the county in which the Association is located.



- I. **“Director”** means an individual who is properly elected or appointed as a member of the Board of Directors in accordance with these Bylaws. A Director is also occasionally referred to as a “trustee” of the Association in the Declaration.
- J. **“Dwelling”** means a detached single-family residential unit.
- K. **“Good Standing”** means: (1) free from any past-due assessments, fines, or other amounts owed to the Association; and (2) free from any unresolved Violations for which written notice has been issued by the Association. A Member is in Good Standing only if all of the Owner(s) of a Lot and the Resident(s) of a Dwelling constructed on the Lot are in Good Standing and if the Member’s Lot itself is in Good Standing.
- L. **“Governing Documents”** means the Association’s duly recorded Declaration, Plat, and Bylaws; the Association’s Articles of Incorporation; the duly adopted Resolutions of the Board or membership of the Association; and the duly adopted Rules of the Association.
- M. **“Lot”** means any residential building lot shown on the Plat including any Dwelling and other improvements constructed thereon.
- N. **“Manager”** means any Person engaged by the Board to manage the Association as authorized by Article 5.2 of the Declaration. As allowed by law, the Board may delegate any of its duties, powers, and authority to a Manager(s), and acts of the Manager consistent with such delegation shall be considered the acts of the Association and the Board.
- O. **“Member”** means the Owner of a Lot or, if multiple Owners, all such Owners taken together, such that there is a single Member per Lot and such that notice given to any one of such Owners shall be considered notice given to the Member and all such Owners.
- P. **“Minutes”** means an official record of: (1) an action taken in (as opposed to a transcript of) a meeting of Members, a Board meeting, or a meeting of a committee; (2) an action taken by written ballot; and (3) an action taken without a Board meeting. Minutes should include: (i) the name of the Association; (ii) the type of meeting or a description of the proposed action; (iii) the date, time, and place of the meeting or events related to the proposed action; (iv) the names of the Directors, Officers, and Owners or their proxies or attorneys-in-fact present at the meeting or involved in an action; (v) whether a quorum was present at the meeting or in the action; and (vi) whether the Minutes of a previous meeting or action were approved as read, or as corrected if approved.
- Q. **“Nonprofit Act”** means the Utah Revised Nonprofit Corporation Act, Utah Code Sections 16-6a-101 *et. seq.*, as it may be amended from time to time.
- R. **“Officer”** means an individual who is elected or appointed as an officer of the Association by the Board in accordance with these Bylaws.
- S. **“Owner”** means a Person holding a Present Ownership Interest in a Lot. *See also* Attorney-in-Fact and Owner Representative.

- T. **“Owner Representative”** means an individual who is a director, officer, member, manager, trustee, or other authorized representative of an Owner that is a legal entity. Anything contrary notwithstanding, an Owner Representative shall be considered an Owner for purposes of all meetings, proxies, voting, and eligibility requirements described in the Governing Documents.
- U. **“Person”** means a natural person (an individual) and a corporation, trust, partnership, company, or other legal entity.
- V. **“Plat”** means the one or more plat maps describing the real property of and within the Association as such plats may be amended or restated from time to time, and as duly recorded in the county in which the Association is located.
- W. **“Present Ownership Interest”** means, with respect to a Lot, (1) a fee simple interest; (2) a joint tenancy, tenancy in common, or tenancy by the entirety; (3) the interest of a tenant shareholder in a cooperative; (4) a life estate; and (5) an interest held by a beneficiary, as opposed to a trustee or grantor, of a trust by which the Lot is held. Notwithstanding the foregoing, a Present Ownership Interest shall not include a security interest in the Lot such as held under a mortgage, deed of trust, or like instrument.
- X. **“Project”** means all phases of The Communities at Deer Crest as described and illustrated on the Plat including the land, Lots, Dwellings, Common Area, buildings, facilities, structures, appurtenances, improvements, easements, and any Association-owned personal property intended for use in connection therewith.
- Y. **“Resident”** means a natural person who resides in a Dwelling; such a person may be: (1) an Owner; (2) an Owner Representative; (3) a tenant; (4) a dependent or family member of, or member of the same household as, any of the foregoing; or (5) any other Person who resides within the Association. A Resident is also known as an Occupant in the Declaration.
- Z. **“Resolution”** means a written instrument of the Association in its capacity as a nonprofit corporation that describes an action(s) taken or provision(s) adopted by the Board or the membership of the Association. A Resolution is operable under the Nonprofit Act and is superior to and takes precedence over a Rule. A Resolution is void to the extent that it conflicts with applicable law, the Declaration, the Articles of Incorporation, or these Bylaws.
- AA. **“Rule”** means a duly adopted rule as defined by the Act that governs the conduct of Residents or the use, quality, type, design, or appearance of Lots or Dwellings. A Rule, also known as a Project Rule in the Declaration, is not a Resolution or an internal business operating procedure established by the Board for purposes of operation, administration, control, or regulation of the Association in its capacity as a nonprofit corporation.
- BB. **“Violation”** means an act or condition that is not in compliance with the provisions of the Governing Documents.

### **3 HOMEOWNERS ASSOCIATION**

#### **3.1 Organization**

The Association is organized as a Utah nonprofit corporation under, and is subject to, the Nonprofit Act, and is also subject to the Act. No portions of the Project are governed by the Utah Condominium Ownership Act. The Association is not a cooperative.

#### **3.2 Registration**

The Board shall cause the Association to be timely registered in the Utah Department of Commerce Homeowner Associations Registry and shall cause such registration to be timely updated in accordance with Section 57-8a-105 of the Act.

#### **3.3 Duties, Powers, and Obligations**

The Association shall have, exercise, and perform all of the duties, powers, and obligations granted to it under the Nonprofit Act, the Act, other applicable law, the Declaration, the Articles of Incorporation, these Bylaws, and any duly adopted Resolution and Rules. Notwithstanding any of the foregoing, the powers of the Association, exercised through its Board or Members or otherwise, shall be limited and restricted as provided herein.

In general, it is the intent of the Governing Documents that the Association shall have all duties and powers reasonably necessary to regulate and operate the Association and the Common Area for the use, enjoyment, and benefit of the Owners and Residents and their guests and invitees, and to regulate and operate in a manner that makes the Common Area reasonably safe for such persons. Notwithstanding the foregoing, and except as otherwise provided in the Declaration, the Articles of Incorporation, or these Bylaws, the duties and powers of the Association shall not include, and it is restricted from, monitoring, managing, regulating, or otherwise controlling the health, safety, and welfare of such persons themselves or any other individual(s) or that of the Association membership as a whole for any purpose whatsoever.

#### **3.4 Membership**

Membership in the Association is appurtenant to each Lot; the Owner(s) of a Lot shall at all times be a Member of the Association so long as such Owner(s) holds a Present Ownership Interest in the Lot. An Owner's membership shall automatically terminate when the Owner ceases to hold a Present Ownership Interest in the Lot and, upon transfer of such interest, the new Owner(s) succeeding to such interest shall likewise succeed to membership in the Association.

If more than one Person holds a Present Ownership Interest in a Lot, the membership appurtenant to that Lot shall be shared by all such Persons in the same proportion in which such interests are held.

## **4 MEETINGS OF MEMBERS**

### **4.1 Annual Meetings of Members**

As scheduled by the Board, one annual meeting of Members shall be held during the first quarter of each calendar year at a place and time designated by the Board. The primary purpose of the annual meeting shall be to elect members of the Board.

If an annual meeting is not held during the first quarter of a particular year, the Board, or the first group of at least ten percent (10%) of the Members to provide the required notice of a meeting of Members, may schedule the annual meeting to be held as soon as possible thereafter.

The secretary shall take and maintain Minutes of actions taken at all meetings of Members, regardless of meeting type.

### **4.2 Special Meetings of Members**

Special meetings of Members may be called at any time by the Board or upon written request signed by a majority of the Members and provided to the Board. Such a written request shall state the specific purpose for the meeting requested. The Board shall designate the place, time, and purpose of a special meeting.

### **4.3 Electronic Meetings of Members**

To the extent arranged by the Board, any or all Members may participate in an annual, special, or other meeting of Members by, or the meeting may be conducted through the use of, any means of communication by which all individuals participating in the meeting may hear each other during the meeting. A Member participating in such a meeting shall be considered to be present in person at the meeting.

### **4.4 Notice of Meetings of Members**

The Association shall give to each Member entitled to vote at a meeting of Members written notice of the place, date, time, and purpose of the meeting no less than ten (10) days and no more than thirty (30) days before the meeting. Notice shall be mailed to Members via first-class or registered mail, or provided by electronic means such as email or the Association's website, or given as otherwise provided by law.

Written notice of a meeting of Members shall include a description of any matter(s) that must be approved by the Members or for which the Members' approval is sought.

When giving written notice of a special meeting of Members that was requested by a majority of the Members, the Association shall include the specific purpose for the meeting as it was stated in the written request signed by the majority of the Members.

### **4.5 Action by Written Ballot**

At the discretion of the Board, or upon written request signed by a majority of the Members and provided to the Board, any action that may be taken at a meeting of Members may alternatively be taken without a meeting of Members and without prior notice if the Association delivers a proper written ballot to every Member eligible to vote.

The secretary shall take and maintain Minutes of actions taken by written ballot without a meeting of Members.

#### **4.5.1 Effect**

Any action taken by written ballot has the same effect as if the action was taken at a meeting of Members, and may be described as such in any document.

#### **4.6 Quorum at Meetings of Members**

Except as otherwise provided in the Declaration or these Bylaws, the quorum required at a meeting of Members shall be those Owners present in person and by proxy at the meeting.

#### **4.7 Eligibility of Members to Vote**

A Member must be eligible to vote for its vote to be counted. A Member is eligible to vote in a meeting of Members or in an action by written ballot only if that Member is in Good Standing at least thirty (30) days before the date of the meeting of Members or the date a written ballot is postmarked, sent, or otherwise delivered. A Member is in Good Standing only if all of the Owner(s) and Resident(s) of the Member's Lot are in Good Standing and if the Member's Lot itself is in Good Standing. A Member that is not eligible to vote is, for purposes of the Nonprofit Act, not entitled to vote.

#### **4.8 Voting at Meetings of Members**

Any action taken at a meeting of the Members shall be taken by written ballot. Written ballots for such action may be delivered to the Members with written notice of the meeting or at the meeting.

Within no more than ten (10) days of a vote at any meeting of Members, the Association shall provide notice of the action taken by written ballot to the Members. Notwithstanding failure to provide such notice, the action(s) taken shall remain valid.

#### **4.9 Proxy Appointments by Members**

Members may vote in person or by proxy in all meetings of Members.

##### **4.9.1 Content**

With respect to a Member's Lot, a proxy appointment form shall: (1) clearly appoint a named individual who is authorized to vote on behalf of the Member at a meeting(s) of Members; (2) include a statement that the appointing individual signing the proxy appointment form is certifying under penalty of perjury that the provided information is complete, true, and correct and that, if the Lot Owner is a legal entity, the appointing individual is a duly-authorized representative of the Owner for purposes of the proxy appointment (collectively the "Required Proxy Content").

In addition to the Required Proxy Content, each proxy appointment form shall include clearly-identified locations or fields for the appointing individual to provide the following information: (1) the physical address of the Lot for which the proxy is being appointed; (2) the printed name of the individual being appointed; (3) the date of the meeting at which the proxy is to be exercised or other period of time during which the proxy appointment is valid, as allowed by law; (4) the day, month, and year the proxy appointment form was signed;

(5) the appointing individual's signature; and (6) the appointing individual's full legal name (collectively the "Proxy Information").

