

WHEN RECORDED, RETURN TO:

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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ESCAPES AT EDGEWATER  
(formerly Edgewater Beach Resort)

A Residential and Commercial Planned Unit Development

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter “Declaration”) is made on the date evidenced below by HWL Edgewater, LLC (hereafter “Declarant”).

## RECITALS

A. The Declarant is the owner of certain land in Weber County, Utah, shown on the Record of Survey Map entitled, “Edgewater Beach Resort Phase 1 – 1st Amendment,” to be recorded in the Recorder’s Office of Weber County, state of Utah, (the Recorder’s Office) and more particularly described in **Exhibit A** attached hereto and made part hereof.

B. It is the intention of the Declarant to develop the land subject to this Declaration as an expandable multi use planned unit development consisting of residential detached single family homes, attached single family townhomes, and commercial retail units, and unto that end the Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens, as set forth herein for the following primary purposes:

(1) To insure a uniform plan and scheme of development and uniformity in the development of the Lots (as hereinafter defined) in the Community, and

(2) To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, and the maintenance of the Common Areas and the buildings in the Community, including but not limited to easements, charges and liens, herein below set forth, and for the creation of an Association to be delegated and assigned the powers of maintaining and administering the Common Areas (as hereinafter defined) and other improvements, and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created upon the Property designated by this Declaration; which association shall be established for the purpose of exercising the functions mentioned herein.

C. A single homeowners association shall manage the affairs of all of the Lots (consisting of the detached single family homes, attached single family townhomes, and commercial retail lots)

D. The Project is not a condominium or cooperative project.

NOW, THEREFORE, the Declarant does hereby declare as follows:

## ARTICLE I - DEFINITIONS

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

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

**1.2** “*Additional Land*” means any land that may be annexed to this Declaration thereby expanding the community in the manner set forth in Article III.

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

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

**1.5** “*Board of Directors*” shall mean and refer to the Board of Directors of the Association.

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

**1.7** “*Commercial Unit*” means a Unit utilized primarily for commercial use.

**1.8** “*Common Area*” means, refers to, and includes: (a) The real property and interests therein, excluding all Lots as defined herein, which comprise the Project; (b) All common areas and facilities designated as such elsewhere herein or on the Plat, except as otherwise stated herein and except any portion of the Condominium Project; (c) All installations for and all equipment connected with the furnishing of the Project’s utility services and existing for common use, such as electricity, gas, water and sewer, except as otherwise provided herein; (d) In general, all apparatus, installations and facilities included within the Project and existing for common use; (e) The Project’s roads and parking areas, excluding all Lots; (f) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; and (g) All Limited Common Areas and facilities (except inasmuch as it is treated differently than Common Area elsewhere herein for maintenance, use, or insurance purposes).

**1.9** “*Common Expenses*” means expenses of administration, maintenance, repair, or replacement of the common areas and facilities and the expenses incurred by the Association in carrying out the responsibilities and duties mandated by the Governing Documents.

**1.10** “*Community*” means the Project and all of the land described in attached **Exhibit A**, including any property annexed at any time into the Project, and includes the Condominium Project.

**1.11** “*Community Wide Standard*” means the standard of conduct, maintenance, or other activity generally prevailing in the Community, as set forth in this Declaration, the Bylaws and as defined or determined by the Board from time to time.

**1.12 “Condominium Project”** means those condominium units (Units 101 through 104) described on Sheets 2 and 3 of the Plat, together with the common area and limited common area described on Sheet 3 of the Plat, and includes the parcels designated G1 through G4 on the Plat. The Condominium Project is administered, operated, managed and maintained separately and apart from the Project by its own condominium owners association.

**1.13 “Condo Unit”** means a condominium unit within the Condominium Project.

**1.14 “Declarant”** means HWL Edgewater, LLC, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Community; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

**1.15 “Detached Home”** means a single-family residential dwelling unit which is not attached to another dwelling unit and is constructed upon a numbered Lot reflected on a Plat.

**1.16 “Fines”** shall mean and refer to fines levied against a Lot Owner for violations of this Declaration, the Bylaws, or Rules and Regulations of the Association. Fines shall be enforced and collected consistent with the Act and may be collected as an unpaid assessment.

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

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

**1.19 “Include,” “includes,” or “including”** means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.

**1.20 “Limited Common Area”** means all of the real property identified as limited common area herein or on the Plat, except as otherwise stated herein, and except limited common area within the Condominium Project. Limited Common Areas are Common Areas, but to which certain different rights and limitations apply as more fully set forth herein, including that they are limited to the use of certain Lots to the exclusion of other Lot Owners.

**1.21 “Lot”** means any lot or parcel of land upon which a Living Unit or Commercial Unit could be constructed in accordance with applicable ordinances and laws, or is already constructed, shown upon the Plat as existing for private use and ownership, including any Improvements thereon.

**1.22 “Manager” or “Managing Agent”** shall mean and refer to the person or entity retained by the Association to manage the Community according to the direction of the Board of Directors.

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

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

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

**1.26** *“Period of Administrative Control”* means the period during which the Declarant (or a successor in interest) retains authority to appoint or remove members of the Board and is the time between the date of recordation of this Declaration and the date on which administrative control of the Association is turned over to the Owners pursuant to Section 7.1 below.

**1.27** *“Plat” or “Plat Map” or “Record of Survey Map”* (these terms may be used interchangeably herein) means the Record of Survey Map entitled, “Edgewater Beach Resort Phase 1 – 1<sup>st</sup> Amendment” recorded, or to be recorded, at the Recorder's Office of Weber County, state of Utah, as the same may be amended or substituted, together with any plat subsequently recorded for an additional phase of the Project.

