

WHEN RECORDED, RETURN TO:

F1 Property Management
PO Box 910069
St. George, UT 84791

AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
COTTONWOOD TOWNHOME ASSOCIATION

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter “Declaration”) is made on the date evidenced below by the Cottonwood Townhome Association (hereafter AAssociation@), established to govern the common affairs of the Association’s members and enforce the covenants, conditions, restrictions and rules of the Association.

RECITALS

A. This Amended and Restated Declaration of Covenants, Conditions and Restrictions including Bylaws supersedes and replaces the Declaration for Cottonwood Townhomes recorded June 23, 1986, as Entry No. 296916, records of the Washington County Recorder (the “Original Declaration”), in its entirety, including all subsequent amendments or supplements thereto.

B. Pursuant to Utah Code Ann. §57-8a-104, at least sixty seven percent (67%) of the voting interests have affirmatively approved the adoption of this document.

C. This Declaration including Bylaws shall be binding upon all real property described in Exhibit A attached hereto and it is agreed by acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment, respecting the property, that this Declaration, together with the Plat Map referred to herein, states covenants, conditions, restrictions, and reservations effecting a planned unit development mutually beneficial to all owners and lots, and that the covenants, conditions, restrictions, and reservations are binding upon the entire property and upon each such lot, and upon its owners or possessors, and their heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the property or any security interests therein without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales of lots under security instruments.

D. The Community is not a condominium project.

NOW, THEREFORE, the Association 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 AAct” shall mean the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended or substituted from time to time.

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

- 1.3** "Association" means and refers to the Cottonwood Townhome Association.
- 1.4** "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- 1.5** "Bylaws" means the instruments, however denominated, that contain the procedures for conduct of the affairs of the association (attached hereto as **Exhibit B**), as they may be amended from time to time.
- 1.6** "Common Area" means, refers to, and includes: (a) The real property, excluding all Lots as defined herein, and interests in the real property which this Declaration submits to the terms of the Act; (b) The real property, excluding all Lots as defined herein, and interests which comprise the Project; (c) All common areas and facilities designated as such on the Plat; (d) All Limited Common Areas and facilities; (e) All installations for and all equipment connected with the furnishing of the project's utility services, such as electricity, gas, water and sewer; (f) In general, all apparatus, installations and facilities included within the Project and existing for common use; (g) The Project's roads, unless otherwise dedicated to the public; (h) All portions of the Project not specifically included within the individual Lots; (i) All other parts of the project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; (j) All common areas as defined in the Act, whether or not enumerated herein.
- 1.7** "Common Expenses" means and refers to all sums which are required by the Board of Directors to perform or exercise its functions, duties, or rights under the Act, this Declaration, the Bylaws and such rules and regulations as the Board of Directors may adopt from time to time.
- 1.8** "Community" means all of the land described in attached **Exhibit A**, including any property annexed into the Project.
- 1.9** "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 by the Board of Directors from time to time.
- 1.10** "Eligible Holder" shall mean any holder, insurer, or guarantor of a first Mortgage who makes a written request to the Association to receive any of the notices provided to Eligible Holders under this Declaration. The written request shall state the name and address of the Eligible Holder and the Lot number to which the Eligible Holder's mortgage interest applies.
- 1.11** "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.
- 1.12** "Governing Documents" shall mean and refer to a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, rules and regulations, and architectural or design guidelines.
- 1.13** "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, driveways, storage compartments or other products of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

1.14 “Limited Common Areas” means all of the real property identified in the Declaration regardless of whether shown on any Plat. Limited Common Areas are Common Areas limited to the use of certain Lots to the exclusion of other Lot Owners.

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

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

1.17 “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.

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

1.19 “Owner” means the person, persons or other entity that is the owner of record of any Lot (including the holder of a vendee=s interest under a land sale contract, unless otherwise stated in the contract), but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Lot (including the holder of a vendor=s interest under a land sale contract, unless otherwise stated in the contract).

1.20 “Party Walls” means and refers to the walls separating the Living Units.

1.21 “Plat” or “Plat Map” or “Record of Survey Map” (these terms may be used interchangeably herein) means the Record of Survey Maps entitled, ACottonwood Townhomes Phase 1,” “Cottonwood Townhomes Phase 2,” “Cottonwood Townhomes Phase 3,” and “Cottonwood Townhomes Phase 4” as recorded in the Recorder’s Office of Washington County, State of Utah, as the same may be amended or substituted, together with any plat recorded for an additional phase of the Project.