**Exhibit A** is an example proxy appointment form that meets the requirements of these Bylaws.

#### **4.9.2 Receipt**

An original proxy appointment or a complete copy thereof, electronic or otherwise, must be received by the Association no later than the scheduled date and time of the meeting but no more than one week before such time.

#### **4.9.3 Validity**

Each proxy appointment, or complete copy thereof, provided to the Association must be timely received by the Association. Any proxy appointment not timely received by the Association shall not be considered valid and shall not be effective.

Each proxy appointment returned to the Association shall include all the Required Proxy Content and all of the required Proxy Information. A proxy appointment received by the Association shall not be considered valid and shall not be effective if it does not include all the Required Proxy Content and all of the required Proxy Information or if any of the foregoing is not provided in a reasonably legible form or in the identified locations or fields provided on the proxy appointment form for such information.

If multiple proxies are appointed for a particular Lot, the only valid one is that which was appointed latest in time. If, in the sole discretion of the Board, it is not clear which was appointed latest in time then all shall be considered invalid. Votes by invalid proxy shall be considered invalid.

If an Owner dies or is found incompetent after making a proxy appointment, the Owner's proxy remains valid unless the Association is notified in writing of such before a vote by the proxy.

The duly executed documentation appointing an attorney-in-fact, if timely received by the Association, shall be accepted in lieu of a proxy appointment form.

#### **4.9.4 Revocation**

A proxy appointment may be revoked by the appointing Member or its attorney-in-fact by attending a meeting and voting in person, or by delivering a subsequent proxy appointment form that is received by the Association no later than the scheduled date and time of the meeting but no more than one week before the meeting.

#### **4.10 Conduct at Meetings of Members**

The Board, or its authorized representative, shall preside at all meetings of Members. The secretary shall keep and maintain Minutes of meetings of Members.

All voting, including for Directors, at a meeting of Members shall take place using proper written ballots.

During a meeting of Members, the Board shall provide a reasonable opportunity for Owners to offer comments; the Board may limit such comments to one specific time period during the meeting.

Attendance at meetings of Members is limited to Owners, their proxies, or their attorneys-in-fact, and any Manager or its representatives. Residents and others that are not Owners may not attend meetings of Members.

The Board may adopt further policies and procedures with regard to conduct at meetings of Members.

#### **4.11 Written Ballots**

##### **4.11.1 Content**

Each written ballot shall: (1) briefly describe one and only one proposed action; (2) provide an opportunity to vote for or against the proposed action, or as otherwise appropriate for the proposed action; (3) specify the period of time during which the completed ballot must be received by the Association in order to be valid and counted; (4) indicate the number of valid returned ballots needed to meet quorum requirements; (5) state the percentage or other amount of approvals necessary to approve the proposed action; (6) include a statement that only one vote is allowed per Lot and that if more than one ballot is received by the Association from the Owner(s), proxy(s), or agent(s) for the same Lot then all of the ballots received for that Lot shall be considered invalid and shall not be counted; (7) include a statement that the voter signing the ballot is certifying under penalty of perjury that the provided information is complete, true, and correct and that, if the Owner is a legal entity, the voter is a duly-authorized representative of the Owner for purposes of the action by written ballot; and (8) be accompanied by written information sufficient for Members to reach a reasonably informed decision on the proposed action (collectively the "Required Ballot Content").

In addition to the Required Ballot Content, and with respect to an Owner and its Lot for which a ballot may be cast, each written ballot shall also include clearly-identified locations or fields for the voter to provide the following information: (1) the physical address of the Lot; (2) the printed full legal name of the Owner; (3) an indication as to whether the Owner is a legal entity; (4) the current physical address of the Owner; (5) the voter's printed full legal name, if different than that of the Owner; (6) the voter's current physical address, if different than that of the Owner; (7) the voter's current email address; (8) the voter's current telephone number; (9) the voter's signature; (10) an indication as to whether the voter signing the ballot is: (a) the Owner, (b) the Owner's proxy or agent, or (c) the Owner's authorized representative if the Owner is a legal entity (collectively the "Voting Information").

Except as otherwise provided by the Declaration or these Bylaws, the period of time during which completed ballots must be received by the Association shall be at least thirty (30) days and no more than 90 days, or such other period of time allowed by law.

Except as otherwise provided by the Declaration or these Bylaws, the number of valid ballots required to meet quorum requirements shall be the number of valid ballots timely received by the Association.

Except as otherwise provided by the Declaration or these Bylaws, the percentage or other number of approvals necessary to approve a proposed action shall be a majority of valid ballots cast in approval of a proposed action. Alternatively, if the ballot is for the election of one or more candidates, the candidate(s) receiving the greatest number(s) of votes shall be the percentage or other number of approvals necessary to elect the candidate(s).

A completed written ballot that, after reasonable investigation by and in the judgement of the Board, is deemed to not be what it purports to be: (1) shall not be considered valid and shall not be counted; or (2)

within a reasonable period of time after a vote by written ballot but not to exceed ten (10) days, may be declared invalid and the election results may be adjusted accordingly at the discretion of the Board. Such a declaration shall be in writing signed by a majority of the Directors; such writing shall include the records of the investigation and shall be kept with the Minutes of the action by written ballot.

A written ballot may be in electronic form; signatures on written ballots may be scanned or may be digital or electronic signatures in any form consistent with Utah law.

**Exhibit B** is an example written ballot for voting on a single proposed action that meets the requirements of these Bylaws.

**Exhibit C** is an example written ballot for the election of a Director(s) that meets the requirements of these Bylaws. Each such ballot may need to be accompanied by additional written information as needed for Members to reach an informed decision with respect to the candidates.

#### **4.11.2 Delivery**

Written ballots and any related information shall be delivered to Owners in person, by mail, or by electronic means including email or a website, or delivered as otherwise provided by law.

#### **4.11.3 Receipt**

Members shall be given at least thirty (30) days from the day on which the written ballots and any related information are delivered before their vote by written ballots must be received by the Association, except as otherwise provided by law. Members may return their vote by written ballots, or complete copies thereof, to the Association in person, by mail, by email, or by any other means allowed by law.

Notwithstanding the foregoing, votes by written ballots for a meeting of Members shall be submitted in person or electronically when called for by the Board or other individual presiding at the meeting of Members.

Once a vote by written ballot has been received by the Association, it cannot be revoked.

#### **4.11.4 Validity**

Each vote by written ballot submitted to the Association must be timely received by the Association. Any vote by written ballot not timely received by the Association shall be considered invalid and shall not be counted.

Each vote by written ballot submitted to the Association shall include all the Required Ballot Content and all of the required Voting Information. Any vote by written ballot received by the Association shall be considered in valid and shall not be counted if it does not include all the Required Ballot Content and all of the required Voting Information or if any of the Voting Information is not provided in a reasonably legible form or in the identified locations or fields provided on the written ballot for such information.

If more than one otherwise valid vote by written ballot is received by the Association from the Owner(s), their proxies, and/or agents of a Lot, then all of the vote by written ballots received for that Lot shall be considered invalid and shall not be counted.



#### **4.11.1 No Secret Ballots**

Written ballots, and votes thereby, are not secret ballots, and no secret ballot may be used for any meeting of the Members, for any Board meeting, or for any other Association purpose. All votes by written ballot, or true and complete copies thereof, shall be maintained with the Minutes to which they apply as part of the permanent records of the Association.

### **5 BOARD OF DIRECTORS**

#### **5.1 Number of Directors**

The number of Directors is three (3); that is, the Board shall have positions for three (3) individuals.

#### **5.2 Term of Directors**

Directors shall serve for a term of two (2) years; provided, however, that the initial Board, or an entirely new Board due to all prior Board positions becoming vacant, shall identify one of the three Directors to serve for a one-year term with the other two Directors serving two-year terms. Thereafter, all Directors elected shall serve for a two-year term. Notwithstanding the foregoing, Board members shall continue to serve until their respective successors are elected, or until their deaths, resignations, or removals.

#### **5.3 Eligibility Requirements for Directors**

Each member of the Board shall at all times be an Owner. Notwithstanding the foregoing, if multiple Owners hold a Present Ownership Interest in the same Lot, only one of those Owners can serve as a member of the Board at any one time. An Owner need not be a Resident to be a member of the Board.

Notwithstanding the foregoing, if, after written notice of a meeting of Members for the purpose of electing a Director(s), no Owner volunteers to fill the vacancy on the Board within a reasonable time, such as at an annual meeting of Members, then the remaining Director(s) or, if none, the Manager shall select a non-Member Director to fill the vacancy. The selected non-Member may be any individual including a representative of the Manager.

#### **5.4 Powers and Duties of the Board**

Except as limited in the Declaration or Articles of Incorporation, the Board shall have all the powers and duties provided for by law, including but not limited to administering the Association's affairs, performing the Association's responsibilities, and exercising the Association's rights and powers as set forth in applicable law and the Governing Documents.

The authority of each Director is equal to that of each other Director, regardless of any office each Director may hold.

#### **5.5 Delegation of Powers and Duties of the Board**

To the extent allowed by law, the Board shall have power and authority to delegate from time to time its powers, authorities, duties, and discretions to one or more managers, officers, committees, volunteers, or other agents, subject to any limitations in the Declaration, Articles of Incorporation, or these Bylaws.

Except as limited in applicable law, the Declaration, the Articles of Incorporation, or these Bylaws, the Board acts in all instances on behalf of the Association.

## **5.6 Resignation of Directors**

A Director may resign at any time by delivering a written resignation to the Board. Unless otherwise specified in the written resignation, it shall take effect upon delivery.

Failure by a Director to attend at least two (2) consecutive Board meetings called over a period of at least two (2) consecutive months shall be effective as a resignation by the Director if confirmed by an affirmative vote of the Board, unless the Director notified the Board of his or her inability to attend in writing, electronic or otherwise, in advance of each unattended meeting. Failure by a Director to attend at least four (4) consecutive Board meetings called over a period of at least four (4) consecutive months shall be effective as a resignation by the Director if confirmed by an affirmative vote of the Board, regardless of the Director's notice to the Board. A Director's lack of Good Standing for a period of three (3) consecutive months shall be effective as a resignation of the Director. A Director's resignation under this paragraph shall also be effective as a resignation from any office(s) held by the Director.

At the time a resignation takes effect, voluntary or otherwise, a vacancy on the Board shall exist.

## **5.7 Removal of Directors**

A Director may be removed from the Board at any time with or without cause. Removal of a Director from the Board shall require a vote by written ballot in which at least fifty-one percent (51%) of the Members vote to remove the Director. The vote to remove the Director shall take place only at a special meeting of Members with the written notice stating that the purpose of the meeting is to vote to remove the Director. A vote of the Board shall be insufficient to remove a Director from the Board.

# **6 NOMINATION AND ELECTION OF DIRECTORS**

## **6.1 Nomination of Directors**

Nominations for election to the Board may be made in advance of an annual meeting of Members by written solicitation for nominations. Such solicitation shall be delivered to all eligible Members no less than ten (10) days and no more than thirty (30) days before written notice of an annual meeting of Members. Such solicitation shall indicate: (1) the number of Director to be elected; (2) the term and eligibility requirements for Directors; (3) the date by which written nominations must be received by the Association; and (4) a statement that each nominee must provide a signed writing accepting such nomination and certifying that he or she meets the eligibility requirements for Directors.

All nominations and signed acceptances must be received by the Association no later than three (3) days before the written notice of the annual meeting of Members is sent. Written ballots that include the names of the self-certified nominees as candidates shall be sent with the written notice of the annual meeting of Members.

Nominations for election to the Board may alternatively be made by any Owner from the floor at an annual meeting of Members.

