

BYLAWS OF
KANE CREEK CONDOMINIUM
OWNERS ASSOCIATION,
a Utah Nonprofit Corporation

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**BYLAWS
OF
KANE CRFEEK CONDOMINIUM
OWNERS ASSOCIATION**

**ARTICLE I
OFFICES**

- 1.1 **Business Offices.** The principal office of Kane Creek Condominium Owners Association, a Utah nonprofit corporation (the "Association") shall be located at 285 S. 400 E. Ste. 216, Moab UT 84532, or such other location as may be determined by the Board of Directors of the Association, from time to time, within the State of Utah. The Association shall maintain at its principal office a copy of those records specified in Article 2, Section 2.14 of these Bylaws.
- 1.2 **Registered Office.** The registered office of the Association required by the Utah Revised Nonprofit Corporation Act (the "Act") shall be located within the State of Utah. The address of the registered office may be changed from time to time by the Board of Directors.

**ARTICLE II
MEMBERS**

- 2.1 **Annual Member Meeting.** An annual meeting of the members shall be held each year on the date, at the time, and at the place, fixed by the Board of Directors, for the purpose of the transaction of such other business as may come before the meeting. The annual meeting of the members shall be held between August 1 and September 30 until otherwise set by the Board of Directors.
- 2.2 **Special Member Meetings.** Special meetings of the members may be called at any time, for any purposes described in the notice of the meeting, by the Board of Directors and shall be called by the Chairman of the Board at the request of a majority of the members of the Association.
- 2.3 **Place of Member Meetings.** The Board of Directors may designate any place, either within or outside the State of Utah, as the place for any annual or special meeting of the members . If no designation is made regarding the place of the meeting, the meeting shall be held at the principal office of the Association.
- 2.4 **Notice of Member Meeting.**
- a) **Required Notice.** Written notice stating the place, day, and hour of any annual or special member meeting shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Board of Directors or Chairman of the Board, to each Owner of a Unit in The Kane Creek Condominiums, as set forth in the Declaration of Covenants, Conditions and Restrictions for The

Kane Creek Condominiums as currently on file in the office of the Grand County Recorder (and as amended from time to time (hereinafter referred to as the "Declaration)). Notice shall be deemed to be effective when deposited in the U.S. Mail addressed to the Member at the address on file with the Association or as otherwise directed in writing by the Member. If no address is on file, the notice shall be mailed to the same address to which Grand County sends the Member its property tax notices.

- b) **Notice Not Required.** If three (3) successive notices mailed to a member, addressed to a member at the member's address as shown on the records of the Association, have been returned as undeliverable, further notices to that member are not necessary until another address of the member is made known to the Association.
- c) **Adjourned Meeting.** If any member meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time or place is announced at the meeting before adjournment unless said date is more than 30 days from the date of adjournment, in which case notice must be given. However, if after the adjournment a new date for the adjourned meeting is or must be fixed (see Section 2.5 of these Bylaws), then notice must be given pursuant to the requirements of this Section 2.4 to members of record who are entitled to vote at the meeting.
- d) **Contents of Notice.** Notice of any special meeting of the members shall include a description of the purpose or purposes for which the meeting is called. Notice of an annual meeting of the members need not include a description of the purpose or purposes for which the meeting is called.
- e) **Waiver of Notice of Meeting.** Any member may waive notice of a meeting by a writing signed by the member which is delivered to the Association (either before or after the date and time stated in the notice as the date or time when any action will occur or has occurred) for inclusion in the minutes or filing with the Association's records.
- f) **Effect of Attendance at Meeting.** A member's attendance at a meeting:
 - (i) 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; and
 - (ii) 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.

