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Sky Mountain Homeowners Association, Inc.

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After Recording mail to:  
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**AMENDED AND RESTATED MASTER BYLAWS**  
**OF**  
**SKY MOUNTAIN HOMEOWNERS ASSOCIATION, INC.**

Prepared by:



Attn: Bruce C. Jenkins  
285 W. Tabernacle, Ste. 301  
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**AMENDED AND RESTATED MASTER BYLAWS  
OF  
SKY MOUNTAIN HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I - GENERAL**

**1.1 Purpose of Bylaws.**

These Amended and Restated Master Bylaws of Sky Mountain Homeowners Association, Inc. (the “Bylaws”) are adopted by vote of a majority or more of the Members at a meeting at which a quorum of the Members was present. These Bylaws are for the regulation and management of the affairs of Sky Mountain Homeowners Association, Inc., a Utah nonprofit corporation (the “Association”), to which reference is made in the Second Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Sky Mountain Project, a Planned Community, recorded in the official records of the Washington County Recorder, State of Utah, as amended or supplemented from time to time (the “Declaration”), to perform the functions as provided in the Declaration and to further the interests of Owners of Lots within the Property. It is the intent of the Board to operate the Clubhouse and Courtyard Associations as one Association.

These Bylaws amend, restate, wholly replace, and substitute for the following:

- Bylaws of Sky Mountain Homeowners Association, Inc., which were not signed but were adopted, accepted, and ratified by resolution of the Board; and
- any other amendments, supplements, or annexing documents to the Bylaws for the Association, whether or not recorded with the Washington County Recorder.

**1.2 Terms Defined in Declaration.**

Unless otherwise specifically provided herein, capitalized terms in these Bylaws shall have the same meaning as given to such terms in the Declaration.

**1.3 Controlling Laws and Instruments.**

These Bylaws are subject to the Utah Revised Nonprofit Corporation Act (Utah Code §§ 16-6a-101, et seq.) (“Nonprofit Act”) and the Community Association Act (Utah Code §§ 57-8a-101, et seq.) (“Association Act”) (collectively the “Acts”), the Declaration, and the Articles of Incorporation of the Association (“Articles”) filed with the Division of Corporations and Commercial Code of the Utah Department of Commerce (the “Division”), as any of the foregoing may be amended from time to time. Where these Bylaws differ from the Nonprofit Act or the Association Act, these Bylaws shall control unless the provisions of either the Nonprofit Act or the Association Act, or both, are mandatory and not default provisions.

## **ARTICLE II - OFFICES**

### **2.1 Principal Office.**

The principal office of the Association shall be at the address identified in the Association's latest annual report filed with the Division. The Board in its discretion, may change from time to time the location of the principal office. (A member of the Board shall hereinafter be referred to as a "Director.")

### **2.2 Registered Office and Agent.**

The Acts require that the Association have and continuously maintain in the State of Utah a registered office and a registered agent. The registered agent must be an individual who resides in the State of Utah and whose business office is identical with the registered office. The initial registered office and the initial registered agent are specified in the Articles and may be changed by the Association at any time, without amendment to the Articles, by filing a statement as specified by law with the Division.

## **ARTICLE III - MEMBERS**

### **3.1 Members.**

A "Member" is the person or, if more than one (1), all persons collectively, who constitute the Owner of a Lot within the Property.

### **3.2 Memberships Appurtenant.**

Each Membership shall be appurtenant to the fee simple title to a Lot. The person or persons who constitute the owner of fee simple title to a Lot shall automatically be the holder of the Membership appurtenant to that Lot and the Membership shall automatically pass with fee simple title to the Lot.

### **3.3 Members' Voting Rights.**

Subject to the provisions in the Declaration and the Articles, each Member shall be entitled to one (1) vote for each Lot which the Member owns within the Property.

### **3.4 Voting by Joint Owners.**

In the event there is more than one (1) Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person, by proxy, or through ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned, unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the

vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

### **3.5 Resolution of Voting Disputes.**

In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting, the Board shall act as arbitrators and the decision of a disinterested majority of the Board shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with Utah law.

### **3.6 Transfer of Memberships on Association Books.**

Transfer of Membership shall be made on the books of the Association only upon the presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Lot to which the Membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the Membership as the owner of the Membership entitled to all rights in connection therewith, including the right to vote and to receive notice.

### **3.7 Assignment of Voting Rights to Tenants and Mortgagees.**

A Member may assign the Member's right to vote to a Tenant occupying the Member's Dwelling Unit or to a mortgagee of the Member's Dwelling Unit for the term of the lease or the mortgage and any sale, transfer or conveyance of the Dwelling Unit and the Lot upon which it is situated shall, unless otherwise provided in the document of sale, transfer or conveyance, be subject to any such assignment of voting rights to any Tenant or mortgagee. Any such assignment of voting rights and any revocation or termination of any assignment of voting rights shall be in writing and shall be filed with the secretary of the Association by the record date set forth in Section 4.4. Any such assignment of voting rights shall be automatically terminated and revoked upon the sale, transfer, or conveyance of the Lot.

## **ARTICLE IV - MEETING OF MEMBERS**

### **4.1 Place of Members' Meetings.**

Meetings of Members shall be held at the principal office of the Association or at such other place, within or convenient to the Property, as may be fixed by the Board and specified in the notice of the meeting.

### **4.2 Annual Meetings of Members.**

Annual Meetings of the Members shall be held during the month preceding the start of the fiscal year at such time of day as is fixed by the Board and specified in the notice of meeting. The Annual Meetings shall be held to elect Directors of the Association and to transact such other business as may properly come before the meeting. A list of orders of business to be considered at the annual meeting shall be sent to the Owners and shall include the name, address, and a brief

biographical sketch if available of each Member of the Association who has announced his or her intention to stand for election to the Board. At or prior to an annual meeting, the Board shall furnish to the Owners (a) a budget for the coming fiscal year which shall itemize the estimated Common Expenses for the coming fiscal year with the estimated allocation thereof to each Owner; and (b) an unaudited statement of the Common Expenses itemizing receipts and disbursements for the previous fiscal year, together with the allocation thereof to each Owner.

#### **4.3 Special Meetings of Members.**

Special Meetings of the Members may be called by the president or the Board or by Members holding not less than ten percent (10%) of the total votes of all Members. No business shall be transacted at a special meeting of Members except as indicated in the notice thereof.

#### **4.4 Record Date/Members List.**

4.4.1. The record date for the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose for the taking of any other lawful action shall be as set forth in Subsection 4.4.2 below, unless the Board, in advance of sending notice, sets a date by resolution as the record date for any such determination of Members. Such record date shall not be more than sixty (60) days prior to the meeting of Members or the event requiring a determination of Members.

4.4.2. Members entitled to notice of a meeting of the Members are the Members of the Association at the close of business on the business day preceding the day on which notice is effective, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held. Members entitled to vote at a meeting of the Members are the Members of the Association on the date of the meeting, and who are otherwise eligible to vote. The record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action are Members of the Association at the later of (a) the close of business on the day on which the Board adopts the resolution relating to the exercise of the right; or (b) the close of business on the sixtieth (60<sup>th</sup>) day before the date of the exercise of the right. A record date fixed under this Section may not be more than seventy (70) days before the meeting or action requiring a determination of Members occurs. A determination of Members entitled to notice of or to vote at a meeting of Members is effective for any adjournment of the meeting unless the Board fixes a new date for determining the right to notice or the right to vote.