**1.28** *“Property” or “Project”* means all of the real property and interests within the boundaries of the project described in the Plat(s), including all Lots, Common Area, easements, and open space, with the exception of the Condominium Project.

**1.29** *“Rules and Regulations”* means those rules and regulations adopted by the Board from time to time that are deemed necessary or prudent by the Board for the enjoyment, operation or governance of the Community.

**1.30** *“Townhome”* means a single-family residential dwelling unit which is attached to another single-family residential dwelling unit and is constructed upon a numbered Lot reflected on a Plat.

**1.31** *“Turnover Meeting”* means the meeting at which the Declarant turns over administrative control of the Association to the Owners pursuant to this Declaration.

**1.32** *“Living Unit” or “Residence”* shall mean a single-family residential dwelling unit constructed upon a Lot.

**1.33** *“Unit”* shall mean a commercial or residential dwelling unit, whether attached to another dwelling unit, detached, or a Condominium Unit.

## **ARTICLE II - PROPERTY DESCRIPTION**

**2.1** *Property Subject the Declaration and Bylaws.* The real property which is, and shall be, transferred, held, sold, conveyed, used, occupied and improved subject to the Act and to this Declaration, the Governing Documents, and all agreements, decisions and determinations made

by the Board or Association is all of the real property described on the Plat and on Exhibit A attached hereto, which Declaration and covenants, conditions and restrictions therein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Community or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Community or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of each Owner thereof. To the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control.

**2.2 Description and Legal Status of Lots.** Except as otherwise stated herein, the Plat shows the Lots and building designations, the Limited Common Areas, and the Common Areas, and their locations and dimensions from which, together with the Definitions above, those areas may be determined. All Lots shall be capable of being independently owned, encumbered, and conveyed.

**2.3 Condominium Project.** The Condominium Project and Units therein shall be subject to a declaration of condominium and a condominium owners association, which declaration shall provide for the operation, management and maintenance of the Condominium Project and the responsibilities of the condominium owners association. The Condominium Project, the Units therein, and the condominium owners association shall be subject to this Declaration and if any contradiction or ambiguity arises between this Declaration and the condominium declaration or between the Association and the condominium owners association, this Declaration and the Association shall control.

**2.4 Form of Lot Conveyance - Legal Description of Lot.** Each conveyance or installment contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the number shown on the Record of Survey Map with appropriate reference to said Map and to this Declaration, as each shall appear on the records of the County Recorder, State of Utah, and in substantially the following form:  
Lot \_\_\_\_, shown on the Record of Survey Map for Edgewater Beach Resort Phase \_\_\_\_, appearing in the records of the Weber County Recorder as Entry No. \_\_\_\_ Map No. \_\_\_\_, and as identified in the Declaration of Covenants, Conditions and Restrictions appearing as Entry No. \_\_\_\_ in Book \_\_\_\_ at Pages \_\_\_\_\_ of the official records of the Weber County Recorder, as may be amended, and the Plat. This conveyance is subject to the provisions of the aforementioned Declaration, including any amendments thereto.

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

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

(a) Right of Entry. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of: (1) determining whether or not the Lot is in compliance with the Governing Documents, (2) determining whether the use of the Lot is causing damage or harm to the Common Areas, (3) for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration, or (4) performing maintenance referred to herein. Requests for entry under numbers (1), (2) and (3) shall be made in advance and at a time that is convenient to the Owner within 30 days of the request, or at a time designated by the Association if such time is more than 30 days from the request, , except in the case of an emergency, when such right shall be immediate. No such entry or actions by the Association shall be deemed to constitute a trespass or otherwise create any right of action for damage or otherwise in the Owner of such Lot.

(b) Utility Easements. The Association and any public or private utility provider shall have an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary as determined by the Board. The Board may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area. Within any easement, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Lot and all improvements therein shall be maintained continuously by the person or entity responsible for maintenance of such Lot in accordance with the terms herein, except for those improvements for which a public authority or utility provider is responsible. Each Lot Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot.

(c) Common Areas. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas, excluding the Limited Common Areas as defined herein.

**2.7 No Encroachment.** No Lot shall encroach upon an adjoining Lot without the express written consent of the Board. If, however, an encroachment occurs due to the settlement or shifting of a structure or building or any other reason whatsoever beyond the control of the Board or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non-disturbance of the structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

### **ARTICLE III - EXPANSION OF COMMUNITY**

**3.1 Discretion to Expand Community.** Declarant reserves the right at its sole discretion to expand the Community to include Additional Land by unilateral action of the Declarant without the consent of the Owners for a period of eight (8) years from the date of recording this Declaration in the office of the Weber County Recorder.



**3.2 No Limitations on Amount of Expansion.** There are no limitations on the maximum or minimum amount of Additional Land which may be added. There may be more than one expansion and the expansion may be made as to any amount or in any order.

**3.3 Process for Expansion.** Expansion shall occur by the Declarant recording: (1) an additional plat or plats creating additional phases for lots in the Community; and (2) a declaration of annexation which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a declaration of annexation, the property described therein shall be subject in all respects to this Declaration.

**3.4 Limitations on Expansion.**

(a) Any additional properties annexed hereto by the Declarant may be for residential or commercial purposes. Any additional properties annexed to the Community by the Declarant shall be architecturally compatible with the existing Units and shall be of similar quality. However, the Declarant makes no assurances that any Unit constructed on any additional properties annexed hereto by the Declarant will be substantially identical to the Units depicted in the Plat. The total number of phases is estimated to be four and the total number of Lots to be developed on additional land is estimated at 38 Lots, for an estimated total of 53 Lots in the Community, plus four existing Condominium Units. No other assurances are made as to the improvement or as to the location of said improvements which shall be made on the expansion land.