2.5 **Members of Record.** Upon purchasing a Unit or Units, as hereinafter defined, in the Project known as Kane Creek Condominiums, the owner shall promptly furnish to the

Association a copy of the recorded instrument by which ownership of such Unit has been vested in such owner, which copy shall be maintained in the records of the Association. The term "Unit" shall have the meaning as defined in the Declaration. For the purpose of determining the identity of members entitled to notice of or to vote at any meeting of the members, or any adjournment thereof, the Board of Directors may fix in advance a date as the record date. Such record date shall not be more than thirty (30) days prior to the date on which the particular action, requiring such determination of the members, is to be taken. If no record date is so fixed by the Board of Directors, the record date shall be at the close of business on the following dates:

- a) **Annual and Special Meetings.** With respect to an annual meeting of the members or any special meeting of the members called by the Chairman of the board, the Board of Directors or the members authorized by these Bylaws to request a meeting, the close of business of the day before the first notice is delivered to members.
- b) **Meeting Demanded by Members.** With respect to a special member meeting demanded by the members pursuant to the Act, the earliest date of any of the demands pursuant to which the meeting is called, or thirty (30) days prior to the date the first of the written demands is received by the Association, whichever is later.
- c) **Action Without a Meeting.** With respect to actions taken in writing without a meeting (pursuant to Section 2.11 of these Bylaws), the date the first member delivers to the Association a signed written consent upon which the action is taken.
- d) When a determination of the members entitled to vote at any meeting of the members has been made as provided in this Section, such determination shall apply to any adjournment thereof unless the Board of Directors fixed a new record date, which it must do if the meeting is adjourned to a date more than one sixty (60) days after the date fixed for the original meeting.

2.6 **Member List.** The Secretary shall make a complete record of the members, arranged in alphabetical order, with the address of each member. The member list must be available for inspection by any member, beginning on the earlier of then (10) days before the meeting for which the list was prepared for two (2) business days after notice of the meeting is given and continuing through the meeting and any adjournments. The list shall be available at the Association's principal office or at a place identified in the notice of the meeting in the city where the meeting is to be held. A member, his or her agent, or attorney is entitled to written demand to inspect and, subject to the requirements of Section 2.I 4 of these Bylaws, to inspect and copy the list during regular business hours and during the period it is available for inspection. The Association shall maintain the member list in written form or in another form capable of conversion into written form within a reasonable time.

2.7 **Voting Requirements.**

- a) **Approval of Actions.** Action on a matter is approved if a majority of the votes cast favor the action, unless the Declaration, the Articles of Incorporation, a Bylaw adopted by the members pursuant to the Act, or the Act requires a greater number of affirmative votes.
- b) **Effect of Representation.** Once a member is represented for any purpose at a meeting, the member is deemed present for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or must be set for that adjourned meeting.

2.8 **Proxies.** At all meetings of the members, a member vote in person or by a proxy executed in any lawful manner. Such proxy shall be filed with the Association before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy.

2.9 **Votes per Member.** With respect to each matter, including the election of Directors, submitted to the vote of the members, each member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit owned by such member.

2.10 **Association's Acceptance of Votes.**

- a) **Corresponding Name.** If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment corresponds to the name of a member, the Association, if acting in good faith, is entitled to accept the vote, consent, waiver, proxy, appointment, or proxy appointment revocation and give it effect as the act of the member.
- b) **Name does not Correspond.** If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation does not correspond to the name of a member, the Association, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the member if:
 - (i) The member is an entity as defined in the Utah Revised Nonprofit Corporation Act and the name signed purports to be that of an officer or agent of the entity;
 - (ii) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the Association requests evidence of fiduciary status acceptable to the Association has been presented with respect to the vote, consent, waiver, proxy appointment or proxy appointment revocation;
 - (iii) the name signed purports to be that of a receiver or trustee in

bankruptcy of the member and, if the Association requests, evidence of this status acceptable to the Association has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation; the name purports to be that of a pledge, beneficial owner, attorney-in- fact of the member and, if the Association requests, evidence acceptable to the Association of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

- (iv) two or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one of the cotenants or fiduciaries and the person sign appears to be acting on behalf of all of the cotenants or fiduciaries; or
- (v) the acceptance of the vote, consent, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the Association that are not inconsistent with the provisions of this Section 2.10.

c) **Membership in Name of Two or More Persons.** If membership stands of record in the names of two or more persons, or if two or more persons have the same fiduciary relationship respecting the same votes, unless the Secretary is given written notice to the contrary and furnished with a copy of the instrument creating the relationship, their acts with respect to voting shall have the following effect:

- (i) The vote shall be cast as one vote only; and
- (ii) in the event the persons are unable to agree among themselves as to how their vote or votes should be cast, they shall lose their right to vote on the matter in question.

d) **Rejection.** The Association is entitled to reject a vote, consent, waiver, proxy appointment, or proxy appointment revocation if the Secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

e) **No Liability.** The Association and its officer or agent who accepts or rejects a vote, consent, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this Section 2.10 are not liable in damages to the member for the consequences of the acceptance or rejection.

f) **Validity.** Corporate action based on the acceptance or rejection of a vote, consent, waiver, proxy appointment, or proxy appointment revocation under

this Section 2.10 is valid unless a court of competent jurisdiction determines otherwise.

2.11 **Informal Action by Members.**

- a) **Written Consent.** Any action which may be taken at any annual or special meeting of members may be taken without a meeting and without prior notice of one or more consents in writing, setting for the action so taken, are signed by members having not less than the minimum voting power necessary to authorize or take the action at a meeting at which all members entitled to vote thereon were present and voted.
- b) **Notice Requirements.** Unless written consents of all members entitled to vote have been obtained, the Association shall give notice of any member approval without a meeting at least ten (10) days before the consummation of the action authorized by the approval to those members entitled to vote who have not consented in writing. Such notice shall contain or be accompanied by the same material that would have been required if a formal meeting had been called to consider the action.
- c) **Revocation.** Any member giving a written consent, or the members' proxy holder or a personal representative of the member or their respective proxy holder, may revoke the consent by a signed writing describing the action and stating that the member's prior consent is revoked, if the writing is received by the Association prior to the effectiveness of the action.
- d) **Effective Date.** If the Association has received written consents signed by all members entitled to vote with respect to the action, the effective date of the action may be any date that is specified in all the written consents as the effective date of the action. The writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature.
- e) **Election of Directors.** Notwithstanding paragraph (a) of this Section 2.11, in the event the members are entitled to vote for the election of directors under Section 3.11, below, directors may not be elected by written consent except by written consent of a majority of all members entitled to vote for the election of directors.
- f) **Effect of Action without a Meeting.** Action taken under this Section 2.11 has the same effect as action taken at a meeting of members and may be so described in any document.

2.12 **Waiver of Notice.** A member may waive any notice required by the Utah Revised Nonprofit Corporation Act, the Association's Articles of Incorporation or 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. Such a waiver must be in writing signed by the members and must be delivered to the Association for inclusion in the minutes of the relevant meeting of the members of in the Association's records.

2.13 **Voting for Directors.** In the event the members are entitled to vote under Section 3.11, below, each member shall have the right to vote, in person or by proxy, for as many persons as there are directors to be elected. Cumulative voting is not authorized.

2.14 **Rights of Members to Inspect Corporate Records.**

a) **Minutes and Accounting Records.** The Association shall keep, as permanent records, minutes of all meetings of its members and Board of Directors, a record of all actions taken by its members or Board of Directors without a meeting, a record of all actions taken on behalf of the Association by a committee of the Board of Directors in place of the Board of Directors, and a record of all waivers of notices of meetings of its members, meetings of the Board of Directors, or any meetings of committees of the Board of Directors. The Association shall maintain appropriate accounting records.

b) **Absolute Inspection Rights.** If a member gives the Association written notice of the member's demand at least five (5) business days before the date on which the member wishes to inspect and copy, a member (or the member's agent or attorney) has the right to inspect and copy, during regular business hours, any of the following records, all of which the Association is required to keep at its principal office:

- (i) (1) the Association's Articles of Incorporation currently in effect;
- (ii) the Association's Bylaws currently in effect;
- (iii) resolutions adopted by its Board of Directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (iv) the minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;
- (v) all written communication within the past three years to members generally as members;
- (vi) a list of the names and business or home addresses of the Association's current officers and directors;
- (vii) the Association's most recent annual report delivered to the State of Utah Department of Commerce Division of Corporations and Commercial Code (the "Division"); and

(viii) all financial statements prepared for periods ending during the last three years that a member could request pursuant to the Utah Revised Nonprofit Corporation Act.