4.4.3. The Association shall only be required to prepare a list of the names of the Members as provided for in Section 9.3.3.

#### **4.5 Notice of Members' Meetings.**

Written notice stating the place, day and hour of any meeting shall be given not less than fifteen (15) nor more than sixty (60) days before the date of the meeting (plus any time added to effectuate delivery under Section 9.16). The notice of an annual, regular or special meeting shall include: (a) the names of any known candidate for Director and shall identify any other matter



which it is known may come before the meeting; (b) potential conflicting interest transactions of a Director, party related to a Director, or an entity in which the Director is a trustee or has a financial interest, (as set forth in Utah Code § 16-6a-825), if any; (c) notice of any indemnification or advance of expenses to a Director in connection with a legal “proceeding” as defined in the Acts; (d) notice of any amendment to these Bylaws proposed by the Members and a copy, summary or general statement of the proposed amendment; (e) notice of a proposed plan of merger; (f) notice of a proposed sale of the Properties by the Association other than in the regular course of activities; (g) notice of a proposed dissolution of the Association; and (h) any matter a Member intends to raise at the meeting if requested in writing to do so by a person entitled to call a special meeting and the request is received (receipt deemed effective as set forth under Section 9.16) by the secretary or president at least ten (10) days before the Association gives notice of the meeting, plus any time added to effectuate delivery under Section 9.16. The notice of a special meeting shall state the purpose or purposes for which the meeting is called.

#### **4.6 Proxies at Meetings.**

A Member entitled to vote at a meeting may vote in person, by ballot, or by proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the secretary of the meeting twenty-four (24) hours prior to the time the proxy is exercised.

#### **4.7 Ballots at Meetings.**

A written ballot may, upon the election of the Board, be used in connection with any annual, regular, or special meeting of Members, thereby allowing Members the choice of either voting in person, by proxy, or by written ballot delivered by a Member to the Association in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Section 4.8 and shall be counted equally with the votes of Members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

#### **4.8 Ballots without a Meeting and Electronic Voting.**

The Association may, upon the election of the Board or upon specific request of a Member for a special meeting of the Members, utilize ballots without a meeting to take any action that may be taken at any annual, regular, or special meeting of the Members provided the Association delivers a written ballot to every Member entitled to vote. Any ballot utilized without a meeting shall be valid only when (a) the time by which all ballots must be received has passed so that a quorum can be determined and (b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4.8.1 All solicitations for votes by written ballot shall: (a) set forth each proposed action; (b) provide for an opportunity to vote for or against each proposed action; (c) indicate the number of responses needed to meet the quorum requirements; (d) state the percentage of approvals necessary to approve each matter other than the election of Directors; (e) specify the time by which a ballot must be received by the Association in order to be counted; and (f) be accompanied by

written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

4.8.2 Any written ballot shall comply with the requirements in this Section and shall be counted equally with the votes of Members in attendance (by person or proxy) at any meeting for every purpose, including satisfaction of a quorum requirement.

4.8.3 Members shall be provided a fair and reasonable amount of time before the day on which the Association must receive ballots. An amount of time is considered to be fair and reasonable if (a) Members are given at least fifteen (15) days from the day on which the notice is mailed, if the notice is mailed by first-class or registered mail; (b) Members are given at least thirty (30) days from the day on which the notice is mailed, if the notice is mailed by other than first-class or registered mail; or (c) considering all the circumstances, the amount of time is otherwise reasonable.

4.8.4 The Association and its Members, by adoption of these Bylaws, agree to allow voting by electronic means. To effectuate electronic voting, ballots may be signed electronically as provided for in Subsection 4.19.

#### **4.9 Revocation of Proxy or Ballot.**

A proxy or ballot may be revoked, prior to the time the proxy is exercised or the ballot counted, by (a) the Member attending the meeting and voting in person, or (b) the Member signing and delivering to the secretary or other person authorized to tabulate proxy or ballot votes (i) a writing stating that the appointment of proxy or ballot is revoked, or (ii) a subsequent proxy form or ballot. A proxy or ballot shall automatically cease upon the conveyance by a Member of the Lot of the Member and the transfer of the Membership on the books of the Association. No proxy shall be valid after the earlier of (i) the day after the meeting of the Members for which the proxy was expressly submitted; or (ii) eleven (11) months from the date of its execution unless otherwise provided in the proxy. The death or incapacity of the Member appointing a proxy or issuing a ballot does not affect the right of the Association to accept the proxy's authority or count the ballot unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority or the ballot is counted.

#### **4.10 Written Consents Without a Meeting.**

Unless prohibited by the Articles, any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice, if one (1) or more written consents, setting forth the action taken, are signed by one hundred percent (100%) of the Members entitled to vote with respect to the subject matter of the action. Directors may not be elected by written consent, except by unanimous written consent of all Members entitled to vote for the election of Directors. Any action taken under this Section 4.10 is not effective unless all written consents are received within a sixty (60) day period and have not been revoked. A written consent may be given by electronic transmission or other form of

communication providing the Association with a complete copy of the written consent, including: (i) the date the written consent was sent and (ii) the signature (including electronic signatures as provided in Section 4.19).

#### **4.11 Telecommunications.**

Any or all of the Members may participate in an annual, regular or special meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A Member participating in a meeting by a means permitted under this Section 4.11 is considered to be present in person at the meeting.

#### **4.12 Quorum at Members' Meetings.**

Except as may be otherwise provided in the Declaration, the Articles, or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the representation, in person, by proxy or by ballot, of Members entitled to cast at least fifty-one percent (51%) of the votes of all Members shall constitute a quorum at any meeting of such Members. Members present in person or by proxy or represented by ballot at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum.

#### **4.13 Adjournment of Members' Meetings.**

Members present in person or by proxy at any meeting, whether or not there is a quorum may adjourn the meeting from time to time. If the meeting is adjourned, the Board shall issue a new Notice of Members Meeting at which meeting the Members that are present in person or by proxy or represented by ballot entitled to cast fifteen percent (15%) of the Membership interests of the Association shall constitute a quorum, except as otherwise provided in the Declaration, the Articles, or these Bylaws. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

#### **4.14 Vote Required at Members' Meetings.**

At any meeting where a quorum is present, action on a matter, other than the election of Directors, is approved if the votes cast favoring the action exceed the votes cast opposing the action unless a greater proportion is required by law, the Declaration, the Articles, or these Bylaws. In the case of elections to the Board, a quorum is not required and when there is more than one (1) candidate, the person or persons receiving the highest number of votes shall be elected.

#### **4.15 Cumulative Voting Not Permitted.**

Cumulative voting by Members in the election of Directors shall not be permitted.

#### **4.16 Order of Business.**

Unless otherwise changed by resolution of the Board or the Members, the order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) election of Directors, if applicable; (d) report of finances; and (e) any other Association business.