(b) The Declarant shall have the sole discretion as to the development of the common area in any expansion area and may (or may not) include any facilities or amenities thereon that Declarant deems necessary. Such common areas, if any, shall be managed by the Association.

(c) All taxes and other assessments relating to property to be added must be paid or provided for by the Declarant prior to the addition of the property. Liens arising in connection with Declarant's interest in the property to be added must not adversely affect the rights of existing Lot Owners or the priority of existing first Mortgages on the Property.

## **ARTICLE IV - ASSESSMENTS**

**4.1 Covenant for Assessments.**

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

4.1.2. Installments of Annual Assessments. The Board shall determine whether installments of Annual Assessments are levied and collected on a monthly, quarterly, semi-

annual, annual or other basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty. No member may exempt itself from liability for Assessments by abandonment of any Lot or Unit owned by such member.

4.1.3. Apportionment. Subject to subsection 4.1.4 below, all Townhomes shall pay equal Annual Assessments and Special Assessments, all Detached Homes and Commercial Units shall pay equal Annual Assessments and Special Assessments, and all Condo Units shall pay equal Annual Assessments and Special Assessments, all commencing upon the date the Lots are made subject to this Declaration. Individual Assessments shall be apportioned exclusively against the Lot(s) or Unit(s) benefitted or to which the expenses are attributable as provided for below.

4.1.4. Declarant Assessment Exemption. Notwithstanding anything herein to the contrary, the Declarant, and any Lot to which the Declarant holds record title, shall be exempt from any Assessment under this Article.

#### **4.2. *Budget and Annual Assessment.***

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

#### 4.2.2. Definition and Purpose of Base, Lot, and Townhome Assessments.

(a) “Base Assessment” means assessments levied on all Lots and Units for payment of expenses incurred by the Association for the general benefit of all Lots and Units and of the entire Community, including, but not limited to: (a) The improvement, maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums for coverage of Common Areas and Association coverage, but not for insurance coverage for the Townhomes and Townhome Limited Common Area or for the Condominium Project; (c) The costs of utilities and other services which may be provided by the Association for the whole Community; and (d) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the general duties under this Declaration or the Bylaws.

(b) “Lot Assessment” means an assessment levied against the Lot Owners in order to fulfill the obligations of the Association hereunder to the Lots, independent of the Base Assessment levied against all Owners. The Lot Assessment shall be used for payment of expenses incurred by the Association for the general benefit of all Lots and only the Lots, including, but not limited to: (a) The improvement, maintenance, operation, care, and services provided by the Association to the Lots exclusively; and (b) The cost of funding reserves established by the Association for the general benefit of the Lots exclusively, if deemed necessary by the Board.

(c) “Townhome Assessment” means an assessment that is levied against the residential Townhome Lots in order to fulfill the obligations of the Association hereunder to the Townhomes, independent of the Base and Lot Assessments. The Townhome Assessment shall be used for payment of expenses incurred by the Association exclusively for the benefit of all Townhomes, including the payment of insurance premiums for coverage of Townhomes and Townhome Limited Common Area.

#### 4.2.3. Determination of Annual Assessment.

(a) The Board shall fix the amount of the Base Assessment, the Lot Assessment, and the Townhome Assessment for each assessment period at least thirty (30) days in advance of the beginning of an annual assessment period.

(i) The Base Assessment shall constitute the Annual Assessment against each Condo Unit.

(ii) The Base Assessment together with the Lot Assessment shall constitute the Annual Assessment against each Detached Home Lot and each Commercial Unit.

(iii) The Base Assessment together with the Lot Assessment and the Townhome Assessment shall constitute the Annual Assessment against each Townhome Lot.

Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period.

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

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

**4.3. *Special Assessments.*** In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time (“Special Assessment”) against all Units, or against all Lots or Units of a particular housing type (e.g., Detached Homes) for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments. The Board may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment

levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Unit may only be levied if it is first voted upon by the Owners against which the Special Assessment is to be levied, and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum of Owners representing at least 30% of the voting rights of Owners against which the Special Assessment is to be levied cast a vote.

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

**4.5. Reserve Funds.**

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

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

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

**4.6. Fee Due on Transfer of Unit.** Each time legal title to a Lot passes from one person to another, within thirty (30) days after the effective date of such title transaction, the new Lot Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee, in the amount of \$250, or such other amount determined by the Board from time to time. The following are not subject to the fee: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, or to a legal

entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of a Lot owned by a financial institution, except to the extent required for the payment of the Association's costs directly related to the transfer of the property, not to exceed \$250.

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

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

4.7.2. Late Charge. Each delinquent payment shall be subject to a late charge of Thirty Dollars (\$30.00), or such other amount as determined by the Board from time to time.

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

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

4.7.5. Termination of Common Services and Facility Use. If an Owner fails or refuses to pay an assessment when due, the Board may, after giving notice and an opportunity to be heard in accordance with the law and the written procedures of the Association, terminate an Owner's right: (1) to receive any service paid as a common expense, including but not limited to utility services; and (2) of access and use of recreational facilities. If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered by the Board. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner shall be responsible for all such costs. Upon payment of the assessment due, including any

interest, late charge, and costs of collection, the Board shall immediately take action to reinstate the terminated utility services to the Lot.

4.7.6. Other Remedies. All membership rights, including the right of a Member to vote shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. The Association shall have each and every remedy for collection of assessments provided in the Act as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

**4.8. Lien.** All Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. The Association and each Owner of a Lot hereby conveys and warrants pursuant to U.C.A. § 57-1-20 and 57-8a-402 to the attorney of the Association, with power of sale, each Lot and all improvements to each Lot for the purpose of securing payment of assessments under the terms of the Declaration.