- c) **Conditional Inspection Rights.** If a member gives the Association a written demand made in good faith and for proper purpose at least five business days before the date on which the member wishes to inspect and copy, the member describes with reasonable particularity the member's purpose and the records the member desires to inspect, and the records are directly connected with the member's purpose, the member (or the member's agent or attorney) is entitled to inspect and copy, during regular business hours at a reasonable location specified by the Association, any of the other records of the Association.
- d) **Copy Costs.** The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means. The Association may impose a reasonable charge, payable in advance, covering the costs of labor and material, for copies of any documents provided to a member. The charge may not exceed the estimated cost of production or reproduction of the records including labor costs.

2.15 **Furnishing Financial Statements to a Member.** Upon the written request of any member, the Association shall mail, email, or post on a website, to the member its most recent annual financial statements, if any, showing in reasonable detail its assets and liabilities and the results of its operations.

ARTICLE III BOARD OF DIRECTORS

3.1 **General Powers.** The property, affairs and business of the Association shall be managed by its Board of Directors. The Board of Directors may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, or by the Declaration of the Declaration of Kane Creek Condominium Owner's Association or as amended from time to time (the "Declaration") except such powers as are by law, the Articles of Incorporation or by these Bylaws vested solely in the members. It shall be the responsibility of the Board of Directors to:

- a) to perform all acts necessary to accomplish the objectives including the optional services set forth in the Declaration;
- b) cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting when such statement is requested in writing by one-half (1/2) of the members who are entitled to vote;
- c) supervise all officers, agents, independent contractors and employees of the Association, and to see that their duties are properly performed;

- d) with respect to annual and special assessments, to:
 - (i) fix the amount of the annual assessment against each Unit in advance of each annual assessment period as set forth in the Declaration. The maximum amount of permitted assessment are as set forth in the Declaration;
 - (ii) fix the amount of each special assessment against each Unit or Parcel at least thirty (30) days in advance of such special assessment;
 - (iii) send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period and of each special assessment; and,
 - (iv) effect the collection of assessments as set forth in the Declaration.
- e) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates and as permitted by the Act. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- f) procure and maintain adequate liability and hazard insurance on property owned by the Association;
- g) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- h) cause Common Elements and Facilities to be maintained, including residence exteriors, landscaping and snow removal;
- i) adopt and publish rules and regulations governing the use of common areas, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof; and,
- j) to perform any and all actions necessary to carry out the terms and intent of the Declaration (as amended from time to time) on file in the office of the Grand County Recorder.

3.2 **Number, Tenure and Qualifications of Directors.**

- a) **Number.** The number of directors of the Association shall be no less than three (3) and may be expanded to five (5) by unanimous decision of the Board.
- b) **Tenure.** The election of the Board of Directors and the voting rights of

Declarant and the members shall be as set forth in the Declaration and shall be supplemented hereby to the extent these Bylaws are not consistent therewith.

The initial Board of Directors of the Association shall serve for a period of three (3) years or such term as determined by Declarant during the Period before all of the Units are sold or until the authority to elect the Board of Directors is granted by Declarant to the Unit Owners (Period of Declarant Control). After expiration of such Period, at the next annual meeting of the members held prior to the date of the expiration of original three (3) year term of the initial Board of Directors, the members shall elect three (3) Directors to serve as follows commencing on the date of the expiration of the initial 10-year term of the initial Board of Directors: one Director shall be elected to serve for a term of three (3) years; one Director shall be elected to serve for a term of two (2) years; and one Director shall be elected to serve for a term of one (1) year. At each annual meeting thereafter, the members shall elect for three (3) year terms the appropriate number of Directors to fill vacancies created by expiring terms of Directors. The Directors appointed by the Declarant do not have to be members of the Association. However, during the Period of Declarant Control the Declarant may terminate any Director at any time at its sole discretion and may immediately appoint a replacement Director who shall serve out the term of the terminated Director.

