

Record at the Request of:
Elfin Cove Owners Association

Amended Restrictive Covenants
Russell Shirts Washington County Recorder
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By VIAL FOTHERINGHAM SG, LLP



After Recording send to
Vial Fotheringham SG, LLP
Attn: Bruce C. Jenkins
285 W. Tabernacle, Suite 301
St. George, UT 84770

Record against Property
Listed in Exhibit A

**SECOND AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
ELFIN COVE OWNERS ASSOCIATION
A Planned Unit Development**

AGE RESTRICTION – COMMUNITY FOR PERSONS 55 YEARS OF AGE OR OLDER

PREAMBLE

THE ELFIN COVE PROJECT, A PLANNED UNIT DEVELOPMENT, IS A MANAGED COMMUNITY FOR PERSONS 55 YEARS OF AGE OR OLDER. OCCUPANCY BY PERSONS UNDER AGE 18 IS PROHIBITED. ONE HUNDRED PERCENT (100%) OF THE OCCUPIED LIVING UNITS IN THE PROPERTY MUST BE OCCUPIED BY AT LEAST ONE PERSON 55 YEARS OF AGE OR OLDER, EXCEPT AS PROVIDED HEREIN OR PROMULGATED IN RULES HEREUNDER. THE BOARD SHALL ESTABLISH POLICIES AND PROCEDURES FROM TIME TO TIME AS NECESSARY TO MAINTAIN THE PROPERTY AS AN AGE RESTRICTED COMMUNITY INTENDED FOR HOUSING PERSONS 55 YEARS OF AGE OR OLDER UNDER STATE AND FEDERAL LAW.

AMENDMENT

This Second Amendment to Declaration of Covenants, Conditions and Restrictions of Elfin Cove Owners Association (“Second Amendment”) amends the following:

- A. Declaration of Covenants, Conditions and Restrictions of Elfin Cove Phase I, a Planned Unit Development, dated February 24, 1994, and recorded on February 25, 1994, in the records of the Washington County Recorder as Entry No. 459129, in Book 797, at pages 804-833;
- B. Supplemental Declaration of Elfin Cove, Phase II, dated February 24, 1994, and recorded on February 25, 1994, in the records of the Washington County Recorder as Entry No. 459131, in Book 797, at Pages 834-836;

- C. Supplemental Declaration of Elfin Cove, Phase 3, dated January 1, 1996, and recorded on January 8, 1996, in the records of the Washington County Recorder as Entry No. 519960, in Book 964, at Pages 485-486; and
- D. Amendment to Declaration of Covenants, Conditions and Restrictions of Elfin Cove, dated June 28, 2000, and recorded on June 28, 2000, in the records of the Washington County Recorder as Entry No. 00689471, in Book 1372, at Page 2389.

This Amendment is adopted pursuant to the written consents and approval of not less than sixty-seven percent (67%) of the Members at a meeting at which a quorum of the Members of the Elfin Cove Owners Association were present. Further, on or about July 15 - 20, 2016, prior to adopting this Amendment, all Members as well as holders of first mortgage liens were sent a copy of this Amendment, together with notice advising them of the proposed Amendment. The adoption of this Amendment is governed by and evidenced by the written consents of the Members.

This Amendment shall take effect upon the date it is recorded in the records of the Washington County Recorder (the "Amendment Date"). All of the Property known as the "Elfin Cove Subdivision" (described in Exhibit A attached hereto and made a part hereof) shall be held, sold and conveyed subject to the Declaration as amended by this Amendment.

As used herein, the term "Board" shall mean and refer to the Board of Directors of Elfin Cove Owners Association. As used herein, the term "Association" shall mean and refer to the Elfin Cove Owners Association. As used herein, the term "Project" shall mean and refer to the real property identified in Exhibit A and known as the "Elfin Cove Subdivision" (Elfin Cove Phase I, Elfin Cove Phase II and Elfin Cove Phase 3), including any annexations and/or additions thereto as may hereafter be subjected to the Declaration.

The following amends, wholly replaces, and substitutes Section 6 of Article XII in the Declaration – all other terms of the Declaration and other governing documents that do not contradict the terms of this Amendment shall remain in full force and effect:

Section 6. Lease Restrictions. Notwithstanding anything to the contrary contained in the Declaration, the Leasing of any Unit and/or Lot (hereinafter "Unit" and "Lot" are collectively referred to as a "Lot") within the Elfin Cove Subdivision shall be governed by this Article XII, Section 6, as amended hereby.