**4.9. Enforcement of Lien.** The Association may enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien is established and may be enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for breach of any provisions of the Governing Documents. The lien maybe foreclosed judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

**4.10. Appointment of Trustee.** The Declarant, the Association and each Owner hereby appoints the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection

with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., as may be amended from time to time.

**4.11. Subordination of Lien to Mortgages.** The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as follows: the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, or from the lien of any future assessment, nor shall it relieve any personal obligation arising under Section 5.16 or elsewhere.

**4.12. Personal Obligation and Costs of Collection.** Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Board, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

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

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

## ARTICLE V - RESTRICTIONS ON USE

**5.1 Restrictions and Requirements.** The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration and the Bylaws:

5.1.1 Residential Use. Detached Homes, Townhomes, and Condo Units shall be used for residential purposes in accordance with, and subject to, the other provisions of this Declaration and the Bylaws and rules and regulations adopted pursuant thereto. No trade, craft,

business, profession, commercial or similar activities that causes additional pedestrian or vehicular traffic, creates a sight or noise nuisance, shall be conducted in any Detached Homes, Townhomes, or Condo Units.

5.1.2 Drainage System. There shall be no interference with the established drainage patterns or systems, if any, over or through any Lot so as to affect any other Lot or any real property outside the Community unless adequate alternative provision is made for proper drainage and is approved by the Board of Directors.

5.1.3 Offensive Activities. No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted on any Lot or within the Community, nor shall anything be done in or placed upon any Common Area or within the Community which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents.

5.1.4 Unlawful Activities. No unlawful use shall be made of the Community or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

5.1.5 Animals.

(1) The Board shall have the express authority and right to promulgate rules, beyond those stated herein, restricting the keeping of pets within the Community.

(2) No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within any Lot, except dogs, cats, or other household pets provided that they are not kept, bred, or maintained for any commercial purpose or in any unreasonable numbers. The Owner of any dog must keep such dog on a leash when outside of the Lot or keep it confined within the Lot.

(3) Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Community. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from the Common Areas and Limited Common Areas.

(4) An Owner may be required to remove a pet upon receipt of a written notice from the Board given pursuant to a resolution relating to rules and regulations governing pets within the Community and enforcement of such rules and regulations and provisions of this subsection. The Board may apply for appropriate judicial relief in the event that Owners violate this Article.

5.1.6 Rubbish and Trash. No part of the Community may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Community except in a sanitary container as



specified by the Association or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

#### 5.1.7 Vehicles in Disrepair.

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

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

#### 5.1.8 Parking of Automobiles and Other Vehicles.

(1) Parking of boats, trailers, commercial vehicles, commercial trucks, truck campers, motor homes and like vehicles and equipment shall only be allowed in designated parking areas and shall be subject to further rules and regulations promulgated by the Board.

(2) The Board may adopt and amend rules to govern the parking of vehicles within the Community, which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of any rule or of this subsection and the cost of any storage thereof.

5.1.9 Clothes Lines and Materials. No clothes lines, clothing racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located on the Community except within a Unit, unless in an area screened from public view. No garments, rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless in an area screened from public view.

5.1.10 Signs. Unless written approval is first obtained from the Board, no advertisement or poster of any kind may be posted in or upon the Properties except:

(1) Not more than one (1) For Sale or For Rent sign, not exceeding twenty-four (24) inches in height and thirty-six (36) inches long, may be temporarily placed on a Lot;

(2) Political signs may be temporarily placed on a Lot by the Owner or occupant of the Lot unless and until prohibited or otherwise limited by the Board by rule; and

(3) Signs may be placed on the Community by Declarant as set forth herein.

#### 5.1.11 Antenna and Dish Policy. Satellite dishes and antennas not regulated by the FCC

are prohibited. Satellite antennas, such as Direct Broadcast Satellite (“DBS”) antennas/dishes one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the dish and any wires are installed so as to not be visible from the streets. If locating the dish so that it is not visible from the streets precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets possible. An Owner must submit written notification to the Association within three (3) business days before installing any antenna or dish that is allowed pursuant to this section. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna/dish. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner.

The Owner is responsible for all damage caused by or connected with the dish, for as long as the dish remains, including damage resulting from water entering a building due to the installation or existence of such antenna/dish. By installing a dish, the Owner agrees to hold the Association harmless and indemnify the Association in the event that someone is injured by the dish or in the installation or maintenance of the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. In the event of a violation of this Section, the Association may bring an action for declaratory and/or injunctive relief and the Owner is subject to a \$50.00 fine to the Association for each violation. If the violation is not corrected within a reasonable length of time as determined by the Board, additional fines of \$10.00 per day will be imposed for each day that the violation continues. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein. The terms “dish” and “antenna” are to be used interchangeably in the interpretation of the above policy.

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

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

5.1.14 Lease Restrictions. All leases shall be in writing and be subject to the Governing Documents and any failure by the lessee to comply with the terms of such documents shall be a default under the Lease.

5.1.15 Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to, or change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors. Such approval shall be solely at the discretion of the Board of Directors as it deems appropriate from time to time. Any such request shall be deemed to have been denied if the relevant Owner, including any subsequent Owner, cannot produce the written approval granted by the Board upon request, and any changes or alterations made by an Owner, or prior Owner, shall be removed and the property restored to its original condition at the request of the Board. In the event the Board fails to approve or disapprove a request by an Owner, the request will be deemed to have been denied. This subsection shall not apply to Declarant's building or construction activities during the building and development of the Project.

