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Amended Restrictive Covenants Page 1 of 29  
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South Field Estates Owners Association

Record against the Property  
described in Exhibit A

After recording mail to:  
JENKINS BAGLEY SPERRY, PLLC  
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St. George, UT 84770

**SECOND AMENDED AND RESTATED DECLARATION OF  
COVENANTS CONDITIONS AND RESTRICTIONS OF SOUTH FIELD  
ESTATES**

Prepared by:



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**SECOND AMENDED AND RESTATED DECLARATION OF  
COVENANTS CONDITIONS AND RESTRICTIONS OF SOUTH FIELD  
ESTATES**

This Second Amended and Restated Declaration of Covenants Conditions and Restrictions of South Field Estates "Declaration" is to combine the First Amendment (defined below) and the Amended and Restated Declaration (defined below) into one document for ease of reference and clarity. This Declaration hereby restates in the entirety and substitutes for the following:

- Declaration of Covenants Conditions and Restrictions of South Field Estates, recorded with the Washington County Recorder on June 10, 1996 as Document No. 00534849, in Book 1008, at Page 0490;
- Amendment to Declaration of Covenants Conditions and Restrictions of South Field Estates, recorded with the Washington County Recorder on June 9, 1997 as Document No. 00568233, in Book 1107, at Page 0096;
- Adopted Changes to the Declarations of Covenants, Conditions, and Restrictions of South Field Estates, recorded with the Washington County Recorder on January 31, 2005 as Document No. 00924170, in Book 1709, at Page 0769;
- Adopted Changes to the Declarations of Covenants, Conditions, and Restrictions of South Field Estates, recorded with the Washington County Recorder on May 12, 2005 as Document No. 00944615, in Book 1743, at Page 0772;
- Adopted Changes to the Declarations of Covenants, Conditions, and Restrictions of South Field Estates, recorded with the Washington County Recorder on December 2, 2005 as Document No. 00988885, in Book 1820, at Page 2028;
- Adopted Changes to the Declarations of Covenants, Conditions, and Restrictions of South Field Estates, recorded with the Washington County Recorder on February 9, 2006 as Document No. 20060002305;
- Adopted Change to the Declarations of the Covenants, Conditions, and Restrictions of South Field Estates Owners Association, recorded with the Washington County Recorder on May 11, 2007 as Document No. 20070024457;
- Amended and Restated Declaration of Covenants Conditions and Restrictions of South Field Estates, recorded with the Washington County Recorder on January 4, 2019 as Document No. 20190000416 ("Amended and Restated Declaration");
- First Amendment to the Amended and Restated Declaration of Covenants Conditions and Restrictions of South Field Estates, recorded with the Washington County Recorder on June 27, 2023 as Document No. 20230018793 ("First Amendment"); and
- Any other amendments, supplements, or annexing documents to the Declaration of Covenants Conditions and Restrictions of South Field Estates, whether or not recorded with the Washington County Recorder.

### RECITALS

Declarant was the Owner of certain real property (the "Properties") in St. George, Washington County, Utah, which is more particularly described in Exhibit A.

Declarant conveyed the Properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges, and liens as set forth in the Original Declaration.

Declarant constructed Homes and sold and conveyed the same to various purchasers, and conveyed Common Area to the Association in which the Home Owners are Members.

On June 27, 2023, the First Amendment to the Amended and Restated Declaration was recorded with the Washington County Recorder. The First Amendment was undertaken pursuant to Article 10, Section 10.3 of the Amended and Restated Declaration which provides that this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the Members entitled to vote and such instrument was attached and recorded with the First Amendment as Exhibit B.

The First Amendment amended Article 4, Section 4.2, and Article 8, Section 8.13, of the Amended and Restated Declaration and the amendments were shown in strikeouts (deletions) and italics (added).

This Second Amended and Restated Declaration is to combine the First Amendment and the Amended and Restated Declaration into one document for ease of reference and clarity for the Owners within the Properties. It removes the strikeouts and italics and presents the Declaration as one cohesive document.

Because the First Amendment was already voted on and approved by the Members and this Second Amended and Restated version only incorporates said Amendment with minor clerical edits, no further Member vote is needed, and this Second Amended and Restated Declaration is approved by the Board as the official Declaration for recording in the records of the Washington County Recorder.

### DECLARATION

All of the Properties set forth in Exhibit A shall be held, sold, conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges, and liens. This is for the purpose of protecting the value and desirability of the Properties. This Declaration and the Map (defined infra) shall be construed as covenants of equitable servitude, shall run with the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

## ARTICLE 1 - DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are at times not capitalized in this Declaration. The definitions in this Declaration are supplemented by the definitions in Utah Code Section 57-8a-101 et seq. (the "Act"). In the event of any conflict, the more specific and restrictive definition shall apply.

Section 1.1 Declaration means this instrument, and any amendments.

Section 1.2 Plat or Map means the subdivision Plats recorded for "South Field Estates - Phase 1," "South Field Estates - Phase 2," and "South Field Estates - Phase 3" or any replacements thereof, or additions thereto.

Section 1.3 Property or Properties means that certain real Property described in Exhibit A, and such additions thereto as may hereafter be subjected to this Declaration.

Section 1.4 Common Area means that portion of Property owned by the Association, shown on the Plat as dedicated to the common use and enjoyment of the Owners.

Section 1.5 Limited Common Area means that portion of Property owned by the Association, shown on the Plat as dedicated to the exclusive use and enjoyment of the Owner of the Lot to which such Limited Common Area is adjacent and/or appurtenant. Limited Common Area is subject to the rights of the Association as set forth in this Declaration.

Section 1.6 Lot means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership, but specifically excludes the Common and Limited Common Areas.