(a) PURPOSE AND PROHIBITION. IN ORDER TO INCREASE THE FUTURE AVAILABILITY OF FINANCING FOR THE PURCHASE/SALE OF LOTS WITHIN THE ELFIN COVE SUBDIVISION, TO PROMOTE THE AVAILABILITY OF INSURANCE FOR THE ASSOCIATION AND ITS MEMBERS AT REASONABLE RATES, TO ATTEMPT TO MAXIMIZE THE PROPERTY VALUES WITHIN THE ELFIN COVE SUBDIVISION, AND/OR TO PROMOTE A SENSE OF COMMUNITY BY AND THROUGH OWNER-OCCUPANTS, FROM AND AFTER THE AMENDMENT DATE NO OWNER SHALL BE ABLE TO LEASE HIS/HER LOT OR ANY IMPROVEMENTS THEREON OR ANY PORTION THEREOF EXCEPT AS SPECIFICALLY PROVIDED HEREIN.

(b) GRANDFATHERING. Subject to Section 6 below, any Owner of a Lot that is leasing the Lot prior to the Amendment Date may continue leasing such Lot provided within forty-five (45) calendar days of the Amendment Date, each such Owner who provides the Board with a completed and executed "Notice of Intent to Continue Leasing", attached hereto as Exhibit B. Any such Owner who fails to timely deliver the Notice of Intent to Continue Leasing to the Board shall forever lose the right to continue Leasing the Owner's Lot.

(c) FUTURE RIGHT TO LEASE. Any Owner that is Leasing a Lot on the Amendment Date and who desires to continue to Lease the Lot and timely returns to the Board a complete and accurate Notice of Intent to Continue Leasing, shall have the right to continue to Lease such Lot, until the earlier to occur of the following:

- (i) The Lot becomes Owner-Occupied (as defined below),
- (ii) The Lot is sold, or
- (iii) The Owner is in violation of this Article XII Section 6, including without limitation the failure to advise the Board of the execution of a Lease and to provide a copy thereof to the Board.

For purposes hereof, a Lot shall be deemed "Owner-Occupied" if:

- (1) The Owner or any member of the Owner's immediate or extended family occupies the Lot for a period of seven (7) days or more in any period of ten (10) consecutive days;
- (2) The Owner is a corporation, limited partnership, limited liability company, general partnership, trust or other legal entity and such entity designates in writing to the Board the primary resident of the Lot which must be an officer, manager, member or partner of the legal entity. Such entities may not utilize the Lot in any form of fractionalized use.

(d) EXTENSION OF RIGHT TO LEASE DURING VACANCY. An Owner in compliance with this Amendment may continue to Lease the Owner's Lot even if the lessees change or the Lot remains unoccupied in between Lease terms, provided the Lot does not become Owner-Occupied at any time after the Amendment Date. An Owner must comply with all the covenants and conditions of this Amendment to be able to Lease the Owner's Lot.

(e) HEIRS RIGHT TO LEASE. A Lot which is being Leased by an Owner at the time of the Owner's death and is passed to the heirs of such Owner by intestacy or testamentary instrument, may continue to be leased until the heirs sell the Lot or it becomes Owner-Occupied. Subject to subsection (k) below, the purchaser shall not have the right to Lease the Lot.

(f) TRANSFER OF LEASED LOT. Notwithstanding anything to the contrary herein, if an Owner transfers the Owner's Lot at a time when a Lease is in effect with respect to that Lot, the Lease shall continue to its termination. However, the purchaser of the Lot shall not have the right to lease the Lot after such purchaser takes title to the Lot, except for the remainder of the term of the Lease in place at the time of sale and thereafter only as specifically provided for in subsection (k) below. For the purposes of this Subsection, a transfer occurs when one or

more of the following occur:

- (i) the voluntary or involuntary conveyance, sale, or other transfer of a Lot by deed;
- (ii) the granting of a life estate in the Lot; or
- (iii) if the Lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

(g) **TERMS OF LEASE.** Any agreement for the leasing or rental of a Lot (both above and hereafter referred to as a "Lease") shall be in writing and shall provide that the terms of such Lease shall be subject in all respects to the provisions of the Declaration, this Amendment, the Articles, the Bylaws, the Rules & Regulations and any other governing documents of the Association (collectively the "Governing Documents"). Any failure by the lessee to comply with the terms of the Governing Documents shall be a default under the Lease. Owners with the right to Lease their Lots shall be responsible for assuring compliance by such Owner's lessee(s) with the Governing Documents and the Lease. Failure of an Owner to cure the lessee's default within fifteen (15) calendar days after receiving written notice from the Board of such default, shall entitle the Association, through the Board, to take any and all such action, including the institution of proceedings in unlawful detainer and/or eviction, on behalf of such Owner against the lessee.

