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DAVIS COUNTY, UTAH RECORDER  
6/3/2019 1:25:00 PM  
FEE \$118.00 Pgs: 13  
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**2019 AMENDMENT**

**TO THE**

**SECOND AMENDED & RESTATED**

**DECLARATION**

**OF**

**COVENANTS, CONDITIONS AND**

**RESTRICTIONS**

**FOR**

**THE COTTAGES AT CHAPEL PARK**

April 2019

**2019 AMENDMENT  
TO THE  
SECOND AMENDED & RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE COTTAGES AT CHAPEL PARK**

This 2019 Amendment to the Second Amended & Restated Declaration of Covenants, Conditions and Restrictions for The Cottages at Chapel Park ("Amendment") is made and executed on the date shown below by the members of the Cottages at Chapel Park Owners Association ("Association"), a Utah nonprofit corporation.

**RECITALS**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for the Cottages at Chapel Park ("2011 Declaration") was recorded in the office of the Davis County Recorder on July 11, 2011, as entry number 2606535; and

WHEREAS, the Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Cottages at Chapel Park ("April, 2012 Declaration") was recorded in the office of the Davis County Recorder on April 12, 2012, as entry number 2653176; and

WHEREAS, the Second Amended & Restated Declaration of Covenants, Conditions and Restrictions for the Cottages at Chapel Park ("Restated Declaration"), which was recorded in the office of the Davis County Recorder on August 27, 2012, as entry number 2682765; and

WHEREAS, the 2011 Declaration, the April, 2012 Declaration, and the Restated Declaration shall collectively be referred to as the "Governing Documents" herein; and

WHEREAS, the members of the Association desire to adopt the this Amendment and record the same against the real property located in Davis County, Utah, known as the Cottages at Chapel Park Subdivision and more fully described on Exhibit "A" attached hereto; and

WHEREAS, the Lot owners within the Association desire to preserve and enhance the quality of life at the Cottages at Chapel Park and have purchased their Lots for the purpose of using their Lot as an owner occupied single family residence; and

WHEREAS, the Lot owners have purchased a Lot in a community association because they

understand the community association living concept was developed to create a real property interest wherein individuals could own their own real property and enjoy the benefits and stability that accompany ownership of real property, both individually and as a neighborhood, as well as the security that comes to a high density community association by having residents who are owners and are committed to the long-term welfare and good of the community; and

WHEREAS, as it is the intent of the Cottages at Chapel Park to provide housing primarily for persons fifty-five (55) years of age and older and to comply with the provisions of the Housing For Older Persons Act of 1995 (HOPA), which outlines the qualifications for housing for older persons exemption established by the Fair Housing Act, found in both state and federal regulations; and

NOW THEREFORE, to accomplish the Lot owners' objectives, the following amendment is adopted. If there is any conflict between this Amendment and any provision of the Governing Documents, or any amendments to the Governing Documents, this Amendment shall prevail. This Amendment shall become effective upon recording. The words defined in Article I of the Restated Declaration shall have the same meaning when used herein unless the context clearly requires a different meaning. The Restated Declaration and the Governing Documents are amended as follows:

## ARTICLE I RENTAL RESTRICTIONS

- 1.1 **No Rentals.** No Lots within the Cottages at Chapel Park subdivision may be leased unless a Lot Owner qualifies for one of the exceptions listed in Section 1.2 below. Any leasing based on the exception set forth in Section 1.2 must be consistent with the provisions of this Amendment.
- 1.2 **Exceptions.** The restrictions herein shall not apply:
- (a) To a Lot Owner who is a member of the military and is temporarily deployed out of the State of Utah, and by reason of the temporary deployment is required to move from the Lot during the period of temporary military deployment. The Lot Owner who is temporarily deployed may lease their Lot during the period of temporary military deployment. However, if the Lot Owner moves from the Lot due to a permanent change of station (PCS) the rental restrictions shall continue to apply to that Lot and Lot Owner;
  - (b) To a parent, grandparent, or child who is a Lot Owner and leases their Lot to a family member who is a parent, grandparent, child, grandchild, or sibling of the Owner;
  - (c) To a Lot Owner who moves for a period of less than two years at least 40 miles away from the Lot by reason of being relocated by the Lot Owner's employer, if relocation of the Owner is necessary for purposes of employment;
  - (d) To a Lot Owner who moves at least 40 miles away from their Lot due to temporary (less than three years) humanitarian, religious or charitable activity or service and