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

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

## **ARTICLE VI - MAINTENANCE OBLIGATIONS**

### **6.1 Owner's Responsibility.**

6.1.1 Lots. Except to the extent that the Association is responsible therefore under Section 6.2, maintenance of the Lots and the Units shall be the responsibility of the Owner(s) thereof, who shall maintain such Lots and Units in good condition and repair. Each Owner at his or her sole expense shall maintain and repair the interior of the Unit, including floors and each and every structural element beneath the Unit, exterior windows, window frames, and exterior

doors/door frames. In addition to decorating and keeping the interior of his or her Unit in good repair and in a clean and sanitary condition, he or she shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, heating equipment, air conditioners, lighting fixtures, refrigerators, dishwasher, disposal equipment, ranges, toilets, or other appliances or fixtures that may be in, or connected with, his or her Lot. Any fixture, pipe, conduit, or other utility device or apparatus that services only one Lot shall be the responsibility of that Lot's Owner to maintain, repair, and replace. Each Unit and Lot shall be maintained so as to not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Unit or Lot.

6.1.2 Limited Common Area. Each Lot Owner shall, at its own cost, maintain, repair, replace, and keep in a clean, sanitary and attractive condition at all times, the Limited Common Areas appurtenant to his or her Lot

## **6.2 Maintenance by Association.**

6.2.1. The Association shall provide for, as a common expense, such care, maintenance, repair and replacement of the following as deemed necessary or desirable by the Board to keep them attractive and generally in good condition and repair:

- (a) The Common Area (unless otherwise stated in this Declaration); and
- (b) The landscaping, including trees, shrubs, and grass, and walks.

6.2.2. Snow Removal. The Association shall provide for snow removal from the Common Area and Limited Common Area (including sidewalks, walkways and driveways), and from the walkways on the Lots. If a parked vehicle prevents or interferes with snow removal from any Lot, the Owner of the Lot shall be responsible for such snow removal.

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

6.2.4. The Association may elect, upon the approval of a majority of the Townhome and Commercial Unit Owners and the Board, to provide for the maintenance, repair and replacement of the exteriors of the Townhomes and Commercial Units, the cost of which shall be assessed to the Townhome and Commercial Unit Owners.

6.2.5. Except to the extent any injury or damage is covered by the Association's insurance, the Association shall not be liable for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of any building, including from any pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or intentional act of the Association.

6.2.6. If any area or improvement is damaged, or the need for maintenance, repair or replacement is caused, by the willful or negligent acts of an Owner, their guests, tenants, invitees or other Unit occupants, the Owner shall be responsible for the cost of required maintenance, repair or replacement and such costs shall automatically and immediately be an Assessment against such Owner.

6.2.7. The Association may assume an Owner's maintenance responsibility as to a Lot or Unit if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action with ten (10) days after mailing of such written notice, then the Association may proceed to maintain the Lot. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall automatically and immediately be an Assessment against such Owner.

## **ARTICLE VII - DECLARANT RIGHTS AND CONTROL**

### ***7.1 Administrative Control of Association.***

Declarant shall assume full administrative control of the Association through an appointed interim Board of Directors, which shall serve until the Turnover Meeting. The Turnover Meeting shall be held not later than the earlier of the following:

- (a) Seven years from the recording of this Declaration; or
- (b) Sixty days after all Additional Land has been added to the Project and the Declarant has conveyed seventy-five percent (75%) of all Lots (including Lots in subsequent phases).

**7.2** The Period of Administrative Control shall expire upon the earlier of: (1) Seven years from the recording of this Declaration, (2) Sixty days after all Additional Land has been added to the Project and the Declarant has conveyed seventy-five percent (75%) of all Lots (including Lots in subsequent phases), or (3) Declarant voluntarily terminating the Period of Administrative Control. The Declarant, however, may elect to voluntarily terminate the Period of Administrative Control at an earlier time by written notice to Owners and by calling and holding the Turnover Meeting.

### ***7.3 Other Rights.***

In addition to any other rights under this Declaration or the Bylaws, as long as Declarant owns at least one (1) Lot within the Community, Declarant:

- (a) Sales Office and Model. Shall have the right to maintain a sales office and model in one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) For Sale Signs. May maintain a reasonable number of For Sale signs, the size of which may be determined by Declarant, at reasonable locations on the Community.

(c) Approval of Amendments. Consistent with the amendment provisions of this Declaration and Bylaws, for so long as the Declarant owns at least one Lot within the Community and so long as any Additional Property remains to be added to the Community, the approval of the Declarant shall be required in order to adopt any amendment to the Declaration or Bylaws of the Association.

(d) The Act. The Declarant, the Declarant-appointed Board and the Association are exempted from all procedures, requirements and obligations imposed by the Act to the extent allowed by the Act during the Period of Administrative Control and all rights authorized to be reserved by a declarant under the Act are hereby deemed reserved by the Declarant. The Declarant and the Declarant-appointed Board are exempt from association rules and the rulemaking procedure under Utah Code Ann. § 57-8a-217 and all rights under that section are hereby reserved by Declarant.

#### **7.4 Easements Reserved to Declarant.**

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as drainage, utility or sewer easements or open space or common area or otherwise designated as an easement area over any road or on the Community, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Community and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

(c) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Common Area and grade a portion of such Common Area adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Common Area, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

## **ARTICLE VIII – THE ASSOCIATION**

**8.1 Organization.** The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively

dissolved by the State of Utah, the Board may re-incorporate the Association without a vote of the Owners. The affairs of the Association shall be governed by a Board as provided herein and in the Bylaws. Declarant has appointed an interim Board of Directors of the Association, which shall serve until their successors have been elected at the Turnover Meeting.

**8.2 *Membership.*** Each Owner shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**8.3 *Voting Rights.*** The method of voting shall be as provided in the Bylaws. Voting rights within the Association shall be allocated as follows:

(a) Lots/Units. Subject to any rights granted to Declarant during the period of Declarant control expressed above, each Owner shall have one (1) vote in matters of the Association for each Lot or Condo Unit owned.

(b) Declarant. For each Lot or Condo Unit owned, the Declarant shall have three (3) votes up until, but not including, the Turnover Meeting.