#### **4.17 Expenses of Meetings.**

The Association shall bear the expenses of all regular and annual meetings of Members and of special meetings of Members.

#### **4.18 Waiver of Notice.**

A Member may waive any notice required by the Acts or by these Bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. A waiver shall be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes; or filing with the corporate records. The delivery and filing required above may not be conditions of the effectiveness of the waiver. A Member's attendance at a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

#### **4.19 Signature of Members.**

Except as otherwise provided in the Acts, all votes, consents, written ballots, waivers, proxy appointments, and proxy or ballot revocations shall be in the name of the Member and signed by the Member with a designation of the Member's capacity; i.e., owner, partner, president, director, member, trustee, conservator, guardian, etc. Pursuant to Utah Code Section 46-4-201 a signature may not be denied legal effect or enforceability solely because it is in electronic form, i.e. an electronic signature. As used herein, the term "electronic" means relating to technology having electrical, digital, magnet, wireless, optical, electromagnetic, or similar capabilities. As used herein, the term "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a ballot and executed or adopted by a person with the intent to sign the ballot.

## ARTICLE V - BOARD OF DIRECTORS

### 5.1 General Powers and Duties of the Board of Directors.

The Board shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board shall have the power to exercise or cause to be exercised for the Association all of the powers, rights and authority of the Association not reserved to Members in the Declaration, the Articles, these Bylaws, or the Acts.

### 5.2 Special Powers and Duties of the Board of Directors.

Without limiting the foregoing statement of general powers and duties of the Board or the powers and duties of the Board as set forth in the Declaration, the Board shall be vested with the following specific powers and duties:

5.2.1 Assessments. The duty to fix and levy from time-to-time Assessments, special Assessments, and all other Assessments upon the Members of the Association as provided in the Declaration; and to enforce the payment of such delinquent Assessments as provided in the Declaration.

5.2.2 Insurance. The duty to contract and pay premiums for fire, casualty, liability, and other insurance in accordance with the provisions of the Declaration.

5.2.3 Common Areas. The duty to manage and care for the Common Areas, and to employ personnel necessary for the care and operation of the Common Areas, and to contract and pay for necessary or desirable improvements on property acquired by the Association in accordance with the Declaration.

5.2.4 Agents and Employees. The power to select, appoint, and remove all officers, agents, and employees of the Association and to prescribe such powers and duties for them as may be consistent with law, with the Declaration, the Articles, and these Bylaws.

5.2.5 Borrowing. The power, with the approval of the Members representing at least two-thirds (2/3) of the voting power of the Association, to borrow money and to incur indebtedness for the purpose of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt, and securities therefor.

5.2.6 Enforcement. The power to enforce the provisions of the Declaration, the Rules and Regulations, these Bylaws, or other agreements of the Association.

5.2.7 Delegation of Powers. The power to delegate its powers according to law.

5.2.8 Rules and Regulations. The power to adopt such Rules and Regulations with respect to the interpretation and implementation of the Declaration, use of Common Areas, and use of any property within the Property, including Dwelling Units, and to levy fines and penalties for infractions and violations thereof; provided, however, that such Rules and Regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles, and these Bylaws.

5.2.9 Emergency Powers. The right to exercise such emergency powers as provided for in the Acts.

### **5.3 Qualifications of Directors.**

A Director must be a natural person eighteen (18) years of age or over and an Owner of a Lot within the Property or, if the Owner of any such Lot is a partnership, corporation, or limited liability company, must be a designated representative of such partnership, corporation, or limited liability company. If a Director conveys or transfers title to his Lot, or if a Director who is a designated representative of a partnership, corporation, or limited liability company ceases to be such designated representative, or if the partnership, corporation, or limited liability company of which a Director is a designated representative transfers title to its Lot, such Director's term as Director shall immediately terminate and a new Director shall be selected as promptly as possible to take such Director's place. Any Director no longer qualified to serve under the standards provided for in this Section 5.3 may be removed by a majority vote of the Directors then in office.

### **5.4 Number of Directors.**

The number of Directors of the Association shall be not less than three(3) nor more than five (5). Subject to such limitations, the number of Directors shall be five (5) until changed pursuant to this Section 5.4. The number of Directors may be decreased from five (5) Directors to three (3) by the majority vote of the Board.

### **5.5 Term of Office of Directors and Elections.**

The affairs of the Association shall be managed by a Board composed of five (5) individuals, unless changed pursuant to Section 5.4. The Board shall be elected at a meeting of the Members by any authorized and lawful procedure adopted by the Board, to serve as follows:

At each annual Meeting of the Members, the Members shall elect Directors for terms of two (2) years, with an odd number of Directors (at least two (2) less than the entire Board) elected in odd-numbered years and an even number of Directors elected in even-numbered years.

Directors newly elected at the annual meeting of the Members shall take office immediately. Newly elected Directors are invited to attend Board meetings to familiarize them with the Association procedures prior to taking office. Only Members who are not in violation of

the Declaration, these Bylaws or Association Rules and Regulations shall be eligible to run for a position on the Board.

In an election of multiple Directors, that number of candidates equaling the number of Directors to be elected having the highest number of votes cast in favor of their election, are elected to the Board. When only one (1) Director position is being voted upon, the candidate having the highest number of votes cast in his or her favor is elected to the Board. Voting for the Board shall be by written ballot.

#### **5.6 Nominating Committee.**

Nominations for election to the Board shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting of the Members. The nominating committee shall consist of not less than three (3) Members of the Association, none of whom shall be members of the then Board. The nominating committee shall be appointed by the Board at least thirty (30) days prior to each annual meeting of the Members. The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among the Members. Nominations for positions of the Board may also be made by petition filed with the Secretary.

#### **5.7 Removal of Directors by the Members.**

At any meeting of the Members, the notice of which indicates such purpose, any or all of the Directors may be removed, with or without cause, by the affirmative vote of Members holding a majority of the voting interests of all Members; and a successor may be then and there elected to fill the vacancy thus created. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association and any Director who shall be absent from three (3) consecutive Board meetings or fails to attend at least seventy-five percent (75%) of the Board meetings held during any fiscal year shall be automatically removed from the Board unless determined otherwise by the Board.

#### **5.8 Resignation of Directors.**

Any Director may resign at any time by giving written notice to the president, to the secretary, or to the Board stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective. A Director who resigns may deliver to the Division a statement setting forth (a) that person's name; (b) the name of the Association; (c) information sufficient to identify the report or other document in which the person is named as a Director or officer; and (d) the date on which the person ceased to be a Director or officer or a statement that the person did not hold the position for which the person was named in the corporate report or other document.

#### **5.9 Vacancies in the Board of Directors.**

Any vacancy occurring in the Board shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members. A Director elected by the Board to fill the vacancy of a Director elected by the voting Members may be removed without cause by the voting Members, but not the Board. Should any vacancy of the Board remain unfilled for a period of two (2) months, the Members may, at a special meeting of the Members called for that purpose, elect a Director to fill such vacancy by a majority of the votes which Members present at such meeting, or represented by proxy or ballot, are entitled to cast.