Section 1.7 Home means a single-family dwelling, without roof or walls in common with other single-family dwelling Lots. When the term "Home" is used it includes fee title to the real property lying directly beneath the single-family dwelling, within Lot boundary lines. This however, is not all the Lot, in some instances there may be Lot boundaries outside the Home walls. The term "single-family dwelling" when used in this Declaration shall mean a group of not more than four (4) persons in a two (2) bedroom Home or up to six (6) persons in a three (3) bedroom Home, who are directly related either as spouses or significant others, parent and child, grandparent, grandchild, or as siblings. In no event shall a single-family dwelling exceed six (6) individuals.

Section 1.8 Owner means the entity, person, or group of persons owning fee simple title to any Lot which is within the Properties. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one (1) "Owner." The fee simple owner must occupy the home unless an authorized lease exists (*see* Section 8.13), or as approved by the Board.

Section 1.9 Association means South Field Estates Owners Association, its successors and assigns.

Section 1.10 Member means every person or entity who holds membership in the Association. Every Member is an Owner, and every Owner is a Member .

Section 1.11 Board of Directors (“Board”) means the governing body of the Association.

Section 1.12 Declarant means Kevin Ence Development, Inc., a Utah corporation, and the Declarant’s heirs, successors and assigns (references herein to the Declarant are for historical purposes and context).

Section 1.13 Mortgage, Deed of Trust, and Mortgagee includes “trust deed beneficiary.”

## ARTICLE 2 - PROPERTY RIGHTS

Section 2.1 Title to the Common Area. The Declarant conveyed fee simple title to the Common Area and Limited Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, but subject to this Declaration, and easements and rights of way of record. In accepting the deed, the Association covenanted to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times and to operate the Common Area at its own expense in accordance with high standards.

Section 2.2 Owners’ Easements of Enjoyment. Every Owner has a right and easement of use and enjoyment in and to the Common Area. This easement is appurtenant to and passes with the title to every Lot, subject to:

- (a) The right of the Association to limit the number of guests of Members using the Common Area.
- (b) The right of the Association to suspend the voting rights and/or common utility service of a Member for any period during which any assessment or portion thereof against his Lot remains unpaid, and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (c) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by a similar Association in consideration for use of the Common Areas and facilities of the other association, or for cash consideration;
- (d) The right of the Association with the approval of sixty-seven percent (67%) of the Owners entitled to vote, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency authority, or utility.
- (e) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.
- (f) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.
- (g) The terms and conditions of this Declaration.
- (h) The right of the Association, through its Board, to adopt rules and regulations concerning use of the Common Area.

Section 2.3 Limited Common Area. A Lot Owner is entitled to the exclusive use of the Limited Common Area adjacent and appurtenant thereto, if any. The Association, through its Board, may adopt rules and regulations concerning use of the Limited Common Area. Limited Common Area is subject to the rights of the Association as set forth in this Declaration.

Section 2.4 Delegation of Use. An Owner is deemed to delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property. No one who is a non-resident shall have any such delegable right of enjoyment.

Section 2.5 Lot. Each Lot is owned in fee simple by the Owner. However, area within the surveyed Lot boundaries but outside the Home walls even though part of the Lot and owned in fee simple by the Owner shall be treated as Limited Common Area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a Lot larger than the Home is to allow flexibility in the original Home construction. After the initial construction on a Lot, subsequent construction, if any, may occupy any portion of the surveyed Lot, subject to all other provisions of this Declaration. An Owner may construct appurtenant structures and personal landscaping outside the boundaries of the Home and within the rear area of the surveyed boundaries of the Lot, subject to approval of the Architectural Control Committee, as outlined in Article 6 herein.

Section 2.6 Display of the Flag. The Association may not prohibit an Owner from Displaying the United States flag inside a dwelling or on the Owner's Lot or Limited Common Area appurtenant to the Owner's Lot if the display complies with United States Code, Title 4, Chapter 1. The Association may, by rule of the Board, restrict the display of a United States Flag on the Common Area.

### ARTICLE 3 - MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Membership. Every Owner is a Member of the Association. The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

Section 3.2 Voting Rights. The Association has one (1) class of voting membership:

CLASS A. Class A Members are all Members. Class A Members are entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, the group of such persons shall be a Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such co-Owners, whether in person, by ballot, or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by



another co-Owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

#### ARTICLE 4 - FINANCES AND OPERATIONS

Section 4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board pursuant to this Declaration; and (4) interest, costs of collection, and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 4.2 Purpose of Assessments. The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties and (b) for the improvement and maintenance of the Common Area and Limited Common Area as provided in this Declaration, and services, and facilities devoted to this purpose. The assessments must provide for but are not limited to the payment of taxes and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common and Limited Common Areas; the payment of administrative expenses of the Association insurance deductible amounts; the establishment of a reserve account for repair, maintenance, and replacement of those Common and Limited Common Areas which must be replaced on a periodic basis; and other amounts required by the Declaration or that the Board shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board, for the payment of other charges including, without limitation, maintenance, management, utility, trash collection, sewer, and water charges.

Section 4.3 Maximum Annual Assessment. The maximum annual assessment may be increased each year by eight percent (8%) above the maximum assessment for the previous year, without a vote of the membership.

The Association may change the basis and maximum of the assessments fixed by this Section 4.3 prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of Members entitled to vote, in person, by ballot, or by proxy, at a meeting duly called for this purpose.

The actual annual assessment need not increase annually. The Board shall set the actual annual assessment on an annual basis. Notice shall be given to each Owner as provided in Section 4.8. The Board must set the actual annual assessment to be an amount at or less than the Maximum

Annual Assessment. Failure to give Notice will not render the annual assessment invalid or any of the rights or obligations of this Article invalid.