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

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

(b) The Association may borrow money, provided the assent of a majority of all Owners is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

(c) Telecommunications/Fiber Optic/Related Contracts. Provided the Association already provides such service to the Lots, the Board shall have the power, in its own discretion and subject to federal law, to enter into, accept an assignment of, or otherwise cause the Association to comply with contracts with Telecommunication Service providers and Telecommunication Facilities owners (both, a "Telecommunication Provider"), pursuant to which the Telecommunication Provider serves as the exclusive provider of Telecommunication Services and/or Telecommunication Facilities to each Lot in the Properties, as well as the power to enter into or contract on behalf of the Association for similar bulk rate service contracts of any nature deemed in the Association's best interests. If such service(s) is not already provided to the

Lots, the prior approval of the Owners shall be obtained by a vote where a majority of the votes cast are cast in favor of the service.

## **ARTICLE IX - PARTY WALLS**

**9.1 General Rules of Law Apply.** Each wall to be built as a part of the original construction of any Townhome or Commercial Unit and placed substantially on a dividing line between any two (2) such Units shall constitute a party wall. In the event the Owner, or its tenant, guest or invitee, causes damage to the party wall, then the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto. The Owner of each Lot adjoining a Party Wall shall be an “Owner” of the wall for purposes of this Article.

**9.2 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners in proportion to their ownership thereto.

**9.3 Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, any Owner thereof may restore it, and the other Owners thereof shall contribute to the cost of restoration thereof in proportion to such ownership without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**9.4 Arbitration.** In the event any dispute arises concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

**9.5 Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner’s successors in title.

## **ARTICLE X - COMPLIANCE AND ENFORCEMENT**

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

**10.2 Remedies.** Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:



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

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

**10.2.3** To levy fines and any violation of any express rule, regulation, covenant, restriction, or term of any Governing Document of the Association shall be subject to a fine in the amount determined by the Board from time to time. A subsequent violation of the same specific type occurring within 12 months of a prior violation shall be deemed the same violation for all purposes, including the purpose of notice, and shall be subject to an immediate fine;

**10.2.4** To terminate the right to receive utility services paid for by assessments, if any, to terminate the right of access to and use of recreational and service facilities of the Association, if any, until the correction of the violation has occurred;

**10.2.5** The right of the Association to suspend the voting rights after notice and an opportunity to request a hearing for any period not to exceed sixty (60) days for any infraction of any of the Governing Documents, including failure to timely pay an assessment;

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

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

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

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

## **ARTICLE XI - INSURANCE**

**11.1 Types of Insurance Maintained by the Association.** The Association shall obtain the following types of insurance:

(a) Liability. A public general liability insurance policy covering the Association, its officers, Board members and managing agents, having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence or in an amount not less than the minimum amount required by applicable law, ordinance or regulation. Coverage under this policy shall include, without limitation, all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas.

(b) Property. Blanket property insurance or guaranteed replacement cost insurance with not less than 100% of the full replacement cost for the physical structure of all Townhomes, Limited Common Areas appurtenant to a Townhome, and Common Areas, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, and including coverage for any fixture, improvement, or betterment installed at any time to a Townhome or to a Limited Common Area appurtenant to a Townhome, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Townhome or to such Limited Common Area.

(c) Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board, employees, and all others who are responsible for handling funds of the Association, including any property manager. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Lots plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's management agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association or any insurance trustee.

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

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

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

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

4) **Intent.** The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or Association may deem necessary or appropriate from time to time, including directors and officers liability insurance.

## ***11.2 Lot Owner Insurance Responsibility.***

11.2.1. **Master Policy Deductible.** For covered losses to Townhome Lots, the Association's policy is primary but the Townhome Lot Owner is responsible for the Association's policy deductible (which shall be an automatic Assessment against such Owner 30 days after substantial completion of the repairs to, as applicable, the Lot, a dwelling on the Lot, or the limited common area appurtenant to the Lot) as follows:

(a) If a loss occurs that is covered by the Association's policy and by a Townhome Lot Owner's policy, the Association's policy provides primary insurance coverage and the Townhome Lot Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

(b) If a Townhome Lot, or Limited Common Area or facility appurtenant to a Townhome Lot, suffers damage as part of a covered loss, the Lot Owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to Lot damage for that Lot to the amount of the deductible under the Association's policy. The amount of the deductible under the Association's policy shall be determined by the Board from time to time. The Association shall provide notice to the Lot Owners of any change in the amount of the deductible.

11.2.2. **Contents of Lot/Unit.** The Association's policy does not cover the contents of a Lot or Unit or a Lot Owner's personal property. Each Lot Owner is strongly encouraged to obtain insurance coverage for contents of their Lot or Unit, as well as for coverage in the event the Owner has to pay the Association policy deductible as provided above

11.2.3. **Loss Due to Fault of Another.** This Declaration does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss, except that, notwithstanding the foregoing, an insurer under a property insurance policy or liability insurance policy obtained by the Association waives the insurer's right to subrogation under the policy against: (a) any person residing with the unit owner, if the unit owner resides in the unit, and (b) the unit owner.

11.2.4. Acceptable Contractors. No work on any part of the Property, including Lots and Units, shall be performed for repair or replacement due to a covered loss except by a licensed contractor carrying adequate liability and workers compensation insurance, whether such person is hired by an Owner or the Association.

### ***11.3 Power of Attorney***

(a) Notwithstanding any of the foregoing provisions and requirements relating to Association property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement (the "Insurance Trustee") who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. By purchasing a Lot, all Owners appoint the Association or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose.

(b) By purchasing a Lot, all Owners appoint the Association or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority.

