



\*W2598480\*

**REVISED BY-LAWS**  
**OF**  
**DURFEE CREEK ASSOCIATION INC.**

E# 2598480 PG 1 OF 16  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
01-OCT-12 131 PM FEE \$112.00 DEF TOT  
REC FOR: DURFEE CREEK ASSOC

**Article 1: Name, Principle Office, Definitions and Purposes**

**1.1. Name.**

The name of the corporation is the Durfee Creek Association Inc. (the "Association").

**1.2. Principal Office.**

The Association's principal office shall be located at 6714 North Durfee Creek Road, Liberty, Utah 84310. The Association may have other offices as the Board of Directors determines or as the Association's affairs require.

**1.3. Definitions.**

The words used in these Revised By-Laws and other Governing Documents shall have their normal, commonly understood definitions. Capitalized terms used in these Revised By-Laws and the other Governing Documents are defined as follows:

**"Association"**: Durfee Creek Association Inc. a Utah nonprofit corporation, its successors or assigns.

**"Board of Directors"** or **"Board"**: The body responsible for the general governance and administration of the Association, elected by the Members as provided in the Revised By-Laws.

**"Benefitted Assessment"**: Assessments charged against a particular Lot or Lots to cover the Association's costs of (i) of providing a service and/or facility to an Owner and their Lot(s) at the request of the Owner; and (ii) repairing tangible damages to the Common Area caused by the negligence or wrongful act of an Owner or occupant of their Lot, their agents, contractors, employees, licensees, invitees, or guests.

**"Common Area"** or **"Common Areas"**: All real or tangible personal property, including easements and public utility rights-of-way, which the Association owns, leases, or otherwise has a right to administer, manage, possess or use for the common benefit, use and enjoyment of the Owners

**"Common Area Rules"**: The restrictions, rules, and regulations governing the use of and activities on the Common Areas adopted and amended in the manner set forth in Utah Code title 57, Chapter 8a, Section 217, as amended.

**"Common Expenses"**: The actual and estimated expenses the Association incurs, or expects to incur, for the general benefit of all Owners. Common Expenses include any reserves the Board and Association Members find necessary or appropriate. Common Expenses do not include any expenses incurred that do not benefit all Owners.

**"Common Maintenance Areas"**: The Common Area, together with any other area for which the Association has or assumes maintenance or other responsibility.

**"Community"** or **"Durfee Creek Estates"**: The real property described in the Recorded Plats for Durfee Creek Estates

**"Declarants"**: Durfee Creek, Inc., Association and its Members.

**“Developer and Initial Declarant”:** A.E. Carter and Sons, Inc., Carter Brothers, Inc. and Allen L. Carter.

**“Development Guidelines”:** The Community’s architectural, construction, design, landscaping and site planning guidelines and review procedures adopted and amended in the manner set forth in Utah Code Title 57, Chapter 8a, Section 217.

**“Development Review Committee” or “DRC”:** The committee established to review plans and specifications for the construction or modification of improvements and to administer the process described in the Governing Documents.

**“Governing Documents”:** The Association’s Restated Articles of Incorporation, Revised By-Laws, Declaration(s) of Covenants, Conditions and Restrictions, Common Area Rules, Development Guidelines and Internal Controls as amended.

**“Lot”:** A portion of the Community, whether improved or unimproved, that may be independently owned and conveyed, and upon which a Residence is intended for development, use and occupancy. The term shall refer to the land that is part of the Lot as well as any improvements, including any Residence, on the Lot. The boundaries of each Lot shall be shown on a Recorded Plat.

**“Member”:** Each Lot Owner, subject to Section 2.7

**“Mortgage”:** A mortgage, deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term “Mortgagee” shall refer to a beneficiary or holder of a Mortgage.

**“Owner”:** The Record title holder to any Lot, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation, such as a Mortgage. If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser, rather than the fee owner, shall be considered the Owner.

**“Person”:** An individual, a corporation, a partnership, a trustee, or any other legal entity.

**“Plat” or “Plats”:** Any Recorded land survey plat for all or any portion of Durfee Creek Estates.

**“Record”, “Recording”, or “Recorded”:** To file, the filing of, or filed of record a legal instrument in the Office of the Recorder of Weber County, Utah, or such other place designated as the official Weber County location for recording documents affecting title to real estate.