(h) **NOTIFICATION OF LEASE.** Immediately upon entering into a Lease, an Owner shall furnish the Board with (i) a copy of such Lease (with the lease amount redacted, if desired by the lessee or Owner), (ii) the telephone number(s) and email address(es), if any, for the lessee(s), and (iii) any change in the address or telephone number of the Lot Owner. As soon as practicable after receiving such notification that an Owner has entered into a Lease, the Owner shall, and the Board may, cause copies of the Governing Documents to be delivered to such lessee(s). (The Governing Documents shall be binding on the lessee whether or not the Owner or the Board delivers the Governing Documents to the lessee.) In the event of a default under this subparagraph (h), the Board may, after affording the Owner an opportunity to be heard, levy a fine against such Owner in an amount determined by the Board, but not less than One Hundred Dollars (\$100.00). The Owner shall have thirty (30) calendar days after receiving written notice of default from the Board to either pay the fine or request a hearing before the Board. If the fine is not timely paid or a hearing requested or the Board finds the Owner in violation after a hearing, the Board shall be entitled to exercise all of its rights hereunder and under the law, including without limitation to (i) levy continuing fines against any Owner for each day the violation continues, each day being considered a separate violation, (ii) add such fines, costs and attorney's fees incurred in connection therewith to the monthly assessment against the Owner's Lot, and (iii) deem the Owner in violation and terminate all further rights of the Owner to Lease the Lot.

(i) **NO TRANSIENT LODGING.** No Lot shall be used for fractional use, hotel or transient purposes. A Lease for a period of less than six (6) months shall be deemed to be for transient purposes. No Owner or lessee shall Lease less than the Owner's entire Lot. No timesharing, fractional ownership, ownership periods, floating ownership or other similar program shall be allowed. Any Lease of a Lot shall be in writing and shall include an

acknowledgment by the lessee of the applicability of all the Governing Documents. Copies of all Leases shall be provided to the Board for its records, as set forth above.

(j) APPLICATION TO LEASE LOT IN THE FUTURE. Those Owners not Leasing their Lot on the Amendment Date shall not be allowed to lease their Lot except as provided in section (k) below.

(k) HARDSHIP. If, at any time after the Amendment Date, an Owner believes that a hardship is being endured (the "Hardship") pursuant to which such Owner needs to Lease the Owner's Lot and the Owner is not then Leasing the Lot under the terms of this Amendment, the Owner may apply to the Board for a Hardship exemption from the leasing restrictions contained in this Amendment. If an Owner decides to apply for a Hardship exemption, such Owner must take the following steps:

(i) Application. The Owner must submit a written request to the Board requesting a Hardship exemption setting forth in detail the reasons why such Owner should be entitled to same. If a hardship exemption is granted to an Owner, the Owner shall complete the Registration Information contained on the form attached hereto as Exhibit B and submit to the Board.

(ii) Approved Hardship Exemptions. Upon proper application and request to the Board, the lease restrictions in this Amendment shall not apply to persons exempt from such rental restrictions pursuant to Utah Code § 57-8a-209, as amended from time to time. The following Hardship exemptions shall be deemed expressly approved upon application to the Board, provided the Owner provides proof in connection to one or more of the following for each application or extension:

- (1) employment where the Lot owner's employer has relocated the Lot Owner for no less than two (2) years;
- (2) Any of the following during the period of the Lot Owner's service, deployment or engagement:
 - (a) Religious service;
 - (b) Military or governmental service; and/or,
 - (c) Civic/Humanitarian service;
- (3) occupancy by a Lot Owner's parent, child or sibling; and/or
- (4) the Lot is owned by a trust or other entity created for the estate planning purposes of the trust or other estate planning entity was created for: (i) the estate of the then current resident of the Lot or (ii) the parent, child or sibling of the then current resident of the Lot.

(iii) Conditional Hardship Exemptions. In addition to the foregoing exemptions set forth in subsection (ii) above, if based on the information supplied to the Board by the Owner, the Board finds, in its sole discretion, that a reasonable Hardship exists, the Board may grant a waiver of Lease restrictions up to a maximum of one (1) year.

- (iv) Conditional Hardship Factors. The types of Conditional Hardships that the Board may consider under subsection (iii) above, shall include, but not be limited to, (a) a death in the family or (b) one or more significant medical treatments for an Owner or an immediate family member of the Owner (such as a spouse or child) or for a person who resided with the Owner in the Owner's Unit, that requires the Owner to be away from the Owner's Unit during the medical treatment. The Board, in its sole discretion, may determine if a Hardship exemption shall be granted.
- (v) Application for Extension of Exemptions. In the event an Owner has been granted a Hardship exemption, such Owner must reapply within thirty (30) days of the expiration of such Hardship exemption if such Owner wishes to request an extension thereof. The Board, in its sole discretion, may decide if an extension for such Hardship exemption shall be granted. In no event shall a Conditional Hardship Exemption (see (k)(iii)) be extended beyond a period of three (3) years.
- (vi) Limit of Conditional Hardship Exemptions. Except for the Approved Hardship Exemptions set forth in subsection (k)(ii), an Owner shall not be granted more than two (2) Conditional Hardship Exemptions, not including extensions.
- (vii) Leasing During Exemption. Any Lease entered into under this Subsection (k) shall be in writing and for a period of no less than ninety (90) days, and, except for the Approved Hardships Exemptions set forth in subsection (k)(ii), the lease term shall be no more than one (1) year. The Lease will be subject to and must comply with all other requirements of this Amendment.

