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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
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After Recording Return to:  
Smith Knowles, P.C.  
Melven E. Smith  
2225 Washington Boulevard, Suite 200  
Ogden, Utah 84401

**DECLARATION OF COVENANTS,  
CONDITIONS & RESTRICTIONS**

For The Cottages at Farmington Hollow, a Conservation Subdivision  
& Adult Community  
Davis County, Utah

08-544-0001 -> 0018

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COTTAGES AT FARMINGTON HOLLOW, A CONSERVATION SUBDIVISION & ADULT COMMUNITY (this "Declaration") is made and executed on this 31 day of October, 2014, by Capital Reef Management, LLC, a Utah limited liability company (hereinafter "Declarant").

**RECITALS:**

(A) This Declaration will take effect on the date recorded at the office of the Davis County Recorder's Office (the "Effective Date").

(B) Declarant is the owner of certain real property located in Davis County, Utah and more particularly described as follows (the "Property"):

PART OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT S89°51'07"W 1321.46 FEET AND SOUTH 1300.72 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 11; THENCE S00°12'04"E ALONG A FENCE LINE, 625.37 FEET TO THE NORTH RIGHT OF WAY LINE OF 1800 NORTH STREET; THENCE ALONG SAID NORTH RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES; (1) ALONG A CURVE THURNING TO THE LEFT WITH AN ARC LENGTH OF 47.58 FEET, A RADIUS OF 380.00 FEET, A CHORD

BEARING OF S46°55'13"W, AND A CHORD LENGTH OF 47.55 FEET AND (2) S43°20'00"W 234.99 FEET; THENCE N11°31'52"W 848.10 FEET TO THE SOUTH LINE OF MONTEBELLA SUBDIVISION; THENCE S89°39'00"E ALONG A FENCE LINE AND THE SOUTH LINE OF MONTEBELLA SUBDIVISION, 363.34 FEET TO THE POINT OF BEGINNING.

CONTAINING 211,904 SQUARE FEET OR 4.865 ACRES

(C) The Project is intended and has operated as housing for older persons, 55 years of age or older, pursuant to the Fair Housing Act and Housing for Older Persons Act of 1995, with over 80% of the Lots being occupied by at least one person 55 years of age or older. It is the intent of the Association and its Members that all Lots in the Project be occupied by at least one person who is 55 year of age or older. The Board must approve that all new Owners or occupants comply with the age restrictions, which approval requires that the new Owner or occupant certify that at least one person occupying the Lot is 55 years of age or older. No persons, including persons under the age of 18, are permitted to visit for a period longer than one month. The Board reserves the right to make, in its sole discretion, limited exceptions to the one month limit for extenuating circumstances.

(D) Declarant desires to subject the Property to the terms of this Declaration. Declarant intends to develop a residential subdivision on the Property pursuant to the Community Association Act, Utah Code Sections 57-8a-101, *et. seq.* Declarant will develop and convey all of the Lots within the Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Subdivision. Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in this Declaration.

(E) Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas and otherwise administer and enforce the provisions of this Declaration. For such purposes, contemporaneously with the recording of this Declaration, Declarant will register with the Utah Department of Commerce The Cottages at Farmington Hollow Homeowners Association, Inc. (the "Association").

(F) The Association is governed by the terms of this Declaration, the Articles of Incorporation for The Cottages at Farmington Hollow Homeowners Association, Inc., and the Bylaws for The Cottages at Farmington Hollow Homeowners Association, Inc., which Bylaws are attached hereto as Exhibit "A" and shall be recorded in the Davis County Recorder's Office contemporaneously with the recording of this Declaration.

(G) Declarant declares that the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with each Lot located on the Property, including any additions thereto, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, and its successors in interest; and may be enforced by the Declarant, any Owner and its successors in interest and by the Association.

(H) Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; and (4) assignment of Declarant's rights under this Declaration in whole or part. This Declaration shall be binding upon the Declarant, as well as its successors in interest, and may be enforced by the Declarant, the Association, or by any Owner of a Lot within the Subdivision.

## COVENANTS, CONDITIONS AND RESTRICTIONS

### ARTICLE I DEFINITIONS

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) "Act" means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et. seq.*

(B) "Architectural Review Board" or "ARB" shall mean the Architectural Review Board created by this Declaration, the Bylaws, and/or Articles of Incorporation.