#### **5.10 Appointment of Committees.**

The Board, by resolution adopted by a majority of the Directors in office, may designate and appoint one (1) or more committees which shall consist of one (1) or more Members and which, unless otherwise provided in such resolution, shall have and may exercise the authority to make recommendations (but not final decisions) to the Board in the management of the Association, except authority with respect to those matters specified in the Acts as matters which such committee may not have and exercise the authority of the Board. All committees shall keep regular minutes of their proceedings and report the same to the Board when required.

#### **5.11 General Provisions Applicable to Committees.**

The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law. The provision of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required, and action by consent applicable to meetings of the Board shall not be applicable to meetings of committees of the Board.

#### **5.12 Board Action to Enforce Governing Documents.**

The Board shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, including whether to compromise a claim made by or against the Board or the Association and whether to pursue a claim for an unpaid Assessment. The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (a) the Association's legal position does not justify taking any or further enforcement action; (b) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (c) a technical violation has or may have occurred and the violation is not material as to a reasonable person or does not justify expending the Association's resources, or (d) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria. If the Board decides under the foregoing to forego enforcement, the Association is not prevented from later taking enforcement action. The Board may not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action. This Section



does not govern whether the Association's action in enforcing a provision of the Governing Documents constitutes a waiver or modification of that provision.

## **ARTICLE VI - MEETING OF DIRECTORS**

### **6.1 Place of Directors' Meetings.**

Meetings of the Board shall be held at the principal office of the Association or at such other place, within or convenient to the Property, as may be fixed by the Board and specified in the notice of the meeting.

### **6.2 Annual Meeting of Directors.**

The annual meeting of the Board shall be held on the same date as, or within ten (10) days following, the annual meeting of Members. The Business to be conducted at the annual meeting of the Board shall consist of the appointment of officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of Members at which the Board is elected or if the time and place of the annual meeting of the Board is announced at the annual meeting of Members.

### **6.3 Other Regular Meetings of Directors.**

The Board may hold other regular meetings and may, by resolution, establish in advance the times and places for such regular meetings. The resolution of meeting schedule shall be given to all Members of the Association at least forty-eight (48) hours (plus any time added to effectuate delivery under Section 9.16) before the first meeting scheduled. No prior notice of any regular meeting need be given after establishment of the time and place thereof by such resolution.

### **6.4 Special Meetings of Directors.**

Special Meetings of the Board may be called by the president or any two (2) members of the Board other than the president. Any special meeting of the Board not regularly scheduled under Section 6.3 shall require the same notice as Section 6.3.

### **6.5 Open Meetings/Member Right to Participate.**

Except as provided in Subsections 6.6 and 6.8, a Board meeting, whether in person or by means of electronic communication, at which the Board can take binding action shall be open to each Member or the Member's representative if the representative is designated in writing. At each meeting, the Board shall provide each Member a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the meeting. A Director may not avoid or obstruct the requirements of this Section. However, nothing in this Section shall affect the validity or enforceability of an action of a Board.

## **6.6 Closed Meetings.**

The Board may close a meeting to: (a) consult with an attorney for the purpose of obtaining legal advice; (b) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (c) discuss a personnel matter; (d) discuss a matter relating to contract negotiations, including review of a bid or proposal; (e) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (f) discuss a delinquent Assessment or fine.

If after a vote of the majority of all other Directors, it is determined that a Director has not maintained the confidentiality of any matter covered in the previous paragraph that is addressed at a closed meeting ("Confidential Matter"), the non-offending Directors may take one of the two following steps: (1) exclude the offending Director from any closed meetings at which that matter is addressed, or (2) create a committee to address the Confidential Matter and exclude the offending Director from that committee.

## **6.7 Notice to Directors of Board Meetings.**

In the case of all meetings of the Board for which notice is required by these Bylaws, notice stating the place, day and hour of the meeting shall be given not less than two (2) nor more than thirty (30) days before the date of the meeting (plus any time added to effectuate delivery under Section 9.16), by mail, fax, electronic means, telephone or personally, by or at the direction of the persons calling the meeting, to each member of the Board. If by telephone such notice shall be deemed to be effective when given by telephone to the Director. If given personally, such notice shall be deemed effective upon delivery of a copy of a written notice to, or upon verbally advising, the Director or some person who appears competent and mature at his home or business address as either appears on the records of the Association.

Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice to the Director or waiver of such meeting.

## **6.8 Notice to Members of Board Meetings.**

At least forty-eight (48) hours before an open Board meeting (plus any time added to effectuate delivery under Section 9.16), the Association shall give written notice of the meeting via email to each Member who requests notice of a meeting, unless: (a) notice of the meeting is included in a meeting schedule that was previously provided to the Member; or (b) the meeting is to address an emergency and each Director receives notice (receipt deemed effective as set forth under Section 9.16) of the meeting less than forty-eight (48) hours before the meeting. The notice to the Members shall: (a) be delivered to the Member by email, to the email address that the Member provides to the Board or the Association (or via mail if requested in writing by the Member); (b) state the time and date of the meeting; (c) state the location of the meeting; and (d) if a Director may participate by means of electronic communication, provide the information necessary to allow the Member to participate by the available means of electronic communication.

## **6.9 Proxies.**

For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Director may be considered to be present at a meeting and to vote if the Director has granted a signed written proxy: (a) to another Director who is present at the meeting; and (b) authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this Section 6.9 and as permitted by Section 6.16, Directors may not vote or otherwise act by proxy.

## **6.10 Telecommunications.**

The Board may permit any Director to participate in a regular or special meeting of the Board by, or conduct the meeting through the use of, any means of communication by which all Directors participating may hear each other during the meeting. A Director so participating in such a meeting is considered to be present in person at the meeting. If a Director is to participate in a Board meeting by electronic communication, the Board shall provide the information necessary to allow the Owners entitled to notice of the Board meeting under Section 6.8 to participate by the available electronic means.

## **6.11 Quorum of Directors.**

A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business. For the purpose of determining the presence of a quorum, Directors will be counted if represented in person, by ballot, or by proxy, if applicable. The Directors shall act only as a Board and individual Directors shall have no powers as such.

## **6.12 Adjournment of Directors' Meeting.**

Directors present at any meeting of the Board may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than announcement at the meeting, for a total period or periods not to exceed thirty (30) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

## **6.13 Vote Required at Directors' Meeting.**

At any meeting of the Board, if a quorum is present, a majority of the votes present in person or by proxy, if applicable, and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles, or these Bylaws.

#### **6.14 Officers at Meetings.**

The president shall act as chairman and the Board shall appoint a secretary to act at all meetings of the Board.

#### **6.15 Waiver of Notice.**

A waiver of notice of any meeting of the Board, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting unless (a) at the beginning of the meeting or promptly upon the Director's later arrival the Director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and, after objecting, the Director does not vote for or assent to action taken at the meeting, or (b) the Director contemporaneously requests that the Director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or (c) the Director causes written notice of the Director's dissent or abstention as to any specific action to be received by (i) the presiding officer of the meeting before adjournment of the meeting; or (ii) the Association promptly after adjournment of the meeting.

#### **6.16 Dissent or Abstention.**

The right of dissent or abstention pursuant to Section 6.15 is not available to a Director who votes in favor of the action taken.