leases their Lot with the intent to return to occupy the Lot when the humanitarian, religious or charitable service has concluded;

- (c) To a Lot owned by an entity that is occupied by an individual who has voting rights under the entity's organizing documents; and has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or
- (f) To a Lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:
  - i. the estate of a current resident of the lot; or
  - ii. the parent, child, or sibling of the current resident of the lot;

1.3 **Grandfather Clause.** Those Lots that are occupied by non-Lot Owners at the time this Amendment is recorded at the Davis County Recorder's Office may continue to be occupied by non-Lot Owners until the Lot Owner sells, conveys or transfers the Lot to another party, occupies the Lot, or 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, transfers the Lot to another party or occupies the Lot.

1.4 **Transfer of Lot.** For purposes of section 1.3, a transfer occurs when one or more of the following occur:

- (a) there is a conveyance, sale, or other transfer of a Lot by deed;
- (b) the granting of a life estate in the Lot; or
- (c) 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.

1.5 **No Partial or Short-Term Rentals.** Renting or Leasing less than 100% of the Lot is Prohibited. An Owner may not rent or lease a portion of a Lot, or an individual room, on a short-term basis, even if the Owner continues to occupy a portion of his or her Lot. No short-term, Airbnb, or overnight type rentals are permitted within the Project. Even when renting a Dwelling under one of the exceptions outlined in 1.2, all short-term rentals of less than 30-days are prohibited within the Project. Nothing contained in this Article I shall be read to permit short-term rentals at any time..

1.6 **Rent Defined.** As used herein, "Rent" (or any variation of the word) of "Lease" (or any variation of the word) means a Lot that is owned by an Owner that is Occupied by one or more Non-Owners while no Owner occupies the lot as the Owner's primary residence. The payment of remuneration to an Owner by a Non-Owner shall not be required to establish that the Non-Owner is leasing a Lot. Failure of a Non-Owner to pay remuneration of any kind to the Owner shall not be considered when determining if a Lot is a Rental Lot. The terms "Rent" and "Lease" shall also include short term or overnight, Airbnb style rentals, even if an Owner continues to occupy the Lot while renting out a portion of the Lot.

1.7 **Non-Owner Defined.** As used herein, "Non-Owner" or "Non-Lot Owner" means an

individual or entity that does not hold any interest in the title to the Lot as shown on the records of the Davis County Recorder.

- 1.8 **Occupied Defined.** As used herein, "Occupied" means to reside in the Lot for 14 or more days in any thirty (30) day period. A Lot is deemed to be Occupied by Non-Owner if the Lot is Occupied by an individual(s) other than the Lot Owner and the Owner is not occupying the Lot as the Owner's primary residence.
- 1.9 **Single Family Defined.** "Single Family" means any number of individuals, related by blood, marriage, or adoption, and domestic servants for such family, or a group of not more than three persons who are not so related, living together as a single nonprofit housekeeping Lot.
- 1.10 **Violation.** Any Lot Owner who violates this Article I shall be subject to a complaint for damages and/or an injunction and Order seeking to terminate the Lease in violation of this Article. If the Association is required to retain legal counsel to enforce this Article, with or without the filing of legal process, the violating Lot Owner shall be liable for all costs and expenses incurred by the Association, including but not limited to attorney fees and court costs incurred by the Association, in enforcing this Article.
- 1.11 **Guest Permitted.** Nothing herein shall prohibit an Owner from permitting a guest or visitor from residing in his or her Lot, while the Owner is present.