(C) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against

an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, special assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(D) "Articles" shall mean the Articles of the Association, as amended from time to time.

(E) "Association" shall mean THE COTTAGES AT FARMINGTON HOLLOW HOMEOWNERS ASSOCIATION, INC., and as the context requires, the officers or directors of that Association.

(F) "Board" or "Board of Directors" shall mean the duly elected and acting Board of Directors of THE COTTAGES AT FARMINGTON HOLLOW HOMEOWNERS ASSOCIATION, INC.

(G) "Bylaws" shall mean the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as Exhibit "A."

(H) "City" shall mean Farmington City, Utah and its appropriate departments, officials and boards.

(I) "County" shall mean Davis County, Utah and its appropriate departments, officials and boards.

(J) "Common Areas" shall mean all property designated on the recorded Plat(s) as Common Area, being intended ultimately to be owned by the Association for the common use and enjoyment of all Owners, including any private draining or water retention system shown on the grading plan or Plat(s), together with all improvements thereon and all of the easements appurtenant thereto. The Association shall maintain the Common Areas.

(K) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments, charges, fines, penalties and liens imposed pursuant hereto; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act.

(L) "Declarant" shall mean and refer to Capital Reef Management, LLC, a Utah limited

liability company, and its successors and assigns.

(M) "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for the Cottages at Farmington Hollow, a Conservation Subdivision & Adult Community, together with any subsequent amendments.

(N) "Dwelling" shall mean the single family residence built or to be built on any Lots, including the attached garage.

(O) "Governing Documents" shall mean this Declaration, Bylaws, Articles, Rules, and any other documents or agreements binding upon an Owner.

(P) "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, dwellings, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(Q) "Lot" shall mean any numbered building Lot shown on any official and recorded Plat(s) of all or a portion of the Subdivision.

(R) "Manager" shall mean any entity or person engaged by the Board of Directors to manage the Project.

(S) "Member" shall mean and refer to every person who holds membership in the Association, including an Owner and the Declarant as set forth herein.

(T) "Owner" shall mean the person or persons having title to any Lot. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of any obligations, including the trustee and/or beneficiary under a deed of trust or mortgagee under a mortgage.

(U) "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

(V) "Plat(s)" shall mean an official and recorded plat of The Cottages at Farmington Hollow, a Conservation Subdivision & Adult Community, including all subsequent phases of The Cottages at Farmington Hollow, a Conservation Subdivision & Adult Community when recorded, as approved by the City and recorded in the office of the Davis County Recorder, as it may be amended

from time to time. A copy of the Plat Map is attached hereto as Exhibit "B."

(W) "Property" shall have the meaning set forth in the recitals.

(X) "Rules" mean any instrument adopted by the Board for the regulation and management of the Association as provided in the Governing Documents.

(Y) "Subdivision" or "Project" shall mean all phases of The Cottages at Farmington Hollow, a Conservation Subdivision & Adult Community and all Lots, and other property within the Subdivision, as shown on the Plat(s) and any future Plat(s) covering the Property.

(Z) "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and utility service to the Lots, and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.

## ARTICLE II EASEMENTS

2.1 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

2.2 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;

(b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.

(c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, utility access/installation, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to in writing by the Owners of at least seventy-five percent (75%) of the Units (not including Units owned by Declarant).<sup>1</sup> No such dedication or transfer, however, may take place without the Association first receiving written approval from City and/or County pursuant to all applicable state and city laws, rules and ordinances in effect at the time of such proposed dedication or transfer.

2.3 Reservation of Access and Utility Easements. Declarant hereby reserves an easement for access, and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

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<sup>1</sup> Declarant shall enjoy this right without limitation generally and these limitations specifically up through transfer of control of the Subdivision as set out in this Declaration.