## **6.2 Election of Directors**

The election of Directors shall be by written ballot. The candidates receiving the greatest number of votes shall be elected. Cumulative voting is not authorized.

A Director may be re-elected to serve consecutive terms as a Director.

## **6.3 Vacancies on the Board**

In the event of the death, resignation, or removal of a Director, his or her successor shall be selected by the remaining Director(s) and shall serve for the remainder of the term of his or her predecessor.

Notwithstanding the foregoing, if the Director was properly removed by the Members, that Director shall not be eligible for selection to serve the remainder of his or her term.

If all positions on the Board are vacant, the Manager shall, in accordance with these Bylaws, call a special meeting of the Members to elect a new Board of Directors. If the Association does not have a Manager, or if the Manager fails to call a special meeting of the Members within two weeks of the entire Board becoming vacant, the first group of ten percent (10%) or more of the Members to provide proper notice of a special meeting of the Members on the door of each Dwelling shall, in accordance with these Bylaws, elect a new Board of Directors at the noticed special meeting of the Members.

## **7 MEETINGS OF THE BOARD**

### **7.1 Quarterly Board Meetings**

Meetings of the Board shall be held quarterly, or more frequently as determined by the Board, and shall be held at a place and time designated by the Board.

The secretary shall take and maintain Minutes of actions taken at all Board meetings, regardless of meeting type.

A gathering of some or all of the members of the Board at which they do not conduct or vote on Association business shall not be considered a Board meeting.

### **7.2 Electronic Board Meetings**

As arranged by the Board, any or all Directors may participate in a Board meeting by, or the meeting may be conducted through the use of, any means of communication by which all individuals participating in the meeting may communicate with each other during the meeting. A Director participating in such a meeting shall be considered to be present in person at the meeting.

### **7.3 Notice of Board Meetings to Directors**

Notice of Board meetings shall be provided to Directors by email or other electronic means at least 48 hours before a Board meeting, or by any other lawful means. This notice requirement shall be deemed waived for a Board meeting held to address an emergency for which 48 hours' notice is not reasonable.

Directors shall provide an email address to the Board for purposes of notice of Board meetings.

#### **7.4 Notice of Board Meetings to Owners**

The Association shall provide notice of a Board meeting by email, or by any other lawful means, to Owners that have requested in writing to be notified of Board meetings and have provided a valid email address, unless notice of the Board meeting is included in a Board meeting schedule that was previously provided to Owners, or the Board meeting is to address an emergency and each Director receives notice of the emergency Board meeting less than 48 hours before the meeting.

Notice of Board meetings to Owners shall state the place, date, and time of each Board meeting. If any Director may participate in a Board meeting via electronic means, the notice to Owners shall provide the information necessary to allow attending Owners to also participate via the electronic means.

#### **7.5 Action without a Board Meeting**

As further described in the following subsections, the Board may take any action without a Board meeting that may be taken at a Board meeting by obtaining written approval, electronic or otherwise, of a proposed action by a majority of the Directors. Any action so approved shall have the same effect as though taken at a Board meeting, and may be described as such in any document.

The secretary shall take and maintain Minutes of actions taken without a meeting.

##### **7.5.1 Written Notice**

Written notice of an action to be taken without a Board meeting shall be sent by any Director to all members of the Board. Such notice shall state: (1) the action to be taken; (2) a reasonable time by which each Director must respond to the notice; (3) that failure to respond by the time stated in the notice will have the same effect as: (a) abstaining in writing by the time stated in the notice; and (b) failing to demand in writing by the time stated in the notice that the action not be taken without a Board meeting. Such notice may be sent to Directors electronically or otherwise. Notwithstanding, parts (2), (3)(a), and (3)(b) of the notice requirements in this paragraph shall be deemed waived if all Directors properly vote in response to the notice.

##### **7.5.2 Voting**

In response to a written notice of an action to be taken without a Board meeting, each Director may, not later than the time stated in the notice, return his or her signed writing to the secretary either: (1) for the action; (2) against the action; (3) abstaining from voting; or (4) demanding that the action not be taken without a Board meeting. Such a signed writing may be returned electronically or otherwise.

A Director's failure to respond to the written notice by the time stated therein shall have the same effect as the Director properly and timely demand in writing that the action not be taken without a Board meeting.

In the event of a Director's timely demand that action not be taken without a Board meeting, the action cannot be taken without a Board meeting. Otherwise, the action is approved only if a majority of the Directors vote in approval of the action within the time stated in the notice.

Signatures on writings may be scanned or may be digital, or electronic signatures in any form consistent with Utah law. An email or other electronic transmission from a Director that clearly communicates his or her vote, abstention, or demand regarding an action shall be considered a signed writing.

### **7.5.3 Effect**

Any action taken without a Board meeting has the same effect as the action taken at a Board meeting, and may be described as such in any document.

### **7.6 Quorum at Board Meetings**

A majority of the number of Directors shall constitute a quorum sufficient for the Board to conduct Association business. A majority of the Directors is determined based on the number of positions on the Board regardless of whether or not such positions are all filled or vacant.

### **7.7 Proxy Appointments by Directors**

Directors shall attend Board meetings themselves as opposed to by proxy; no proxy appointment by a Director for purposes of a Board meeting or action without a Board meeting shall be effective.

### **7.8 Conduct at Board Meetings**

Attendance at Board meetings is limited to Directors, any Officer or Manager invited by the Board, and those Owners that have requested in writing to be notified of Board meetings, or their attorneys-in-fact; otherwise, non-Owners, Residents or otherwise, shall not attend Board meetings.

Owners who attend Board meetings may be present for all discussion, deliberation, and decisions of the Board. Notwithstanding the foregoing, the Board may close a Board meeting to Owners in order to: (1) consult with an attorney for the purpose of obtaining legal advice; (2) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (3) discuss a personnel matter; (4) discuss a matter relating to contract negotiations, including review of a bid or proposal; (5) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (6) discuss a delinquent assessment or fine.

Owners shall comply with all reasonable policies and procedures established by the Board for their attendance, and shall remain silent except when comments are solicited by the Board. The Board may limit Owner comments to a specific period of time during the meeting.

The Board may adopt further policies and procedures with regard to conduct at Board meetings.

### **7.9 Action by the Board**

Any act of the Board shall be valid when a quorum is present at the time of the act unless otherwise limited by law, the Declaration, the Articles of Incorporation, or these Bylaws. Each Director present shall have one vote.

## **8 OFFICERS**

### **8.1 Elected and Appointed Officers**

The elected officers of the Association shall be: (1) a president, (2) a vice-president, (3) a secretary, and (4) a treasurer.

The Board may appoint additional officers from time to time, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may determine and memorialize in the Minutes of the Board meeting at which such officers are appointed.

### **8.2 Term of Officers**

Elected officers shall serve for a term of one (1) year and shall continue to serve until their respective successors are elected, or until their deaths, resignations, or removals. Elected officers shall assume their duties at the close of the Board meeting at which they are elected.

Appointed officers shall serve until their deaths, resignations, or removals, with or without cause, by the Board.

### **8.3 Eligibility Requirements for Officers**

The president, vice-president, and treasurer shall at all times be Directors. The office of secretary may be held by any Officer, elected or appointed.

An appointed Officer may be any individual deemed qualified by the Board whether or not that individual is an Owner.

No individual, Director or otherwise, shall be eligible to hold more than two (2) offices at the same time.

### **8.4 Election of Officers**

At the first Board meeting following the election or selection of a new Director(s), the Board shall elect: (1) a president, (2) a vice-president, (3) a secretary, and (4) a treasurer.

An elected Officer may be elected to serve consecutive terms.

### **8.5 State Registration Requirement**

Within ninety (90) days of the election of a new president of the Association, and in accordance with Section 57-8a-105 of the Act, the Association shall update its registration with the Utah Department of Commerce to reflect the name, address, telephone number, and email address of the new president, or other information as may be required, who shall be considered the "Chair" (or other Association official as may be required) for purposes of such registration.

### **8.6 Duties of Officers**

Elected Officers shall, subject to the control of the Board, perform the duties provided in this section and such other duties as may be prescribed by the Board.

### **8.6.1 President**

The president, or other individual(s) appointed by the Board from time to time, shall: (1) preside at all meetings of Members and of the Board; (2) conduct or appoint another to conduct such meetings; (3) manage the administration of the Association's affairs; (4) manage the performance of the Association's responsibilities; (5) manage the exercising of the Association's rights; (6) manage the enforcement of the provisions of the Governing Documents; and (7) carry out all other duties prescribed by the Governing Documents and applicable law.

### **8.6.2 Vice-President**

The vice-president, or other individual(s) appointed by the Board from time to time, shall: (1) during the absence or disability of the president, perform the duties of the president; and (2) perform such other duties as may be prescribed by the president or the Governing Documents.

### **8.6.3 Secretary**

The secretary, or other individual(s) appointed by the Board from time to time, shall: (1) attend meetings of the Association; (2) record all votes and minutes of meetings in records to be kept for that purpose; (3) give notice of meetings of Members and of the Board; (4) maintain a list of Members entitled to vote at each meeting of Members, the list indicating the Owners' names and corresponding Lot addresses; (5) create and maintain a record of Owners who attend a meeting of Members, including a signature of each attending Owner; (6) maintain Association documents and records as required by law; and (7) perform such other duties as may be prescribed by the Board or the Governing Documents.

### **8.6.4 Treasurer**

The treasurer, or other individual(s) appointed by the Board from time to time, shall: (1) have custody of the Association funds and securities; (2) maintain complete and accurate accounts of receipts and disbursements in the Association's books; (3) deposit all money and other valuables in the name and to the credit of the Association in such depositories as may be designated by the Board; (4) disburse the funds of the Association as may be ordered or authorized by the Board, and preserve proper vouchers for such disbursements; (5) prepare the Association's annual financial report; (6) render to the president at the regular Board meetings, or whenever required, an account of the financial condition of the Association; (6) render a full financial report at the annual meeting of Members; (7) upon request, be furnished by all Officers and Association agents with such reports and statements as may be required regarding all financial transactions of the Association; and (8) perform such other duties as may be prescribed by the Board or the Governing Documents.

## **8.7 Delegation of Duties of Officers**

Unless otherwise limited by law or the Governing Documents, an elected Officer may delegate and or all of his or her duties to any other Officer, elected or appointed, and may engage one or more volunteer assistants from time to time.

An appointed Officer may not delegate duties without written approval of the Board but may engage one or more volunteer assistants from time to time. The Board may withdraw its written approval to delegate duties at any time with or without cause.

Any or all of the duties of any Officer may be performed by or through a Manager, or be delegated to the Manager, at the discretion of the Board as determined by written agreement with the Manager or otherwise.

### **8.8 Resignation of Officers**

An Officer may resign at any time by delivering a written resignation to the Board. Unless otherwise specified in the written resignation, the resignation shall take effect upon delivery.

### **8.9 Removal of Officers**

An elected or appointed Officer may be removed from office at any time with or without cause. Removal of an Officer from office shall require a majority vote of the Board. Notwithstanding, an Officer removed from office who is also a Director shall remain a Director unless also properly removed as a Director.

## **9 NOMINATION AND ELECTION OF OFFICERS**

### **9.1 Nomination of Officers**

Nominations for election to a particular office may be made by any member of the Directors from the floor of a Board meeting, or by an eligible candidate providing to the Board a signed writing seeking an office.

### **9.2 Election of Officers**

The election of elected Officers shall be by majority vote of the Board and shall take place at the first Board meeting following an annual meeting of Members. The candidates receiving the greatest number of votes shall be elected. Cumulative voting is not authorized.

An elected Officer may be re-elected to serve consecutive terms in the same office.