Section 4.4 Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common or Limited Common Area structures, fixtures, and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of Members entitled to vote, in person, by ballot, or by proxy, at a meeting duly called for this purpose.

Section 4.5 Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other Common or Limited Common Areas from the activities of the City of St. George in maintaining, repairing or replacing the City's utility lines and facilities thereon. The Association may also levy an additional assessment against an Owner, his tenant, or guest for any damage done by the Owner, his tenant, or guest to the Common Area or Limited Common Area. It is acknowledged that the ownership of said utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 4.6 Notice and Quorum for Any Action Authorized Under Sections 4.3 and 4.4. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 4.3 or 4.4 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of Members entitled to vote shall constitute a quorum. If the quorum requirement is not met at such meeting, another meeting may be called, with at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.7 Uniform Rate of Assessment: Periodic Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. This method of determining the assessments, dues, and charges may not be changed without the prior written approval of all first mortgagees.

Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Board determines.

Section 4.8 Date of Commencement of Annual Assessments: Due Dates. At least thirty (30) days prior to the commencement of each new assessment period, the Board shall send or cause to be sent a written notice of the annual assessment to each Owner subject thereto. This notice shall not be a pre-requisite to the validity of the assessment.

In the absence of a determination by the Board as to the amount of said assessment, the annual assessment shall be an amount equal to ninety percent (90%) of the maximum annual assessment determined as provided above.

The assessment due dates shall be established by the Board. The Board may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

The Board shall prepare a roster of the Properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessment and shall allow inspection of the roster by any Member at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 4.9 Effect of Non-Payment of Assessment-Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Board shall determine appropriate) until paid. In addition, the Board may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment.

The Board may, in the name of the Association, (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, (b) foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure and a reasonable attorney's fee, together with an account for the reasonable rental for the Lot from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale, the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association and each Lot Owner hereby conveys and warrants pursuant to Sections 212 and 302 of the Act, and Utah Code § 57-1-20, to attorney Bruce C. Jenkins, or any other attorney that the Association engages to act on its behalf to substitute for Bruce C. Jenkins, 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.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 4.10 Delinquent Member. As used in this section, "Delinquent Member" means a Lot Owner who fails to pay an assessment when due.

- (a) The Board may terminate a Delinquent Member's right:
  - (i) to receive a utility service for which the Member pays as a common expense; or
  - (ii) of access to and use of recreational facilities.

- (b) (i) Before terminating a utility service or right of access to and use of recreational facilities under Subsection (a) the Manager or Board shall give the Delinquent Member notice. Such notice shall state:
  - (A) that the Association will terminate the Member's utility service or right of access to and use of recreational facilities, or both, if the Association does not receive payment of the assessment within fourteen (14) calendar days;
  - (B) the amount of the assessment due, including any interest or late payment fee; and
  - (C) the Delinquent Member's right to request a hearing under Subsection (c).
- (ii) A notice under Subsection (b)(i) may include the estimated cost to reinstate a utility service if service is terminated.
- (c) (i) The Delinquent Member may submit a written request to the Board for an informal hearing to dispute the assessment.
  - (ii) A request under Subsection (c)(i) shall be submitted within fourteen (14) days after the date the Delinquent Member receives the notice under Subsection (b)(i).
- (d) The Board shall conduct an informal hearing requested under Subsection (c)(i) in accordance with the hearing procedures of the Association.
- (e) If the Delinquent Member requests a hearing, the Association may not terminate a utility service or right of access to and use of recreational facilities until after the Board:
  - (i) conducts the hearing; and
  - (ii) enters a final decision.
- (f) If the Association terminates a utility service or a right of access to and use of recreational facilities, the Association shall take immediate action to reinstate the service or right following the Delinquent Member's payment of the assessment, including any interest and late payment fee.
- (g) The Association may:
  - (i) levy an assessment against the Delinquent Member for the cost associated with reinstating a utility service that the Association terminates as provided in this section; and
  - (ii) demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in a notice under Subsection (b)(i).

**Section 4.11 Tenant Payment of Assessments.**

- (a) The Board may require a tenant under a lease with a Lot Owner to pay the Association all future lease payments due to the Lot Owner if the Lot Owner fails to pay an assessment for a period of more than sixty (60) days after the assessment is due and payable, beginning with the next monthly or periodic payment due from the tenant and until the Association is paid the amount owing. Before requiring a tenant to pay lease payments to the Association, the Association's manager or Board shall give the Owner notice, which notice shall state: (i) the amount of the

- assessment due, including any interest, late fee, collection cost, and attorney's fees; (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of lease payments; and (iii) that the Association intends to demand payment of future lease payments from the Lot Owner's tenant if the Lot Owner does not pay the amount owing within fifteen (15) days.
- (b) If a Lot Owner fails to pay the amount owing within fifteen (15) days after the Association's manager or Board gives the Lot Owner notice, the Association's manager or Board may exercise the Association's rights by delivering a written notice to the tenant. The notice to the tenant shall state that: (i) due to the Lot Owner's failure to pay an assessment within the required time, the Board has notified the Lot Owner of the Board's intent to collect all lease payments until the amount owing is paid; (ii) the law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid; and (iii) the tenant's payment of lease payments to the Association does not constitute a default under the terms of the lease with the Lot Owner. The manager or Board shall mail a copy of this notice to the Lot Owner.
- (c) A tenant to whom notice is given shall pay to the Association all future lease payments as they become due and owing to the Owner: (i) beginning with the next monthly or other periodic payment after the notice is delivered to the tenant; and (ii) until the Association notifies the tenant under Subsection 4.11(d) that the amount owing is paid. A Lot Owner shall credit each payment that the tenant makes to the Association under this section against any obligation that the tenant owes to the Owner as though the tenant made the payment to the Owner; and may not initiate a suit or other action against a tenant for failure to make a lease payment that the tenant pays to an Association as required under this section.
- (d) Within five (5) business days after the amount owing is paid, the Association's manager or Board shall notify the tenant in writing that the tenant is no longer required to pay future lease payments to the Association. The manager or Board shall mail a copy of this notification to the Owner. The Association shall deposit money paid to the Association under this section in a separate account and disburse that money to the Association until the amount owing is paid; and any cost of administration, not to exceed Twenty-Five Dollars (\$25.00), is paid. The Association shall, within five (5) business days after the amount owing is paid, pay to the Lot Owner any remaining balance.