2.4 Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or if any structure constructed by Declarant on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.5 Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Dwellings on Lots, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots, or other property in the Project, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

2.6 Easement in Favor of Association. The Lots, Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(a) For inspection during reasonable hours of the Lots, Common Area in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;

(b) For inspection, maintenance, repair and replacement of portions of the Common Area;

(c) For correction of emergency conditions on one or more Lots or on portions of the Common Area;

(d) For the purpose of enabling the Association, the Architectural Review Board or any other committees appointed by the Association to exercise and discharge during



reasonable hours their respective rights, powers and duties;

(e) For inspection during reasonable hours of the Lots, Common Area in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

### ARTICLE III COMMON AREAS

3.1 The Common Areas shall be and are hereby conveyed to the Association, a Utah non-profit corporation, subject to this Declaration and subject to all easements as set forth in this Declaration.

3.2 The Common Areas consist of areas designated as Common Areas on the recorded Plat(s), including any structures related to the operation or maintenance of the Common Areas, together with any rights of way and utilities, as shown on the recorded Plat(s), and any private draining or water retention system shown on the grading plan or Plat(s).

3.3 Notwithstanding anything contained in this Declaration to the contrary, all Common Areas appurtenant to each recorded Plat of the Project shall be conveyed to the Association upon recordation of a Plat depicting such Common Areas, reserving all easements as set forth in this Declaration. The Association shall maintain the Common Areas.

3.4 Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain all Common Areas, including, without limitation, the improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate. The Association shall have the authority to assess its members for the costs of said maintenance in accordance with the terms of this Declaration.

### ARTICLE IV MEMBERSHIP

4.1 Following the Class B Control Period, Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner cease to have an ownership interest in the Lot. Upon the transfer of an ownership interest in a Lot the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the

membership appurtenant to that Lot shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Lot is held.

**ARTICLE V**  
**VOTING**

5.1 The Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

(A) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" membership shall be entitled to one (1) equal vote for each Lot in which they are an Owner. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association that Person shall be entitled to cast all votes appertaining to that Lot. But if more than one of such Person(s) is present, the votes appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Lot may not be divided between Owners of such Lot or with respect to matters before the Association, and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

(B) Class "B". The Class "B" Member shall be Declarant. In all matters requiring a vote, the Class "B" membership shall receive ten (10) votes for each recorded Lot owned by Declarant. The Class "B" membership shall also be entitled to appoint the members of the Board and Association during the Class "B" Control Period.

**ARTICLE VI**  
**CONTROL PERIOD**

6.1 The Class "B" Control Period runs until ninety (90) days after the first to occur of the following:

(A) When the total number of votes for the Class B Member is less than the total number of votes for the Class A Members; or

(B) When, at its discretion, the Class B Member so determines.

6.2 Notwithstanding anything to the contrary in this Declaration, Declarant may exercise its discretionary termination of control as set forth in herein in whole or in part as to any portion of the Subdivision at its sole election and determination. In doing so as to a portion of the Subdivision, it does not waive any reversionary or remaining control as to all other portions of the Subdivision, the control of which is not expressly terminated by Declarant.

**ARTICLE VII**  
**HOMEOWNER ASSOCIATION**

7.1 Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners of Lots within the Project, and is established to perform the following functions and exercise the following rights and powers for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Lot, and is transferable only in conjunction with the transfer of the title to the Lot. The Association shall serve as the organizational body for all Owners.

7.2 Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record and/or foreclose liens against an Owner's Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense (with the exception of water, sewer, power and natural gas); (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

(a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. However, this shall not limit the individual right of Owner(s) to personally enforce these covenants in their own name. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners. Owners may appear individually.

(b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Documents, and the Association prevails in a court of

law, then the Association shall have the right to assess the costs of such litigation, including reasonable attorney fees, against the Owner(s) or Lot(s) in question.

(c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

7.3 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy assessments against each Lot as necessary to carry out its functions. Assessments shall be levied against all Lots in the Property, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

(a) All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

(b) The Association may levy special assessments for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by other assessments. No special assessment will be levied without approval of a majority of a quorum of the Owners at a Special Meeting called for that purpose or upon the written consent of a majority of Owners.

(c) In addition, the Association may levy special assessment (a) on every Lot, the Owner or occupant of which, shall cause any damage to the Common Areas necessitating repairs, and (b) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken under the provisions of the Governing Documents. The aggregate amount of any such special assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lot(s) according

to the cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work.

(d) The Association may levy a reserve fund assessment, as set forth in this article.

(e) The Association may levy other assessments or fees, as authorized by the Governing Documents.