1.22 “Property” or “Project” means all of the real property described in attached **Exhibit A**, and all property hereafter annexed into the Project.

1.23 “Rules and Regulations” means and refers to those rules and regulations adopted by the Board of Directors from time to time that are deemed necessary by the Board for the enjoyment of the Property and Community.

1.24 “Single-Family” means and refers to a single group of individuals allowed to reside together in a Unit based on the definition of “family” as contained in the Zoning Regulations of the Washington County code, as may be amended from time to time.

1.25 “Unit” or “Living Unit” shall mean Single-Family residential dwelling unit on the Property and constructed upon a numbered Lot or space reflected on a recorded Plat.

1.26 “Unit Number” means the symbol, number, letter, or combination thereof designating or identifying only one Living Unit in the Project as set forth in the Plat or this Declaration.

ARTICLE II - PROPERTY DESCRIPTION

2.1 Property Subject the Declaration and Bylaws. The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in Washington County, Utah, and is described on **Exhibit A** attached hereto, and includes all property hereafter annexed into the Project.

2.2 Description and Legal Status of Lots. The Map shows the Lots and building designations, their locations, dimensions from which its areas may be determined, and, as provided in this Declaration and with the Definitions above, those Limited Common Areas which are reserved for such use, and the Common Areas. All Lots are residential Lots. All Lots shall be capable of being independently owned, encumbered, and conveyed.

2.3 Covenants Run with the Land. All of the Property shall be owned, conveyed hypothecated, encumbered, used, occupied and improved subject to this Declaration and the Governing Documents, and the Act. The easements, covenants, conditions, restrictions and charges, described in this Declaration shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of the Association and each Owner thereof.

ARTICLE III - PROPERTY RIGHTS AND EASEMENTS

3.1 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, 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.

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

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

(b) Utility Easements. The Association or any public 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. Within these easements, 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 Owner of the 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.

(d) Parking Rights of Owners. Ownership of each Unit shall entitle the Owner thereof to the use of the common driveway, with a right of ingress and egress in and upon said driveway to private garages. Parking by others in such a manner as to prevent ingress and egress to said private garages by the Owner thereof shall be prohibited.

3.3 No Encroachment. No Lot shall encroach upon an adjoining Lot without the express written consent of the Board of Directors. If, however, an encroachment occurs due to the settlement or shifting of a structure/building or any other reason whatsoever beyond the control of the Board of Directors 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 IV - ASSESSMENTS

4.1 Covenant for Assessments.

(a) Each Owner, by acceptance of a deed 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:

- (1) Annual common assessments (the "Annual Assessment") as provided below.
- (2) Special assessments ("Special Assessments") as provided below.
- (3) Individual assessments ("Individual Assessments") as provided below.

(b) No member may exempt itself from liability for Assessments by abandonment of any Lot owned by such member.

4.2 Annual Budget and Assessment.

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

(b) Determination of Annual Assessment.

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

(2) The omission by the Board of Directors, 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.

(3) 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 of Directors 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 or Private Lane Assessment. Owners shall be given at least twenty (20) days' written notice of any changes in the amount of an Assessment.

4.3 Apportionment of Assessments. Assessments shall be apportioned as follows:

(a) Annual and Special Assessments. All Lots shall pay a pro rata share of the Annual Assessment and Special Assessments commencing upon the date the Lots were made subject to the Original Declaration. The pro rata share shall be based upon the total amount of each such assessment divided by the total number of Lots.

(b) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots benefitted or to which the expenses are attributable as provided for below.

(c) Payment of Assessments. Installments of Annual Assessments shall be levied and collected on a monthly basis. However, upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis.

Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

4.4 Lien. The Annual Assessment and all other 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.

4.5 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 of Directors, 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.

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

4.7 Special Assessments. In addition to the Annual Assessments authorized in this article, the Association may levy at any time a special assessment ("Special Assessment"), for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Areas or for any other purpose consistent with the provisions of the Governing Documents. The Board of Directors may authorize a special assessment for any lawful purpose provided, however, that such assessment shall first be approved by two-thirds (2/3) of those members of the Association, who actually cast votes through the voting procedure authorized by the Board for that particular action (e.g., at a meeting or through mail-in ballot). Notwithstanding the foregoing, the Board of Directors may levy a special assessment in an amount not to exceed \$500 per Lot without approval of the members.