Section 4.12 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender or insured by the Federal Housing Administration or the Veterans Administration if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve a Lot or Owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

Section 4.13 Books, Records, and Audit. The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books,

records, and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers, and guarantors of first mortgages during normal business hours upon reasonable notice pursuant to Utah Code Section 16-6a-1601, et seq., as may be amended from time to time. Charges shall be made for copying, researching or extracting from such documents.

Section 4.14 Reserve Analysis – Reserve Fund. The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years and shall review and, if necessary, update a previously prepared reserve analysis every three (3) years. The Board may conduct the reserve analysis by itself or may engage a reliable person or organization to conduct the reserve analysis. The Board shall annually provide Owners a summary of the most recent reserve analysis or update and provide a complete copy of the reserve analysis or update to an Owner upon written request. In formulating the budget each year, the Board shall include a reserve line item in an amount required by the governing documents, or, if the governing documents do not provide for an amount, the Board shall include an amount it determines, based on the reserve analysis, to be prudent. Unless a majority of the Association Members vote to approve the use of reserve fund money for that purpose, the Board may not use money in a reserve fund: (i) for daily maintenance expenses; or (ii) for any purpose other than the purpose for which the reserve fund was established. A Board shall maintain a reserve fund separate from other Association funds.

Section 4.15 Budget. At least annually the Board shall prepare and adopt a budget for the Association and the Board shall present the budget at a meeting of the Members. A budget presented by the Board is only disapproved if Member action to disapprove the budget is taken in accordance with the limitations under Section 215 of the Act.

#### ARTICLE 5 – INSURANCE

Section 5.1 Casualty Insurance on Insurable Common Area. The Board shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

Section 5.2 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the Property damaged or destroyed, the Association may make a reconstruction assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Lot Owner.

In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Board is empowered to and shall represent the Members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each Owner for this purpose.

Section 5.3 Liability Insurance. The Board shall obtain a comprehensive policy of public liability insurance covering all of the Common and Limited Common Area for at least One Million Dollars (\$1,000,000.00) per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 5.4 Fidelity Insurance. The Board may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Board shall seek a policy which shall (a) name the Association as obligee or beneficiary, (b) be written in an amount not less than the sum of (i) three (3) months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (c) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5.5 Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient.

Section 5.6 Owner Insurance. Each Owner of a Lot should acquire and maintain a whole house HO5 policy, including any other necessary or desirable insurance, with regard to their respective Lot and Home.

#### ARTICLE 6 - ARCHITECTURAL CONTROL COMMITTEE

No structure, building, fence, wall or addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration to any Lot or Home be made until the plans and specifications showing the nature, kind, shape, height, materials, colors, and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or their designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this Article 6 will be deemed to have been made.

Without the prior written approval of at least sixty-seven percent (67%) of each of the Owners entitled to vote, neither the Association nor the Architectural Control Committee shall

have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of homes and Lots, and the maintenance of the Common and Limited Common Areas, including walls, fences, driveways, lawns, and plantings.

Section 6.1 Limit on Fee for Approval of Plans. The Association may charge a plan fee that is equivalent to the cost of reviewing and approving the plans. As used in this section, "plans" mean any plans for the construction or improvement of a Lot which are required to be approved by the Association before the construction or improvement may occur.

#### ARTICLE 7 - EXTERIOR MAINTENANCE

Section 7.1 Exterior Maintenance by Owner. Each Owner shall be responsible for maintenance, repair, and/or any replacement to the exterior area of the Home owned, including the roof, and in the Limited Common Area adjacent and appurtenant to the Lot. The Board may, however, in the default of the Owner to perform maintenance which is the Owner's responsibility, after a majority vote of the Board, and after ten (10) days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each Home and Lot, and the Limited Common Area adjacent and appurtenant thereto. The cost of such maintenance shall be assessed against the Lot or Home.

Section 7.2 Exterior Maintenance by Association. The Association shall be responsible for maintenance upon the Common Area, the Limited Common Area which is not adjacent to any Lot, and the area of any Lot outside the walls of the Home which is of the same character as surrounding common or Limited Common Area. The cost of such maintenance shall be a common expense. In no instance shall the Association be responsible for the maintenance of any roof(s) of the Homes.

Section 7.3 Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this Article, the Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours.

Section 7.4 Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a Lot outside the walls of the Home, and the Limited Common Areas adjacent and appurtenant to the Homes may be altered by Rule of the Association.

Section 7.5 Responsibility for Maintenance. The Board, or its authorized representative, after giving not less than twenty-four (24) hours advance notice posted to the Lot, may access a Lot, including the Home, from time to time during reasonable hours, as necessary for maintenance, repair, or replacement of any of the Common Areas. If repair to a Lot, Home, Limited Common Area or Common Area -- that if not made in a timely manner -- will likely result in immediate and substantial damage to a Common Area, Limited Common Area or another Lot or Home, then the Board may enter the Lot or the Home to make the emergency repair upon such notice as is reasonable under the circumstances.



Section 7.6 Maintenance Reserves. The Association in accordance with Utah State law, shall calculate the needed contingency funds (reserves) for maintenance of Limited Common and Common Areas. The calculations of the reserves shall be performed using Generally Accepted Accounting Principles (GAAP).