7.4 Budget. The Board is authorized and required to adopt a budget for each fiscal year, no later than 30 days prior to the beginning of the fiscal year. The adopted budget shall be presented to the Owners at or before each annual meeting.

(a) The Board shall provide a copy of the approved budget to all Owners within 30 days after the adoption of a budget or adoption of a revised budget.

(b) The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget.

(c) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

(d) Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments.

(e) The Association shall not borrow money without the approval of at least sixty-seven percent (67%) of the Owners.

7.5 Reserve Fund Analysis. Following the Class B Control Period, the Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

- (a) The Board may not use money in a reserve fund:
- (i) For daily maintenance expenses, unless a majority of the Owners vote to approve the use of reserve fund money for that purpose;
  - (ii) For any purpose other than the purpose for which the reserve fund was established, unless a majority of the Owners vote to approve the alternate purpose; or
  - (iii) In the event that the Association experiences a surplus in any fiscal year, the Board may elect to place said surplus in the reserve fund account.

7.6 Reserve Fund Account Creation. Following the Class B Control Period, based on the results of the reserve analysis, the Board shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board's discretion, to fund the reserve account.

7.7 Transfer Fee. The Board shall have power to levy a one-time transfer fee when a change in ownership of a Lot occurs in an amount determined by the Board, but no more than a maximum fee of \$450.00.

7.8 Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Lot on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide.

7.9 Assessment for Unimproved Lots. All assessments authorized herein shall be fixed at a uniform rate for all Lots; provided, however, that until a Lot has been both fully improved with a completed Dwelling and occupied for the first time for residential purposes, the periodic assessment applicable to such Lot shall be ten percent (10%) of the periodic assessment which would otherwise apply to such Lot. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Lots adversely affected.

7.10 Fines. The Association shall have the power to assess a fine against an Owner (or their Lot) for a violation of the terms and conditions of the Governing Documents in accordance with the requirements of the Act.

7.11 Hearing Process. The Board shall have authority to create a reasonable hearing process applicable when the Association takes an adverse action related to any particular Owner(s).

7.12 Association Rules. The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing: (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; (e) collection policies and procedures; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents.

(a) Rules shall be reasonable in light of all surrounding circumstances. Any Rule or Regulation adopted by the Board shall be provided to all Owners within thirty (30) days of its adoption.

(b) Within six (6) months of distribution of a Rule, an Owner may file written notice of objection with the Board. If the Board receives five (5) or more timely objections within six (6) months of distribution of the Rule(s), the Board shall place the subject Rule(s) at issue on the agenda of the next special or annual meeting, whichever comes first, wherein the Owners shall discuss and vote for adoption of the Rule or variation thereof by a majority vote of Owners representing a quorum at a duly called meeting.

7.13 Statement of Account. Any Owner may request that the Association provide a statement of his account to any lender or prospective buyer in relation to the transfer, refinance or sale of a Lot. The Association may charge a fee, not to exceed \$50.00, for providing such statements.

7.14 Availability of Documents. The Board may also adopt a record retention or other document management policy.

7.15 Indemnity of Association Board and Officers. The Association will indemnify the officers, agents and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under the Governing Documents.

7.16 Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Articles of Incorporation

and Bylaws of the Association.

7.17 Number of Board, Term of Office. The appointment, election and term of the Members of the Board are set forth in the Bylaws and Articles. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association.

7.18 Independent Accountant. The Association may retain the services of an independent accountant to assist the Board of Directors and officers to maintain accurate financial records of the Association.

**ARTICLE VIII**  
**NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE**

8.1 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

8.2 Due Date, Charges & Interest. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10 of each month. The Board may charge a late fee in an amount set by the Board, but not to exceed \$50, for each unpaid or late assessment. In addition to late fees, interest shall accrue on all unpaid balances, including prior, unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges imposed by a Manager related to collections.

8.3 Lien. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

8.4 Foreclosure. The Association shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Lot not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.



8.5 Other Remedies. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally.

8.6 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Lot, the amount of any assessment that is more than sixty (60) days past due.

8.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents.

8.8 Appointment of Trustee. The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Melven E. Smith, Esq., a licensed member of the Utah State Bar, with power of sale, the Lot and all Improvements to the lot for the purpose of securing payment of assessments under the terms of this Declaration.