**“Regular Assessment”:** Annual assessments levied to fund Common Expenses for the general benefit of all Lots.

**“Restated Articles of Incorporation”:** The Restated Articles of Incorporation of the Durfee Creek Association Inc. filed with Utah’s Division of Corporations and Commercial Code, as they may be further amended in the future.

**“Residence”:** Any building, or part of a building, on a Lot that is intended for use and occupancy as a separate residence.

**“Special Assessment”:** Assessments levied by the Board against all Lots to cover any unbudgeted expense required by law, permit and/or regulation for the operation, maintenance and repair of the Wastewater Disposal System if such expense cannot be funded with reserve funds accumulated specifically for that purpose or other sources. A Special Assessment proposed for any other purposes, including the manner and timing of payments, shall be approved by 67% of the eligible votes in the Association.

**“Wastewater Disposal System”:** The Community septic tank, active drainfields and appurtenances, drainfield replacement area, manholes and collection lines located in the Common Area and rights-of-way.

#### **1.4. Purposes.**

The Association is organized for purposes set forth in the Restated Articles of Incorporation. These Revised By-Laws are primarily intended to describe policy and procedural matters related to the administration, operation and governance of the Association.

### **Article 2: Membership, Meetings, Quorum, Voting and Proxies**

#### **2.1. Membership.**

The Association shall have one class of membership. Members shall be the Lot Owners. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of the membership, subject to the Governing Documents and the voting restrictions described in Section 2.7. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner that is not an individual may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association Secretary

#### **2.2. Location of Meetings**

The Association shall hold meetings at suitable place convenient to the Members as the Board of Directors may designate.

#### **2.2. Annual Meetings.**

The Board of Directors shall set the date and time of regular annual meetings so as to occur during the first or fourth quarters of the calendar year. At the Board's discretion, annual meetings, in whole or in part, may be conducted electronically, via the Internet or teleconference, if, and to the extent permitted by Utah law.

#### **2.4. Special Meetings.**

Special meetings of the Association may be called at any time by the President, by resolution of the Board of Directors, or upon written petition of Members, entitled to vote, representing at least 25% of the Association's membership. Members' written petition describing the purpose of the meeting shall be delivered to the Association's Secretary. Special meetings may be conducted electronically, via the Internet or teleconference, if, and to the extent permitted by Utah law.

If the Association's Secretary does not send notice of a special meeting pursuant to Section 2.5 within 30-days following the date the written petition is delivered to the Association's Secretary, any Member signing the petition may set the time and place of the special meeting and give the Association notice pursuant to Section 2.5.

#### **2.5. Notice of Meetings.**

At least 30 but not more than 60-days before the date of a meeting, the Association's Secretary shall cause notice stating the place, day, and hour of any meeting. In accordance with Utah Code Title 16, Chapter 6a, as amended, and Title 57, Chapter 8a, Section 214, as amended, sent by first class or registered mail or by electronic means, including, email or posting to the Association's website.

The purpose or purposes for which a meeting is called shall be stated in the notice. No other business shall be transacted at a special meeting except as stated in the notice. The Board of Directors, in their sole discretion, may allow business not stated in the notice to occur at annual meetings.

If posted, notice shall be deemed delivered when posted. If mailed, the notice shall be deemed delivered when deposited in the United States mail addressed to the Member at the address as it appears on the Association's records, with postage prepaid. If sent by facsimile, electronic mail or other electronic

communication device, notice shall be deemed delivered when transmitted to any Member at the address or number as it appears on the Association's records. Failure to receive actual notice of an Association meeting shall not affect the validity of any action taken at such meeting.

#### **2.6. Waiver of Notice.**

Waiver of notice of an Association meeting shall be the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. Any Member's attendance at a meeting shall be deemed a waiver by such Member unless the Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at the meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

#### **2.7. Membership and Voting.**

The Association has one class of membership. Members are all Owners and have one equal vote for each Lot they own, except that there shall be only one vote per Lot.

For each Lot, the Owner shall be entitled personally to exercise the vote for their Lot. In any situation where a Member is entitled personally to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one person seeks to exercise it.

Voting rights shall be automatically suspended if a Lot Owner is 90-days delinquent in paying any assessment or other charge owed to the Association.