### **9.3 Vacancies of Offices**

In the event of the death, resignation, or removal of an elected Officer, his or her successor shall be selected by the Board and shall serve for the unexpired term of his or her predecessor.

## **10 COMMITTEES**

The Board may appoint such committees as it deems appropriate in carrying out the purposes of the Association. Except as otherwise provided by the Declaration or Articles of Incorporation, a committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board. The Board may terminate any committee or committee member, or revoke any assigned powers, duties, or responsibilities, at any time with or without cause. All such actions shall be memorialized in the Minutes of the Board meeting(s) at which the actions were taken.

With regard to committees and their composition, powers, duties, responsibilities, proceedings, conduct, or any other matter, the Board may adopt further policies and procedures that are not inconsistent with the Declaration or these Bylaws.



Except as provided by applicable law, the Declaration, the Articles of Incorporation, and these Bylaws, all committees shall be strictly advisory in nature; the Board is the only body authorized to act for and in behalf of the Association and its Members.

## **11 RULEMAKING PROCEDURES**

### **11.1 Authority for Rulemaking**

In accordance with Section 57-8a-217 of the Act and other applicable law, and as limited by Section 57-8a-218 of the Act, the Board shall have the authority to adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce Rules.

### **11.2 Procedures for Rulemaking**

Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding a Rule, the Board shall: (1) at least fifteen (15) days before the Board meets to consider any of the foregoing actions, deliver notice to all Members of the Board meeting at which the action will be considered; and (2) provide an open forum at the Board meeting giving Owners an opportunity to be heard at the Board meeting before the Board takes the action.

The Board shall deliver a notice of any changes to the Rules, along with a publication, electronic or otherwise, or a link thereto, of the current version of all the Rules, to all Members within fifteen (15) days of the Board meeting at which the changes were made. Each such publication shall include: (1) the name of the Association; (2) an indication that the publication contains the most current Rules of the Association; and (3) the date of the Board meeting at which the most recent Rules changes were made.

A Rule may not be inconsistent with any provision of applicable law, the Declaration, the Articles of Incorporation, these Bylaws, or any duly adopted Resolution. Any individual Rule that includes any such inconsistency shall be considered entirely void, without severability, and unenforceable.

### **11.3 Notice for Rulemaking**

Notices relating to Rule changes shall be provided in writing to Members via first-class or registered mail, by electronic means including email or posting on the Association's website, or as otherwise prescribed by law.

### **11.4 Effective Date of Rules**

A Rule, or any change thereto, shall be effective ten (10) days after the date that a publication containing all of the most current Rules of the Association is provided to the Members by first-class or registered mail, electronic means including email or posting on the Association's website, or as otherwise provided by law.

### **11.5 Applicability of Rules**

Owners, Residents, and, to the extent allowed by law, all Persons who enter upon or in any way make use of the Common Area, shall be subject to enforcement of the Governing Documents.

Owners and their Residents shall be jointly and severally liable for violations of the Governing Documents by non-owner Residents of the Owners' Dwellings, including by tenants of their Dwellings. Tenants are not

responsible for the violations of Owners with respect their rental Dwellings provided the tenants do not contribute to such violations.

## **11.6 Limitations on Rulemaking**

In addition to other limitations prescribed by the Act and other applicable law, the Declaration, the Articles of Incorporation, and these Bylaws, the rulemaking power of the Association, whether exercised through its Board or Members or otherwise, shall be limited as prescribed in the following subparts. Any act or other exercise of power by the Association in violation of the following limitations shall be entirely void, without severability, and unenforceable. Notwithstanding, nothing in these limitations shall limit the Association or any other Person from taking lawful actions against illegal acts, or from recovering damages in relation to such illegal acts or arising out of the Association's violation of these limitations.

### **11.6.1 Equal Treatment**

A Rule shall treat similarly situated Owners and Residents similarly.

### **11.6.2 United States Flag**

The Association shall not prohibit, by Rule or otherwise, a Resident from displaying the United States flag inside a Dwelling or on a Lot to the extent the display complies with United States Code, Title 4, Chapter 1, The Flag, and with Utah Code Title 57, Chapter 24, Display of Flag. Notwithstanding this prohibition and in relation to displaying the United States flag, no Owner, Resident, or any other Person has a right to utilize or modify Common Area in a manner that is not authorized by, or is inconsistent with, the Governing Documents.

### **11.6.3 Inconsistent Actions**

Except as allowed by applicable law, the Association, whether through its Board or otherwise, shall not act or fail to act in a manner that is inconsistent with the provisions of applicable law and the Governing Documents.

### **11.6.4 Conflicting Rules**

The Association shall not establish any Rule, Resolution, or the like that conflicts with the Act, the Nonprofit Act, other applicable law, the Declaration, the Articles of Incorporation, or these Bylaws. Any Rule, Resolution, or the like that conflicts in any manner with any of the foregoing shall be entirely void, without severability, and unenforceable.

### **11.6.5 Owner Easements**

Except as allowed by law, the Declaration, or these Bylaws, or for purposes of reasonable maintenance or repairs or the like, the Association shall not limit or restrict an Owner's right and easement of use and enjoyment of the Common Area as such appertains to that Owner's Lot. Notwithstanding the foregoing, and except for purposes of reasonable maintenance or repairs or the like, the Association shall not restrict or limit access to Dwellings via Common Area streets, parking areas, driveways, sidewalks, walkways, and the like.

Notwithstanding anything to the contrary, the Association shall have the right and power to temporarily close to its membership any portion of the Common Area for purposes of reasonable maintenance or repairs or the like.

#### **11.6.6 Personal Property**

Except as allowed by law, the Declaration, or these Bylaws, the Association shall not interfere with, limit, or restrict personal property that may be kept at, or transported to and from, a Lot; nor shall the Association discriminate in any manner whatsoever against any Person in relation to their personal property or that of any other Person(s).

#### **11.6.7 Religion**

Except as allowed by law, the Declaration, or these Bylaws, the Association shall not interfere with, limit, or restrict any Person's exercise of religion; nor shall the Association discriminate in any manner whatsoever against any Person in relation to their exercise of religion or that of any other Person(s); nor shall religion or the exercise thereof be a subject or condition of any Rule, Resolution, or the like.

#### **11.6.8 Speech**

Except as allowed by law, the Declaration, or these Bylaws, the Association shall not interfere with, limit, or restrict any Person's right of free speech; nor shall the Association discriminate in any manner whatsoever against any Person in relation to their free speech or that of any other Person(s); nor shall free speech or the right thereto be a subject or condition of any Rule, Resolution, or the like.

#### **11.6.9 Assembly**

Except as allowed by law, the Declaration, or these Bylaws, the Association shall not interfere with, limit, or restrict any Owner's or Resident's right to peaceably assemble at a Lot, virtually, or outside of the Association, including with such Owner's or Resident's guests, invitees, or others Persons; nor shall the Association discriminate in any manner whatsoever against any Person in relation to peaceably assembling at a Lot, virtually, or outside of the Association; nor shall the right to peaceably assemble at a Lot, virtually, or outside of the Association be a subject or condition of any Rule, Resolution, or the like.

#### **11.6.10 Association**

Except as allowed by law, the Declaration, or these Bylaws, the Association shall not interfere with, limit, or restrict any Owner's or Resident's right to associate or the Owner's or Resident's right to privacy in relation thereto; nor shall the Association discriminate in any manner whatsoever against any Person in relation to the right to associate or the right to privacy in relation thereto or that of any other Person(s); nor shall the right to associate or the right to privacy in relation thereto be a subject or condition of any Rule, Resolution, or the like.

#### **11.6.11 Arms**

The Association shall not interfere with, limit, or restrict any individual's right to keep, bear, and lawfully carry and use arms, including but not limited to firearms, ammunition, and all appurtenances related thereto; nor shall the Association discriminate in any manner whatsoever against any individual in relation to the right to keep, bear, and lawfully carry and use arms or that of any other Person(s); nor shall the right to keep, bear, and lawfully carry and use arms be a subject or condition of any Rule, Resolution, or the like.

#### **11.6.12 Lots**

Except as allowed by law, the Declaration, or these Bylaws, the Association and its Board Directors, Officers, committee members, volunteers, agents, employees, and contractors shall have no right to enter into or onto, or to make use of, a Lot or Dwelling without the express permission of its Owner; nor shall such entry or use

of a Lot or Dwelling, except with the express permission of its Owner, be a subject or condition of any Rule, Resolution, or the like.

#### **11.6.13 Working from Home**

Except as allowed by law, the Declaration, or these Bylaws, the Association shall not interfere with, limit, or restrict any Resident's right to work from their Lot or the Dwelling that is their place of residence; nor shall the Association discriminate in any manner whatsoever against any individual in relation to working from their Lot or the Dwelling that is their place of residence; nor shall working from a Resident's Lot or the Dwelling that is their place of residence or not working from such be a subject or condition of any Rule, Resolution, or the like.

As used herein, the phrase "working from a Resident's Lot or the Dwelling that is their place of residence" and the like refers to working from within the Association for or on behalf of an employer rather than working at the employer's office, facility, or other location. Such an employer may be one's own business. Notwithstanding the foregoing, such working may not involve having more than the occasional non-Resident customer, client, co-worker, shipping or receiving personnel, or the like enter the physical boundaries of the Association. The Association may establish Rules or the like that reasonably regulate such occasional entry within the physical boundaries of the Association.

#### **11.6.14 Fines**

The Association shall not impose excessive fines nor shall fines be imposed for violations unless supported by reasonable oath or affirmation of one or more witnesses to such violations. Notwithstanding the foregoing, the Association may impose fines and limit the use of Common Area as prescribed by law, the Declaration, the Articles of Incorporation, or these Bylaws. The fine amounts authorized by these Bylaws shall not be considered excessive.

#### **11.6.15 Household Composition**

Except as allowed by law, the Declaration, or these Bylaws, the Association shall not interfere with, limit, or restrict the right of Owners or Residents to determine the composition of their households; nor shall the Association discriminate in any manner whatsoever against any Person in relation to household composition or that of any other Person(s); nor shall household composition be a subject or condition of any Rule, Resolution, or the like.

#### **11.6.16 Privacy**

Except as allowed by law, the Declaration, or these Bylaws, the Association shall not violate the right of Persons to privacy and to be secure in their persons, vehicles, houses, and papers and effects, whether such papers and effects are electronic or digital or otherwise, against unreasonable searches and seizures.

The Association shall not have the power or authority to require any individual to obtain or to not obtain any type of medical treatment, procedure, condition, or the like, including but not limited to any vaccination, or to provide any information regarding the foregoing, or to provide, disclose, or utilize any evidence or verification thereof for any purpose whatsoever, regardless of its source; nor shall the Association discriminate in any manner whatsoever against any Person in relation to an individual(s) obtaining, providing, disclosing, or utilizing the same or not obtaining, providing, disclosing, or utilizing the same; nor shall any of the foregoing or anything in relation thereto be a subject or condition of any Rule, Resolution, or the like.

The Association shall not have the power or authority to require any individual to utilize or to not utilize any medical device or health-related protective device for any purpose whatsoever, including but not limited to

face coverings, or to provide, disclose, or utilize any evidence or verification thereof for any purpose whatsoever, regardless of its source; nor shall the Association discriminate in any manner whatsoever against any Person in relation to an individual(s) utilizing, providing, or disclosing the same or not utilizing, providing, or disclosing the same; nor shall any of the foregoing or anything in relation thereto be a subject or condition of any Rule, Resolution, or the like.