#### **6.17 Action of Directors Without a Meeting.**

The Directors shall have the right to take any action in the absence of a meeting which they could take at any meeting by obtaining the written approval of all the Directors. Such approval may be provided by electronic communication. Any action so approved shall be in accordance with § 16-6a-813 of the Nonprofit Act and have the same effect as though taken at a meeting of the Directors. The form attached hereto as Exhibit B may be utilized by the Board when taking action without a meeting.

#### **6.18 Expenses of Board Meetings.**

The Association shall bear the expenses of all regular and special meetings of the Board.

## **ARTICLE VII - OFFICERS**

### **7.1 Officers, Employees, and Agents.**

The officers of the Association shall be natural persons eighteen (18) years of age or over and shall consist of a president, a secretary, a treasurer, and such other officers, assistant officers, employees, and agents as may be deemed necessary by the Board. Officers other than the secretary and the treasurer must be Directors. The same person may simultaneously hold more than one office.

### **7.2 Appointment and Term of Office of Officers.**

The officers shall be appointed by the Board at the annual meeting of the Board and shall hold office, subject to the pleasure of the Board, until the next annual meeting of the Board or until their successors are appointed, whichever is later, unless the officer resigns, or is removed earlier.

### **7.3 Resignation and Removal of Officers.**

An officer may resign at any time by giving written notice of resignation to the Association. A resignation of an officer is effective when the notice is received by the Association unless the notice specifies a later effective date. If a resignation is made effective at a later date, the Board may: (a) (i) permit the officer to remain in office until the effective date; and (ii) fill the pending vacancy before the effective date if the successor does not take office until the effective date; or (b) (i) remove the officer at any time before the effective date; and (ii) fill the vacancy created by the removal. The Board may remove any officer at any time with or without cause. An officer who resigns, is removed, or whose appointment has expired may file a statement in the same form as provided in Section 5.8.

### **7.4 Vacancies in Officers.**

Any vacancy occurring in any position as an officer may be filled by the Board. An officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

### **7.5 President.**

The president shall be a member of the Board and shall be the principal executive officer of the Association and, subject to the control of the Board, shall direct, supervise, coordinate, and have general control over the affairs of the Association, and shall have the powers generally attributable to the chief executive officer of a corporation. The president shall preside at all meetings of the Board and of the Members of the Association.

#### **7.6 Vice President.**

The vice president, if any, may act in place of the president in case of his death, absence, or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board or by the president.

#### **7.7 Secretary.**

The secretary shall be the custodian of the records and the seal, if any, of the Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association set forth in Section 9.3 are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Members, of the Board, and of committees of the Board; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of secretary and such other duties as may, from time to time, be assigned to him by the Board or by the president. The Board may appoint one or more assistant secretaries who may act in place of the secretary in case of his death, absence, or inability to act. The duties of the secretary may be delegated to a property management company.

#### **7.8 Treasurer.**

The treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; shall deposit all such funds in the name of the Association in such depositories as shall be designated by the Board; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board may, from time to time, require; shall arrange for the annual report required under Section 9.7 of these Bylaws; and, in general, shall perform all the duties incident to the office of treasurer and such other duties as may from time to time be assigned to him by the Board or by the president. The Board may appoint one or more assistant treasurers who may act in place of the treasurer in case of his death, absence or inability to act. The duties of the treasurer may be delegated to a property management company.

#### **7.9 Bonds.**

The Association may pay for fidelity bonds covering officers or other persons handling funds of the Association as provided for in the Declaration. The Association shall pay the premiums for any such bonds acquired.

#### **7.10 Special Appointments.**

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

## **ARTICLE VIII - INDEMNIFICATION OF OFFICIALS AND AGENTS**

### **8.1 Right of Indemnification.**

The Association shall indemnify any Director, officer, employee, fiduciary and agent (including without limitation the property manager) to the fullest extent allowed the Acts, or any replacement Sections thereof.

### **8.2 Authority to Insure.**

The Association may purchase and maintain liability insurance on behalf of any Director, officer, employee, fiduciary, and agent against any liability asserted against him and incurred by him in such capacity or arising out of his status as such, including liabilities for which he might not be entitled to indemnification hereunder.

## **ARTICLE IX - MISCELLANEOUS**

### **9.1 Amendment/Conflict.**

These Bylaws may be amended, at any regular, annual, or special meeting of the Board, by a vote of the majority of the Board, except if it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a Membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class. The Board may not amend these Bylaws to require a greater quorum requirement or a greater voting requirement for Members without Member approval. The Members may amend the Bylaws even though the Bylaws may also be amended by the Board. These Bylaws may be amended by a vote of a majority of the Members present in person, by ballot, or by proxy, at a meeting duly called for such purpose with one (1) vote allocated to each Lot. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

### **9.2 Compensation of Officers, Directors, and Members.**

No Director shall have the right to receive any compensation from the Association for serving as a Director except for reimbursement of expenses as may be approved by resolution of disinterested members of the Board and except as may otherwise be approved by the Members. Officers, agents and employees shall receive such reasonable compensation as may be approved by the Board. Appointment of a person as an officer, agent or employee shall not, of itself, create any right to compensation.

### **9.3 Books and Records.**

9.3.1 The Association shall keep as permanent records: (a) minutes of all meetings of its Members and Board; (b) a record of all actions taken by the Members or Board without a meeting; (c) a record of all actions taken by a committee of the Board in place of the Board on behalf of the

Association; (d) a record of all waivers of notices of meetings of Members and of the Board or any committee of the Board; and (e) a copy of the Declaration, as the same may be amended.

9.3.2 The Association shall maintain appropriate accounting records.

9.3.3 The Association or its agent shall maintain a record of its Members in a form that permits preparation of a list of the name and address of all Members: (a) in alphabetical order, by class, and (b) showing the number of votes each Member is entitled to vote.

9.3.4 The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

9.3.5 The Association shall keep a copy of each of the following records at its principal office: (a) Declaration; (b) Articles; (c) Bylaws; (d) resolutions adopted by its Board relating to the characteristics, qualifications, rights, limitations, and obligations of Members; (e) the minutes of all Member meetings for a period of three (3) years; (f) records of all actions taken by Members without a meeting; (g) all written communications to Members generally as Members for a period of three (3) years; (h) a list of the names and business or home addresses of its current Directors and officers; (i) a copy of its most recent annual report; (j) all financial statements prepared for periods ending during the last three (3) years; (k) the most recent approved Board meeting minutes; and (l) the most recent budget and financial report.

9.3.6 If the Association has an active website, the Association shall make the documents described in Subsection 9.3.5 available to all Members, free of charge, through the website; or, if the Association does not have an active website, make physical copies of the documents described in Subsection 9.3.5 available to Members during regular business hours at the Association's address registered with the Department of Commerce.

#### **9.4 Inspection of Records.**

9.4.1 A Director or Member is entitled to inspect and copy any of the records of the Association described in Subsection 9.3.5: (a) during regular business hours; (b) at the Association's principal office; and (c) if the Director or Member gives the Association written demand, at least five (5) business days before the date on which the Member wishes to inspect and copy the records.