4.8 Notice and Quorum for any Action Authorized Under Section 4.7. Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Sections 4.7 of this Article shall be sent to all members not less than twenty (20) days, or more than seventy-five (75) days, in advance of the meeting. At any meeting or voting procedure conducted for the purpose of taking any action authorized under Sections 4.7 of this Article, the presence at the meeting of members or of proxies, or the response of members in a vote conducted without a meeting, equaling forty percent (40%) of all of the votes of members, shall be necessary and sufficient to constitute a quorum. If a quorum cannot be obtained at any such meeting or voting procedure, the meeting may be adjourned and the quorum requirement at

any subsequent meeting or voting procedure held within thirty (30) days shall be twenty percent (20%) of all of the votes of members.

4.9 Commencement of Assessments. The Assessments provided herein shall commence as to each Owner on the first day of the month following the conveyance of any Lot to such Owner. Any Assessments due shall be adjusted according to the number of months or other periodic payments remaining for the applicable calendar year.

4.10 Individual Assessments. Any expenses benefitting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefitted. Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association; (2) Expenses relating to the cost of maintenance, repair, replacement, and reserves of the Lots.

4.11 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 of Directors through resolution, and shall be delinquent if not paid by the fifteenth (15th) of the month or within such other period established by the Board from time to time. The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment.

4.11.1 Interest. Delinquent payments shall bear interest from the sixteenth (16th) day of the month (the “date of delinquency”) at the rate established by the Board of Directors.

4.11.2 Late Charge. Delinquent payments shall be subject to a late charge of Fifteen Dollars (\$15.00) per month until paid, or such other amount as determined by the Board from time to time.

4.11.3 Acceleration. If paid by installments, the Assessments may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days written notice to the Owner. 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.

4.12 Remedies, Including Suspension of Membership Rights and Services. All membership rights, including the right of an Owner to vote on issues concerning the Association or sit on the Board may be suspended by the Board if the Owner is delinquent by more than 60 days in the payment of his or her Assessment. Any service provided by the Association to the Owners shall also be terminated as to the delinquent Owner at the discretion of the Board. The Association shall have each and every remedy for collection of assessments provided in the Utah Community Association Act, Utah Code Title 57, Chapter 8a, as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act

in order to exercise any such remedy. The Association hereby conveys and warrants pursuant to U.C.A. § 57-1-20 and 57-8a-402 (as the same may be amended from time to time) 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.

4.13 Appointment of Trustee. 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.

4.14 Enforcement of Lien. The Association may establish and 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 may be established and 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 this Declaration, the Bylaws or any rules and regulations of the Association. The lien may be 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.

4.15 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.

4.16 Reserve Funds. Pursuant to the Act, the Association must cause a full reserve analysis to be conducted at least once every six years, which must also be reviewed and, if necessary, updated every three years, for the purpose of determining the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common Area and any common facilities that have a useful life of three years or more. Furthermore, the Association must present the reserve study to the owners annually and provide an opportunity for the unit owners to: (1) discuss reserves; (2) vote on whether to fund a reserve; and, (3) if the owners resolve to fund a reserve account, to determine how to fund the account and in what amount. In addition to presenting the reserve and allowing the owners to discuss and vote on the funding of

the reserves, the Association must prepare and keep minutes of each meeting held annually and indicate in the minutes the decisions of the owners regarding funding reserves. Reserves may not be used for any purpose other than the purpose for which the reserve fund was created and such reserves must be maintained separately from other Association funds. The proportional interest of any member of the Association in any reserve fund established under this Section shall be considered an appurtenance of any such Owner's Lot, shall not be separated from the Lot to which it pertains, and shall be deemed to be transferred with the title to said Lot.

4.17 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.

4.18 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. Furthermore, 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 Occupancy and Residential Use. Each Lot within the Association shall be limited to Single-Family occupancy and their guests, for a reasonable duration, as a private residence and for no other purpose. Lots 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. Except as provided in this subsection, 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 on any Lot or in any other portion of the Project.

5.1.2 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 other portion of the Common Areas, nor shall anything be done in or placed upon any Common Area which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents.