(l) ASSOCIATION RIGHT TO LEASE. The Board shall have the right to Lease any Lot owned by the Association which the Association has possession of, pursuant to any court order or foreclosure (judicial or non-judicial), and said Lots shall not be subject to the provisions of this Amendment that prohibit leasing of a Lot.

(m) COMPLIANCE WITH GOVERNING DOCUMENTS AND DEFAULT. Any Owner who shall Lease his Lot shall be responsible for assuring compliance by such Owner's lessee(s) with the Governing Documents. The Association may require the Lease to include an Addendum to the Rental Agreement in the form attached hereto as Exhibit C. Failure by an Owner to take legal action, including the institution of proceedings in Unlawful Detainer and/or Eviction against the lessee in violation of the Governing Documents within fifteen (15) calendar days after receipt of written demand from the Board to take action against the lessee(s) in violation, shall entitle the Association, through the Board, to take any and all action available in law or equity, including without limitation the institution of proceedings in Unlawful Detainer/Eviction, on behalf of such Owner against the lessee(s). Additionally, if any Owner leases the Owner's Lot in violation of this Amendment, then after providing the Owner with the appropriate notice and hearing as required by law, the Owner fails to institute proceedings in Unlawful Detainer/Eviction against the lessee(s) to have the lessee(s) removed from the Owner's Lot, then the Association may, but shall not have an obligation to, institute proceedings in Unlawful Detainer/Eviction on behalf of the Owner against the lessee(s) to have the lessee(s) evicted from the property. Any expenses incurred by the Association in enforcing this

Amendment, including attorneys fees and costs of suit and/or foreclosure, shall be repaid to the Association by such Owner. Failure of such Owner to make such repayment within fifteen (15) days after receipt of written demand thereof, shall entitle the Board (i) to levy and add to the assessment against such Owner and the Owner's Lot, all expenses incurred by the Association and to foreclose the assessment lien according to Utah law; or (ii) to file suit to collect the amounts due and owing, or both.

(n) **POWER OF ATTORNEY.** In the event an Owner fails to enforce the terms of that Owner's Lease and the covenants and conditions of this Amendment, such Owner hereby appoints the Association as its limited attorney in fact for the purposes of filing and prosecuting any proceeding in Unlawful Detainer/Eviction that the Association elects to commence pursuant to the terms of this Amendment.

(o) **NOTICE.** Notices required hereunder shall be deemed given three (3) days after placing the same in the U.S. First Class Mail, postage pre-paid, to the last address of the Owner known to the Association. An Owner shall be obligated to notify the Association in writing of the Owner's correct address and any change in address.

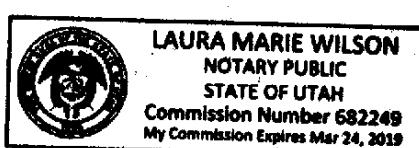
IN WITNESS WHEREOF, on the 26 day of September, 2016, the President of the Association hereby represents that sixty-seven percent (67%) or more of all the Lot Owners represented at a meeting where a quorum was present approved this Amendment within the Project.

Elfin Cove Owners Association

By: Sandra Woodward
Name: SANDRA WOODWARD
Title: President

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

On this 26th day of September, 2016, personally appeared before me Sandra Woodward, who is personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that he/she is the President of Elfin Cove Owners Association, a Utah corporation, and that he/she executed the foregoing Second Amendment to Declaration of Covenants, Conditions and Restrictions of Elfin Cove, on behalf said corporation by authority of a resolution of its Board of Directors, and he/she acknowledged before me that the corporation executed the same for the uses and purposes stated therein.



Laura M. Wilson
Notary Public

Exhibit A

This Second Amendment to Declaration of Covenants, Conditions and Restrictions of Elfin Cove Owners Association is to be recorded against the real property located in Washington County, Utah with the following parcel numbers:

1-ELFC-1-1 through 1-ELFC-1-8
1-ELFC-2-9 through 1-ELFC-2-13
1-ELFC-3-14 through 1-ELFC-3-30