## **ARTICLE XII - AMENDMENT AND DURATION**

### ***12.1 Amendments.***

(a) How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights of the Association. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment

(b) Approval Required. This Declaration may be amended if such amendment is approved by sixty percent (60%) of the voting rights of the Association. Notwithstanding the foregoing, however, for so long as the Declarant owns a single Lot in the Community or any of the Additional Property remains to be annexed into the Project, any and all amendments proposed pursuant to this Section must first receive the approval of the Declarant. Failure to receive such approval shall make the amendment null and void.

(c) Declarant Amendments. The Declarant may unilaterally amend this Declaration at any time until the Turnover Meeting, except any material changes shall require the approval of a majority of the voting rights of the Association.

(d) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the appropriate County Recorder's Office. An amendment or revocation which only requires the execution of an instrument by Declarant shall be effective when executed by Declarant and recorded with the County Recorder.

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

### **ARTICLE XIII - MISCELLANEOUS PROVISIONS**

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

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

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

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

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

**13.6 Premises Liability.** From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, Declarant shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities; inasmuch as the control, operation, management, use and enjoyment, of the common area shall be within, under, and subject to the Association—and not Declarant, and an Owner shall defend, indemnify and hold harmless the Declarant against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the common area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the common area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

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

**IN WITNESS WHEREOF,** HWL Edgewater, LLC, has executed this Declaration this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**HWL EDGEWATER, LLC**

\_\_\_\_\_  
By:  
Its:

STATE OF UTAH                    )  
  )ss:  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
2014 by \_\_\_\_\_, of HWL Edgewater, LLC.

\_\_\_\_\_  
Notary Public for Utah

**OWNER CONSENT**

The undersigned, as owner of Unit 101 described in Exhibit A hereby consents to the foregoing Declaration and attached Bylaws and the recording of such this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**OWNER:**

\_\_\_\_\_  
Print:

STATE OF UTAH                    )  
  )ss:  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
2014 by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Utah

OWNER CONSENT

The undersigned, as owner of Unit 102 described in Exhibit A hereby consent to the foregoing Declaration and attached Bylaws and the recording of such this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**OWNER:**

\_\_\_\_\_  
Print:

STATE OF UTAH            )  
  )ss:  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Utah

OWNER CONSENT

The undersigned, as owner of Unit 103 described in Exhibit A hereby consents to the foregoing Declaration and attached Bylaws and the recording of such this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**OWNER:**

\_\_\_\_\_  
Print:

STATE OF UTAH            )  
  )ss:  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Utah



OWNER CONSENT

The undersigned, as owner of Unit 104 described in Exhibit A hereby consents to the foregoing Declaration and attached Bylaws and the recording of such this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**OWNER:**

\_\_\_\_\_  
Print:

STATE OF UTAH            )  
  )ss:  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Utah

## **EXHIBIT A**

### **(LEGAL DESCRIPTION)**

All Lots and Units, EDGEWATER BEACH RESORT PHASE 1 – 1ST AMENDMENT, according to the official plat thereof recorded with the office of the Weber County Recorder, state of Utah.

## EXHIBIT B

# BYLAWS

### SECTION 1

#### MEETINGS OF OWNERS

**1.1. Annual Meetings.** The first annual meeting and subsequent annual meetings of the Association will be held at a time and in a month specified by the Board.

**1.2. Special Meetings.** A special meeting of the Association may be called at any time by the Board or the president of the Association, or by the Board upon the written request of at least 30% of the Owners. A special meeting may only be held for the purposes set forth in the notice for that special meeting.

**1.3. Place of Meetings.** The Board may designate any place in the State as the place for any annual or special meeting of the Association.

**1.4. Notice of Meetings.** Notice of each meeting stating the place, date, and time of the meeting and the purpose or purposes for which the meeting is called, will be delivered to each Owner entitled to vote at the meeting, not less than 7 nor more than 90 days before the date of the meeting. If mailed, the notice will be deemed to be delivered when deposited in the United States mail, postage prepaid, and addressed to the Owner at its address as it appears in the records of the Association. The Board may set a record date for determining the Owners entitled to notice. The Association will give notice at the Association's expense of any special meeting called by the Owners.

### SECTION 2

#### VOTING; QUORUM

**2.1. Quorum.** Except as otherwise provided in the Declaration, the number of Owners participating in a meeting in person, by proxy, or by written ballot will constitute a quorum.

**2.2. Voting Method.** Votes may be cast in person, by proxy, or as determined by the Board, by written ballot.

**2.3. Action by Proxy.** Every proxy must be executed in writing by the Owner or its duly authorized attorney-in-fact and filed with the secretary of the Association before or at the time of the meeting. No proxy will be valid after the expiration of one year from the date of its execution unless otherwise provided in the proxy.

**2.4. Action by Written Ballot.**

(a) Any action that may be taken at any meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner entitled to vote on

the matter. Such written ballot will set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot will be valid only when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot. Owners submitting a written ballot will be considered to have participated in the meeting for all purposes.

(b) All solicitations for votes by written ballot will: 1) indicate the number of responses needed to meet the quorum requirements; 2) state the percentage of approvals necessary to approve each matter other than election of directors; 3) specify the time by which a written ballot must be received by the Association in order to be counted; and 4) be accompanied by written information sufficient to permit each Owner casting a written ballot to reach an informed decision on the matter.

(c) A written ballot may not be revoked.

(d) Action by written ballot will have the same effect as action taken at a meeting.

(e) The number of votes cast by written ballot will constitute a quorum for action on the matter.

(f) A written ballot may also be used in connection with any meeting of the Association, thereby allowing Owners the choice of either voting in person or by written ballot delivered by an Owner to the Association in lieu of attendance at such meeting. A valid written ballot will be counted equally with the votes of Owners in attendance at any meeting for every purpose.