**ARTICLE IX**  
**SUBORDINATION OF LIEN TO INSTITUTIONAL**  
**FIRST AND SECOND MORTGAGES**

9.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Association. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a prior, recorded institutional first or second mortgage shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer; provided, that to the extent there are any proceeds of the sale on foreclosure of such mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such mortgage, the lien shall apply to such excess. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee holding an institutional first or second mortgage of record or other purchaser of a Lot obtains title pursuant to remedies under the mortgage, its successors and assigns shall not be liable for the share of the assessments by the Association

chargeable to such Lot that became due prior to the acquisition of title to such Lot by such acquirer. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

**ARTICLE X**  
**USE LIMITATIONS & RESTRICTIONS**

10.1 Single Family. All Lots shall be used only for single-family residential purposes, and no more than one Dwelling shall be constructed on any Lot. "Single Family" shall mean one household of persons related to each other by blood, adoption or marriage, or one group of not more than three persons in a two bedroom Dwelling and not more than four persons in a three bedroom Dwelling. The Project is an Adult Community, 55 and over, pursuant to the Fair Housing Act and Housing for Older Persons Act of 1995.

10.2 Zoning Regulations. The lawfully enacted zoning regulations of the City and/or County, and any building, fire, and health codes are in full force and effect in the Project. No Lot may be occupied in a manner that is in violation of any statute, law or ordinance.

10.3 Licensed Contractor. Unless the Architectural Review Board gives a written waiver of approval to an Owner, no Improvement may be constructed, remodeled or altered on any Lot except by a licensed contractor, duly qualified and licensed by the appropriate governmental authorities.

10.4 No Mining Uses. The property within the Project shall be used for residential purposes only, and no mining, drilling, prospecting, mineral exploration or quarrying activity will be permitted.

10.5 No Business or Commercial Uses. No portion of the Subdivision may be used for any commercial business use, provided, however, that nothing in this provision is intended to prevent (a) the Declarant, or other builders, from using one or more Lots for purposes of a construction office or sales office during the actual period of construction of the Subdivision Improvements or until 100% of the Lots are sold in the Subdivision, whichever occurs later, or (b) the use by any Owner of his Lot for a home occupation pursuant to City or County ordinance. Businesses, professions or trades may not require heavy equipment or create a nuisance within the Project, and may not noticeably increase the traffic flow to the project.

10.6 Restriction on Signs. The Subdivision may be identified by permanent signs to be installed by Declarant, at Declarant's discretion. No signs will be permitted on any Lot or within the

Subdivision, except for traffic control signs placed by the City, temporary signs warning of some immediate danger, or signs not in excess of eight square feet identifying the contractor and/or architect of any Dwelling while it is under construction. Signs indicating the Lot is for sale may be placed in accordance with City sign regulations, and no such sign may exceed eight square feet. The Declarant may erect signs and other advertising material at the entrances to the Subdivision announcing the availability of Lots and giving sales information. No permanent signs stating the address or the name of the owner of any Lot may be installed without the advance consent of the Architectural Review Board.

10.7 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of a certificate of occupancy by the City and/or County.

10.8 Dwelling to be Constructed First. No garage, out building or other Improvement may be constructed prior to the construction of Dwelling on the Lot.

10.9 Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Project are to be underground, including lines within any Lot which service installations entirely within that Lot. No above-ground propane tanks may be installed on any Lot.

10.10 Sewer Connection Required. All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Dwelling units must be connected to the sanitary sewer system.

10.11 Drainage. No Owner shall alter the direction of natural drainage from his Lot, nor shall any Owner permit accelerated storm run-off to leave his Lot without first using reasonable means to dissipate the flow energy.

10.12 No Transient Lodging Uses. The Lots are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding house, a bed and breakfast, or other uses for providing accommodations to travelers. No leases of any Dwelling on a Lot shall be for a period of less than 90 days. No Dwelling on a Lot shall be subjected to time interval ownership.

10.13 No Re-Subdivision. No Lot may be re-subdivided.

10.14 Combination of Lots. No Lot may be combined with another Lot.

10.15 Construction. No Dwelling or structure shall be permitted to remain incomplete for a period in excess of one (1) year from the date of commencement of construction unless any delays

are approved in writing by the ARB. Declarant is exempt from this restriction.