5.1.3 Hazardous and Unlawful Activities. No activities shall be conducted on the Property and no improvements shall be constructed which are or might be unsafe or hazardous to any person or property. Furthermore, no unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

5.1.4 Animals.

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

(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. All approved pets must be kept in compliance with all applicable laws and ordinances, as may be amended from time to time. 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 of Directors 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 of Directors may apply for appropriate judicial relief in the event that Owners violate this Article.

5.1.5 Rubbish and Trash. No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

5.1.6 Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Property unless such vehicle is within a garage. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the other Lots. If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board of Directors, the Board of Directors may have such vehicle removed from the Property (i.e., towed) and assess the Owner the expense of such removal and any storage necessitated thereby.

5.1.7 Parking of Automobiles and Other Vehicles. The Board of Directors may adopt and amend rules to govern the parking of vehicles in the Common Areas, 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. Vehicles parked in violation of rules governing the parking of vehicles will be subject to being towed. No disabled vehicles are to be left in driveways more than seventy-two (72) hours.

5.1.8 Carports and Garages. Carports are not permitted to be constructed upon any portion of the Property, including driveways and or any other part of a Lot. Furthermore, no garage located upon the Property may be converted into any type of living space nor altered in any way that would preclude the parking of vehicles therein.

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 Property except within a Living 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 Living Unit unless in an area screened from public view.

5.1.10 Signs. Unless written approval is first obtained from the Board of Directors, 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 by the Owner, resident or a licensed real estate agent; and,

(2) An identifying sign may be displayed on the exterior of any Living Unit provided said sign shall not be in excess of a 2 feet 2 inches area.

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

5.1.12 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 Lot or Common Areas which will result in cancellation of insurance on any Lot.

5.1.13 Weed Control. Each Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on his or her Lot so as to minimize weeds, fire and other hazards to surrounding Living Units, the common air, the Common Areas, and surrounding properties. Noxious weeds shall mean and refer to those plants which are injurious to crops, animals, land, or the public health.

5.1.14 Lease Restrictions.

(1) Definitions. For use of this Section 5.1.14, the following terms are hereby defined as follows:

(a) “Rental,” including any derivations thereof, shall mean: (1) a Lot that is occupied by someone other than the Lot’s Owner while no Owner occupies the Lot as the Owner’s primary residence; and, (2) a Lot that is owned by an entity or trust, but is occupied by someone other than the Lot’s Designated Owner, regardless of who occupies the Lot.

(b) “Designated Owner” shall mean any person or Single-Family designated in writing to the Association by a partnership, corporation, trust, or other legal entity that owns or has an ownership interest in a Unit, whether in whole or in part, as the authorized residents thereof. If the partnership, corporation, trust, or other legal entity fails to designate a person or Single-Family as required herein, then no person may occupy the Unit. Furthermore, the partnership, corporation, trust, or other legal entity may, upon written notice to the Association, change its designation once every six (6) months.

(2) Requirements. No Owner shall rent less than the entire Lot or Living Unit, and no Owner shall rent such Owner’s Lot or Living Unit for an initial term of less than twelve (12) months.

(3) Rental Limit. No Lot or Living Unit may be rented if the rental results in more than **twenty percent (20%)** of the total number of Lots or Living Units within the Property being rented (“**Rental Limit**”), except as provided below.

(4) Application Required. Prior to renting any Lot or Living Unit, an Owner shall apply to the Association for approval to rent their Lot or Living Unit. The Association shall review the application and make a determination of whether the rental or lease will exceed the Rental Limit and the Association shall deny the application if it determines that the rental of the Lot or Living Unit will exceed the Rental Limit.

(5) General Exemptions. The Association hereby exempts from the above rental restriction the following Lots and/or Lot Owners: (1) a Lot Owner in the military for the period of the Lot Owner’s deployment; (2) a Lot occupied by a Lot Owner’s spouse, parents, child, sibling, grandparents, or grandchildren; or, (3) a Lot Owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of a current resident of the Lot or the spouse, parent, child, or sibling of the current resident of the Lot.