Members may vote by US mail, facsimile, electronic mail and on the Association's website before a meeting without the necessity of attending the meeting or by voice vote or ballot at a meeting. Votes cast at a meeting for the election of directors shall be by secret ballot.

#### **2.8. Proxies.**

Subject to Utah Code Title 16, Chapter 6a, as amended, on any matter on which a Member is entitled to vote, such vote may be cast by proxy card.

All proxy cards shall be in writing and delivered in-person, by United States mail or submitted electronically in the manner set forth on the proxy card. Proxy cards shall be dated, specify the Lot or Lots for which it is given, signed by the Member or validated electronically and filed with the Association Secretary prior to the beginning of the meeting for which it is to be effective.

Every proxy card shall be revocable and shall automatically cease upon: (a) conveyance of any Lot for which it was submitted, (b) the Association's Secretary's receipt of written or electronic notice of revocation, (c) 90-days from the meeting for which the proxy card was originally submitted, unless the proxy card specifies a shorter period.

#### **2.9. Majority.**

As used in Sections 2.11 and 3.9 of these Revised By-Laws, the term "majority" shall mean those votes, Lot owners or other group, as the context may indicate, totaling more than 50% of the eligible number of Members.

#### **2.10. Quorum.**

Except as these Revised By-Laws or the other Governing Documents otherwise provides, at all meetings of the Association a quorum shall constitute a representation of 60% of the Members entitled to vote at any

such meeting. For the purposes of determining a quorum at any meeting, a Member's proxy, written or electronic absentee vote and/or presence shall be considered appropriate representation.

### **2.11. Adjournment of Meetings.**

If the Association cannot take action at a meeting because a quorum is not represented, the Members representing a majority of those who are present may adjourn the meeting and reconvene at a time and date at least 10 but not more than 30-days from the date called for the original meeting. In accordance with Utah Code Title 16, Chapter 6a, Section 704, no further notice need be given as to time, date and place set for the reconvened meeting. At the reconvened meeting, if a quorum is represented, any business may be transacted which might have been transacted at the meeting originally called. If the time and place is not fixed for a reconvened meeting or if for any reason a new date is fixed after adjournment, the Association shall give Members notice of the time and place for reconvening the meeting in the manner prescribed in Section 2.5.

Any Members present at a duly called or held meeting at which a quorum is represented may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that at least a majority of the votes required to constitute a quorum approve any action taken.

### **2.12. Conduct of Meetings.**

The President shall preside over all Association meetings. The Secretary shall keep the minutes and record in a minute book all resolutions adopted and all other transactions occurring at such meetings. Subject to reasonable rules imposed by the Board, Lot Owners may tape record or videotape Association meetings.

### **2.13. Action Without a Meeting.**

Subject to the provisions set forth in Utah Code Title 16, Chapter 6a, Section 707, as amended, any action that may be taken at any annual or special meeting of Members may be taken without a meeting and without prior notice.

## **Article 3: Board of Directors: Selection, Meetings, Authority, Duties and Standards.**

### **A. Composition and Selection.**

#### **3.1. Managing Body and Composition.**

The Association's affairs shall be managed by a Board consisting of three (3) directors each of whom shall be Members of the Association in good standing. Each Board member shall have one vote and be at least 18-years old.

#### **3.2. Nomination and Election Procedures.**

(a). Nominations. Prior to each election of directors, the Board shall prescribe the opening and closing date of a reasonable filing period during which every eligible person who has an interest in serving as a director may file as a candidate with the Association Secretary.

Not less than 60-days prior the election of directors, the Board shall form a Nominating Committee consisting of one Board member and two or more Members of the Association. The Nominating Committee shall make as many nominations for election to the Board as it deems appropriate in its discretion. In making its nominations, The Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates.

The Board may, but shall not be required to, give each candidate a reasonable, equal opportunity to communicate their qualifications to the Members and solicit votes.

(b) Election Procedures. Each eligible Member may cast votes for each position to be filled from the slate of candidates. The number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Cumulative voting shall not be permitted.

### **3.3. Election and Term of Office.**

Except as these Revised By-Laws may otherwise specifically provide, election of directors shall take place at the Association's annual meeting.

Two directors shall serve a two-year term and one director shall serve a one-year term, as such directors determine among themselves. Directors may not serve more than two consecutive two-year terms.