#### ARTICLE 8 - USE RESTRICTIONS

Section 8.1 General Use Restrictions. All of the Properties which are subject to this Declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the Common Area. All buildings or structures erected in the Properties shall be of new construction and no buildings or structures shall be removed from other locations to the Properties. After the initial construction on a Lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that Lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time.

Section 8.2 Signs: Commercial Activity. Except for one (1) "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot or any portion of the Properties. No commercial activities of any kind whatsoever shall be conducted in any building or on any portion of the Properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws, and Rules and Regulations, as the same may be amended from time to time.

Section 8.3 Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any part of the Properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

Section 8.4 Animals. No animals, beehives, poultry or livestock of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets, two (2) or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Lot Owners. All pets must be kept on the Lots or on a leash when in the Common Areas. This provision may be made more restrictive by Rule of the Association.

Section 8.5 Use of Common Area. Except for the rights of ingress and egress, Owners are hereby prohibited and restricted from using any of said Common Area, other than as permitted in this Declaration or as may be allowed by the Board. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Owners of Lots in the Properties and is necessary for the protection of the interests of all said Owners in and to the Common Area.

Section 8.6 Parking. No motor vehicle which is inoperable shall be allowed within the Properties. Any motor vehicle which remains parked on a street over seventy-two (72) hours shall be subject to removal by the Association, at the Owner's expense and/or subject to a fine or legal action. Subject to the provisions of this Section, parking is allowed on the streets in front of Owners' homes and shall be used for parking of motor vehicles actually used by the Owner or his immediate family or guests for personal use and not for commercial use. Recreational vehicles, boats, travel trailers and similar property may not be parked within the Properties unless permitted by Rule of the Association.

Section 8.7 Planting and Gardening. No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any Property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Board.

Section 8.8 External Apparatus. No Lot Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or place on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Board.

Section 8.9 Exterior Television or Other Antennas. No exterior radio or other antennas, except: (i) one (1) television antenna; and (ii) other antennas which shall not exceed one meter in diameter shall be placed, allowed or maintained upon any Lot or upon any structure or portion of the improvements situated and located upon the Properties without prior written approval of the Board.

Section 8.10 Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 8.11 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Properties of any Lot. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Properties or any Lot.

Section 8.12 Interior Utilities. All utilities, fixtures, and equipment installed within a Lot commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a Lot shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other Lots or Owners.

Section 8.13 Lease Provisions. Notwithstanding anything to the contrary contained in this Declaration, the Leasing of any Lot within South Field Estates shall be governed by this Article 8, Section 8.13.

8.13.1 PURPOSE AND PROHIBITION. IN ORDER TO INCREASE THE FUTURE AVAILABILITY OF FINANCING FOR THE PURCHASE/SALE OF LOTS WITHIN SOUTH FIELD ESTATES, TO PROMOTE THE AVAILABILITY OF INSURANCE FOR THE

ASSOCIATION AND ITS MEMBERS AT REASONABLE RATES, TO ATTEMPT TO MAXIMIZE THE PROPERTY VALUES WITHIN SOUTH FIELD ESTATES AND/OR TO PROMOTE A SENSE OF COMMUNITY BY AND THROUGH OWNER-OCCUPANTS, FROM AND AFTER THE AMENDMENT DATE, **NONE OF THE LOTS WITHIN THE PROJECT (ALL PHASES OF SOUTH FIELD ESTATES) SHALL BE LEASED, EXCEPT AS SPECIFICALLY PROVIDED HEREIN.**

8.13.2 APPLICATION TO CONTINUE LEASING. Within forty-five (45) calendar days of June 27, 2023, each Owner who was Leasing a Lot on June 27, 2023, and who desired to continue to Lease the Lot, must have completed and returned the form attached to the First Amendment as Exhibit C (the "Notice of Intent to Continue Leasing"). An Owner who failed to timely deliver the Notice of Intent to Continue Leasing to the Board shall lose the right to continue Leasing the Owner's Lot.

8.13.3 GRANDFATHERING. Any Owner who was renting the Owner's Lot as of June 27, 2023, a "Rental Lot,"<sup>1</sup> and who timely returned 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:

- (a) The Lot becomes Owner-Occupied (as defined below);
- (b) The Lot is transferred; or,
- (c) The Owner is in violation of this Section 8.13, including without limitation the failure to advise the Board of the execution of a Lease and to provide a copy thereof to the Board.
- (d) For purposes hereof, a Lot shall be deemed "Owner-Occupied" if:
  - (i) Except as provided for in 8.13.9(b)(ii) below, 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 ten (10) consecutive day period; or,
  - (ii) An officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Lot, occupies the Lot for a period of seven (7) days or more in any ten (10) consecutive day period;
- (e) For purposes of Subsection 8.13.3, a transfer occurs when one (1) or more of the following occur:
  - (i) the 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 seventy-five percent (75%) of the business entity's share, stock, membership interests, or partnership interests in a twelve (12) -month period.

8.13.4 EXTENSION OF RIGHT TO LEASE DURING VACANCY. An Owner in compliance with this Declaration may continue to Lease the Owner's Lot even if the lessees change or the Lot remains unoccupied in between lease terms.

8.13.5 SALE OF LEASED LOT. Notwithstanding anything to the contrary herein, if an Owner sells 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

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<sup>1</sup> A "Rental Lot" is defined by Utah Code § 57-8a-102(20) as (i) a Lot that is not owned by an entity or trust and is occupied by an individual while the Lot Owner is not occupying the Lot as the Lot Owner's primary residence and (ii) a Lot that is occupied by an entity or trust, regardless of who occupies the Lot.

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 transfer.