(6) Hardship Exemptions. Notwithstanding anything herein to the contrary, to avoid undue hardships or extreme practical difficulties such as the Owner’s disability, job relocation, charitable service, extended vacation, fluctuating market conditions, or other similar circumstances, the Board shall have the sole discretion to approve an Owner’s application to temporarily rent the Owner’s Lot and may set any terms and restrictions it deems necessary as a condition precedent to such Owner’s ability to temporarily rent such Lot or Living Unit. The Association may not approve an application to rent or lease less than the Owner’s entire Lot or

Living Unit or to rent or lease the Unit for a period of less than twelve (12) consecutive months.

(7) Grandfathering. Notwithstanding anything to the contrary in this Section 5.1.14, any Owner of a Lot or Living Unit who was grandfathered under the Third Amendment to the Declaration of Covenants and Bylaws of Cottonwood Townhomes, recorded on November 16, 2009, as Entry No. 20090043648, remains grandfathered under this Declaration until such time as such Owner occupies the Lot or until the conveyance, sale, or other transfer of the Lot by deed. Thereafter, the grandfathered status of such Owner and/or Lot shall expire and shall be subject to the rental restriction of this Section 5.1.14. Owners renting or leasing their Lots or living units pursuant to this grandfathering provision shall still be required to submit a copy of the written lease or rental agreement to the Association in compliance with subsection (6) below. Each Lot currently being rented, regardless of whether it is temporarily exempt from the rental prohibition under this grandfathering provision, shall be counted for purposes of the Rental Limit.

(8) Waiting List. The Board may establish and maintain a “waiting list” for Owners who desire to rent their Lots or Living Units, but are ineligible to do so because of the Rental Limit. When the number of rentals drops below the applicable Rental Limit, the Board may provide written authorization to the Owners on the waiting list allowing them to lease or rent their Lot or Living Unit. Such authorizations shall be given in the order the applications were received, and shall only be given if the new rental will not exceed the Rental Limit. Upon receipt of written authorization from the Association, an Owner shall have sixty (60) days to lease the Lot or Living Unit and to submit a copy of the written lease to the Board. If the Owner receiving the authorization has not leased their Lot or Living Unit and provided a copy of the written lease to the Board within sixty (60) days of the written authorization, the authorization is terminated and the Owner’s name shall be placed at the end of the existing waiting list. The Board may then offer the lease authorization to the next Owner on the waiting list. The Board shall have the authority to adopt reasonable procedures and policies, not inconsistent with this Declaration, for maintaining and administering the waiting list.

(9) Lease Agreement. If an Owner is approved to lease or rent their Unit, whether pursuant to a hardship exemption or otherwise, any lease agreement between an Owner and a lessee must be in writing, and must provide, among other things, that the terms of the lease shall in all respects be subject to the provisions of the Governing Documents of the Association. All lease agreements shall contain as an attachment to the lease agreement, a copy of the current Rules and Regulations of the Association. Any failure by the lessee to comply with the terms of the Association’s Governing Documents shall constitute a default under the lease and, upon notice to the Owner and a failure of the Owner to remedy violations of their lessee, the Board may require an Owner to terminate a lease agreement. If violations continue thereafter, the Association is hereby deemed an intended third-party beneficiary under the lease and is hereby appointed agent of the Owner and is entitled to initiate eviction proceedings against any such lessee. Any Owner that is approved to rent or lease their Lot or Unit shall submit a copy of the written lease or rental agreement to the Association.

(10) Lease Payments by Tenant to Association. If an Owner who is renting his or her Lot fails to pay an assessment for more than sixty (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 the amount due to the Association is paid. The Board shall give the Owner written notice of its intent to demand full payment from the tenant. The notice to the Owner shall state (1) the date certain by which the Association expects full payment; (2) the amount due and owing to the Association, and (3) that the Association will make demand upon the tenant for future lease payments to be made to the Association if the request is not adhered to.

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 of Directors fails to approve or disapprove a request by an Owner, the request will be deemed to have been denied.

5.1.16 Solar Energy Installations. All Owners shall have the right, subject to the approval of the Association regarding size, place, manner of placement, and visibility, to place and maintain on their Lot any solar energy collection devices or other energy-saving devices and facilities related to the installation and maintenance of individual solar energy collection device. The installation and maintenance of any solar energy collection devices by an Owner shall be subject to the approval of the City of St. George, State of Utah and to all other applicable governmental ordinances, rules and regulations. No solar energy collection device or heating panels shall be installed on any portion of any Lot or any Improvements thereon unless such equipment is installed in such location and in such manner as to be concealed from the view of others within the Project to the greatest degree practical without decreasing efficiency. This provision shall not be deemed to create a solar easement that would be enforceable by applicable law; however, the Association will use its best efforts to not interfere with an Owner's access to sunlight nor to develop the Common Areas in such a way as to restrict such Owner's solar-energy system's access to sunlight.