## ARTICLE II HOUSING FOR OLDER PERSONS ACT

- 2.1 **Association's Compliance with the Housing for Older Persons Act ("HOPA").**
  - (a) As of the date this Amendment is recorded in the office of the Davis County Recorder, the Cottages at Chapel Park will operate its community for occupancy by persons fifty-five (55) years of age or older. At least eighty (80%) percent of the occupied Dwellings are currently occupied by at least one person who is fifty-five (55) years of age or older. This reflects the Cottages at Chapel Park intention to comply with provisions of HOPA, which outlines the requirements for qualification for housing for older persons exemption established by the Fair Housing Act. (§100.304 of HOPA).
  - (b) Once an over 55 years of age community meets these requirements, it may establish age restrictions in compliance with state law. These restrictions can be more strict than the HOPA requirements which outline the qualifications for the exemptions established by the Fair Housing Act (§ 100.304 of HOPA).
  - (c) As a part of the Association's intent to operate as housing designed for persons who are fifty-five (55) years or older, the Association shall advertise in a manner designed to attract such prospective residents who are also fifty-five (55) years or older. All sales proposals and contracts shall provide notice of the Association's intent to operate housing primarily designed for persons fifty-five (55) years or older. The Association will publish and adhere to these policies demonstrating its intention

to qualify for this exemption, including compliance with all rules issued by the State of Utah or HUD for the verification of occupancy in the community. (§100.304 of HOPA).

- (d) As a part of the Association's intention to comply with the individual provisions of HOPA, any provision in the Governing Documents, the Restated Declaration, this Amendment, the community rules, or bylaws now existing or hereafter adopted in violation or contradiction to the provisions of state and federal law are void and without effect.

## 2.2 Use of Dwellings and Minimum Age Requirement.

- (a) The Dwellings in the Association may only be occupied for single family residential purposes and are restricted to such use. As used herein, "single family" means (a) any number of individuals, related by marriage or adoption, within three generations by blood, or (b) a group of not more than three persons who are not so related, living together as a single non-profit housekeeping unit.
- (b) No more than three (3) persons may occupy each Dwelling unless all such persons are a family, and related by blood, marriage, or adoption. An exception to this rule is a care giver.
- (c) For purposes of this Article II, a person is a "resident" (or any other form of the word, including "reside" or "residing") when he or she stays in, resides in, occupies, or lives in a Dwelling for fifteen (15) or more days in any thirty (30) day period. A person is deemed to have resided in a Dwelling when a person (1) sleeps in the Dwelling, and (2) the Dwelling is otherwise considered his or her primary place of abode.
- (d) As a community designed primarily for persons who are fifty-five (55) years of age or older, HOPA requires that at least eighty (80%) percent of the Dwellings being occupied by at least one person who is fifty-five (55) years of age or older. However, the Cottages at Chapel Park has established a requirement in addition to HOPA's requirements, that ninety percent (90%) of all Dwellings must be occupied by at least one person who is fifty-five (55) years of age or older.
- (e) No persons under the age of eighteen (18) years of age are permitted to reside within the Cottages at Chapel Park for more than thirty (30) days in any six month period. As an exception to this rule, the Board shall have authority to permit an individual under the age of eighteen (18) to reside in a Dwelling for more than thirty (30) days in any six month period if the Board determines that an Owner is facing an extreme hardship that is outside of the Owner's control. The Board shall not grant an exception for more than six (6) months.
- (f) Any contracts, leases, or proposals to sell or rent a Dwelling within the Cottages at Chapel Park shall clearly state and give notice that the Cottages at Chapel Park is a community designed as an over fifty-five (55) years of age community and that no

persons under the age of eighteen (18) may reside in a Dwelling.