### **3.4. Removal of Directors and Vacancies.**

Any director may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor may, at the Board's discretion, be elected by the Members entitled to elect such director, or appointed by the Board to fill the vacancy for the remainder of the term.

Any director who has three consecutive unexcused absences from Board meetings or who is more than 30-days delinquent in the payment of any assessment or other charge due to the Association may be removed by a vote of the Board, excluding the director at issue.

In the event of the death, disability or resignation of a director, the Board may declare a vacancy and appoint a successor for the remainder of the term.

## **B. Meetings.**

### **3.5. Organizational Meetings and Work Sessions.**

The Board shall hold its first meeting within 30-days of each annual meeting of the Association at a time and place determined by the Board. Such meeting shall be used to discuss organizational and transition issues. Additional organizational meetings and work sessions may be held as determined by the Board.

### **3.6. Regular and Special Meetings.**

The Board shall hold at least four regular meetings during each calendar year with at least one per quarter. The President or any two directors may call a special meeting. All such meetings may be held at a time and place determined by the Board.

### **3.7. Notice.**

Except for organizational meetings, work sessions and emergency meetings, notice of a Board meeting shall be posted on the Association website and provided by email at least 5-days before the meeting. Such notice shall include the time, place and agenda for the meeting. Notwithstanding the above, a Lot Owner may, by written request, require the Association to provide notice by mail.

### **3.9. Telephonic Participation.**

Subject to the availability of appropriate equipment, Board members or members of any committee designated by the Board may participate in a meeting by means of telephone or other electronic media through which the participants can hear each other. Participation in this manner shall constitute presence at the meeting.

**3.10. Quorum of the Board.**

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business and the votes of a majority of the directors present at a meeting which a quorum is present shall constitute the Board's decision, unless these Revised By-Laws or the Amended Declaration specifically provide otherwise.

**3.11. Conduct of Meetings.**

The President shall preside over all Board meetings. The Secretary shall keep a minute book of Board proceedings, recording all Board resolutions, all transactions and all official proceedings occurring at such meetings. Association members may tape record or videotape Board meetings subject to reasonable rules the Board imposes.

**3.12. Open Meetings.**

All regular and special Board meetings shall be open to any and all Members of the Association.

Members may request additions to the agenda, provided such request is submitted in writing and received by the Secretary of the Association at least 72-hours before the meeting.

Attendees other than directors may participate in any discussion or deliberation. The President may limit the time any such individual may speak.

**3.13. Action Taken Without a Formal Meeting.**

Any action authorized by Utah law or the Governing Documents to be taken or which may be taken at a Board meeting may be taken without such a meeting if all directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

**C. Authority and Duties.****3.14. Authority.**

The Board shall have all of the authority and duties necessary for managing the Association's affairs, for performing all of the Association's responsibilities and exercising all of the Association's rights and obligations as set forth in Utah Code Title 16, Chapter 6a, as amended, Utah Code Title 57, Chapter 8a, as amended and the Governing Documents. In addition to those things that the above referenced Utah laws and the Governing Documents require to be done and exercised exclusively by the membership, the Board shall specifically not have the authority to:

- (a). Authorize an encroachment of any kind on the Common Area without the specific approval of 100% of the eligible voting Members of the Association. The term encroachments shall include, without limitation, any surface or vegetation disturbing activity connected with the construction of any improvements or landscaping on any Lot.
- (b). Request or authorize Weber County to grant any relief from setback or other building code requirements.
- (c). Waive or otherwise disregard any permit requirements, including without limitation those associated with the Wastewater Disposal System.

**3.15. Duties.**

The Board's duties shall include, without limitation:

- (a). Preparing, adopting and administering an annual budget for Common Expenses in accordance with the procedures set forth in Utah Code Title 57, Chapter 8a, Section 215, as amended.
- (b). Managing expenditures in a manner that prevents unforeseen and unplanned expenses associated with any line item reflected in an approved budget from exceeding 10% of total amount of that approved budget. Any unforeseen or unplanned expenditure that may be required for a line item that is not specifically reflected in an approved budget that is expected to exceed 10% of the total approved budget shall be approved by 67% of the eligible voting Members of the Association before any such expenditure is made. The only unforeseen and unplanned expenditures that are excluded from these requirements are expenses required to maintain the Wastewater Disposal System and expenses required to comply government laws, regulations and permit conditions.
- (c). Establishing and collecting Regular Assessments representing each Lot Owner's share of the Association's Common Expenses.
- (d). Levying and collecting Special & Benefitted Assessments in the manner set forth in the Governing Document.
- (e). Providing for the operation, maintenance, repair and replacement of the Wastewater Disposal System and the Common Area in accordance with all applicable governmental laws and regulations, the Governing Documents and generally accepted best management practices.
- (f). Adopting and publishing Common Area Rules and Development Guidelines in the manner set forth in Utah Code Title 57, Chapter 8a, Section 217, as amended.
- (g). Depositing all funds received on the Association's behalf in a bank depository approved by the Board and using such funds, exclusive of monies designated for a reserve fund, to operate the Association.
- (h). Preparing a reserve analysis in accordance with the procedures set forth in Utah Code title 57, Chapter 8a, Section 211, as amended, and establishing the necessary reserve fund in an approved bank depository.
- (i). Opening bank and other depository accounts on the Association's behalf and designating the signatories required.
- (j). Designating, hiring and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of necessary equipment, supplies and materials.
- (k). Obtaining and carrying liability insurance, fidelity bonds and other forms of insurance, as may be necessary to protect the Association, Members and the Association's assets, paying the cost thereof and filing claims as appropriate in the manner set forth in Utah Code Title 57, Chapter 8a, Sections 401-407, as amended.
- (l). Paying for the cost of all goods and services delivered or rendered to the Association.
- (m). Keeping books with detailed accounts of the Association's receipts and expenditures.
- (n). Enforcing the provisions of the Governing Documents, as more fully described in Section 3.18.
- (o). Making available to any Lot Owner, the holders, insurers and guarantors of any Mortgage on any Lot and or the improvements placed thereon, and any prospective purchaser of any Lot, current copies of the Governing Documents and all other books, records and financial statements as provided in Section 3.16.



- (p). Maintaining a system of internal controls to supplement the Governing Documents.
- (q). Maintaining the official records of the Association.

### **3.16. Compensation.**

The Association shall not compensate a director for acting in such capacity or for any service provided to the Association. The Association may reimburse any director for expenses incurred on the Association's behalf if approved by a majority of the other directors.

### **3.17. Accounts and Reports.**

The following management standards of performance shall be followed:

- (a). Accrual accounting, as defined by generally accepted accounting principles, shall be used.
- (b). Accounting and internal controls shall conform, to the maximum extent practicable, generally accepted accounting principles.
- (c). The Association's cash accounts shall not be commingled with any other accounts.
- (d). At least quarterly, the Board shall prepare financial reports for the Association containing:
  - (i). an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
  - (ii). a statement reflecting all cash receipts and disbursements for the preceding period;
  - (iii). a variance report reflecting the status of all accounts in an "actual" versus "approved budget" format;
  - (iv). a balance sheet as of the last day of the preceding period; and
  - (v). a delinquency report listing all Lot Owners that are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such delinquent assessments. Any assessment or installment thereof shall be considered delinquent on the 30<sup>th</sup> day following the due date unless otherwise specified by Board resolution.
- (e). Within 90-days of the end of the calendar year, the Board shall provide the following to the Members
  - (i). an annual report consisting of at least a balance sheet; a profit and loss statement and a statement of changes in financial position for the fiscal year; and
  - (ii) the results of the most recent reserve analysis.

### **3.18. Right to Contract.**

The Board shall have the right to contract for the performance of specific duties and functions to include, without limitation, service, maintenance, operational or other similar agreements. The Board shall comply with procedures specifically set forth in duly adopted internal controls prior to entering into any contract. No contract shall be written for work that is not reflected in a previously approved budget or other action approved by the Members.

### **3.19. Enforcement.**

The enforcement of all federal, Utah and Weber County laws, ordinances and regulations applicable to the Community is the sole responsibility of the government agencies with that authority.