### **SECTION 3 BOARD & OFFICERS**

**3.1. Number, Election, Term of Directors.** The Board shall consist of three Directors. The Directors shall also constitute the Officers of the Association as set forth in Section 4. Except during the Period of Administrative Control, Directors will be elected at the annual meetings of the Association by a plurality of votes, that is, the candidate(s) with the most votes shall be elected. Except during the Period of Administrative Control and except at the first election, each Director will hold office for a term of two years. At the first election, the two candidates receiving the most votes shall be elected for two year terms and the third Director shall serve a one year term, so as to achieve a staggering of terms.

**3.2. Resignation or Death.** A Director may resign before the expiration of his or her term by giving written notice to the president or to the secretary of the Association. Such resignation will take effect on the date specified in the notice. Upon the resignation or death of a Director, the remaining Directors will appoint a replacement Director to serve until his successor is elected.

**3.3. Meetings.** Meetings of the Board will be held at least annually, and at any time when called by the president of the Association or by two or more Directors, upon the giving of at least

two days' prior notice of the time and place of the meeting to each Director by hand-delivery, prepaid United States mail, fax, email, telephone, or in any other manner deemed fair and reasonable by the Board. Any business may be transacted at a Board meeting. No notice of a Board meeting need state the purposes for holding the meeting, and no notice of any adjourned Board meeting will be required. If the Board establishes a regular meeting schedule, then such regular meetings of the Board may be held without notice of the date, time, or place of the meeting to the other Directors.

**3.4. Place of Meetings.** The Board may designate any location convenient to the Directors in which to hold a Board meeting. Directors may participate in any Board meeting by means of any electronic or telephonic communication by which all participants may simultaneously hear one another during such meeting. Directors who participate in a Board meeting by such means will be considered present for all purposes, including the presence of a quorum.

**3.5. Quorum.** A majority of Directors will constitute a quorum for the transaction of business, but a lesser number may adjourn any Board meeting from time to time. When a quorum is present at any Board meeting, a majority of the Directors in attendance will decide any question brought before such meeting.

**3.6. Waiver of Notice.** Before, at, or after any Board meeting, any Director may, in writing, waive notice of such meeting and such waiver will be deemed equivalent to the giving of such notice. Attendance by a Director at a Board meeting will constitute a waiver of notice by such Director except when such Director attends the meeting for the express purpose of objecting to the transaction of business based on a claim that the meeting was not duly called or convened.

**3.7. Informal Action by Directors.** Any action required or permitted to be taken at a Board meeting may be taken without a meeting (e.g., via email correspondence) if each member of the Board in writing either: (1) votes for the action, or (2) votes against the action, or (3) abstains from voting and waives the right to demand that action not be taken without a meeting.

## SECTION 4 OFFICERS AND AGENTS

**4.1. General.** The Officers shall be elected by the Board. The Officers of the Association shall be a president, a vice president, and a secretary/treasurer. The Board may appoint such other Officers, assistant Officers, committees, and agents, including assistant secretaries and assistant treasurers, as it may consider necessary or advisable, who will be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any Officer, agent, or employee are not prescribed by these Bylaws or by the Board, such Officer, agent, or employee will follow the orders and instructions of the president.

**4.2. Removal of Officers.** The Board may remove any Officer with or without cause, and elect a successor at any Board meeting.

**4.3. Vacancies.** A vacancy in any office will be filled by the Board for the unexpired portion of the term.

**4.4. President.** The president will be the chief Officer of the Association. The president will preside at all Association meetings and Board meetings. The president will have the general and active control of the affairs and business of the Association and general supervision of its Officers, agents, and employees. The president is designated as the Officer with the power to prepare, execute, certify, and/or file amendments to the Articles, Bylaws, and the Rules and Regulations on behalf of the Association.

**4.5. Vice President.** The vice president will assist the president and will perform the duties assigned to him by the president or the Board. In the absence of the president, the vice president will have the powers and perform the duties of the president.

**4.6. Secretary/Treasurer.** The Secretary/Treasurer will:

(a) keep, or cause to be kept, the minutes of the proceedings of Association meetings and Board meetings;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws;

(c) maintain the records of the Association, including a record containing the names and registered addresses of all Owners, the designation of the Lot owned by each Owner, and, if a Lot is Mortgaged, the name and address of each Mortgagee;

(d) perform all other duties incident to the office of secretary and the duties assigned to her or him by the president or the Board;

(d) be the principal financial Officer of the Association and will have the care and custody of all funds, securities, evidences of indebtedness, and other personal property of the Association;

(e) receive and give receipts and acquittances for moneys paid in on account of the Association and will pay out of the funds on hand all bills, payrolls, and other just debts of the Association upon maturity;

(f) perform all other duties incident to the office of treasurer and, upon request of the Board, make such reports to it as may be required at any time;

(g) if required by the Board, give the Association a bond for the faithful performance of his duties and for the restoration to the Association of all books, papers, vouchers, money, and other property in his possession or under his control belonging to the Association; and

(h) have such other powers and perform such other duties assigned to her or him by the president or the Board.

## SECTION 5 CONTACT INFORMATION; ADDRESS

Each Owner is required to register a mailing address, a phone number, and an email address with the Association within ten days after becoming an Owner. The contact information of each

Owner will be kept in the records of the Association. Owners must notify the Association of any change in contact information within ten days after the change. Any notice mailed to an Owner's registered address or—if the Owner fails to register an address with the Association—to the address on file with the County Recorder will be deemed duly delivered.

**SECTION 6**  
**NOTICE, AFFAIRS, ELECTRONIC MEANS**

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

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

**SECTION 7**  
**AMENDMENT**

Except as limited by law or the Articles, these Bylaws may be amended by a vote of at least a majority of the voting rights of the Association.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
, President