8.13.6 TERMS OF LEASE. Any agreement for the leasing or rental of a Lot shall be in writing, shall provide that the terms of such lease shall be subject in all respects to the provisions in the Governing Documents, and shall include an acknowledgement by the lessee of the applicability of the Governing Documents. 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, upon order of a court of competent jurisdiction 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 Owner's lessee. A renter or lessee may not sublet or allow a third-party to occupy the Living Unit.

8.13.7 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 of the lessee, (iii) the email address of the lessee (if available), and (iv) 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 Owners shall, and the Board may, cause copies of the Governing Documents to be delivered to such lessee. (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 subparagraph 8.13.6, 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 in no event less than One Hundred Dollars (\$100.00). The Owner shall have fifteen (15) 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.

8.13.8 NO TRANSIENT LODGING. No Lot shall be used for fractional use, leasing of separate rooms, hotel, or transient purposes. A Lease for a period of less than twelve (12) months shall be deemed to be for transient purposes. No Owner or lessee shall Lease less than the entire Lot.

8.13.9 HARDSHIP. If, at any time after June 27, 2023, 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, the Owner may apply to the Board for a Hardship exemption from the leasing restrictions contained in this Section. If an Owner decides to apply for a Hardship exemption, such Owner must take the following steps:

- (a) Application. The Owner must submit a request in writing to the Board requesting a Hardship exemption setting forth in detail the reasons why such Owner should be entitled to same.
- (b) Approved Exemptions. The following five Hardship exemptions shall be deemed expressly approved for up to a maximum of one (1) year, with the opportunity to obtain not more than two (2) one (1) -year extensions upon application to and approval from the Board, provided the Owner provides proof of engagement in one (1) or more of the following for each application or extension:

- (i) a Lot Owner in the military for the period of the Lot Owner's deployment;
  - (ii) a Lot occupied by a Lot Owner's parent, child, or sibling;
  - (iii) a Lot Owner whose employer has relocated the Lot Owner for no less than two (2) years;
  - (iv) a Rental Lot owned by an entity that is occupied by an individual who:
    - (a) has voting rights under the entity's organizing documents; and
    - (b) has a twenty-five percent (25%) or greater share of ownership, control, and right to profits and losses of the entity; and
  - (v) a Rental Lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:
    - (a) the estate of a current resident of the Lot; or
    - (b) the parent, child, or sibling of the current resident of the Lot;
- (c) Conditional Exemptions. In addition to the foregoing exemptions set forth in Subsection (b) 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.
- (d) Conditional Hardship Factors. The types of Hardships that the Board may consider under Subsection (c) above, shall include, but not be limited to, Hardships for a death in the family, transfers for jobs, or one (1) 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.
- (e) 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. However, in no event shall the Hardship be extended beyond a period of two (2) years.
- (f) Limit of Exemptions. In no event shall more than two (2) Hardship exemptions, not including extensions, be given to an Owner.
- (g) Leasing During Exemption. Any Lease entered into under this Subsection 8.13.9 shall be in writing and for a period of not less than one (1) year. The Lease will be subject to and must comply with all other requirements of this Declaration.

8.13.10 ASSOCIATION RIGHT TO LEASE. The Board shall have the right to lease any Association owned Lots or any Lot 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 this Section 8.13.

8.13.11 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. 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 his lessee. Additionally, if any Owner Leases his Lot in violation of this Section, 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 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 to have the lessee evicted from the property. Any expenses incurred by the Association in enforcing this Section 8.13, including attorney's fees and costs of suit, 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 his Lot, all expenses incurred by the Association and to foreclose the assessment lien according to Utah law, including non-judicial foreclosure; or (ii) to file suit to collect the amounts due and owing, or both.

8.13.12 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 Section, 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 Section.

8.13.13 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 Owners correct address and any change in address.

8.13.14 LIMITS ON RENTAL INFORMATION. Except as provided in Subsection 8.13.15(d), the Association may not require a Lot Owner who owns a rental Lot to:

- (a) obtain the Association's approval of a prospective renter;
- (b) give the Association:
  - (i) a copy of a rental application;
  - (ii) a copy of a renter's or prospective renter's credit information or credit report;
  - (iii) a copy of a renter's or prospective renter's background check; or
  - (iv) documentation to verify the renter's age; or
- (c) pay an additional assessment, fine, or fee because the Lot is a rental Lot.
- (d) A Lot Owner who owns a rental Lot shall give the Association the documents described in Subsection 8.13.14 if the Lot Owner is required to provide the documents by court order or as part of discovery under the Utah Rules of Civil Procedure.
- (e) To the extent this Declaration lawfully prohibits or restricts occupancy of the Lots by a certain class of individuals, the Association may require a Lot Owner who owns a rental Lot to give the Association the information described in Subsection 8.13.14, if:
  - (i) the information helps the Association determine whether the renter's occupancy of the Lot complies with this Declaration; and
  - (ii) the Association uses the information to determine whether the renter's occupancy of the Lot complies with this Declaration.

Section 8.14 Senior Community.