9.4.2 In addition to the rights set forth in Subsection 9.4.1, a Director or Member is entitled to inspect and copy any of the other records of the Association: (a) during regular business hours; (b) at a reasonable location specified by the Association; and (c) at least five (5) business days before the date on which the Member wishes to inspect and copy the records, if the Director or Member: (i) meets the requirements of Subsection 9.4.3; and (ii) gives the Association written demand.

9.4.3 A Director or Member may inspect and copy the records described in Subsection 9.4.2 only if: (a) the demand is made: (i) in good faith; and (ii) for a proper purpose; (b) the Director



or Member describes with reasonable particularity the purpose and the records the Director or Member desires to inspect; and (c) the records are directly connected with the described purpose.

9.4.4 Notwithstanding any other provision in these Bylaws, for purposes of this Section: (a) “Member” includes: (i) a beneficial owner whose Membership interest is held in a voting trust; and (ii) any other beneficial owner of a Membership interest who establishes beneficial ownership; and (b) “proper purpose” means a purpose reasonably related to the demanding Member’s or Director’s interest as a Member or Director.

9.4.5 The right of inspection granted by this Section may not be abolished or limited by the Articles or these Bylaws.

9.4.6 This Section does not affect: (a) the right of a Director or Member to inspect records relating to ballots; (b) the right of a Member to inspect records to the same extent as any other litigant if the Member is in litigation with the Association; or (c) the power of a court, independent of this Article IX, to compel the production of corporate records for examination.

9.4.7 A Director or Member may not use any information obtained through the inspection or copying of records permitted by 9.4.2 for any purposes other than those set forth in the demand made under 9.4.3.

9.4.8 The Association may redact the following information from any document the Association produces for inspection or copying (a) a Social Security number; (b) a bank account number; or (c) any communication subject to attorney-client privilege.

9.4.9

- (a) In a written request to inspect or copy documents, a Member shall include:
  - (i) the Association’s name;
  - (ii) the Member’s name;
  - (iii) the Member’s property address;
  - (iv) the Member’s email address;
  - (v) a description of the documents requested; and
  - (vi) any election or request described in Subsection (b).
  
- (b) In a written request to inspect or copy documents, a Member may:
  - (i) elect whether to inspect or copy the documents;
  - (ii) if the Member elects to copy the documents, request hard copies or electronic scans of the documents; or
  - (iii) subject to Subsection 9.4.10, request that:
    - (A) the Association make the copies or electronic scans of the requested documents;
    - (B) a recognized third-party duplicating service make the copies or electronic scans of the requested documents;

- (C) the Member be allowed to bring any necessary imaging equipment to the place of inspection and make copies or electronic scans of the documents while inspecting the documents; or
- (D) the Association email the requested documents to an email address provided in the request.

9.4.10 If the Association produces the copies or electronic scans, the copies or electronic scans shall be legible and accurate and the Member shall pay the Association the reasonable cost of the copies or electronic scans and for the time spent meeting with the Member, which may not exceed: (a) the actual cost that the Association paid to a recognized third-party duplicating service to make the copies or electronic scans; or (b) if an employee, manager, or other agent of the Association makes the copies or electronic scans, ten cents (\$.10) per page and fifteen dollars (\$15.00) per hour for the employee's, manager's, or other agent's time making the copies or electronic scans.

9.4.11 If a Member requests a recognized third-party duplicating service make the copies or electronic scans the Association shall arrange for the delivery and pick up of the original documents; and the Member shall pay the duplicating service directly. If a Member requests to bring imaging equipment to the inspection, the Association shall provide the necessary space, light, and power for the imaging equipment.

9.4.12 Subject to Subsection 9.4.13, if in response to a Members request to inspect or copy documents, the Association fails to comply with a provision of this section, the Association shall pay:

- (a) the reasonable costs of inspecting and copying the requested documents;
- (b) for items described Subsection 9.3.5, twenty-five dollars (\$25.00) to the Member who made the request for each day the request continues unfulfilled, beginning the sixth (6<sup>th</sup>) day after the day on which the Member made the request; and
- (c) reasonable attorney fees and costs incurred by the Member in obtaining the inspection and copies of the requested documents.

9.4.13 The Association is not liable for identifying or providing a document in error, if the Association identified or provided the erroneous document in good faith.

## **9.5 Scope of Inspection Right.**

A Director or Member's agent or attorney has the same inspection and copying rights as the Director or Member. The right to copy records under Section 9.4 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means. The Association may comply with a Director's or Member's demand to inspect the record of Members under Subsection 9.3.3 by furnishing to the Director or Member a list of Directors or Members that: (a) complies with Subsection 9.3.3; and (b) is compiled no earlier than the date of the Director's or Member's demand. Concerning financial statements, by no later than fifteen (15) days after the day on which the Association receives a written request of any Member (receipt by the Association deemed effective as set forth under Section 9.16), the Association shall mail to the

Member the following that show in reasonable detail the assets and liabilities and results of the operations of the Association: (a) the Association's most recent annual financial statements, if any; and (b) the Association's most recently published financial statements, if any. Without consent of the Board, a Membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a Member's interest as a Member.

#### **9.6 Statement of Account.**

Upon payment of a reasonable fee to be determined by the Association and upon written request of an Owner of a Lot or any person with any right, title or interest in a Lot or intending to acquire any right, title or interest in a Lot, the Association shall give, within ten (10) days after the receipt of such request (receipt by the Association deemed effective as set forth under Section 9.16), a written statement of account setting forth the amount of unpaid Assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Lot and the Dwelling Unit thereon, and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Lot and the Dwelling Unit thereon. Such statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

#### **9.7 Annual Corporation Reports.**

The Association shall file with the Division, within the time prescribed by law, annual corporate reports in such form and containing the information required by law and shall pay the fee for such filing as prescribed by law.

#### **9.8 Fiscal Year.**

The fiscal year of the Association shall begin on April 1 and end the succeeding March 31. The fiscal year may be changed by the Board without amending these Bylaws.

#### **9.9 Shares of Stock and Dividends Prohibited.**

The Association shall not have or issue shares of stock and no dividends shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Directors or officers. Notwithstanding the foregoing, the Association may issue certificates evidencing Membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

#### **9.10 Loans to Directors, Officers, and Members Prohibited.**

No loan shall be made by the Association to its Members, Directors or officers, and any Director, officer or Member who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

#### **9.11 Limited Liability.**

The Association, the Board, the Design Review Committee, and any agent or employee of the Association, the Board, or the Design Review Committee, shall not be liable to any person for any actions or for any failure to act in connection with the affairs of the Association if the action taken or failure to act was in good faith and without malice.

#### **9.12 Minutes and Presumptions Thereunder.**

Minutes or any similar record of the meetings of Members or of the Board, when signed by the secretary or acting secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given. Minutes of the annual and special meetings of the Members shall be distributed to each Member within sixty (60) days after the meeting.

#### **9.13 Checks, Drafts, and Documents.**

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board.

#### **9.14 Execution of Documents.**

The Board, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

#### **9.15 Right to Inspect.**

Notwithstanding the other provisions of this Article, unless otherwise provided in these Bylaws, a right of a Member to inspect or receive information from the Association applies only to a voting Member of the Association.