Except as otherwise allowed by law, the Declaration, or these Bylaws, the Association shall not have the power or authority to require any individual to provide or disclose any health-related information whatsoever; nor shall the Association discriminate in any manner whatsoever against any Person in relation to the health-related information, or a lack thereof, of any individual(s); nor shall the Association collect or maintain any such health information without the written authorization of the individual, or if a minor the individual's parent or guardian, to whom such information pertains, subject to that individual's ability to withdraw such authorization in writing at any time; nor shall any of the foregoing or anything in relation thereto be a subject or condition of any Rule, Resolution, or the like.

## **12 ENFORCEMENT PROCEDURES**

### **12.1 Authority for Enforcement**

In accordance with Section 57-8a-208 of the Act and other applicable law, the Association shall have the right to enforce the Governing Documents and may assess fines against Owners for violations of the Governing Documents. The Board may not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action. The Board shall ensure consistent administration and enforcement of the Governing Documents.

Failure to enforce any provision of the Governing Documents shall not constitute a waiver or modification of that provision.

### **12.2 Reporting a Violation**

Any Owner or Resident may report an alleged violation of the Governing Documents to the Board or Manager. For such a report to be actionable, it must include: (1) the name, address, email address, and phone number of the Owner or Resident making the report; (2) the name and address of the Owner or Resident, or the address of the Lot, allegedly in violation; (3) a description of the violation including the approximate date and time it occurred or was witnessed by the individual making the report; (4) identification of the provision(s) of the Governing Documents that was allegedly violated; and (5) a certification by the individual making the report substantially stating the following, "I CERTIFY UNDER PENALTY OF PERJURY THAT I PERSONALLY WITNESSED THE VIOLATION I AM REPORTING AND THAT, TO THE BEST OF MY KNOWLEDGE, THE INFORMATION I AM PROVIDING IS TRUE AND CORRECT. I understand that I may be called as a witness of the violation if my report results in an informal hearing before the Board." A violation report should include pictures of the violation when possible.

**Exhibit D** is an example violation report form that meets the requirements of these Bylaws.

**NOTE:** an alleged violation is not an actual violation until confirmed by the Board or Manager and a Notice of Violation or a Notice of Fine, as applicable, has been issued.

### 12.3 Effect of Violations

An Owner, Resident, or Lot shall be deemed not in Good Standing during the period of time beginning on the effective date of any notice of violation or notice of fine issued to such Owner, Resident, or Lot and extending through the date that the violation has been resolved and any fines and related charges issued have been fully paid. Owners that are not in Good Standing, and Owners of Lots that are not in Good Standing, shall be ineligible to vote in Association elections. An issued notice of violation and an issued notice of fine shall each be considered notice of such ineligibility.

### 12.4 Notice of Violation

In the event of a violation of the Governing Documents, the Association should issue a notice of violation against the offending party or the offending Lot, as the case may be.

A notice of violation shall only be issued for a violation of a Rule, covenant, condition, or restriction that is found in the Governing Documents.

#### 12.4.1 Content

A notice of violation shall be in writing and shall include: (1) identification of the Lot and, as applicable and available, the party in violation; (2) a brief description of the violation; (3) the date on or about which the violation occurred or was discovered; (4) identification of the provision(s) of the Governing Documents that was violated; (5) a statement that a fine may be assessed if: (a) the violation remains unresolved beyond a stated period of time (which period of time shall be not less than one (1) day and not more than ten (10) days from the date of the notice of violation, or as otherwise provided by law); or (b) a similar violation occurs within one (1) year from the date of the notice of violation; and (6) a statement explaining how the violation can be resolved.

**Exhibit E** is an example notice of violation that meets the requirements of these Bylaws.

#### 12.4.2 Delivery

A notice of violation should be delivered via registered or certified mail, return receipt requested, but may be sent in any manner authorized by law.

If the offending party is a tenant of a Dwelling that is being rented, the notice of violation should be delivered to both the tenants and the Owner of the rental Dwelling.

Copies of all issued notices of violation shall be maintained in the records of the Association.

#### 12.4.3 Effective Date

A notice of violation is effective at the earliest of the following: (1) the date received; (2) five (5) days after the date of mailing; or (3) the date a receipt is signed by or on behalf of the addressee when the notice is sent via registered or certified mail, return receipt requested. Any period of time for resolution stated in a notice of violation shall begin on the effective date of the notice.

## 12.5 Notice of Fine

Before a notice of fine for a violation can be issued, a notice of violation for a similar violation must have first been issued pursuant to Section 57-8a-208 of the Act.

In the event of a violation of the Governing Documents, and after the issuance of a preceding notice of violation or a notice of fine for a similar violation, the Association should issue a notice of fine against the offending party and/or the offending Lot, as the case may be, provided that: (1) the violation remained unresolved after the period of time for resolution stated in the preceding notice of violation or notice of fine; or (2) the violation occurred within a year of the effective date of the preceding notice of violation or a notice of fine.

A notice of fine shall only be issued for a violation of a Rule, covenant, condition, or restriction that is found in the Governing Documents.

### 12.5.1 Content

A notice of fine shall be in writing and shall include: (1) identification of the Lot and, as applicable and available, the party in violation; (2) a brief description of the violation; (3) the date on or about which the violation occurred or was discovered; (4) identification of the provision of the Governing Documents that was violated; (5) the date on which the preceding notice(s) of violation or notice or fine was sent; (6) the amount of the fine being assessed and where it is specified in the Governing Documents; (7) a statement that the amount of the fine shall be assessed as of the date of the notice of fine; (8) a statement that: (a) the fine is due and payable immediately or as otherwise provided by the Governing Documents, whichever is later, (b) that late charges may apply if the fine is not timely paid, (c) that interest may apply if the fine is not timely paid, (d) that Lots and/or Owners with past-due amounts are deemed not in Good Standing and thus become ineligible to vote in Association elections, and (e) that the fine may constitute a lien that may be enforced by sale of the Lot; (9) a statement that an additional fine may be assessed if: (a) the violation remains unresolved beyond a stated period of time (which period of time shall be not less than one (1) day and not more than ten (10) days from the date of the notice of fine, or as otherwise provided by law); or (b) a similar violation occurs within one year from the date of the written notice of violation; and (10) a statement explaining how the violation can be resolved.

**Exhibit F** is an example notice of fine that meets the requirements of these Bylaws.

### 12.5.2 Delivery

A notice of fine should be delivered via registered or certified mail, return receipt requested, but may be sent in any manner authorized by law.

If the offending party is a tenant of a Dwelling that is being rented, the notice of fine should be delivered to both the tenants and to the Owner of the rental Dwelling.

Copies of all issued notices of fines shall be maintained in the records of the Association.

### **12.5.3 Effective Date**

A notice of fine is effective at the earliest of the following: (1) the date received; (2) five (5) days after the date of mailing; or (3) the date the receipt is signed by or on behalf of the addressee when the notice is sent via registered or certified mail, return receipt requested. Any period of time for resolution stated in a notice of fine shall begin on the effective date of the notice.

## **12.6 Schedule of Fines**

### **12.6.1 First Violation**

A written notice of violation shall be issued for a first violation; no fine may be assessed.

### **12.6.2 Second Violation**

A fine in the amount of \$50 (fifty US dollars) shall be assessed for: (1) a preceding violation that was not resolved within the time stated in the preceding notice; and (2) a second violation that is similar to and occurs within a year of the first violation.

### **12.6.3 Third Violation**

A fine in the amount of \$100 (one hundred US dollars) shall be assessed for: (1) a preceding violation that was not resolved within the time stated in the preceding notice; and (2) a third violation that is similar to and occurs within a year of the second violation.

### **12.6.4 Fourth Violation**

A fine in the amount of \$150 (one hundred and fifty US dollars) shall be assessed for: (1) a preceding violation that was not resolved within the time stated in the preceding notice; and (2) a fourth or subsequent violation that is similar to and occurs within a year of the third violation.

## **12.7 Amount of Fines**

The Board may by Resolution increase the amount of the fine stated herein for a second violation; in so doing, the fines for the third and fourth violations shall automatically increase by the same amount.

## **12.8 Assessment of Fines**

The amount of a fine shall be assessed against a Lot's and its Member's account and, as applicable, against the account of a tenant Resident(s) of the Dwelling as of the effective date of a notice of fine.

If a particular violation continues unresolved through a fourth violation (i.e., a violation occurs that results in an initial Notice of Violation and that violation continues unresolved for three subsequent Notices of Fine) the Association may submit the violation to an attorney for resolution. In such event, the Owner(s) of the Lot and, as applicable based on responsibility for the violation, the Resident(s) of the Dwelling shall be jointly and severally liable for all costs related to submission to an attorney for resolution, including collection costs.



### **13 TRANSFER FEE AND REINVESTMENT FEE COVENANT**

Pursuant to Section 16-6a-302(r) of the Nonprofit Act, Utah Code 57-1-46 Transfer Fee and Reinvestment Fee Covenants, and Article 5.9 of the Declaration, the Association hereby establishes a transfer fee in the form of the following reinvestment fee covenant.

#### **13.1 Reinvestment Fee Covenant**

With respect to each and every conveyance of a Dwelling to a new Owner, including the first conveyance to the first owner of the Dwelling, a fee in the maximum amount allowed by law as it may change from time to time, currently one-half percent (0.5%) of the value of the Dwelling, (the "Reinvestment Fee") shall be paid to the Association.

The Reinvestment Fee shall be paid by the buyer of the Dwelling unless otherwise agreed in writing by the buyer and the seller, and shall be in addition to any pro rata share of assessments due and adjusted at settlement.

The existence of this covenant (the "Reinvestment Fee Covenant") precludes the imposition of an additional reinvestment fee covenant on the burdened property. The purpose of the amount required to be paid under this covenant is to facilitate the maintenance of common areas and facilities, and is required to benefit the Project.

To the fullest extent practicable, the Reinvestment Fee shall be collected at the closing of the purchase/sale transaction by a title company, escrow company, or other person involved with the transaction, and paid directly to the Association.

Funds obtained from payment of all Reinvestment Fees shall be allocated solely to the Reserve Fund.

The obligation to pay the Reinvestment Fee shall be a joint and several personal and continuing obligation of the seller and buyer regardless of whether the buyer acquired title by regular conveyance or pursuant to a foreclosure sale (judicial, non-judicial, or otherwise). Notwithstanding, conveyance of a Dwelling by inheritance, probate, or the like, or from an Owner to a trust or similar structure of which the Owner is directly or indirectly a beneficiary, including a living trust, shall not be subject to the Reinvestment Fee.

### **14 BUDGET AND RELATED MATTERS**

Consistent with Article 7.2.3 of the Declaration, the following provisions related to the Association's budget are hereby adopted.

#### **14.1 Budget Composition**

The Association's budget shall, for a given fiscal year, include line items for at least the following budget components:

##### **14.1.1 Dues Income**

This budget line item represents the Association's total annual income from Assessment payments anticipated during the fiscal year.

**14.1.2 Reinvestment Fee Income**

This budget line item represents the Association's total annual income from reinvestment fees anticipated during the fiscal year.

**14.1.3 Miscellaneous Income**

This budget line item represents the Association's total annual income from interest, fines, fees, charges, and other amounts anticipated during the fiscal year.

**14.1.4 Insurance Expenses**

This budget line item represents the Association's total annual insurance expenses for insurance premiums of the Association anticipated during the fiscal year.

**14.1.5 Common Expenses**

This budget line item represents the Association's total annual expenses for the Common Expenses of the Association anticipated during the fiscal year. This line item should be further broken down to include sub line items representing at least the following Association expenses: (1) insurance; (2) legal; (3) utilities; (4) snow removal; (5) landscape maintenance; (6) general maintenance and repairs; (7) management; and (8) miscellaneous.