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

ARTICLE VI – THE ASSOCIATION

6.1 Organization.

(a) 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).

(b) The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association. However, the Board of Directors, upon its own motion, may re-incorporate the Association without a vote of the Owners.

(c) The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws.

6.2 Membership. Each Owner during the entire period of Owner=s ownership of one or more Lots within the Community shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of such ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership. Such membership shall be appurtenant to and may not be separated from ownership of any Lot.

6.3 Voting Rights. The method of voting shall be as provided in the Bylaws. Voting rights within the Association shall be allocated as follows: Each Owner shall have one (1) vote in matters of the Association for each Lot owned as set forth in the Bylaws.

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

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

(1) The Association shall maintain the Common Areas and any other areas required to be maintained by this Declaration;

(2) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Property, provided that the Association shall have the right to contest or compromise any such taxes or assessments;

(3) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration;

(4) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Community, subject at all times to direction by the Board of Directors, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board of Directors; however, any contract to employ a Managing Agent must be terminable at any time upon the vote of two-thirds (2/3);

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

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

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

(3) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by the Association at the end of the first year or at any time thereafter upon no less than thirty (30) days written notice if without cause, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Lot on account of any work done or performed

by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

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

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

(4) The Boards may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Officers 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).

6.5 Adoption of Bylaws. The Association has adopted Bylaws for the Association which are recorded simultaneously with this Declaration and are attached as **Exhibit B** hereto.

ARTICLE VII - PARTY WALLS

7.1 General Rules of Law Apply. Each wall to be built as a part of the original construction of any Living Unit and placed substantially on a dividing line between any two (2) Living 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.

7.2 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.

7.3 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.

7.4 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.

7.5 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 VIII - MAINTENANCE OBLIGATIONS

8.1 Owner's Responsibility.

8.1.1 Lots. Except to the extent that the Association is responsible therefore under Section 8.2 below, maintenance of the Lots and the Living Units shall be the responsibility of the Owner(s) thereof, who shall maintain such Lots and Living Unit in good condition and repair. Each Owner at his or her sole expense shall maintain and repair the interior of the Living Units, including floors and each and every structural element beneath the Unit, gutters and downspouts, if installed upon the Living 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, including fences. 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 Living 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 Living Unit or Lot.

8.1.2 Limited Common Area. For the purpose of maintenance under this Article VIII, the decks and/or patios appurtenant to each Lot shall be deemed and treated as 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, including any deck and/or patio.

8.1.3 Fences and Fenced-in Areas.

(a) No Separate Property Right Created. Any area enclosed by a fence shall retain its original status as Common Area, Limited Common Area, or a Lot, as the case may be, and shall not be deemed to be part of a Lot or an interest in real property only by virtue of its being enclosed by a fence. The applicable Owner shall merely enjoy a temporary revocable license to enjoy such enclosed area for his or her exclusive use but no further property right is or shall be created and no guarantee, covenant or promise that such a license shall continue to exist for any period of time is created hereby.

(b) Maintenance of Fenced Area. Landscaping of any fenced in area is under the control and direction of the Association. Approval to plant in or modify the landscaping in any fenced in area must be obtained from the Board prior to making any changes or improvements to the fenced in area. Flowers may be planted in existing planter beds provided the owner maintains them. In addition to its other responsibilities for the Common Areas and if requested by an Owner in writing, the mowing, aerating, and reseeding of lawns ("lawn services") within the fenced areas shall be provided by the Association.

The Association is responsible for the maintaining of the sprinkler system and keeping it in good working order; however, to the difficulties that arise from Common Areas appurtenant to Lots being enclosed by fencing, namely that the Association may not have notice of problems or potential problems with any Common Area elements or accessories enclosed by such fencing, for example sprinkler line breaks, and in order to preserve the benefit of enclosed Common Areas and to avoid exposing all Owners within the Association to increased and unnecessary risks of liability to repair such fenced areas after significant damage has already occurred, the Association deems it necessary that any Owner that has Common Area enclosed by fencing appurtenant to their Lot shall have placed upon them an affirmative duty to report to the Board any defects, necessary repairs, or damage to such Common Area that are enclosed by fencing. Failure to report such problems, defects, or damage with the enclosed Common Areas, if discoverable by a reasonably prudent resident Owner, shall relieve the Association from liability, and the Owner agrees to hold the Association harmless, for any damage caused by such defect, necessary repair, or damage to the enclosed Common Area.