### **9.16 Manner of Giving Notice.**

Notwithstanding any other provision in the Declaration, Articles, Bylaws, or Rules and Regulations, the Association may provide notice to Owners orally or by electronic means, including text message, email, or the Association's website, except that an Owner may, by written demand, require the Association provide notice to that Owner by mail. Any notice required to be given will be deemed received and effective upon the earlier to occur of the following:

(a) when sent by facsimile, the notice is deemed effective when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;

(b) when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed effective at the earliest of the following: (a) when received; (b) six (6) days after it is mailed; or (c) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;

(c) when sent via electronic means such as an e-mail, text message or similar electronic communication, the notice is deemed effective within twenty-four (24) hours of being sent and a rejection or undeliverable notice is not received by the sender;

(d) when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;

(e) when hand delivered, the notice is deemed effective immediately upon delivery;

(f) when notice is given orally, the notice is deemed effective when communicated; or

(g) when delivered by other means, the notice is deemed effective upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.

### **9.17 Severability.**

Invalidation of any provision of the Governing Documents by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

### **9.18 Interpretation.**

The provisions of the Governing Documents shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Areas and other areas within the Property. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. Except for judicial construction and express Utah law, the Board shall have the exclusive right to construe and interpret the provisions of the Governing Documents, and amendments thereto. In the absence of any adjudication by a court of competent jurisdiction or express Utah law to the contrary, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Governing Documents.

## **9.19 Litigation.**

(a) If any action is brought by a member of the Board on behalf of the Association, the expenses of suit, including reasonable attorney fees, shall be a Common Expense. If any action is brought against the Owners or against the Board or the officers, employees, or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Owners, the expenses of suit, including attorney fees, shall be a Common Expense. If any action is brought against one (1) or more, but less than all Owners, with the result that the ultimate liability would, if proved, be borne solely by such Owners, the expenses of suit, including attorney fees, shall not be charged to or borne by the other Owners, as a Common Expense or otherwise.

(b) Any action brought against the Association or the Board, or the officers, employees, or agents thereof, in their respective capacities as such, or the Project as a whole, shall be directed to the Board, which shall promptly give written notice thereof to the Owners and shall be defended by the Board; and the Owners shall have no right to participate in such defense other than through the Board. Actions against one (1) or more, but less than all Owners, shall be directed to such Owners, who shall promptly give written notice thereof to the Board, and shall be defended by such Owners.

## **ARTICLE X - NOTICE AND HEARING PROCEDURE**

### **10.1. Association's Enforcement Rights.**

In the event of an alleged violation of the Declaration, the Articles, these Bylaws, or the Rules and Regulations of the Association by a Member or occupant ("Respondent"), the Board shall have the right, upon an affirmative vote of a majority of all Directors, to take any one (1) or more of the actions and to pursue one (1) or more of the remedies permitted by law or equity or under the provisions of the Declaration, these Bylaws, or the Rules and Regulations of the Association. The failure of the Board or the Design Review Committee to enforce the Rules and Regulations of the Association, these Bylaws, or the Declaration shall not constitute waiver of the right to enforce the same thereafter. The remedies set forth and provided by law or equity or in the Declaration, these Bylaws, or the Rules and Regulations of the Association shall be cumulative, and none shall be exclusive.

### **10.2. Hearing.**

(a) At the hearing, the Respondent must show cause, if any cause can be shown, why said Respondent is not in violation of the Declaration, these Bylaws, or the Rules and Regulations of the Association, as set forth in the Notice.

(b) Oral evidence shall be taken only on oath or affirmation administered by a Director. The use of affidavits and written interrogatories in lieu of oral testimony shall be encouraged by the Board.

(c) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine witnesses on any matter relevant to the issues; to impeach any witness; and to rebut the evidence against such party. If Respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(d) The hearing need not be conducted according to technical rules relating to evidence of witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil action. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(e) Neither the complainant nor the Respondent need be in attendance at the hearing. The Board may close the meeting to the general Membership if the Board believes the discussion is likely to cause undue embarrassment or violate the individual's reasonable expectation of privacy.

(f) In rendering a decision, official notice may be taken at any time of any provision of the Declaration, these Bylaws, the Rules and Regulations of the Association, or any generally understood matter within the working of the Association. Persons present at the hearing shall be informed of the matters to be noticed by the Board, and these matters shall be made a part of the record of proceedings.

(g) The Board may grant continuances on a showing of good cause.

(h) Whenever the Board has commenced to hear the matter and a Director is forced to withdraw prior to a final determination by the Board, the remaining Directors shall continue to hear and decide the case.

### **10.3. Decision.**

If a Respondent fails to appear at a hearing, the Board may take action based upon the evidence presented to it without further notice to Respondent. However, the Respondent may make any showing by way of mitigation. After all testimony and documentary evidence has been presented to the Board, the Board may vote by secret written ballot, or otherwise, upon the matter, with a majority of the entire Board controlling. A copy of the Notice of Adjudication of the Board may be posted by the Board at a conspicuous place in the Property, and a copy shall be provided by the president of the Association to each person directly involved in the matter and his attorney, if any, in accordance with the notice provision(s) set forth in the Declaration, if any. The Notice of Adjudication may include (a) the terms of any disciplinary action; (b) the levy of any Assessment of fine; or (c) other such actions or remedies as the Board deems appropriate. The decision of the Board shall become effective ten (10) days after it is given to each Respondent, unless otherwise ordered in writing by the Board of Directors. The Board may order a reconsideration at any time within fifteen (15) days following service of its decision on the

involved persons, on its own motion or on petition by any party. However, no action against a Respondent arising from the alleged violation shall take effect prior to the expiration of the later of (a) fifteen (15) days after each Respondent's receipt of the Notice of Hearing; or (b) ten (10) days after the hearing required herein.

*[SIGNATURES ON FOLLOWING PAGE]*



**CERTIFICATE OF PRESIDENT**

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting President of [ASSOCIATION NAME], a Utah nonprofit corporation (“Association”); and

2. The foregoing Bylaws constitute the Bylaws of the Association duly adopted by the Members of the Association at a meeting held on \_\_\_\_\_, 20\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SKY MOUNTAIN HOMEOWNERS ASSOCIATION,  
INC.,** a Utah nonprofit Corporation

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

STATE OF UTAH,        )  
                                  :SS.  
County of Washington. )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, personally appeared before me \_\_\_\_\_, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being duly sworn (or affirmed), did say that he/she is the President of the Sky Mountain Homeowners Association, Inc., a Utah nonprofit corporation, and that the foregoing document was signed by him/her on behalf of the Association by authority of its Bylaws, Declaration, or resolution of the Board, and he/she acknowledged before me that he/she executed the document on behalf of the Association and for its stated purpose.