**14.1.6 Reserve Component**

Pursuant to Section 57-8a-211(6) of the Act, this budget line item represents the total annual reserve amount that the Association plans to deposit into its reserve fund during the fiscal year.

**14.1.7 Additional Line Items**

The Association may include additional line items in its budget as needed.

**14.2 Reserve Fund**

Pursuant to Section 57-8a-211 of the Act, the Board shall establish a reserve fund that shall be maintained in an account(s) separate from all other Association funds. The reserve fund is reserved, and shall only be used, for repairing, replacing, and restoring Common Area that has a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years, but not for Common Expenses, ordinary maintenance expenses, or capital improvements.

**14.3 Insurance Fund**

Pursuant to Section 57-8a-405(8) of the Act, the Board shall establish and maintain an insurance fund, whether deposited in a separate account or held with other Association funds, in an amount equal to the amount of the Association's insurance policy deductible or, if the deductible exceeds \$10,000, in an amount of not less than \$10,000. The insurance fund shall be used only for insurance deductible purpose and any amounts expended shall be replenished within sixty (60) days from the operating funds of the Association, by Special Assessment, and/or from the Association's reserve fund.

## **15 RESERVE ANALYSIS**

Pursuant to Section 57-8a-211, the Board shall have a reserve analysis conducted no less frequently than every six (6) years and updated no less frequently than every three (3) years. Each such analysis shall be conducted or updated by a competent third-party provider experienced in conducting such analyses.

## **16 DELINQUENCY AND RELATED MATTERS**

The following regulations are hereby adopted pursuant to at least Section 57-8a-216(2)(h) of the Act, Section 16-6a-302(2)(c) of the Nonprofit Act, and Article 7.7 of the Declaration.

### **16.1 Delinquency**

Any Assessment, fee, charge, interest accrued, or other amount due and payable to the Association that is not paid in full by its due date shall be considered delinquent.

### **16.2 Annual Assessment Installments**

Each year's Annual Assessment shall be paid in substantially equal monthly installments.

### **16.3 Due Dates**

Each monthly installment of the Annual Assessment shall be due and payable in full on or before the first day of the month.

Each Special Assessment shall be due and payable in full, or in installments, and on or before the due dates as such are determined in writing by the Board.

### **16.4 Partial Payment**

Partial payments shall be credited first to collection costs (including attorney fees), then to interest accrued, then to late charges, and then to Assessments owed in order of oldest to newest.

### **16.5 Late Charge**

Consistent with Section 57-8a-218(14)(c) of the Act and pursuant to Article 7.1 of the Declaration, the Association shall charge a late charge in an amount of \$25 (twenty-five US Dollars) or 10% (ten percent) of the delinquent amount owed to the Association, whichever is greater.

Pursuant to Article 7.8.1 of the Declaration, a late charge shall be charged against any Assessment, or installment thereof, that is not paid in full within thirty (30) days after which such Assessment was due.

### **16.6 Interest**

Consistent with Section 57-8a-208(3)(c) of the Act and pursuant to Article 7.8.1 of the Declaration, interest shall accrue to the Association at a rate of 18% (eighteen percent) on each delinquent Assessments owed to the Association with such interest accruing as of the due date an amount that becomes delinquent.

## **16.7 Collection**

Consistent with Section 57-8a-301 of the Act and pursuant to Articles 7.1 and 7.8.5 of the Declaration, the Association may engage one or more agents to perform collection and other related tasks, and may disclose to its agents any personal information of Owners, Residents, and other parties reasonably necessary to perform such collection and other related tasks, even if such information is otherwise protected or considered private.

Past due amounts owed the Association by any party under the Governing Documents, including any Assessments, fees, late charges, and interest accrued, that are delinquent may be submitted for collection given not less than thirty (30) days written notice of collection pursuant to Article 7.7 of the Declaration. The owing party(s) shall pay all delinquent amounts owed together with any and all related costs, fees, late charges, and interest allowed by law and provided for in the Governing Documents. Should collection be performed by a third-party agent, the owing party(s) hereby covenants and agrees to pay all related collection costs and fees, including a fee in the amount of the maximum percentage allowed by law of the total delinquent amounts as well as all legal and other fees and costs related to their collection, with or without suit, including administrative fees, attorney fees, court costs, filing fees, and all other costs and fees related to the delinquent amounts and their collection. This provision shall remain in force against all parties owing any amount to the Association both during and after their membership or residency therein, or after having entered upon the Common Area or within the jurisdiction of the Association.

## **16.8 Joint and Several Liability**

All Owners of a Dwelling shall be jointly and severally liable for all amounts owed to the Association in relation to the Dwelling or any of its Owners. Should a non-Owner Resident of a Dwelling, or a family member, guest, or invitee of an Owner or Resident, owe an amount to the Association, each such owing party along with all Owners of the Dwelling shall be jointly and severally liable for such such amount.

## **17 INSURANCE**

### **17.1 Directors and Officers Insurance**

Pursuant to Article 9.1.4 of the Declaration, the Association shall obtain and maintain in force directors and officers liability insurance protecting the Association and its Board members, officers, committee members, volunteers, employees, and managers against claims including but not limited to wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). Such insurance shall include coverage for: (1) monetary and non-monetary claims; (2) claims made under any fair housing act or similar laws; (3) any form of discrimination or civil rights violations; and (4) defamation.

### **17.2 Fidelity Insurance**

Pursuant to Article 9.1.4 of the Declaration, the Association shall obtain and maintain in force insurance covering the theft and embezzlement of funds that shall provide coverage for: (1) an amount of not less than the sum of three months of Annual Assessments in addition to the prior calendar year's highest monthly balance of all Association accounts, funds, investments, and other financial assets combined; and (2) theft or

embezzlement of such by the Association's Board, Directors, Officers, committee members, volunteers, employees, or Managers or their employees.

### **17.3 Insurance Requirement**

**NOTICE: THE ASSOCIATION'S INSURANCE DOES NOT COVER DWELLINGS WITHIN THE ASSOCIATION OR THE PERSONAL PROPERTY OR LIABILITY OF THE OWNERS, RESIDENTS, OR THEIR GUESTS AND INVITEES.**

The Association shall obtain insurance as required under Part 4 of the Act, the Declaration, and these Bylaws, and may obtain insurance that provides more or additional coverage than required thereby. For purposes of the Act, the term Dwelling as defined in the Declaration means "detached dwelling" as that term is used in the Act.

### **17.4 Right to Negotiate**

Each Owner hereby appoints the Association as its attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, execution of all documents including releases of liability, and performance of all other acts necessary to administer Association insurance and any related claim. This power-of-attorney shall be irrevocable and binding on heirs, personal representatives, successors, and assigns of each Owner.

### **17.5 Dwelling Insurance**

**THE OWNER(S) OF EACH DWELLING SHALL OBTAIN AND MAINTAIN IN FORCE AT LEAST PROPERTY AND LIABILITY INSURANCE THAT COVERS THE DWELLING IN AT LEAST AN AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT. THE ASSOCIATION DOES NOT, AND SHALL NOT BE RESPONSIBLE TO, PROVIDE ANY INSURANCE WHATSOEVER FOR THE DETACHED DWELLINGS LOCATED THEREIN.**

**THE ASSOCIATION SHALL NOT BE LIABLE FOR AND IS NOT REQUIRED TO FILE CLAIMS AGAINST ANY OF ITS INSURANCE POLICIES FOR ANY DAMAGE OR LIABILITY THAT SHOULD OR WOULD HAVE BEEN COVERED UNDER AN OWNER'S INSURANCE POLICY.**

## **18 CORPORATE RECORDS**

### **18.1 Record Keeping**

Consistent with Section 57-8a-227(1) of the Act and Section 16-6a-1601(5) of the Nonprofit Act and in addition to all other requirements under applicable law, the Association shall keep copies of the following records (the "Records") at its principal office: (1) the Declaration; (2) the Articles of Incorporation; (3) these Bylaws; (4) any adopted Resolutions; (5) the Minutes of all meetings of Members held over the most recent three (3) year period; (6) the Minutes of all Board meetings held over the most recent three (3) year period; (7) records of all actions taken without a meeting over the most recent three (3) year period; (8) all written communications to Members for the most recent three (3) years period; (9) a list of the names, addresses, and email addresses of the current Directors and Officers; (10) the Association's most recent annual and other

published financial statements, if any, for periods ending during the last three (3) years; (11) the most recent budget of the Association; (12) the most recent reserve study of the Association; and (13) certificates of insurance for each insurance policy held by the Association, or the policies themselves.

## **18.2 Record Availability**

The Association shall make the Records available to Owners, free of charge, through the Association's website. If the Association does not have an active website, physical copies of the Records shall be made available to the Owners by appointment during regular business hours at its principal office or that of its Manager.

An Owner may request in writing to inspect or copy a Record. Such a written request shall include: (1) the Association's name; (2) the Owner's name; (3) if the Owner is a legal entity, copies of entity records showing that the requesting party is an authorized representative of the Owner; (4) the address of the Owner's Lot; (5) the Owner's or authorized representative's email address; and (6) a description of the specific Record(s) being requested.

If an Owner requests the Association to provide it with a copy or scan of a Record, the Owner shall pay to the Association an amount that includes ten (10) cents per page and \$15 per hour for the Association's agent's time, or the actual amount if the copy or scan is provided by a third-party provider; all such amounts shall be considered an assessment against the Owner.

## **19 AMENDMENTS**

### **19.1 Amendment of Bylaws**

These Bylaws may be amended by the approval of at least sixty-seven percent (67%) of the Members in Good Standing. Such approval to amend these Bylaws shall be obtained by action by written ballot.

A Director may execute, certify, and record any duly approved amendment of these Bylaws. Any such amendment shall be prepared at the request of the Board by an attorney licensed to practice law in the State of Utah and who specializes in Utah homeowners association law.

### **19.2 Amendment Effective Date**

Amendments to these Bylaws shall not be effective until duly recorded in the recorder's office of the county in which the Association is located.

## **20 PROCEDURAL IRREGULARITIES**

### **20.1 Waiver of Irregularities**

No Person other than an Owner may make any claim or the like against the Association in relation to procedural inaccuracies and irregularities. All procedural inaccuracies and irregularities, and any claims, causes of action, or damages of any kind related thereto, in: (1) calls to, notices of, and the manner of conducting a meeting; (2) the manner of voting; (3) the form and handling of proxies; (4) the manner of asserting Persons

present at the meeting; (5) the manner of taking action or making decisions; (6) the manner of accepting or counting votes; (7) the manner of taking Minutes or the content thereof; and (8) the manner of enforcing the Governing Documents **shall be deemed waived under the following circumstances:** (a) if the objecting Owner did not object within thirty (30) days of a violation enforcement action taken; (b) if the objecting Owner was in attendance at the meeting, but the issue upon which the objection is based was perceptible and no objection was made at the meeting; (c) if the objecting Owner was not in attendance at the meeting but proper notice of the meeting was given; (d) if the objecting Owner was not in attendance at the meeting and proper notice of the meeting was not given, but the Owner had actual notice of the meeting before it occurred; (e) if the objecting Owner was not in attendance at the meeting, proper notice of the meeting was not given, the Owner did not have actual notice of the meeting before it occurred, but the Owner did not object within thirty (30) days of receiving notice of the occurrence of the meeting or of an action, vote, or decision thereat; and (f) if a decision, vote, or action was taken without a meeting, but the Owner did not object within thirty (30) days of receiving notice of the decision, vote, or action taken.

## **20.2 Objections to Irregularities**

All objections to procedural inaccuracies and irregularities, except those made at a meeting, shall be made in a writing that is signed by the objecting Owner and provided to the Board. The date on which the writing is received by the Board shall control for purposes of waiver.

