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RICHARD T. MAUGHAN  
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# **FAIRFIELD FARMS**

## **AMENDMENT TO DECLARATION**

(Housing for Older Persons Act)

August 2019

## **FAIRFIELD FARMS**

### **AMENDMENT TO DECLARATION**

(Housing for Older Persons Act)

This Amendment to Declaration ("2019 HOPA Amendment") is made and executed on the date shown below by the Fairfield Farms Unit Owners after having been voted upon and approved by not less than 67% of the voting membership at Fairfield Farms ("Fairfield Farms").

#### **RECITALS**

WHEREAS, Fairfield Farms was created by the Declaration of Covenants, Conditions and Restrictions for Fairfield Farms ("Declaration") dated May 30, 1973, and recorded June 8, 1973, as entry number 381475, in book 517, beginning at page 811, records of Davis County, Utah. There have been various amendments to the Declaration (all of which amendments recorded prior to this 2019 HOPA Amendment are, along with the Declaration, collectively referred to as "prior CC&Rs"); and

WHEREAS, Fairfield Farms Unit Owners desire to amend the prior CC&Rs to comply with the Housing for Older Persons Act ("HOPA") and qualify as a senior living community; and

NOW THEREFORE, the Unit Owners of Fairfield Farms hereby amend all Fairfield Farms prior CC&Rs recorded against the real property located in Davis County, Utah, and more fully described on Exhibit "A" attached hereto. If there is any conflict between this 2019 HOPA Amendment and prior CC&Rs, this 2019 HOPA Amendment shall control.

The Fairfield Farms prior CC&RS are hereby amended as follows:

#### **AMENDMENT**

##### **HOUSING FOR OLDER PERSONS**

###### **1.1 Compliance With the Housing for Older Person Act (HOPA)**

- 1.1.1 **Intent to Comply.** Fairfield Farms is a community primarily for persons 55 years of age or older. At the time this 2019 HOPA Amendment is adopted, at least eighty percent (80%) of the units at Fairfield Farms are occupied by at least one person who is fifty-five (55) years of age or older. This reflects Fairfield Farms intention to comply with the provisions of HOPA, which sets forth the exemptions established by the Fair Housing Act (HOPA §100.304 ).

- 1.1.2 **Current Compliance.** Once an over 55 years of age HOPA community meets the requirements in the preceding section, it may adopt additional age restrictions. These restrictions can be more strict than the minimum 80% HOPA requirements. Fairfield Farms has elected to adopt additional age restrictions.
- 1.1.3 **Future Compliance.** Fairfield Farms shall maintain its HOPA status (a) by advertising in a manner designed to attract prospective residents who are fifty-five (55) years of age or older, and (b) by requiring that all contracts, leases, or proposals to sell or rent units at Fairfield Farms clearly state and give notice that Fairfield Farms is a HOPA community designed as an over fifty-five (55) years of age senior community.
- 1.1.4 **Contrary Provisions Void.** As a part of Fairfield Farms intention to comply with HOPA, any Declaration, Community Rules or Bylaws now existing or hereafter adopted in violation or contradiction to the provisions of state and federal law, are void and without effect.

## 1.2 Use of Units

- 1.2.1 **Single Family.** Each Fairfield Farms unit is intended to be used for single family residential purposes and is restricted to such use. No unit shall be used for business or commercial activity.
- 1.2.2 **80% / 100% Requirements.** As a HOPA community designed primarily for persons fifty-five (55) years of age or older, to comply with HOPA, Fairfield Farms requires that no less than eighty percent (80%) of the units must be occupied by at least one person who is fifty-five (55) years of age or older. However, in addition to HOPA's minimum requirements, Fairfield Farms requires that one hundred percent (100%) of the units be occupied by at least one person who is fifty-five (55) years of age or older.
- 1.2.3 **Grandfather Clause.** As of the date this 2019 HOPA Amendment is recorded, any current resident under the age of fifty-five (55) shall be considered "grandfathered" and permitted to continue residing in their unit at Fairfield Farms until they move from their unit, their unit is sold, or their lease expires.
- 1.2.4 **Minimum Age 35.** No person under the age of thirty-five (35) may be a resident of a unit. A person shall be deemed a resident for purposes of this Article when they reside in a unit for a period of fourteen (14) days or longer in any thirty (30) day period. However, a person under age thirty-five (35) may, as a visitor, live in a unit for a period not exceeding thirty (30) days in any sixty (60) day period, or for not more than ninety (90) days in any calendar year.
- 1.2.5 **Board Notification.** To maintain the eighty percent (80%) HOPA standard and the one hundred percent (100%) requirement of this 2019 HOPA Amendment, prior to any unit owner selling or leasing his or her unit, they shall first notify the

board, in writing, of their intent to sell or lease their unit. As long as the selling unit owner(s) convey their unit to a new owner(s), (a) at least one of whom is age fifty-five (55) or older and who resides in the unit, and (b) all residents of the unit are age thirty-five or older, no additional board notification or approval is required for the transaction.