\_\_\_\_\_  
Notary Public

Exhibit A  
(Legal Description)

These Amended and Restated Master Bylaws of Sky Mountain Homeowners Association, Inc., affect the following real property, all located in Washington County, State of Utah:

**Clubhouse Series at Sky Mountain:**

All of Lot 1-A, Lots 2 through 6, Lots 7-A through 8-A, Lots 9 through 13, Lots 14-A through 15-A, Lots 16 through 19, Lots 20-A through 21-A, Lots 22 through 31, and Lot A-1, together with all Common Area, Clubhouse Series at Sky Mountain 1A Amd (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-CSSM-1A-1-A-RD2

PARCEL: H-CSSM-1A-2-RD2 through H-CSSM-1A-6-RD2

PARCEL: H-CSSM-1A-7-A-RD2 through H-CSSM-1A-8-A-RD2

PARCEL: H-CSSM-1A-9-RD2 through H-CSSM-1A-13-RD2

PARCEL: H-CSSM-1A-14-A-RD2 through H-CSSM-1A-15-A-RD2

PARCEL: H-CSSM-1A-16-RD2 through H-CSSM-1A-19-RD2

PARCEL: H-CSSM-1A-20-A-RD2 through H-CSSM-1A-21-A-RD2

PARCEL: H-CSSM-1A-22-RD2 through H-CSSM-1A-31-RD2

PARCEL: H-CSSM-1A-A-1-RD2

All of Lots 32 through 38, together with all Common Area, Clubhouse Series at Sky Mountain 2 (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-CSSM-2-32-RD2 through H-CSSM-2-38-RD2

**Courtyard Townhomes at Sky Mountain:**

All of Lots 1A through 30A, together with all Common Area, Courtyard TH at Sky Mountain 1B Amd (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-CTSM-1B-1A-RD2 through H-CTSM-1B-30A-RD2

**Sky Mountain Golf Estates:**

All of Lots 1 through 55, together with all Common Area, Sky Mountain Golf Est 1 Amd (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SMGE-1-1-RD2 through H-SMGE-1-55-RD2

All of Lots 93 through 99, Lot 100-A, Lots 101 through 111, Lots 114 through 121, and Lot 143, together with all Common Area, Sky Mountain Golf Est Map 3 (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SMGEM-3-93-RD2 through H-SMGEM-3-99-RD2

PARCEL: H-SMGEM-3-100-A-RD2

PARCEL: H-SMGEM-3-101-RD2 through H-SMGEM-3-111-RD2

PARCEL: H-SMGEM-3-114-RD2 through H-SMGEM-3-121-RD2

PARCEL: H-SMGEM-3-143-RD2

All of Lot 122 and Lots 144 through 154, together with all Common Area, Sky Mountain Golf Est 4 (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SMGE-4-122-RD2

PARCEL: H-SMGE-4-144-RD2 through H-SMGE-4-154-RD2

All of Lots 155 through 163 and Lots 165 through 166, together with all Common Area, Sky Mountain Golf Est 5 (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SMGE-5-155-RD2 through H-SMGE-5-163-RD2

PARCEL: H-SMGE-5-165-RD2 through H-SMGE-5-166-RD2

All of Lots 167 through 174, Lot 176, and Lots 189 through 198, together with all Common Area, Sky Mountain Golf Est 6 (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SMGE-6-167-RD2 through H-SMGE-6-174-RD2

PARCEL: H-SMGE-6-176-RD2

PARCEL: H-SMGE-6-189-RD2 through H-SMGE-6-198-RD2

All of Lots 176 through 180, Lots 181-A through 182-A, and Lots 183 through 184, together with all Common Area, Sky Mountain Golf Est 7 (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SMGE-7-176-RD2 through H-SMGE-7-180-RD2

PARCEL: H-SMGE-7-181-A-RD2 through H-SMGE-7-182-A-RD2

PARCEL: H-SMGE-7-183-RD2 through H-SMGE-7-184-RD2

All of Lots 185 through 188 and Lots 199 through 200, together with all Common Area, Sky Mountain Golf Est 8 (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SMGE-8-185-RD2 through H-SMGE-8-188-RD2

PARCEL: H-SMGE-8-199-RD2 through H-SMGE-8-200-RD2

All of Lots 201 through 221, together with all Common Area, Sky Mountain Golf Est 9 (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SMGE-9-201-RD2 through H-SMGE-9-221-RD2

All of Lots 222 through 228, together with all Common Area, Sky Mountain Golf Est 10 Amd (H), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: H-SMGE-10-222-RD2 through H-SMGE-10-228-RD2

Exhibit B  
(Action without a Meeting Form)

Notice of Proposed Action Without a Meeting of the Board  
Pursuant to Utah Code Section 16-6a-813  
(Email Communication)

1. Stipulations: All Board members stipulate that this email communication and any response by email will be deemed a written communication and the email address of each Board member will act as their signature to the communication. Any response must be sent by a “reply to all.” A response sent to all Board members in this email communication will be deemed a written response received by the Association.
  
2. Proposed Action: The following Action is proposed to be taken:  

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3. Response Options: Each Board member may respond to the proposed action in one of the following three ways (or language which is clear and the equivalent of the following):
  - a. Reply all via email stating, “I vote in favor of the proposed action,”
  - b. Reply all via email stating, “I abstain from the vote on the proposed action,”
  - c. Reply all via email stating, “I object to the proposed action being taken without a meeting.”
  
4. Time to Respond: This Notice must be responded to by not later than the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ .m., Utah time.
  
5. Effect of Untimely Response: An untimely response will have the following effect:
  - a. abstaining from the vote on the proposed action; and
  - b. failing to timely demand the proposed action not be taken without a meeting.
  
6. When Action is Deemed Taken: The proposed action is taken only if at the end of the time stated in paragraph No. 4:
  - a. the affirmative votes are timely received and not timely revoked, which votes equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Board members then in office were present and voted; and

- b. there has not been received a demand pursuant to paragraph 3(c) that the action not be taken without a meeting, unless such demand has been revoked by the time stated in paragraph 4.
7. Right to Revoke: A Board member who has voted, abstained, or demanded the action not be taken without a meeting pursuant to paragraph 3 and/or 5 may revoke the vote, abstention, or demand that the action not be taken without a meeting by sending a follow up reply email by the time set forth in paragraph 4 and stating the revocation and stating the desired response option provided for in paragraph 3.
8. Effective Date: The effective date of the Action deemed taken under paragraph 6 shall be the date and time set forth in paragraph 4, unless a later date and time for the effective date is specified in the proposed Action to be taken in paragraph 2.
9. Conditions for Email Communications:
  - a. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this action if the email is delivered with information from which the Board, as parties to the email communication can determine:
    - i. that the electronic transmission is transmitted by the Board member; and
    - ii. the date on which the email is transmitted.
  - b. The date on which the email is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed.
  - c. For purposes of this proposed Action, email communications to the Board are not effective until received.
10. Statutory Effect: Pursuant to Utah Code Section 16-6a-813 action taken pursuant to this email communication has the same effect as action taken at a meeting of the Board and may be described as an action taken at a meeting of the Board in any document.
11. Minutes: Notwithstanding the statutory effect provided for in paragraph 10, at the next regular Board meeting any action taken pursuant to this email communication and action without a meeting shall be announced at the meeting and recorded in the minutes of the Board. No action taken without a meeting shall be deemed void or ineffective if not announced at the next Board meeting or if not included in the Board minutes, or both.