Owners shall be responsible to maintain, repair and replace any additional flowers, trees, specific plants or planters, or for any other Improvements that they install or construct, after receiving the proper approval from the Board.

(c) Common Area in Front of Units. While the areas located in front of Units are Common Areas, Owners are allowed a temporary revocable license to use the planter located in front of each Unit and the planter between the driveways for the planting of flowers and other approved plants as may be designated by the Board through adopted rule.

(c) Additional Requirements. The Board may adopt rules from time to time further regulating fences and clarifying or otherwise expanding the provisions of this Section 8.1.3 and may impose additional requirements for an Owner to continue to keep a fence or obtain approval to install a fence, including but not limited to, days that the mowing shall occur and requiring Owners to have their gates unlocked to receive such services.

8.2 Maintenance by Association. The Association shall maintain the Common Areas of the Property, unless otherwise stated in this Declaration, and shall provide for such maintenance and repair of the exteriors of the Living Units, including roofs, (but not including the repair or replacement of glass, doors, door frames, window, window frames, gutters and downspouts, and also not including sealing, repairing or otherwise fixing foundations) as may be necessary or desirable to keep them attractive and generally in good condition and repair. However, if the Common Areas are damaged by the willful misconduct of an Owner, their guests, tenants, or invitees, the Owner shall be responsible for all such damage. The Association shall also maintain all Common Area amenities which may be installed from time to time.

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, including the responsibility for Limited Common Areas. Such

determinations shall be set forth in a Board resolution distributed to all Owners and shall be binding against all Owners.

Additionally, the Association, by and through the Board of Directors, may assume the Owner=s general maintenance responsibility over a Lot and Limited Common Area if, in the opinion of the Board of Directors, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board of Directors 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 fifteen (15) 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 be levied and collected in the same manner as assessments pursuant to this Declaration.

ARTICLE IX - COMPLIANCE AND ENFORCEMENT

9.1 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.

9.2 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:

9.2.1 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;

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

9.2.3 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 and set forth in a schedule of fines. 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;

9.2.4 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; or

9.2.5 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.

9.2.6 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.

9.3 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.

9.4 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 X - INSURANCE

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

(a) A public general liability insurance policy covering the Association, its members, 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, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common elements, and legal liability arising out of lawsuits related to employment contracts of the Association;

(b) Workers' compensation insurance, if and to the extent required by law;

(c) Fidelity bond or bonds covering all Board members, officers, employees and other persons handling or responsible for the funds of, or administered by, the Association, in such amounts as the Board of Directors deems appropriate, but no less than a sum equal to three months aggregate assessments on all units plus reserve funds. Where the Managing Agent has the responsibility for handling or administering funds of the Association, the Managing Agent

shall maintain fidelity bond coverage for its officers, employees, and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or Managing Agent, as the case may be, at any given time during the term of each bond. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees”, or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the Managing Agent, shall be paid by the Association as a common expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days’ prior written notice to the Association or insurance trustee;

(d) Blanket property insurance with not less than 100% of the full replacement cost for the physical structure of all attached dwellings, Limited Common Areas appurtenant to a Living Unit on a Lot, and Common Areas in the project, insuring against all risks of direct physical loss commonly insured against, including coverage for any fixture, improvement, or betterment installed by a Lot Owner to an attached Living Unit or to a Limited Common Area appurtenant to a Living Unit on a Lot, 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 an attached Living Unit or to a Limited Common Area;

10.2 Acceptable Insurance Providers. The Association shall use generally acceptable insurance carriers.

10.3 Lot Owner Insurance Responsibility. For Living Units, the Association’s policy is primary but the Unit Owner is responsible for the deductible as follows:

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

10.3.2. If a Lot, or Limited Common Area or facility appurtenant to a 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 Unit damage for that Unit 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 in an amount that is reasonable. The Association shall provide notice to the Lot Owners of any change in the amount of the deductible.

10.3.3. 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.