- (g) The Cottages at Chapel Park, by maintaining ninety (90%) percent of the Dwellings as an over fifty-five (55) year old community, may allow the remaining ten (10%) percent of the occupied Dwellings to be occupied by persons under fifty-five (55) years of age.
- (h) Individuals residing in a Dwelling as a reasonable accommodation to a resident with a disability (as defined under the Americans with Disability Act (ADA)), shall not be counted in meeting the 90% requirements nor be included in determining the minimum age requirement. This exemption shall ensure that Association does not violate the ADA or the HOPA requirements by authorizing reasonable accommodations for residents who, because of a disability, require an attendant, including family members under the age of 18, to reside in their unit in order for that person to benefit from the ownership of his or her unit.

### **2.3 Good Faith Defense Against Money Damages.**

- (a) The Association, in seeking to rely on HOPA's good faith defense, finds that the Board or individuals residing at the Association shall not be held personally liable for monetary damages where such person(s) acted in good faith in belief that the Association qualifies for a housing primarily for older persons exemption. (§100.38 of HOPA).
- (b) The Association has through authorized representatives asserted in writing that it qualifies as housing for older persons and thus, individuals of the Association shall qualify for this good faith belief defense.

### **2.4 Verification of Occupancy.**

- (a) By virtue of being a 55-years of age or older community, ninety (90%) of the Dwellings must be occupied by at least one person fifty-five (55) years of age or older. In determining compliance with this requirement, the residents living in the Dwelling will be counted, and not only Owners.
- (b) The Association will comply with federal and state regulations through use of reliable surveys and affidavits. The following documents are considered reliable for age verification of Dwelling occupants and may be shown by the following:
  - i. Birth certificate, drivers license, passport, immigration card, military identification, or any other state, local or national documentation, provided it contains current information about the Dwelling occupants age or birth.
  - ii. A self certification in the application affidavit, or other document signed by an adult member of the household asserting that at least one of the Dwelling occupants is 55 years of age or older will also satisfy age verification under this subject.
  - iii. The Association may, if it has sufficient evidence, consider the household

- to be occupied by at least one person who is 55 years or older.
- iv. Statements made under penalty of perjury from third party individuals who have knowledge of the age of the Dwelling occupants may be used when the household itself refuses to cooperate by providing age verification. Other information, such as statements indicating age in prior applications may also be acceptable. The Association may base its decision for age verification on government documents such as census data. (§100.307 of HOPA).
- (c) The Association will survey its current list of residents once every two years, in March of odd years, to ensure that at least ninety (90%) percent of the Dwellings contain at least one resident who is fifty-five (55) years of age or older. The remaining ten (10%) percent of the occupied Dwellings are not required to contain at least one person over the age of fifty-five (55), but must comply with the minimum age requirement, which is that no persons under the age of 18 may occupy a Dwelling (subject to the exceptions in this Article II). (§100.307 (f) of HOPA).
- (d) The Association will retain the records of the survey so long as it intends to maintain its age exempt status. (§100.307 of HOPA).
- (e) As a result of the Association adopting these rules, and in order to maintain an over fifty-five (55) year old community, the Association is authorized and empowered to bring or take legal action as the result of any violations or non-compliance with any of the above age restrictive rules found in this Amendment or in the community rules. The Association is entitled to evict any residents who resides in a Dwelling in violation of the HOPA requirements, or to void any contract for sale, and to collect from the offending party any and all costs and fees, including reasonable attorney fees, from the party who seeks to sell or lease a Dwelling or who seeks to purchase or lease a Dwelling in violation of any of the provision herein or in violation of any of the provisions of HOPA. Any contracts or sales agreements entered into in violation of the age restrictive requirements are also void and may result in legal action and eviction from the Association.
- (f) Any Dwelling Owner, resident or any other person who violates the provisions of this Article II shall be responsible to pay to the Association the attorney fees and costs incurred by the Association in enforcing the provisions herein, even if the attorney fees or costs do not result in the filing of legal proceedings, or are limited to letters, research, phone calls and consultations. Such fees shall be added on to and become part of the common expense owed by the Dwelling Owner or resident who has violated the provisions herein.
- 2.5 **Selling and Leasing Lots.** Prior to any Dwelling owner selling or leasing his or her Dwelling to a party under the age of 55, an Owner shall first contact the Board, in writing, to obtain written authorization from the Board to sell or lease their Lot to a person under the age of 55. To maintain the 90% HOPA standard, the Board shall not grant any Owner the right to sell or lease a Dwelling to any party if that transaction will result in the Association falling to meet the requirement that at least 90% of all dwelling be occupied by an individual