1. Age Restrictions. South Field Estates HOA is hereby designated as a participant in the Housing for Older Persons Act (HOPA) of the Department of Housing and Urban Development (HUD). In accordance with this act eighty percent (80%) of Homes within the Association must be occupied by at least one (1) person fifty-five (55) years of age or older. The remaining twenty percent (20%) of the units must have at least one (1) resident forty (40) years of age or older. Without limiting the foregoing, at no time shall less than eighty percent (80%) of the occupied Homes subject to this Declaration be occupied by at least one (1) person fifty-five (55) years of age or older. All new leases or purchase agreements regarding any unit must contain a provision, directly above the signatory lines, asserting that new occupants are in compliance with the above age restrictions. A copy of such leases or purchase agreements shall immediately be provided to the Board. The Board shall establish policies and procedures from time to time as necessary to maintain the Properties as an age restricted community intended for housing persons fifty-five (55) years of age or older or herein described under state and federal law.
2. Children. The Association shall prohibit occupancy by persons under the age of eighteen (18), as well as all others falling within the defined term of familial status under federal law, except that persons under the age eighteen (18) may reside with any resident but not for more than thirty (30) consecutive days nor more than ninety (90) days in any calendar year. The Board may make exceptions for hardship.
3. Survey. Every other year, the President of the Association, or such persons designated by the Board, shall conduct a survey of the persons in the community to determine if at least one (1) person residing in each unit conforms to the age restrictions listed above. For each unit, the surveyor shall record the person's name, unit number, date of birth, and the method of reliable identification. Such reliable identification includes; driver's licenses, birth certificates, passport, immigration cards, military ID, or other certifiable documents indicating age. Each person questioned shall sign the survey as to the truth of his or her response, and the surveyor shall affirm under oath that he has inspected the identifications provided, and the information in the survey accurately reflects those documents.
4. Uncooperative Members. If any persons in the community refuse to comply with these procedures, the surveyor may, if there is sufficient evidence, consider the unit to be in compliance with the age restrictions as outlined in Section –8.14(1). Such evidence may include; government records or documents, prior forms or applications, a statement from individuals who have personal knowledge of the inhabitant, setting forth basis of knowledge that the unit is occupied by a person complying with the age restrictions as outlined in Section 8.14(1).
5. New Residents. All persons intending to purchase or lease an interest in any unit must provide verification that at least one (1) intended resident of the unit is in compliance with the age restrictions listed in Section 8.14(1) of this Declaration to the Board or such person designated by it. Such verification shall include reliable identification as described above.
6. Availability of Survey. The survey must be available for inspection by any person upon reasonable notice as determined by the Board.

7. Exceptions. Any Owner may apply for relief or exception from the provisions as outlined in this Declaration or in the Policies, Procedures, and Rules of the Association, which cover this Declaration due to circumstances not covered in the HOPA of 1995. However, in no circumstance may the threshold of at least eighty percent (80%) of all units in the community have at least one (1) person over the age of fifty-five (55) years be compromised.
8. Notices, Signs, Advertising, Marketing and Sales. All advertising, marketing, signs, notices and sales materials of any kind shall reflect that the Association is intended for housing for older persons. All print ads shall contain the following language. **“South Field Estates Owners Association is intended and operated for residents 55 years of age and older as defined in the Fair Housing Act. As such it is the policy of South Field Estates Owners Association to prohibit permanent residence of persons under 18 years of age as is permitted under an exemption of the Act.”** A notice shall be placed in the Legal Section of the local news media indicating the status of the Association as a “Senior Community”, signs at all vehicular entrances to the Association shall be placed indicating senior status over fifty-five (55) community.

Section 8.15 Reinvestment Fee Assessment. In addition to all other assessments and upon the conveyance of a Lot there shall be one (1) Reinvestment Fee charged to the buyer or seller, as the buyer and seller may determine, comprised of one (1) or more of the following charges:

- (a) An assessment determined pursuant to resolution of the Board and charged for:
  - (i) Common planning, facilities, and infrastructure,
  - (ii) Obligations arising from an environmental covenant,
  - (iii) Community programming,
  - (iv) recreational facilities and amenities,
  - (v) the following Association expenses:
    - (A) the administration of the common interest Association;
    - (B) the purchase, ownership, leasing, construction, operation, use, administration, maintenance, improvement, repair, or replacement of Association facilities, including expenses for taxes, insurance, operating reserves, capital reserves, and emergency funds;
    - (C) providing, establishing, creating, or managing a facility, activity, service, or program for the benefit of property Owners, tenants, Common Areas, the burdened property, or property governed by the common interest Association; or
    - (D) other facilities, activities, services, or programs that are required or permitted under the common interest Association’s organizational documents; and
- (b) Expenses reasonably charged to the Owners Association by the Association’s Manager for the administration of the conveyance.
- (c) No reinvestment assessment shall exceed one-half percent (0.5%) of the fair market value of the Lot, plus all improvements. When the seller is a financial institution, the reinvestment assessment shall be limited to the costs directly related to the transfer, not to exceed Two Hundred



and Fifty Dollars (\$250.00). The Association may assign the charges in 8.15(b) directly to the Association's manager.

#### ARTICLE 9 – EASEMENTS

Section 9.1 Encroachments. Each Lot and the property included in the Common and Limited Common Areas shall be subject to an easement for encroachments created by the construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing Lots is partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments of parts of the adjacent Lots or common or Limited Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 9.2 Utilities. There is hereby created a blanket easement upon, across, over and under all of the Properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires, and other necessary equipment on the Properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits, and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this Section no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties in such a way as to unreasonably encroach upon or limit the use of the Common Area or Limited Common Area or any structure thereon. In the initial exercise of easement rights under this Section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this Section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document the Association shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 9.3 Police, Fire and Ambulance Service. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common and Limited Common Area in the performance of their duties.

Section 9.4 Maintenance by Association. An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the Common and Limited Common Areas and any Lot to perform the duties of maintenance and repair set forth in this Declaration.

Section 9.5 Other Easements. The easements provided for in this Article 9 shall in no way effect any other recorded easement.

## ARTICLE 10 – GENERAL PROVISIONS

Section 10.1 Enforcement. The Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against any land to enforce any lien created by these covenants. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner a reasonable attorney's fee.