10.16 Maintenance of Property. All Lots, and the Improvements on them, shall be maintained in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his Lot or the Improvements on it to fall into a state of disrepair.

10.17 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot or the Project, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots. No Owner or occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

10.18 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners' insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than property supervised and contained).

10.19 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during construction of an Improvement); open storage or parking of construction equipment; open storage or parking of vehicles, trailers or other pieces of equipment that are unusable, in poor condition or unsightly; accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; and the storage or accumulation of any other material that is unsightly.

10.20 Garbage. All garbage, rubbish, and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible for neighboring Lots, roadways and Common Areas. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with applicable laws and the Rules of the Board.

10.21 No Annoying Lights. No outdoor lighting shall be permitted except for lighting that is designed to aim downward and reasonably limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by the City and/or County. Holiday or seasonal decorative lights, that otherwise comply with the terms of the Governing Documents, are permitted.

10.22 No Annoying Sounds. No speakers, windbells, windchimes, or other noise making devices may be used or maintained on any Lot which creates noise that might reasonably be expected

to be unreasonably or annoyingly loud to adjoining Lots, except for security or fire alarms.

10.23 Livestock, Poultry and Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets (maximum of two) may be kept provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's control. "Control" for the above purposes shall only mean on a leash or lead, within a vehicle, within the Dwelling of the Owner, or within confines on the premises of the Owner. Pet owners shall promptly remove and dispose of all excrement emitted by their pets. Fierce, dangerous or vicious animals or animals that cause a nuisance by barking or other offensive activity shall not be permitted. Failure to abide by these conditions shall result in fines as authorized by the Board.

10.24 Landscaping. The front, side yard and backyard of each Lot must be fully landscaped within one (1) year of occupancy of each corresponding Dwelling. The Owner shall submit a landscaping plan to the ARB and receive approval of said plan prior to commencement of any such landscaping. Vegetation within any Lot shall be planted and maintained in good condition by the Owner. Prior written permission must be obtained by the ARB to materially modify exterior landscaping on any Lot.

- (a) The Association will provide for the landscaping maintenance of the front and side yards (to the extent such side yard is not enclosed by any fencing) of each Lot with a Dwelling completed thereon. Owners shall be responsible to maintain their back yard and any portion of a side yard (which is enclosed by fencing.)
- (b) The Association will provide for the snow removal for the driveways for each Lot with a Dwelling constructed thereon and the sidewalks within the Project.

10.25 Fencing. Any fencing must be constructed of iron, wood or high-quality vinyl or synthetic material in harmony with the Dwelling and surrounding area, and subject to approval from the ARB prior to construction. No barbwire or chain link is permitted. Height of any fencing may not exceed six (6) feet from natural grade.

10.26 Vehicles & Parking. No vehicles are to be parked or stored overnight on the front or side streets within the Subdivision without prior approval from the Board. One automobile may be parked overnight in the driveway of a Lot if it is in running condition, properly licensed, regularly used and in compliance with City and/or County ordinances. No recreational vehicles, campers, motorcycles, atvs, trailers, boats, or similar vehicles may be parked or stored in the driveways, streets or elsewhere within the Subdivision. Recreational vehicles, campers, motorcycles, atvs, trailers, boats, and similar vehicles must be parked or stored in a garage or other enclosure approved by the

ARB. Prior, written permission must be obtained from the ARB before constructing any enclosure. The Association reserves the right to adopt Rules relating to the parking of vehicles within the Subdivision including, without limitation: (1) the right to immediately remove or cause to be removed any vehicles that are improperly parked, (2) restrictions on the time period and duration that any guest or visitor parking may be utilized; (3) restrictions or bans on vehicles without Department of Transportation compliant mufflers and exhaust systems, and (4) the assessment of fines to Owners and occupants who violate such Rules. Any parking must comply with the city requirement for a 20-foot roadway clearance to all for the passage of emergency vehicles and equipment.).

10.27 Exterior Antennas and Satellite Dishes. Prior, written approval from the ARB as to the location of any new satellite dishes, antennas, cables and related hardware is required.