who is 55 years of age or older. In order to protect the 90% requirement, no Dwelling may change from a Dwelling that is occupied by an individual who is 55 years of age or older, to a Dwelling that is not occupied by an individual who is 55 years of age or older, unless that Dwelling owner first obtains written consent from the Board.

- 2.6 **No Authorization to Lease.** Nothing contained herein shall be construed as authorization for a Dwelling to be occupied by or resided in by a non-Dwelling Owner.
- 2.7 **Severable.** The provisions of this Article II shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

### ARTICLE III RULES AND FINES

- 3.1 **Rule Adoption.** As authorized in § 57-8a-217 of the Utah Community Association Act, the Board is authorized to adopt policies and/or rules and regulations governing the use and maintenance of the Project and to amend such policies and/or rules and regulations by a vote of the Board.
- 3.2 **Fines.** As authorized in § 57-8a of the Utah Community Association Act, the Association is also permitted to assess fines against owners who violate the Association's governing documents. The Board must give notice to an owner and follow the other requirements outlined in U.C.A. § 57-8a-208 before assessing a fine against any Owner.

### ARTICLE IV COLLECTION POLICY

WHEREAS, the timely receipt by the Association of assessments is critical to the proper functioning of the Association and the receipt of such funds is necessary for the Board to fulfill its obligations to the community as established in the Restated Declaration; and

WHEREAS, from time to time owners may become delinquent in the payment of their assessments and fail to respond to the demands of the Association to bring their account current; and

WHEREAS, it is in the Association's best interest to adopt a uniform and systematic policy and procedure for the collection of delinquent assessments.

NOW THEREFORE, BE IT RESOLVED THAT the following is the Association's collection policy:

- 4.1 **Due Date.** Assessments shall be paid monthly and are due on the first day of each month.
- 4.2 **Past Due.** All assessments (of whatever nature) shall be considered delinquent if not paid within thirty (30) days of the due date ("Delinquency Date").
- 4.3 **Late Fee.** Any assessment not paid as of the "Delinquency Date" shall be assessed a late fee

of Twenty-five Dollar (\$25.00) for each month the assessment is not paid. The amount of the late fee may be increased by Board resolution without the need to record an amendment to the Restated Declaration.

- 4.4 **Interest.** All unpaid assessments and late fees shall be assessed interest at the rate of Fifteen percent (15%) per annum, assessed as of the Due Date if not paid by the Delinquency Date. The Board may choose to use simple interest or compounding interest.
- 4.5 **Application of Payments.** Payments received from owners shall be applied first to accrued interest, then to late fees, then to costs of collection (including attorney fees), and then to the past due assessment.
- 4.6 **Association's Collection Action.** The Board shall send to owners who have not paid an assessment by the Delinquency Date, a notice informing the owner that their assessment is past due. This notice may be sent at any time after the Delinquency Date to the address on file with the Association and shall state the amount past due and make demand for payment.
- 4.7 **Legal Action.** Any owner who has not paid an assessment within sixty (60) days of the Due Date, or who is otherwise sixty (60) days or more delinquent in the payment of any assessment (including late fees, interest and any other collection expense authorized in the Restated Declaration or in this Amendment) shall be turned over to the Association's attorney for collection of the delinquent assessments.
- 4.8 **Board Variance.** If at any time the Association (through the Board or the management agent) determines it is in the Association's best interest to initiate legal action or any other collection effort on a time-frame that is shorter than outlined above, the Association may do so. The Association will seek to follow the time-frames set forth herein, but if an owner has a history of delinquent payments, or if the Association is of the opinion that delaying collection action may reduce in any manner the prospect of the Association successfully collecting the full assessment owed or may cause the Association's secured position to be negatively impacted, the Association is not bound or required to comply with this collection policy, but may avail itself to any of the collection options set forth in the Declaration or in Utah law.
- 4.9 **Payment.** Once a delinquent owner's account has been sent to the Association's law firm for collection, all payments and negotiations are to be made through the law firm.