Whether at the meeting or in writing, objections must be specific, must include identification of the particular provision of the Governing Documents or other law that is alleged to have been violated, and must include a brief statement of the facts supporting the alleged violation.

Any purported objection to procedural inaccuracies and irregularities that does not comply with the foregoing requirements shall not be considered a valid objection.

## **20.3 Non-Waivable Irregularities**

Any procedural inaccuracy and irregularity that is the result of fraud or that was caused knowingly and intentionally in violation the Governing Documents or applicable law shall not be waived.

# **21 ASSUMPTION OF RISK, RELEASE OF LIABILITY, AND INDEMNIFICATION**

## **21.1 General Assumption of Risk**

In consideration of use of the Common Area, including but not limited to any of the following that currently exist, or may be constructed in the future, within the Association: (1) water systems and features, and related equipment and facilities, including but not limited to any pools, hot tubs, splash pads, decks, tables, chairs, equipment, sprinklers, irrigations systems, and other water systems; (2) equipment and facilities including but not limited to buildings, clubhouses, kitchens, fitness rooms and related equipment, game rooms and related equipment, theater rooms and related equipment, restrooms, laundry rooms, parking areas, walkways, streets, and grass areas; (3) gathering areas including but not limited to pavilions and related tables, chairs, and other equipment, both outdoors and indoors; (4) play areas including but not limited to children's play areas and related sand boxes, playgrounds, play equipment, and other related equipment, both outdoors and indoors; and (5) all other common areas, property, equipment, and facilities of every kind owned or maintained by the

Association now and in the future, **each Person that enters upon or makes use of the Common Area in any way shall be deemed to ACKNOWLEDGE, ACCEPT, AND ASSUME ALL RISK related thereto**, including but not limited to risk of temporary and permanent personal injury, illness, disability, paralysis, death, and harm of any kind, and property damage of any kind, in any way arising from or related to such use. Each such Person is further deemed to understand and acknowledge that such use of the Common Area may involve risks that include but are not limited to accident, injury, death, sensitivities to and injuries arising from pool or other chemicals, slips and falls, trip hazards, cardiovascular stress, the reckless conduct of others, equipment malfunctions and failures, and other apparent, hidden, unforeseen, and unforeseeable dangers. Each such Person is further deemed to understand and acknowledge that such use of the Common Area is not or may not be supervised by the Association or its agents, that the Association does not employ lifeguards or other staff to protect the Person's interests, and that the Person is fully and solely responsible for their own proper and careful use of the Common Area regardless of its condition. As part of accepting all risk, each such Person is further deemed to acknowledge, represent, and covenant that the Person has, or will immediately upon entering upon or making use of the Common Area, inspect and carefully consider the Common Area, and that such entering upon or making use of the Common Area constitutes the Person's acknowledgment that the Common Area has been inspected and carefully considered by the Person, and that the Person finds and accepts the Common Area as being safe and reasonably suited for the purposes of such entering upon or use.

### **21.2 Health Assumption of Risk**

In further consideration of use of the Common Area, **each Person that enters upon or makes use of the Common Area in any way shall be deemed to acknowledge the possible existence of all health hazards, including without limitation those related to viruses, bacteria, fungi, germs, spores, protozoa, pathogens, diseases, bodily fluids, and other contaminates, (the "Health Hazards") and to ACKNOWLEDGE, ACCEPT, AND ASSUME ALL RISK related to such Health Hazards.** Each such Person shall be deemed to understand and acknowledge that the Person may be exposed to such Health Hazards from or while using the Common Area, and that such risks include without limitation temporary and permanent injury, illness, disability, and death. Each such Person shall be deemed to understand and acknowledge that the risk of becoming exposed to or infected by such Health Hazards from or while using the Common Area may result from the actions, omissions, or negligence of the Person or others, including but not limited to those of the Association and any of its agents, contractors, directors, officers, volunteers, Owners, or Residents, and their families, children, and guests. Each such Person is further deemed to understand and acknowledge that the condition of the Common Area with respect to Health Hazards is not or may not be monitored by the Association or its agents, that the Association does not employ Health Hazard monitors, mitigators, or other staff to protect the Person from Health Hazards, and that the Person is fully and solely responsible for their own proper and careful use of the Common Area with respect to possible Health Hazards.

### **21.3 Covenants, Conditions, Restrictions, and Rules of the Association**

Each Person that enters upon or makes use of the Common Area in any way shall be deemed to understand and acknowledge that the Association makes the Common Area available for authorized use only—that is, for the use and enjoyment of the Owners, Residents, and their families, guests, and invitees, and that entry upon and use of the Common Area is strictly voluntary and not required in any way. Each such Person shall be deemed to understand and acknowledge that the Person has an affirmative obligation to seek out, read,



understand, and comply with all covenants, conditions, restrictions, and Rules of the Governing Documents, including as they relate to the Common Area, and that the Person shall be fully and solely responsible for ensuring that the Person's family, guests, and invitees also abide by all such covenants, conditions, restrictions, and rules, and that the Person shall be fully and solely responsible for the actions and inactions of all such family, guests, and invitees, and for any harm or damage they may cause directly or indirectly, whether such family, guests, or invitees are the Person's own or those of their family, guests, or invitees. Each such Person is further deemed to certify and covenant that, while using the Common Area, the Person shall obey all instructions given either verbally or in writing by the Association or its agents, and that the Person shall be fully and solely responsible to ensure that the Person's family, guests, and invitees do likewise.

#### **21.4 Warnings, Rules, and Regulations Regarding Health Hazards**

Each Person that enters upon or makes use of the Common Area in any way shall be deemed to understand and acknowledge that federal, state, or local agencies or health departments may have and may yet promulgate warnings, rules, or regulations related to the Health Hazards, that the Person has an affirmative obligation to seek out, read, understand, and comply with all such warnings, rules, and regulations as they may issue or change from time to time, and that the Person shall fully comply with all such warnings, rules, and regulations while upon or making use of the Common Area, and that the Person shall be fully and solely responsible to ensure that the Person's family, guests, and invitees do likewise.

#### **21.5 No Responsibility**

Each Person that enters upon or makes use of the Common Area in any way shall be deemed to understand and acknowledge that the Association and its agents are not responsible for any lost, stolen, or damaged personal property belonging to the Person or that of any of the Person's family, guests, or invitees including while such property is located in, on, or around the Common Area or other facilities or property within the Association, including any parking lots.

#### **21.6 Release, Waiver of Liability, and Indemnification**

In further consideration of use of the Common Area, each Person shall be deemed to FOREVER WAIVE any and all claims and causes of action against the Association and its agents, contractors, Directors, Officers, volunteers, Managers, Owners, Residents, and insurers (the "Released Parties") arising out of or related in any way to the Person's entry upon or use of the Common Area, and such entry upon or use by any of the Person's family, guests, or invites of the Common Area. Each such Person is further deemed to FOREVER RELEASE and covenant to HOLD HARMLESS the Released Parties from any and all liability, alleged or otherwise, to the Person or to any of the Person's family, guests, and invitees in relation to any claims or causes of action or the like arising out of or in any way related to the ACTS, OMISSIONS, or NEGLIGENCE of the Association and its agents, Directors, Officers, volunteers, and Managers. Each such Person is further deemed to covenant to INDEMNIFY and DEFEND the Released Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, claims, suits, judgments, costs, expenses, and disbursements of any kind or nature whatsoever, including but not limited to attorneys' fees, with or without suit, and all related costs, (the "Indemnified Liabilities") caused directly or indirectly to the Person or to any of the Person's family, guests, or invitees by the Association or its agents, Directors, Officers, volunteers, or Managers, or caused directly or indirectly to any of the Released Parties by the Person or any of the Person's family, guests or invitees.

## **22 INDEMNIFICATION**

### **22.1 Indemnification**

The Association shall indemnify the Directors, Officers, committee members, volunteers, Managers, employees, and other agents of the Association against any and all claims, actions, suits, proceedings, costs, expenses, and liabilities whatsoever, including without limitation attorneys' fees, with or without suit, court costs, and all related expenses, arising against them personally in relation to the good faith exercise of their powers, duties, and responsibilities in any way related to the Governing Documents. The indemnification provided herein shall continue as to any Person who has for any reason ceased to be a Director, Officer, committee member, volunteer, Manager, employee, or other agent of the Association and shall inure to the benefit of the heirs, executors, and administrators of all such Persons.

## **23 GENERAL**

### **23.1 Principal Place of Business**

The principal place of business of the Association shall be at the address indicated in the Utah Department of Commerce Homeowner Associations Registry as such may change from time to time.

### **23.2 Applicability**

These Bylaws shall apply to and be binding upon all Owners and Residents, as well as all Persons who enter upon or in any way make use of the Common Area.

### **23.3 Conflicts**

Notwithstanding anything contrary in the Governing Document and pursuant to Section 57-8a-228(5) of the Act, in the event of any conflict, the provisions of (1) the Act, (2) the Nonprofit Act, (3) the Plat and Declaration equally, (4) the Articles of Incorporation, (5) these Bylaws, (6) duly adopted Resolutions of the Association's membership from newest to oldest, (7) duly adopted Resolutions of the Board from newest to oldest, and (8) duly adopted Rules shall prevail in that order.

### **23.4 Contact Information**

Upon becoming an Owner or a Resident, and upon reasonable later request of the Association, each Owner and Resident shall provide the Association with at least the following contact information: (1) their full legal name and, if a legal entity, the State in which it was formed; (2) the address of their primary residence or, if a legal entity, the address of its primary office; (3) the address of the Lot by which they are an Owner or Resident; (4) their email address; (5) and their telephone number. Regardless of any waiver of notice provided to the Association, it shall be the continuous duty of each Owner and Resident to timely keep their contact information current with the Association. Owners and Residents that fail to keep their contact information current with the Association, whether or not they reside within the physical boundaries of the Project, shall be deemed not in Good Standing and in violation of this Declaration. In addition to being deemed not in Good Standing, if the Association provides any notice to an Owner or Resident based on outdated contact

information that has not been timely updated by the Owner or Resident, such notice shall be considered properly provided.

### **23.5 Compensation**

No Director, elected Officer, committee member, or other volunteer shall receive compensation for their services. However, Directors, Officers, and other volunteers may be reimbursed for actual expenses incurred in the performance of their duties if such expenses were approved in writing in advance by the Board; otherwise, such expenses may be reimbursed at the discretion of the Board.

A compensated Manager, contractor, employee, or other Person compensated by the Association may, unrelated to their compensated services, serve as a Director or an appointed Officer in accordance with these Bylaws but shall not receive additional compensation therefor.

### **23.6 No Offsets**

All assessments and fees shall be payable at the time and in the amount specified by the Association in accordance with the Governing Documents, and no offsets against such amounts by Owners and Residents shall be permitted for any reason, including but not limited to: (1) claims that the Board is not properly exercising its duties or power; (2) claims in the nature of offset or that the Association owes the Owner or Resident money; or (3) claims that the Association is not complying with its obligations as provided for in the Governing Documents.

### **23.7 No Estoppel or Reliance**

With respect to these Bylaws, no one may rely upon any statement or authorization from the Board or anyone else that is contrary to these Bylaws, regardless of the circumstances. No claim of estoppel, waiver, or similar equitable claim or defense may be raised by anyone in relation to any alleged reliance.

### **23.8 Fiscal Year**

Pursuant to Article 7.2.2 of the Declaration, the fiscal year of the Association shall begin on the first day of January and end on the last day of December of each year, except that the first fiscal year shall begin on the date of the Association's incorporation.