- c) **Qualifications.** Directors shall be natural persons twenty-one (21) years of age or older.

3.3 **Regular Meetings of the Board of Directors.** The Board of Directors may provide, by resolution, the time and place, either within or outside the State of Utah, for the holding of regular meetings, which shall be held without other notice than such resolution.

3.4 **Special Meetings of the Board of Directors.** Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board or the majority of directors, who may fix any place, either within or outside the State of Utah, as the place for holding the meeting.

3.5 **Notice and Waiver of Notice of Special Director Meetings.**

- a) **Notice.** Unless the Articles of Incorporation provide for a longer or shorter period, special meetings of the Board of Directors must be preceded by at least two (2) days notice of the date, time and place of the meeting. Notice may be communicated in person, by telephone, by any form of electronic communication, or by mail or private carrier.
- b) **Effective Date.** Notice of any meeting of the Board of Directors shall be deemed to be effective at the earliest of the following: (1) When it is received; (2) five (5) days after it is mailed; or (3) the date shown on the return receipt if it sent by registered or certified mail, return receipt requested, and the receipt

is signed by or on behalf of the director.

- c) **Waiver of Notice.** A director may waive notice of any meeting. Except as provided in this Section 3.5, the waiver must be in writing and signed by the director entitled to the notice. The waiver shall be delivered to the Association for filing with the corporate records, but delivery and filing are not conditions to its effectiveness.
- d) **Effect of Attendance.** The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business and at the beginning of the meeting, or promptly upon arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting.

3.6 **Quorum of Directors.** A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

3.7 **Manner of Acting.**

- a) **Action by Majority.** If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present is the act of the Board of Directors, unless the Utah Revised Nonprofit Corporation Act requires the vote of a greater number of directors.
- b) **Telephone Meetings.** Any or all directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.
- c) **Effect of Presence at Meeting.** A director who is present at a meeting of the Board of Directors when corporate is taken is considered to be have assented to the action taken, unless:
 - (i) The director objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting business at the meeting;
 - (ii) the director contemporaneously requests his or her dissent or abstention as to any specific action to be entered into the minutes of the meeting; or
 - (iii) the director causes written notice of a dissent or abstention as to any specific action to be received by the presiding officer of the meeting before its adjournment or by the Association promptly after adjournment of the meeting.

- d) **Right of Dissent or Abstention.** The right of dissent or abstention as to a specific action is not available to a director who votes in favor of the action taken.
- 3.8 **Director Action by Written Consent.** Unless the Utah Revised Nonprofit Corporation Act provides otherwise, any action required or permitted to be taken by the Board of Directors at a meeting may be taken without a meeting if each and every member of the Board of Directors in writing either votes for the action or abstains from voting and waives the right to demand that action not be taken without a meeting. Action is taken by written consent at the time the last director signs a writing describing the action taken, unless, prior to that time, any director has revoked consent by a writing signed by the director and received by the Secretary. Action taken by written consent is effective when the last director signs the consent, unless the Board of Directors establishes a different effective date. Action taken by written consent has the same effect as action taken at a meeting of directors and may be described as such in any document.
- 3.9 **Resignation of Directors.** A director may resign at any time by giving a written notice of resignation to the Association or other members of the Boar. A resignation of a director is effective when the notice is received by the Association unless the notice specifies a later effective date. A director who resigns may deliver a statement of his or her resignation to the Utah Revised Nonprofit Corporation Act to the Division for filing.
- 3.10 **Removal of Directors.** A majority of the Membership may remove one or more directors for cause at a meeting called for that purpose if notice has been given that a purpose of the meeting is such removal.
- 3.11 **Board of Director Vacancies.**
- a) **Vacancies.** If a vacancy occurs on the Board of Directors:
 - (i) If the vacancy occurs by reason of the death, resignation or removal of a Director, or if a vacancy occurs by reason of an increase in the authorized number of Directors, during the Period of Declarant Control, the Declarant shall appoint a successor, thereafter, the Board of Directors shall fill the vacancy;
 - (ii) After the Period of Declarant Control if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office;
 - (iii) After the Period of Declarant Control if vacancies occur in the Board of Directors by reason of the removal of a Director) the vacancy shall be filled by the qualified voting members at the meeting at which such