On behalf of the Association, the Board may enforce provisions of the Governing Documents that are not the responsibility of a government agency in the following manner:

- (i). Suspending an Owner's right to vote, except that suspension shall be automatic if the Owner is more than 90-days delinquent in paying any assessment or other charge owed to the Association;
- (ii). Suspending an Owner's right to use the Common Area, except that suspension shall be automatic if the Owner is more than 90-days delinquent in paying any assessment or other charge owed to the Association;
- (iii). Suspending any services, excluding wastewater disposal, provided by the Association, except that suspension shall be automatic if the Owner is more than 90-days delinquent in paying any assessment or other charge owed to the Association; and

The Board shall give written notice of the Association's intent to suspend the delinquent Lot Owner's rights or service. After receiving such notice, the delinquent Lot Owner shall have 14-days to pay any delinquent assessment or other charge owed to the Association, or submit a written request to the Board for an informal hearing to dispute the assessment or other charges. No rights or services shall be suspended until after the Board conducts the hearing and makes a final decision.

The above enforcement actions shall be in addition to any remedies available at law or in equity. The prevailing party in any such action shall be entitled to recover all costs incurred in the action, including without limitation, court fees and reasonable attorney fees.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except the Board shall not be arbitrary, capricious or against public policy in taking enforcement action. The Board may determine that under the circumstances of a particular case:

- (i). The Association's position is not strong enough to justify taking any further action;
- (ii). The provision of the Governing document being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii). Although a violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv). That it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

At any given time, a decision not to take an enforcement action on a particular provision of the Governing Documents shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other provision of the Governing Documents.

### **3.20. Board Education.**

At the first Board meeting of each fiscal year the directors shall conduct a review Board standards and responsibilities as specified in the Governing Documents. Such review shall also include, without limitation, applicable Utah laws Weber County ordinances, the Association's internal controls and Association history.

### **3.21. Board Standards.**

In performing their duties, directors and officers shall act as fiduciaries and are subject to indemnification from liability provided for directors of non profit corporations by Utah Code Title 16, Chapter 6a. Directors shall exercise the ordinary and reasonable care of directors of a corporation, and shall be subject to a business judgment rule specifically defined as follows:

A director shall act in accordance with the business judgment rule so long as the director:

- (a). acts within the scope of the Governing Documents, his or her actions are not prohibited by or in excess of the Governing Documents and his or her actions are not prohibited by Utah law;
- (b). affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, they are made on a fully informed basis;
- (c). acts on a disinterested basis, promptly discloses any real or potential conflict of interests, and avoids participation in such decisions and actions all in accordance with the Association's Conflict of Interest Policy; and
- (d). acts in a non-fraudulent manner and without indifference to the Association's affairs.

A director acting in accordance with the business judgment rule shall be protected from personal liability.

The Board shall exercise its authority in a fair, nondiscriminatory manner and shall strictly adhere to the procedures established in Utah law and the Governing Documents.

#### **Article 4. Officers.**

##### **4.1. Composition.**

The Association's officers shall be a President, Vice-President, Secretary and Treasurer. With the exception of the Treasurer which may be appointed by the Board, the officers shall at all times be directors. The same person may hold the offices of Secretary and Treasurer. The Board may appoint other officers, as it shall deem desirable. If appointed, such other officers shall have the authority and duties prescribed by the Board.

##### **4.2. Election.**

The Board shall elect the Association's officers at the first Board meeting following each Association annual meeting. Officers shall serve until their successors are elected and may not hold the same office for more than two consecutive terms.

##### **4.3. Removal, Resignation and Vacancies.**

Any officer may be removed by a majority vote of the directors. Any officer may resign at any time by giving notice to the Board. Acceptance of such resignation shall not be necessary to make it effective. The Board shall appoint a replacement to fill any vacancy in any office for the unexpired portion of the term.

##### **4.4. Authority and Duties.**

The Association's officers each shall have such authority and duties as generally pertain to their respective offices, as well as such authority and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Vice-President shall act in place and stead of the President in the event of absence, inability or refusal to act. The Secretary shall keep the corporate seal and official records of the Association. The Treasurer shall be the Association's chief financial officer.

##### **4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.**

Two officers all shall sign all agreements, checks, contracts, deeds, easements and leases.

#### **4.7. Compensation.**

The Association shall not compensate an officer for acting in such capacity or for any service provided to the Association. The Association may reimburse any officer for expenses incurred on the Association's behalf if approved by a majority of the directors.

#### **Article 5. Committees.**

In addition to the Nominating Committee described in Section 3.2, the Association shall have a Development Review Committee and an Internal Audit Committee each with members appointed by the Board.

The Development Review Committee shall consist of at least 3, but not more than 5 eligible Members of the Association that are not serving as a director, officer or member of another committee, with the authority to administer Development Guidelines and to review and act upon all applications for improvements within the Community.