10.28 Parking. Parking within the Subdivision, not specifically addressed in this Declaration, is governed by applicable City or County ordinance.

10.29. Approved Builder. During the Class B Control Period, only contractors approved in advance by Declarant, in its sole discretion, may construct Improvement(s) upon the Lots.

**ARTICLE XI**  
**RENTAL/LEASE RESTRICTIONS**

11.1 Declaration and Rules Governing Non-Owner Occupied Dwellings. Notwithstanding anything to the contrary in the Governing Documents, any leasing and non-owner occupancy of a Dwelling shall be governed by this section, Rules consistent with this section, and procedures adopted, as allowed in this section.

11.2 Non-Owner Occupation Is Prohibited. The Dwellings within the Project are intended to be Owner occupied and leasing, renting or occupation of Dwellings by non-owner occupants shall be prohibited. Notwithstanding, the Board, in its sole discretion, may make exceptions to this prohibition in the following circumstances:

- (a) A Dwelling occupied by a person in the military for the period of the Owner's deployment;
- (b) A Dwelling occupied by an immediate family member;
- (c) A Dwelling whose Owner (i) moves due to temporary (less than three years) humanitarian, religious, or charitable activity or service, and (ii) has the intent to return to occupy the Dwelling when the service has concluded;

- (d) A Dwelling whose Owner was relocated by the Owner's employer for a period of not less than two years;
- (e) A Dwelling owned by an Owner who uses the Dwelling as a primary residence and due to health reasons will be living in an assisted living, rehabilitation, or other long-term healthcare facility for one year or more;
- (f) A Dwelling owned by a trust or other entity created for estate planning purposes, a person occupying the Dwelling if the trust or other estate planning entity that owns the Dwelling was created for the estate of (i) a current occupant of the Dwelling; or (ii) the parent, child, or sibling of the current occupant of the Dwelling' and;
- (g) Other limited exceptions for extenuating circumstances, as determined by the Board, in its sole discretion.

11.3 Exemption of Declarant. At any time during the Class B Control Period, the non-owner occupancy restrictions do not apply to Declarant.

## ARTICLE XII OWNERS' MAINTENANCE OBLIGATIONS

12.1 Duty to Maintain. It is the obligation of each Owner to maintain his Lot at all times in order to preserve and enhance the enjoyment of the Project. If an Owner's Lot contains a private backyard, the Owner is responsible for its maintenance.

12.2 Repairs by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision. In addition, each Owner hereby grants to the Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from

the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

12.3 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the ARB. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the ARB.

12.4 Repair Following Damage. In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the ARB, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the ARB, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

### ARTICLE XIII ARCHITECTURAL REVIEW BOARD

13.1 Purpose & Creation. Following the Class B Control Period, the Board may create an Architectural Review Board to impose architectural standards on the Improvements and landscaping to any Lot of a type and nature that result in buildings and yards which are architecturally and aesthetically compatible in terms of lot coverage, proportion, materials, colors and general appearance. The ARB shall not apply to the Declarant.

13.2 Variances. Any variance granted must be consistent with the intent of this Declaration. The ARB cannot grant any variance that has the effect of modifying applicable zoning or building code regulations. The burden of obtaining a variance is entirely on the applicant.

13.3 General Design Review. The ARB will use its best efforts to provide a consistent pattern of development, and consistent application of standards of this Declaration and the Project.

13.4 Architectural Review Fee. An architectural review fee may be charged in an amount determined by the Board that reflects the actual cost incurred by the Board or ARB.



13.5 Board and Committee not Liable. The Board and the ARB and its members shall not be liable to the applicant for any damages, or to the Owners of any Lots within the Subdivision for their actions, inactions, or approval or disapproval of any set of plans submitted to the ARB for review.

13.6 Exemption of Declarant. At any time during the Class B Control Period, Declarant need not submit or receive any approval from the ARB.

**ARTICLE XIV**  
**INSURANCE**

14.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. EACH OWNER SHALL BE SOLELY RESPONSIBLE TO INSURE THE OWNER'S LOT AND DWELLING

14.2 Property Insurance.

(a) Hazard Insurance.

(i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas.