### **23.9 Waiver**

Failure of the Association at any time to enforce any aspect of these Bylaws or the other Governing Documents shall not be construed as a waiver of the Association's right to enforce such aspects, or as a waiver, abandonment, or modification of such aspects.

### **23.10 Time Limit for Claims**

Any claim, action, litigation, or the like arising out of these Bylaws or the other Governing Documents brought by any party subject thereto against the Association or its Board, Director, Officer, agent, volunteer, Manager, contractor, or employee must be commenced within twelve (12) months of the cause of such claim, action, litigation, or the like. Any such claim, action, litigation, or the like not brought against such a party within twelve (12) months shall be considered forever waived as to that party.

**23.11 Governing Law**

These Bylaws and the other Governing Documents shall be governed by and construed in accordance with the laws of the State of Utah without regard to principles of conflicts of laws.

**23.12 Jurisdiction**

Any action, suit, or other proceeding arising out of these Bylaws or the other Governing Documents shall be brought in a court of the State of Utah or a federal court located therein. To the extent allowed by law, all Owners and Residents, and all Persons who at any time have entered upon or in any way made use of any Common Area, irrevocably consent and submit to the exclusive jurisdiction of such courts for the purpose of any such action, suit, or proceeding.

**23.13 Severability**

Should any term, condition, provision, or portion of these Bylaws or the other Governing Documents, or any other aspect of such be held invalid or unenforceable for any reason (an "Invalid Term"), such Invalid Term shall be removed or restructured and then interpreted as determined by a court of competent jurisdiction so as to accomplish the intent of the Invalid Term in view of the Governing Documents, and the balance of such shall remain in full force and effect.

**23.14 Gender and Number**

All references herein to any party shall be read with such changes in gender and number as the context or reference requires.

**23.15 Headings**

Unless explicitly stated otherwise, headings in the Governing Documents are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned have executed these Bylaws as of the date first written below.

THE COMMUNITIES AT DEER CREST OWNERS ASSOCIATION, INC.

By: [Signature]  
Robert Alexander Bell, Director

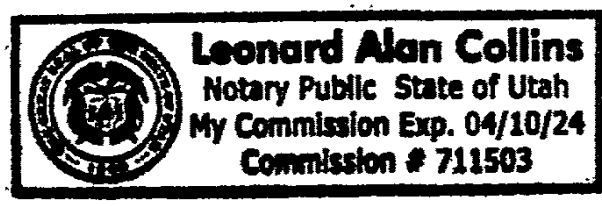
By: [Signature]  
Ralph Caddell, Director

By: [Signature]  
Jamison Hill, Director

State of Utah )  
County of Cache ) SS.

On the 23 day of January, in the year 2024, each of the above-name individuals, proven by satisfactory evidence, personally appeared before me and each, while under oath or affirmation, stated that he or she is a duly-authorized Director of the Association, did voluntarily sign this document on behalf of the Association, and acknowledged that the Association thereby executed the same.

(Seal)



[Signature]  
NOTARY PUBLIC SIGNATURE

EXHIBIT A – Example Proxy Appointment Form

**PROXY APPOINTMENT FORM**

Lot Address: \_\_\_\_\_

BE IT KNOWN, that I, \_\_\_\_\_, the undersigned, hereby appoint \_\_\_\_\_ as my true and lawful attorney-in-fact and agent for me, and in my name, place and stead, to vote as my proxy at the association meeting to be held on \_\_\_\_\_ or any adjournment thereof (the “Meeting”), for the transaction of any business which may legally come before the meeting, and for me and in my name, to act as fully as I could do if personally present, and I herewith revoke any other proxy heretofore given.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_,

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

**BY SIGNING THIS PROXY APPOINTMENT I CERTIFY UNDER PENALTY OF PERJURY THAT THE PROVIDED INFORMATION IS COMPLETE, TRUE, AND CORRECT AND THAT, IF THE OWNER IS A LEGAL ENTITY, I AM A DULY-AUTHORIZED REPRESENTATIVE OF THE OWNER FOR PURPOSES OF THIS PROXY APPOINTMENT.**

EXHIBIT B – Example Written Ballot for a Proposed Action

**Title of Proposed Action**

(Include a *description* of the proposed action here)

Yes                       No

Lot Address: \_\_\_\_\_

Owner Name: \_\_\_\_\_

Is the Owner a Legal Entity?  Yes  No; **NOTE:** Owner's full legal name required.

Owner Address: \_\_\_\_\_

Voter Name: \_\_\_\_\_ Title: \_\_\_\_\_

Required only if different than Owner Name; **NOTE:** Voter's full legal name required.

Voter Address: \_\_\_\_\_

Required only if different than Owner Address.

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Signature: \_\_\_\_\_

I am signing as:  an Owner,  an Owner's Proxy or agent, or  an Authorized Representative of an Owner that is a legal entity.

**BY SIGNING THIS BALLOT I CERTIFY UNDER PENALTY OF PERJURY THAT THE PROVIDED INFORMATION IS COMPLETE, TRUE, AND CORRECT AND THAT, IF THE OWNER IS A LEGAL ENTITY, I AM A DULY-AUTHORIZED REPRESENTATIVE OF THE OWNER FOR PURPOSES OF THIS ACTION BY WRITTEN BALLOT.**

**IMPORTANT:** All information requested above is required unless indicated otherwise. Your fully-completed ballot must be received by the Association no later than *<date>* or it will be invalid and not counted. The number of valid written ballots required to meet quorum requirements for each proposed action is the number of ballots timely received by the Association. 'Yes' votes on a majority of valid ballots are required to approve the proposed action.

**WARNING: ONLY ONE VOTE IS ALLOWED PER LOT.** If more than one written ballot is received by the Association from the Owner(s) or its agent for the same Lot, then all of the written ballots received for that Lot shall be considered invalid and shall not be counted.

EXHIBIT C – Example Written Ballot for an Election of Candidate(s)

**Election Ballot**

Election of Directors

Vote for no more than two (2) of the following candidates:

- Candidate 1
- Candidate 2
- Candidate 3

Lot Address: \_\_\_\_\_

Owner Name: \_\_\_\_\_

Is the Owner a Legal Entity?  Yes  No; **NOTE:** Owner's full legal name required.

Owner Address: \_\_\_\_\_

Voter Name: \_\_\_\_\_ Title: \_\_\_\_\_

Required only if different than Owner Name; **NOTE:** Voter's full legal name required.

Voter Address: \_\_\_\_\_

Required only if different than Owner Address.

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Signature: \_\_\_\_\_

I am signing as:  an Owner,  an Owner's Proxy or agent, or  an Authorized Representative of an Owner that is a legal entity.

**BY SIGNING THIS BALLOT I CERTIFY UNDER PENALTY OF PERJURY THAT THE PROVIDED INFORMATION IS COMPLETE, TRUE, AND CORRECT AND THAT, IF THE OWNER IS A LEGAL ENTITY, I AM A DULY-AUTHORIZED REPRESENTATIVE OF THE OWNER FOR PURPOSES OF THIS ACTION BY WRITTEN BALLOT.**

**IMPORTANT:** All information requested above is required unless indicated otherwise. Your fully-completed ballot must be received by the Association no later than *<date>* or it will be invalid and not counted. The number of valid written ballots required to meet quorum requirements for each proposed action is the number of ballots timely received by the Association. The two (2) candidates receiving the most votes will be elected. **If more than two (2) candidates are selected on this ballot then it shall be considered invalid and shall not be counted.**

**WARNING: ONLY ONE VOTE IS ALLOWED PER LOT.** If more than one written ballot is received by the Association from the Owner(s) or its agent for the same Lot, then all of the written ballots received for that Lot shall be considered invalid and shall not be counted.



EXHIBIT D – Example Violation Report Form

**VIOLATION REPORT FORM**

*<name of HOA>*

My Name: \_\_\_\_\_, Phone: \_\_\_\_\_

My Address: \_\_\_\_\_, Email: \_\_\_\_\_

Name and Address of violator or Lot in violation:

\_\_\_\_\_

Description, date and time of violation:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Provision(s) of Governing Documents that was violated:

\_\_\_\_\_

Please provide pictures of the violation if available.

My Certifying Signature: \_\_\_\_\_

**I CERTIFY UNDER PENALTY OF PERJURY THAT I PERSONALLY WITNESSED THE VIOLATION I AM REPORTING AND THAT, TO THE BEST OF MY KNOWLEDGE, THE INFORMATION I AM PROVIDING IS TRUE AND CORRECT. I understand that I may be called as a witness of the violation if my report results in an informal hearing before the Board.**

EXHIBIT E – Example Notice of Violation

**NOTICE OF VIOLATION**

*<date of notice>*

Lot Address: \_\_\_\_\_

This is a formal notice that you are in violation of the following sections of the Association's governing documents: *<list applicable sections here>*.

*<copy relevant text of applicable sections here>*

The specific violation occurred or was discovered on or about *<date>* and was: *<brief description of the violation and, as applicable and available, the party involved>*.

This violation can be resolved by: *<description of how to resolve the violation>*.

Failure to resolve this violation by *<date>*, or  any occurrence of a similar violation within one year of the date of this notice, may result in a fine being assessed against the Lot and/or the owner(s) and/or resident(s) of the Lot.

Failure to timely resolve this violation may result in further action including but not limited to a lien against the Lot, legal proceedings, foreclosure, and/or termination of rights to vote.

All communication regarding this notice shall be in writing to:

The Homeowners Association  
*<email address>*

## EXHIBIT F – Example Notice of Fine

**NOTICE OF FINE**

&lt;date of notice&gt;

Lot Address: \_\_\_\_\_

This is a formal notice that you are in violation of the following sections of the Association's governing documents: <list applicable sections here>.

<copy relevant text of applicable sections here>

The specific violation occurred or was discovered on or about <date> and was: <brief description of the violation and, as applicable and available, the party involved>.

On <date(s)> a prior notice(s) was issued for a similar violation(s) of the same sections of the Association's governing documents.

**FINE AMOUNT:** \_\_\_\_\_. This amount must be paid  by <date> or  within <time period> days of the date of this notice. Late payments may be subject to late charges, interest, collection costs, and/or attorney fees. Lots and/or owners with amounts past due may be deemed not in good standing and thus become ineligible to vote in Association elections. Past-due amounts may constitute a lien against the Lot which may be foreclosed.

This violation can be resolved by: <description of how to resolve the violation>.

Failure to resolve this violation by <date>, or  any occurrence of a similar violation within one year of the date of this notice, may result in another fine being assessed against the Lot and/or the owner(s) and/or resident(s) of the Lot.

Failure to timely resolve this violation may result in further action including but not limited to a lien against the Lot, legal proceedings, foreclosure, and/or termination of rights to vote.

All communication regarding this notice shall be in writing to:

The Homeowners Association  
<email address>

**EXHIBIT G – Legal Description**

Lots 1-94 together with Tracts A and B and all lanes, courts, and other common area as shown on the plat entitled "THE COMMUNITIES AT DEER CREST" that was recorded in the Cache County recorder's office on November 1, 2005, as entry no. 903427, which plat was amended as "THE COMMUNITIES AT DEER CREST (2007 AMENDMENT)" and recorded in the Cache County recorder's office on October 2, 2007, as entry no. 955932, such Lots also known as parcel nos. 05-109-0001 – 0094, and such common area also known as parcel no. 05-109-0095.

Except that, since the above plats were recorded, county records currently show that: (1) Lots 4, 6, and 7 have been merged into Lot 7; (2) Lots 44 and 45 have been merged into Lot 44; and (3) Lots 89 and 90 have been merged into Lot 90. The remaining 90 Lots are also known as parcel nos. 05-109-0001 – 0003, 0005, 0007 – 0044, 0046 – 0088, and 0090 – 0094.