- 1.2.6 **ADA Accommodation.** Individuals residing in a unit, as a reasonable accommodation to a resident with a disability as defined under the ADA (Americans with Disability Act) shall not be counted toward meeting the eighty percent (80%) HOPA requirement or the one hundred percent (100%) Fairfield Farms requirement, nor be included in determining compliance with the minimum age requirement. This exemption shall ensure that Fairfield Farms does not violate ADA or HOPA requirements by failing to authorize reasonable accommodations for the residents who, because of a disability, require an attendant, including family members under the age of 18, to reside in their unit in order for the owner to continue to benefit from his or her unit.

### 1.3 **Good Faith Defense**

- 1.3.1 **No Board Liability.** Fairfield Farms, in relying on HOPA's good faith defense, finds that the board of directors or individuals residing at Fairfield Farms shall not be personally liable for monetary damages where such person(s) acted in good faith in belief that Fairfield Farms qualifies for the "housing primarily for older persons" exemption (HOPA §100.38).
- 1.3.2 **Good Faith Defense.** Fairfield Farms has, through authorized representatives, asserted in writing that it qualifies as housing for older persons and thus individuals of Fairfield Farms shall qualify for this good faith belief defense.

### 1.4 **Verification of Occupancy**

- 1.4.1 **Minimum Requirements.** By virtue of being a fifty-five (55) years of age or older HOPA community, eighty percent (80%) of the Fairfield Farms units must be occupied by at least one person fifty-five (55) years of age or older. However, Fairfield Farms continues to require one hundred percent (100%) of the units to have at least one resident living in the unit who is fifty-five (55) years of age or older. In the case of rentals or leases, the ages of the occupants residing in units are assessed, not the age of the owners.
- 1.4.2 **Temporary Exception.** If a unit owner vacates his or her a unit for a specific but limited period of time not exceeding three (3) years, he or she may rent their unit to persons under the age of fifty-five (55), but older than age thirty-five (35), but only if the under fifty-five (55) person meets one of the exceptions contained in Article 2.7 of the Amendment to Declaration recorded January 12, 2010, as entry number 2505139, in the Davis County Records office (Restrictions on Rentals).

- 1.4.3 **Bi-Annual Survey.** Fairfield Farms will survey its current list of residents once every two years in October of odd years to ensure that at least eighty (80%) percent of the residents are fifty-five (55) years of age or older. The remaining 20% percent of the occupied units shall all be occupied by persons who are fifty-five (55) years of age or older unless they qualify for an exception contained herein.
- 1.4.4 **Enforcement / Legal Fees.** In order to maintain a fifty-five (55) years of age or older HOPA community, the Fairfield Farms board is authorized and empowered to bring legal action as the result of any violation or non-compliance with any of the provisions contained herein. Any contract, lease, sale or rental agreement entered into in violation of this 2019 HOPA Amendment may also result in legal actions. Fairfield Farms is authorized to evict any resident who resides in a unit at Fairfield Farms in violation of this 2019 HOPA Amendment, who leases or purchases a unit in violation of this 2019 HOPA Amendment, and to void any sales contract, and to collect from the offending party any and all costs and fees, including reasonable attorney fees, from the party who seeks to sell or lease a unit, who seeks to purchase or lease a unit, or who resides in a unit at Fairfield Farms in violation of any of the provisions herein or in violations of any of the provisions of HOPA.


1.5 **Severability.**

- 1.5.1 **Validity.** If any of the provisions of this 2019 HOPA Amendment, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this 2019 HOPA Amendment and the application of any such provision, paragraph, sentence, phrase or word in any other circumstances shall not be affected thereby.
- 1.5.2 **Effective Date.** This Declaration shall take effect upon recording.

**CERTIFICATION**

It is hereby certified that Fairfield Farms unit owners holding not less than sixty-seven percent (67%) of the undivided ownership interest in the common areas and facilities have approved this 2019 HOPA Amendment.

IN WITNESS WHEREOF, this 31<sup>st</sup> day of July, 2019.

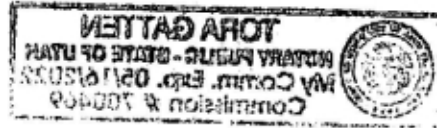
By   
Its: President O. JAY GATTEN

STATE OF UTAH            )  
                                      :ss.  
COUNTY OF DAVIS        )



On this 31<sup>st</sup> day of July, 2019, personally appeared before me O Jay Gatten who, being by me duly sworn, did say that (s)he is President of the Fairfield Farms Management Committee and that the within and foregoing instrument was signed in behalf of said Management Committee and (s)he duly acknowledged to me (s)he executed the same.

Tora Gatten  
Notary Public



COMMISSIONER OF PUBLIC SAFETY  
STATE OF UTAH  
MY Comm. Exp. 05/15/2023  
Commission # 700409

STATE OF UTAH  
COUNTY OF...

STATE OF UTAH  
COUNTY OF...

# **Exhibit A**

## **Legal Description of Units**

Units 10 through 24, Fairfield Farm, Phase 1, 3<sup>rd</sup> revision PUD, Davis County, Utah

(11-129-0010 through 11-129-0019, 11-129-0031, and 11-129-0021 through 11-129-0024)

Units 201 through 206, Fairfield Farms, Phase 2 PUD, Davis County, Utah

(11-310-0201 through 11-310-0206)