(1) At a minimum, any required blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

(2) Any blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and

another property insurance policy in the name of an Owner:

- (i) The Association's policy provides primary insurance coverage; and
  - (ii) The Owner is responsible for the Association's policy deductible; and
  - (iii) The Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
- (c) Associations Obligation to Segregate Property Insurance Deductible. The Association shall keep an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible. If the amount held in this account is used to pay any deductible, it shall be replenished within (12) months.
- (d) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible the Association need not tender the claim to the Association's insurer.

14.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area, Limited Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

14.4 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

- (a) Include coverage for volunteers and employees;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the

manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

14.5 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association; and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Dwellings. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

14.6 Owner Act Cannot Void Coverage Under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

14.7 Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

## ARTICLE XV DAMAGE & DESTRUCTION

15.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

15.2 Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association,

shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

15.3 In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

#### ARTICLE XVI DISBURSEMENT OF PROCEEDS

16.1 If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account.

#### ARTICLE XVII REPAIR AND RECONSTRUCTION

17.1 If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

**ARTICLE XVIII**  
**CONDEMNATION**

18.1 Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of members representing at least sixty-seven percent (67%) of the total Association vote by any authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

**ARTICLE XIX**  
**MISCELLANEOUS PROVISIONS**

19.1 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by an Owner or by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

19.2 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

19.3 Limited Liability. Neither the Declarant, the Board, nor the Architectural Review Board or its individual members, nor any Owner shall have personal liability to any other Owner for actions or inactions taken under these covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority, under these covenants, and without malice.

19.4 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Dwelling, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

19.5 No Representations and Warranties. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE DECLARANT, ASSOCIATION, AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

19.6 Conflicting Provisions. In the case of any conflict between the Governing

Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, Bylaws, and then the Rules.

19.7 Amendment. At any time while this Declaration is in effect, the covenants herein contained can be modified by the Declarant or Declarant's successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

19.8 Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Lot in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against his/her Lot, whether or not there is any reference to this Declaration in the instrument by which he/she acquires interest in any Lot.

19.9 Notices. All notices under this Declaration are provided as set forth in the Bylaws.

19.10 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

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Executed on the date stated above.  
Capital Reef Management, LLC, a Utah limited liability company

[Signature]  
By: Norman L. Frost *Norm Frost by Brad Frost*  
Its: Member *attorney in fact.*

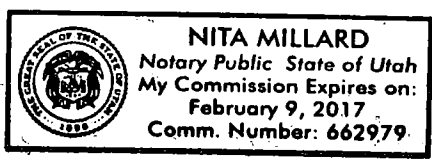
STATE OF UTAH )  
: SS

COUNTY OF Davis  
On this 21 day of October, 2014, personally appeared before me Norman L. Frost, who being by me duly sworn, did say that he is a Member of Capital Reef Management, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority and said member duly acknowledged to me that said limited liability company approved the same.

Nita Millard  
Notary Public  
Residing at: Farmington, Ut.  
My Commission Expires: \_\_\_\_\_

Executed on the date stated above.  
Capital Reef Management, LLC, a Utah limited liability company

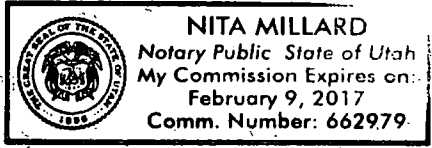
[Signature]  
By: Brad Frost  
Its: Member



STATE OF UTAH )  
: SS

COUNTY OF Davis  
On this 31 day of October, 2014, personally appeared before me Brad Frost, who being by me duly sworn, did say that he is a Member of Capital Reef Management, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority and said member duly acknowledged to me that said limited liability company approved the same.

Nita Millard  
Notary Public  
Residing at: Farmington, Ut.  
My Commission Expires: \_\_\_\_\_





Executed on the date stated above.

Capital Reef Management, LLC, a Utah limited liability company

By: David Bird

Its: Member

STATE OF UTAH )

: ss

COUNTY OF David

On this 31 day of October, 2014, personally appeared before me David Bird, who being by me duly sworn, did say that he is a Member of Capital Reef Management, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority and said member duly acknowledged to me that said limited liability company approved the same.

Nita Millard

Notary Public

Residing at: Farmington, Ut

My Commission Expires: \_\_\_\_\_