Section 10.2 Severability. All of said conditions, covenants, and reservations contained in this Declaration shall be construed together, but if any one (1) of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Association and Owners, their successors, heirs, and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause, and phrase of this Declaration, irrespective of the invalidity of unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 10.3 Amendment. The covenants, conditions, and restrictions of this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the Members entitled to vote. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Section 10.4 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 10.5 Waivers. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 10.6 Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

Section 10.7 Community Association Act. The Community Association Act, Utah Code § 57-8a-101, et. seq. (the "Act"), as amended from time to time, shall supplement this Declaration. If an amendment to this Declaration adopts a specific section of the Act, such amendment shall grant a right, power, and privilege permitted by such section of the Act, together with all correlative obligations, liabilities and restrictions of that section. The remedies in the Act and this Declaration -- provided by law or in equity -- are cumulative and not mutually exclusive.

Section 10.8 Board Acts for Association. Except as limited in the Declaration or the Association Bylaws, the Board acts in all instances on behalf of the Association.

Section 10.9 Rules Against Perpetuities. The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat or otherwise void a provision of this Declaration, the Articles, Bylaws, Plat, Rules or other governing document of the Association. If for any reason the Declaration does not comply with the Act, such noncompliance does not render a Lot or Common Area unmarketable or otherwise affect the title if the failure is insubstantial.

Section 10.10 Fines. The Association, through its Board, shall have the power to levy fines for violations of the Association's governing documents and fines may only be levied for violations of the governing documents. In addition to the levy of fines, the Board may also elect to pursue other enforcement remedies and/or damages permitted under the governing documents. Furthermore, pursuant to Utah Code § 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the governing documents by the tenant. The Board shall adopt a rule for the procedure to enforce the governing documents and levy fines, including a schedule of fines.

Section 10.11 Manner of Giving Notice. When notice is required under this Declaration, notice shall be given as provided in the Bylaws.

Section 10.12 Non-Liability for Tort. The Association shall not be liable, in any civil action brought by or on behalf of a Member, for bodily injury occurring to a Member, or a Member's guests, invitees, licensees or trespassers, on the Association's Common Area or Limited Common Area. This immunity from liability shall not be effective if the Association causes bodily injury to the Member on the Common Area or Limited Common Area by its willful, wanton, or grossly negligent act of commission or omission.

Section 10.13 Rules. The Board may adopt, amend, cancel, limit, create exceptions to, expand or enforce rules and design criteria of the Association that are not inconsistent with this Declaration or the Act. Except in the case of imminent risk of harm to a Common Area, a Limited Common Area, an Owner, a Lot or a dwelling, the Board shall give at least fifteen (15) days advance notice of the date and time the Board will meet to consider adopting, amending, canceling, limiting, creating exceptions to, expanding or changing the procedures for enforcing rules and design criteria. The Board may provide in the notice a copy of the particulars of the rule or design criteria under consideration. A rule or design criteria adopted by the Board is only disapproved if Member action to disapprove the rule or design criteria is taken in accordance with the limitations under Section 217 of the Act.

Section 10.14 Eminent Domain – Common Area. If part of the Common Area is taken by eminent domain: (a) the entity taking part of the Common Area shall pay to the Association the portion of the compensation awarded for the taking that is attributable to the Common Area; and (b) the Association shall equally divide any portion of the award attributable to the taking of a

Limited Common Area among the Owners of the Lots to which the Limited Common Area was allocated at the time of the taking.

IN WITNESS WHEREOF, on the 13 day of December, 2023, the Board hereby certifies that this Second Amended and Restated Declaration is to combine the First Amendment and the Amended and Restated Declaration into one document for ease of reference and clarity and that a separate vote of the Members was not taken because the Members already approved such amendments.

**SOUTH FIELD ESTATES OWNERS ASSOCIATION,**  
a Utah nonprofit corporation



By: Martin Craig Stingel  
Its: President

State of Utah )  
                                  :SS.  
County of Washington)

On this 13 day of December, 2023, personally appeared before me Martin Craig Stingel whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being duly sworn (or affirmed), did say that he/she is the President of South Fields Estates Owners Association, a Utah nonprofit corporation, and that the foregoing document was signed by him/her on behalf of the Association by authority of its Bylaws, Declaration, or resolution of the Board, and he/she acknowledged before me that he/she executed the document on behalf of the Association and for its stated purpose.

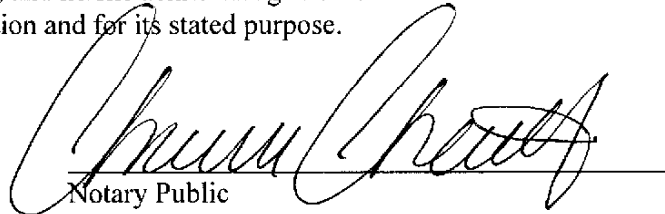
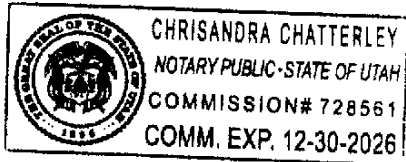
  
Notary Public

Exhibit A  
(Legal Description)

This Second Amended and Restated Declaration of Covenants Conditions and Restrictions of South Field Estates affects the following real property, all located in Washington County, State of Utah:

All of Lots 1 through 12 and Lots 27 through 48, together with all Common Area, South Field Est 1 (SG), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: SG-SFE-1-1 through SG-SFE-1-12  
PARCEL: SG-SFE-1-27 through SG-SFE-1-48

All of Lots 13 through 26 and Lots 49 through 54, together with all Common Area, South Field Est 2 (SG), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: SG-SFE-2-13 through SG-SFE-2-26  
PARCEL: SG-SFE-2-49 through SG-SFE-2-54

All of Lots 55 through 92, together with all Common Area, South Field Est 3 (SG), according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

PARCEL: SG-SFE-3-55 through SG-SFE-3-92