## ARTICLE V ARCHITECTURAL RESTRICTIONS

- 5.1 **Enforcement of Architectural Restrictions.** The Lot Owners recognize that, over the past several years, multiple owners have violated the architectural restrictions contained in the Restated Declaration (including, but not limited to, the restrictions in Articles XVIII and XIX of the Restated Declaration). Despite any failure to enforce the architectural restrictions in the past, the Association shall continue to have authority to enforce all restrictions contained in the Restated Declaration.

- 5.2 **Grandfather Clause.** If any Owner violated any provision contained Articles XVIII and XIX of the Restated Declaration prior to April 15, 2019, the Association hereby waives any of those violations and grandfather's any violations of Articles XVIII and XIX that may exist within the Project as of April 15, 2019. This Article V shall not be construed to give any owner permission to violate any restrictions contained in Articles XVIII and XIX in the future.

**ARTICLE VI  
REPEAL OF CONFLICTING LANGUAGE**

- 6.1 **Repeal.** If any language or requirements contained in the Restated Declaration, or any other of the Governing Documents contradicts or violates any provision contained in this Amendment, such provisions are hereby repealed and shall no longer be enforceable.
- 6.2 **Severable.** The provisions of this Amendment shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

*[Certification on Next Page]*

**CERTIFICATION**

It is hereby certified that Lot Owners holding more than 67% of the undivided ownership interest in the common areas and facilities have voted to approve these amendments.

IN WITNESS WHEREOF, we have affixed our signatures this 31 day of MAY, 2019.

By *Alan L. Palko*  
President

STATE OF UTAH )

:ss

COUNTY OF DAVIS )

On this 31 day of May, 2019, personally appeared before me Steven Palko who, being by me duly sworn, did say that she is President of the Cottages at Chapel Park Owners Association board of directors and that the within and foregoing instrument was signed in behalf of said board of directors and she duly acknowledged to me she executed the same.



*Cindi Lamph*  
Notary Public

## Exhibit "A"

**Legal Descriptions  
for  
The Cottages at Capel Park**

ALL OF LOTS 101 THROUGH 108, COTTAGES AT CHAPEL PARK - PHASE 1, LAYTON CITY, DAVIS COUNTY, UTAH  
[11-683-0101 THROUGH 11-683-0108]

ALL OF LOTS 201 THROUGH 214, COTTAGES AT CHAPEL PARK - PHASE 2, LAYTON CITY, DAVIS COUNTY, UTAH  
[11-684-0201 THROUGH 11-684-0214]

ALL OF LOTS 301 THROUGH 306, COTTAGES AT CHAPEL PARK - PHASE 3, LAYTON CITY, DAVIS COUNTY, UTAH  
[11-699-0301 THROUGH 11-699-0306]

ALL OF LOTS 401 THROUGH 409, COTTAGES AT CHAPEL PARK - PHASE 4, LAYTON CITY, DAVIS COUNTY, UTAH  
[11-703-0401 THROUGH 11-703-0409]

ALL OF LOTS 501 THROUGH 512, COTTAGES AT CHAPEL PARK - PHASE 5, LAYTON CITY, DAVIS COUNTY, UTAH  
[11-715-0501 THROUGH 11-715-0512]