Director is removed;

- (iv) Any Director elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his or her predecessors, or for the term of the newly appointed director; and,
- (v) If at any time there are no directors remaining in office, then the members may fill the vacancy.
- (vi) These Bylaws supplement the Declaration to the extent they are not inconsistent with them.

b) **Election of Director Prior to Vacancy.** A vacancy that will occur at a specific later date, because of a resignation effective at a later date, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

3.12 **Director Compensation.** No Director shall receive compensation for any services that he or she may render to the Association as a Director; provided, however, that Directors may be reimbursed for expenses incurred in performance of their duties as Directors and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in their capacity as Directors.

3.13 **Director Committees.** Committees of the Board of Directors may be established in accordance with Article 4 of these Bylaws.

3.14 **Director's Rights to Inspect Association Records.**

a) **Absolute Inspection Rights.** If a director gives the Association written notice of the director's demand at least five (5) business days before the date on which the director wishes to inspect and copy, the director (or the director's agent or attorney) has the right to copy, during regular business hours, any of the following records, all of which the Association is required to keep at its principal office:

- (i) The Association's Articles of incorporation currently in effect;
- (ii) the Association's Bylaws currently in effect;
- (iii) resolutions adopted by the Board relating to the characteristics, qualifications, rights, limitations and obligations of members of any class or category of members;
- (iv) the minutes of all member's meetings, and records of all action taken by members without a meeting, for the past three years;
- (v) all written communications within the past three years to members

generally as members;

- (vi) a list of the names and business or home addresses of the Association's current officers and directors;
- (vii) the Association's most recent annual report delivered to the Division; and,
- (viii) all financial statements prepared for periods ending during the last three years that a member could request.

- b) **Conditional Inspection Rights.** In addition, if a director gives the Association a written demand made in good faith and for a proper purpose at least five business days before the date on which the director wishes to inspect and copy, the director describes with reasonable particularity the director's purpose and the records the director desires to inspect, and the records are directly connected with the director's purpose, the director (or the director's agent or attorney) is entitled to inspect and copy, during regular business hours at a reasonable location specified by the Association, any other records of the Association.
- c) **Copy Cost.** The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means. The Association may impose a reasonable charge, payable in advance, covering the costs of labor and material, for copies of any documents provided to the director. The charge may not exceed the estimated cost of reproduction of the records.

3.15 **General Standards of Conduct for Directors.** The standards of conduct for the directors of the Association shall be as follows:

- a) Each director shall discharge his or her duties as a director, including duties as a member of committee, (i) in good faith, and (ii) in a manner the director reasonably believes to be in the best interests of the Association. The Board of Directors and members of the Association understand that the members of the board of Directors may have other business interests, activities and responsibilities that take a substantial portion of their time and attention. Accordingly, the members of the Board of Directors are required to devote to the business of the Association in fulfillment of their respective responsibilities as a director of the Association and/or an officer of the Association, as the case may be, only the time and attention that they shall unilaterally deem necessary in order to fulfill their responsibilities as a director and/or officer.
- b) A director is not liable for any action taken, or any failure to take any action as a director, if the duties of the director have been performed in compliance with this Section 3.15.

- c) The standards of conduct set forth in this Section 3.15, or any breach of such standards, shall not affect the right or power of the Association to indemnify any individual pursuant to Article 6 of these Bylaws.