The Internal Audit Committee shall consist of at least 3, but not more than 5 eligible Members of the Association that are not serving as a director, officer or member of another committee. The Internal Audit Committee shall help provide assurance to Members of the Association that applicable laws, regulations, Association policies and procedures and the Governing Documents are being complied with.

The Board may appoint any additional committees, as it deems appropriate, to perform such tasks and to serve for such periods as the Board may designate by resolution.

In an effort to encourage a broad base of participation in the Community, it shall be the Association's policy that the Board delegate responsibilities to committees as reasonably appropriate. When making appointments to committees, the Board shall use all reasonable efforts to select Members that have not previously served in that capacity.

Committees shall exercise such authority as granted by the Governing Documents or Board resolution, provided the Board may, in the exercise of its reasonable discretion, elect not to follow a committee's advice on any matter.

Committees may not bind the Association contractually or financially.

Unless otherwise approved by the Board, committee members may serve no more than two consecutive, two-year terms on the same committee.

#### **Article 6. Conflict of Interest Policy.**

##### **6.1. Purpose.**

This policy is intended to protect the Association when it is considering entering into a transaction or arrangement that might benefit the private interest of a director, officer or member of a committee with Board delegated authority and to supplement but not replace any Utah and federal laws governing conflict of interest applicable to nonprofit corporations.

##### **6.2. Definitions.**

For the purpose of this policy the following definitions shall be used:

**"Interested Person"**: Any director, officer or member of a committee with Board delegated authority, who has a direct or indirect financial interest or who may gain excess benefit, as defined below, is an interested person.

**“Financial Interest”:** A person has a financial interest if the person has, directly or indirectly, through business, investment or family:

- (i.) An ownership or investment interest in any entity with which the Association has a transaction or arrangement,
- (ii.) A compensation arrangement with the Association or with any entity or individual with which the Association has a transaction or arrangement, or
- (iii.) A potential ownership or investment interest in, or compensation arrangement with, any entity with which the Association is negotiating a transaction or arrangement.

**“Excess Benefit”:** A person gains an excess benefit when a transaction or arrangement entered into by the Association results in a tangible or intangible benefit that is not readily available to or enjoyed by all Members of the Association.

For the purpose of this Conflict of Interest Policy, compensation includes direct and indirect remuneration as well as gifts or favors that are not substantial.

A financial interest or excess benefit is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest or may gain excess benefit may have a conflict of interest only if the board or committee decides that a conflict of interest exists.

### **6.3. Duty to Disclose**

In connection with any actual or possible conflict of interest, an interested person shall disclose the existence of a financial interest or potential excess benefit. An interested person shall be given the opportunity to disclose all material facts to the Board of Directors and members of committees with Board delegated authority considering the transaction or arrangement.

### **6.4. Determining If a Conflict of Interest Exists**

After disclosure of the financial interest or potential excess benefit and all material facts, the interested person shall be excused from the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon by the remaining Board or committee members.

### **6.5. Addressing the Conflict of Interest**

- a. An interested person may make a presentation at the Board or committee meeting, but after the presentation the interested person shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairperson of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the Board or committee shall determine whether the Association can obtain with reasonable efforts a more advantageous transaction or arrangement that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board or committee shall determine by majority vote of disinterested directors whether the transaction or arrangement is in the Association’s best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

## 6.6. Policy Violations

a. If the Board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the Board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate corrective action, up to and including, removing the member from the Board or committee.

## 6.7. Records of Proceedings.

The minutes of Board or committee meetings with Board delegated authority shall contain:

a. The names of persons who disclosed or otherwise were found to have a financial interest or potential excess gain in connection with an actual or possible conflict of interest, the nature of the financial interest or excess personal gain, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.

b. The names of persons present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

## 6.8. Annual Statements.

Each director, officer and member of a committee with Board delegated authority shall annually sign a statement which affirms such person has (i) received a copy of the Association's Conflict of Interest Policy; (ii) read and understands the policy; and (iii) agrees to comply with the policy.

## Article 7. Miscellaneous.

### 7.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless otherwise established by Board resolution.

### 7.2. Parliamentary Rules.

Except as may be modified by Board resolution, Robert's Rules of Order, current edition, shall govern the conduct of Association proceedings when not in conflict with Utah law or the Governing Documents.