10.4 Annual Review of Policies. The Board shall review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed.

10.5 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 XI - AMENDMENT AND DURATION

11.1 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 Owners holding sixty-seven percent (67%) of the voting rights of the Association.

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

11.2 Duration.

(a) Period. All provisions, covenants, conditions and restrictions contained in this Declaration shall continue and remain in full force and effect until there is recorded an instrument directing the termination of this Declaration after the vote and approval of eight-five percent (85%) of all of the Owners of the Lots.

(b) Execution and Recording of Termination Certificate. 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 XII - MISCELLANEOUS PROVISIONS

12.1 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.

12.2 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.

12.3 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 Property under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner=s use, improvement or enjoyment of such Owner=s Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

12.4 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 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 Association, Board of Directors or Owner as to any similar matter.

12.5 Interpretation. All questions of interpretation or construction of any of the covenants or

EXHIBIT A

(LEGAL DESCRIPTION)

The following properties and the legal descriptions, including Lots, as described on the Record of Survey Plats recorded in the Office of the Washington County Recorder, State of Utah:

Cottonwood Townhomes Phases 1 through 4.

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 Washington County 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 ten (10) nor more than ninety (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 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 (1) 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

3.1. Number, Election, Term of Directors. The Board shall consist of three (3) or five (5) Directors, the exact number, which may be altered from time to time, to be determined by resolution of the Board. The Directors shall also constitute the Officers of the Association as set forth in Section 4. 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. Each Director will hold office for a term of three (3) years. The intent of this provision is for the terms of the Board members to be staggered, therefore, unless terms are already staggered, at the first election after recordation of these Bylaws, the candidate receiving the most votes shall be elected for a three (3) year term, the candidate receiving the second most votes shall be elected for a two (2) year term, and the third Director shall serve a one (1) year term, so as to achieve a staggering of terms.

3.2. Meetings. Meetings of the Board will be held as needed, but at least annually, and at any time when called by the president of the Association or by a majority of the Directors, upon the giving of at least two (2) 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.

3.3. 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.

3.4. 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.

3.5. 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.

3.6. 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.

3.7. Removal of Directors.

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

(b) The Board may declare the position of a Director to be vacant in the event such Director is absent from three (3) consecutive regular meetings of the Board or from more than twenty-five percent (25%) of the regular meetings held in any twelve (12) month period. The vacancy shall be filled as provided in Section 3.8 below.

3.8. Resignation or Death. A Director may resign before the expiration of his 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.

3.9. Deadlock. In the event of a deadlock on the Board, the Board shall immediately call for a special meeting of the members and, at the direction of the president of the Board, either call for the election of a new Board, or submit the matter to the members for determination.

3.10. Compensation. The Board of Directors shall serve without compensation, provided that their reasonable out of pocket expenses for Association business, including the costs of attending Board meetings, may be reimbursed by the Association.

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, a secretary, and a 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. The secretary shall keep or cause to be kept the minutes of all meetings of the Board and the minutes of all meetings of the Association, see that all notices are duly given in accordance with the provisions of these Bylaws, maintain or cause to maintain the records of the Association, including a record containing the names and registered addresses of all Owners, the designation of the Lot or Lots owned by each Owner, and, if a Lot is Mortgaged, the name and address of each Eligible Holder, have charge of such books and papers as the Board may direct, shall have the responsibility for preparation and maintenance other records and information required to be kept by the Association under the Act and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act, for authenticating records of the non-profit corporation, and in general, perform all other duties incident to the office of secretary and the duties assigned to her or him by the president or the Board.

Treasurer. The treasurer shall be the principal financial officer of the Association and will have the responsibility and custody for all of the Association's funds, securities, evidences of indebtedness, and other personal property of the Association. The treasurer shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. Additionally, the treasurer shall 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 and shall perform all other duties incident to the office of treasurer and the duties assigned to her or him by the president or the Board. 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.

SECTION 5 - CONTACT INFORMATION; ADDRESS

5.1. Each Owner is required to register a mailing address, a phone number, and an email address with the Association within ten (10) business 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 (10) business 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 Owners, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring members to furnish the Association with a current email address.

SECTION 7 - AMENDMENT

7.1. Except as limited by law or the Articles of Incorporation, these Bylaws may be amended or repealed by a vote of at least fifty-one percent (51%) 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

, Secretary