ARTICLE IV OFFICERS

- 4.1 **Officers.** The officers of the Association shall be a President and a Secretary, each of whom shall be appointed by the Board of Directors. The Board of Directors may appoint, but shall not be required to appoint, a Treasurer and a Vice President. Such other officers and assistant officers as may be deemed necessary may be appointed by the Board of Directors. If specifically authorized by the Board of Directors, an officer may appoint one or more officers or assistant officers. The same individual may simultaneously hold more than one office in the Association. Officers are not required to be members of the Association.
- 4.2 **Appointment and Term of Office.** The officers of the Association shall be appointed by the Board of Directors for such terms as is determined by the Board of Directors. If no term is specified, each officer shall hold office until the officer resigned, dies, is removed in the manner provided in Section 4.4 of these Bylaws, or until the first meeting of the directors held after the next annual meeting of members. If the appointment of officers shall not be made at such meeting, such appointment shall be made as soon thereafter as is convenient. If a vacancy shall occur in any office, or if a new office shall be created, the Board of Directors may appoint an officer or officers to fill such a vacancy or new office, and such appointment shall be for the term determined by the Board of Directors. Each officer shall held office until his or her successor shall have been duly appointed.
- The designation of a specified term does not grant to the officer any contract rights, and the Board of Directors may remove the officer at any time prior to the end of such term.
- 4.3 **Resignation of Officers.** Any officer may resign at any time by giving written notice of resignation to the Association.
- 4.4 **Removal of Officers.** Any officer or agent may be removed by the Board of Directors at any time, with or without cause. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an officer or agent shall not of itself create contract rights.
- 4.5 **President.** The President shall (i) be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall, in general, supervise and control all of the business and affairs of the Association, (ii) preside at all meetings of the members and the Board of Directors, and (iii) sign, with the Secretary or any other proper officer of the Association authorized by the Board of Directors, any certificates for stock of the Association, the issuance of which shall have been authorized by a

resolution of the Board of Directors, and deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed. The President in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

4.6 **Vice President.** In the absence of the President or in the event of his or her death, the inability, or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. If there is no Vice President, then the Treasurer shall perform such duties of the President. The Vice President may sign, with the Secretary or an Assistant Secretary, certificates for stock of the Association the issuance of which have been authorized by resolution of the Board of Directors, and deeds, mortgages, bonds, contracts or other instruments, except in cases where the signing and execution thereof shall be expressly delegated by the Board of directors or by these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board of Directors.

4.7 **Secretary.** The Secretary shall

- a) Keep the minutes of the proceedings of the members and of the Board of Directors and the other records and information of the Association required to be kept, in one or more books provided for that purpose;
- b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;
- c) be custodian of the corporate records and of any seal of the Association;
- d) when requested or required, authenticate any records of the Association;
- e) keep a register of the post office address of each member which shall be furnished to the Secretary by such member; and
- f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President of the Board of Directors.

4.8 **Treasurer.** The Treasurer shall:

- a) Have charge and custody of and be responsible for all funds and securities of the Association;
- b) receive and give receipts for moneys due and payable to the Association from

any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies, or other depositories as shall be selected by the Board of Directors; and

- c) in general perform all of the duties incident to the office of the Treasurer and other such duties as from time to time may be assigned to him or her by the President or by the Board of Directors.
- d) If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

4.9 **Assistant Secretaries and Assistant Treasurers.** The Assistant Secretaries, when authorized by the Board of Directors, may sign, with the President or the Vice President, certificates for stock of the Association, the issuance of which shall have been authorized by resolution of the Board of Directors shall determine. The Assistant Treasurers shall, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

4.10 **Salaries.** No officer shall receive compensation for any services rendered to the Association unless a reasonable compensation is set by the Board of Directors; provided, however, that officers may be reimbursed for expenses incurred in performance of their duties as officers and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in their capacity as an officer.

4.11 **General Standards of Conduct for Officers.** The standards of conduct for the officers of the Association shall be as follows:

- a) Each officer with discretionary authority shall discharge his or her duties under that authority (i) in good faith, and (ii) in a manner the officer reasonably believes to be in the best interests of the Association.
- b) An officer is not liable for any action taken, or any failure to take any action as an officer if the duties of the office have been performed in compliance with this Section 4.11.
- c) The standards of conduct set forth in this Section 4.11, or any breach of such standards, shall not affect the right or power of the Association to indemnify any individual pursuant to Article 5 of these Bylaws.