### 7.3. Conflicts.

If there are differences or inconsistencies in the language contained in corresponding or like provisions of Utah law, the Restated Articles of Incorporation, these Revised By-Laws and the Declarations, as amended, the provisions of Utah law, the Declarations, as amended, the Restated Articles of Incorporation and these Revised By-Laws, in that order, shall be applied.

### 7.4. Books and Records.

At any reasonable time and for a purpose reasonably related to a Member's ownership interest in a Lot, the Board shall make available for inspection and copying the Association's Governing Documents, membership register, books of account and the minutes of meetings. The Board shall provide for such inspection to occur within 10-days of a written request, at such place as it shall designate. The cost of

reproducing documents request shall be established by the Board, but in no event shall such costs exceed the amount allowed by Utah law.

**7.5. Notices.**

Except as otherwise provided by the Governing Documents, all communications under the Governing Documents shall be in writing and deemed to have been duly given if delivered personally or if sent by United States mail:

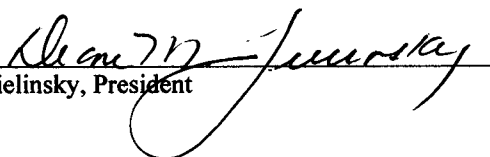
- (a). if to a Member, at the physical or electronic mail address designated by the Member;
- (b). if to the Association or the Board, at the principal office of the Association;
- (c). if to any committee, at the principal office of the Association.

**7.6. Amendments.**

These Revised By-Laws may be amended by affirmative written or electronic vote, proxy card, or written or electronic consent, or any combination thereof of Members representing 67% of the eligible votes in the Association. Amendments to these Revised By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to the process used to adopt an amendment must be made within 45-days of its recordation or such amendment shall be presumed to have been validly adopted.

**CERTIFICATION**

I, the undersigned, being President of Durfee Creek Association Inc., a Utah non-profit corporation (the "Association"), do hereby certify the foregoing to be the Revised By-Laws of the Association, as approved by a vote of the majority of a quorum of the Members of the Association and adopted by resolution of the Board of Directors on September 15, 2012 and that such Revised By-Laws are applicable to the real property contained in Durfee Creek Estates Subdivision as set forth in the attachment hereto.

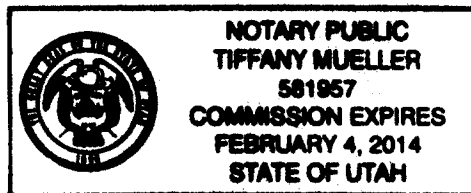
  
 \_\_\_\_\_  
 Diane Zielinsky, President

**Acknowledgement**

State of Utah  
County of Weber

Subscribed and sworn to before me on this 20 day of Sept, 2012 by Diane Zielinsky

  
 \_\_\_\_\_  
 Notary Name Signature



## Attachment to Revised By-Laws, Dated July 24, 2012

<b>Durfee Creek Estates Subdivision</b>		
<b>Parcel Numbers</b>		
17-092-0027	17-137-0017	17-226-0001
17-135-0001	17-138-0001	17-292-0001
17-135-0002	17-138-0002	17-292-0002
17-136-0001	17-138-0003	17-292-0005
17-136-0002	17-138-0004	17-297-0001
17-136-0003	17-138-0005	17-297-0002
17-136-0004	17-138-0006	17-297-0003
17-136-0005	17-138-0007	17-297-0004
17-136-0006	17-138-0008	17-297-0005
17-137-0001	17-138-0009	17-297-0006
17-137-0002	17-139-0001	17-297-0007
17-137-0003	17-139-0002	17-297-0008
17-137-0004	17-139-0003	17-297-0009
17-137-0005	17-139-0004	17-297-0010
17-137-0006	17-225-0001	17-297-0011
17-137-0007	17-225-0002	17-297-0012
17-137-0008	17-225-0008	17-307-0001
17-137-0009	17-225-0009	17-307-0002
17-137-0010	17-225-0010	17-307-0003
17-137-0011	17-225-0011	17-307-0004
17-137-0012	17-225-0012	17-307-0005
17-137-0013	17-225-0013	17-307-0006
17-137-0014	17-225-0014	17-307-0007
17-137-0015	17-225-0015	
17-137-0016	17-225-0016	