**ARTICLE V
INDEMNIFICATION OF DIRECTORS, OFFICERS,
EMPLOYEES, FIDUCIARIES, AND AGENTS**

- 5.1 **Limitation of Liability of Directors and Officers.** The personal liability of the directors and officers of the Association to the Association or its members, or to any third person, shall be eliminated or limited to the fullest extent as from time to time permitted by Utah law. No director or officer of the Association shall have any personal liability for any injury to person or property unless such officer or director is convicted of the commission of a criminal act in connection with any such injury.
- 5.2 **Indemnification of Directors and Officers.** The Association shall indemnify, defend and hold harmless its directors, officers, employees, fiduciaries or agents and to any person who is or was serving at the Association's request as a director, officer, partner, trustee, employee, fiduciary or agent of another domestic or foreign corporation or other person or of an employee benefit plan (and their respective estates or personal representatives) to the fullest extent possible as from time to time permitted by Utah law.
- 5.3 **Effect of Repeal or Modification of Article V.** Any repeal or modification of this Article V by the members of the Association shall not adversely affect any right or protection of any person existing at the time of such repeal or modification.
- 5.4 **Insurance.** The Association may purchase and maintain liability insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the Association, or who, while serve as a director, officer, employee, fiduciary, or agent of the Association is or was serving at the request of the Association as a director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic corporation or other person, or of an employee benefit plan, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, fiduciary, or agent, whether or not the Association would have power to indemnify him or h against the same liability under Sections 16-6a-902, 16-6a-903, or 16-6a-907 of the Utah Revised Nonprofit Corporation Act. Insurance may be procured from any insurance company designated by the Board of Directors, whether the insurance company is formed under the laws of the State of Utah or any other jurisdiction of the United States or elsewhere, including any insurance company in which the Association has an equity or other interest through stock ownership or otherwise.

**ARTICLE VI
EXECUTION OF INSTRUMENTS, BORROWING OF
MONEY AND DEPOSIT OF CORPORATE FUNDS**

- 6.1 **Execution of Instruments.** Subject to any limitation contained in the Utah Revised Nonprofit Corporation Act, or these Bylaws, the Board of Directors may authorize any other officer or agent to execute and deliver any contract or other instrument in the name and on behalf of the Association; any such authorization may be general or

confined to specific instances.

- 6.2 **Loans.** No loan or advance shall be contracted on behalf of the Association, no negotiable paper or other evidence of its obligation under any loan or advance shall be issued in its name, and no property of the Association shall be mortgaged, pledged, hypothecated, transferred, or conveyed as security for the payment of any loan, advance, indebtedness, or liability of the Association, unless and except as authorized by the Board of Directors. Any such authorization may be general or confined to specific instances.
- 6.3 **Deposits.** All monies of the Association not otherwise employed shall be deposited from time to time to its credit in such banks or trust companies or with such bankers or other depositories as the Board of Directors may select, or as from time to time may be selected by any officer or agent authorized to do so by the Board of Directors.
- 6.4 **Checks, Drafts, Etc.** All notes, drafts, acceptances, checks, endorsements, and, subject to the provisions of these Bylaws, evidences of indebtedness of the Association shall be signed by the President or by such officer or officers or such agent or agents of the Association and in such manner as the Board of Directors from time to time may determine. Endorsements for deposits to the credit of the Association in any of its duly authorized depositories shall be in such manner as the Board of Directors from time to time may determine.

ARTICLE VII FISCAL YEAR

- 7.1 **Fiscal Year.** The initial fiscal year of the Association shall end on December 31, but may hereafter be changed by resolution by the Board of Directors.

ARTICLE VIII AMENDMENTS AND DECLARATION CONTROLLING

- 8.1 **Amendments.** The Membership may amend these Bylaws by a vote or written consent of not less than a Majority of the Total Votes. The members may adopt, amend or repeal a Bylaw that fixes a greater voting requirement for members than is required by the Utah Revised Nonprofit Corporation Act, provided that a majority of all of the outstanding votes of the Association consent to such an adoption, amendment or repeal. Any such action shall comply with the provisions of the Utah Revised Nonprofit Corporation Act.
- 8.2 **Declaration Controlling.** In the event of any conflict or inconsistency between these Bylaws and the Declaration, the Declaration shall govern and control.

KANE CREEK CONDOMINIUM OWNERS ASSOCIATION