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Craig Jacobsen, Esq.  
498 N. Kays Drive, Suite 230  
Kaysville, Utah 84037

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

For The Cottages at Kays Creek,  
a PRUD Subdivision and Adult Community  
Layton City, Davis County, Utah

11-820-0101 → 0131

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for the Cottages at Kays Creek, a PRUD subdivision and adult community (the "Declaration") is made and executed on this 29<sup>th</sup> day of October, 2017, by Capital Reef Management, LLC, a Utah limited liability company (hereinafter "Declarant").

RECITALS:

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

B. Declarant is the owner of certain real property located at approximately 1900 West 1000 South, Layton City, in Davis County, Utah and more particularly described as follows (the "Property"):

PART OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, U.S. SURVEY. DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF 1000 SOUTH STREET, SAID POINT BEING N89°57'40"E 1597.53 FEET AND S00°02'20"E 32.30 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 31; THENCE N89°57'20"E ALONG THE SOUTHERLY RIGHT OF WAY LINE OF 1000 SOUTH STREET, 310.46 FEET; THENCE S00°01'18"W 993.12 FEET; THENCE N61°30'02"W 5.69 FEET; THENCE S00°00'10"W 217.90 FEET TO THE NORTHERLY LINE OF THE VILLAS AT KAY CREEK; THENCE N61°30'02"W ALONG SAID NORTHERLY LINE, 0.27 FEET TO THE WESTERLY LINE OF VILLAS AT KAY CREEK; THENCE S00°00'05"E ALONG SAID WESTERLY LINE, 354.03 FEET; THENCE N39°20'40"W 529.15 FEET; THENCE N50°39'20"E 112.00 FEET; THENCE N39°20'40"W 135.16 FEET; THENCE N50°39'20"E 129.03 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 171.00 FEET, AN ARC LENGTH OF 151.12 FEET, A DELTA ANGLE OF 50°38'02", A CHORD BEARING OF N25°20'19"E, AND A CHORD LENGTH OF 146.25 FEET; THENCE N89°55'28"W 133.50 FEET; THENCE N00°04'32"E 275.29 FEET; THENCE N00°36'20"E 72.16 FEET; THENCE N00°02'30"W 415.61 FEET TO THE POINT OF BEGINNING.

CONTAINING 406,681 SQUARE FEET OR 9.336 ACRES

C. The project is intended primarily to be operated as housing for persons 55 years of age or older, pursuant to the Fair Housing Act and Housing for Older Persons Act of 1995, with over 80% of the Dwellings being occupied by at least one person 55 years of age or older. The Board must approve all new owners so as to ensure compliance with the above-stated ratio with respect to the desired age restrictions, which approval requires that the new Owner or occupant certify that at least one person owning or occupying the Dwelling is 55 years of age or older. Absent express approval of the Board, no persons under the age of 18 are permitted to visit for a period longer than one month. Nevertheless, the Board reserves the right to make, in its sole discretion, limited exceptions to the one-month limit for extenuating circumstances.

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

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

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

G. Declarant declares that the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with each Lot located on the Property, including any additions

thereto, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, and its successors in interest; and may be enforced by any Owner and its successors in interest and by the Association.

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

## **COVENANTS, CONDITIONS AND RESTRICTIONS**

### **DEFINITIONS**

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

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

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

(C) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, special assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

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

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

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

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

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

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

(J) "Common Areas" shall mean all property, including any and all Detention Basin(s) designated on the recorded Plat(s), including any structures related to the operation or maintenance of any such Detention Basin(s), as being intended ultimately to be owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all of the easements appurtenant thereto. The Association shall maintain the Common Areas.

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

(L) "Declarant" shall mean and refer to Capital Reef Management, LLC, a Utah limited liability company, and to its successors or assigns.

(M) "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for the Cottages at Kays Creek, a PRUD Subdivision and Adult Community, together with any subsequent amendments or additions.

(N) "Dwelling" shall mean the residence built or to be built on any of the numbered building pads/Lots in the plat, including the attached garage.

(O) "Family" shall mean one household of persons related to each other by blood, adoption or marriage and not more than three persons in a two-bedroom dwelling and not more than four persons in a three-bedroom dwelling.

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

(Q) "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, dwellings, garages, walkways,

retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

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

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

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

(U) "Owner" shall mean the person or persons having title to any Lot. Owner shall mean the person holding fee simple title, including the Declarant, Declarant's assignee, Ovation Homes, LLC, and any buyer intending to inhabit a Dwelling. Owner does not include any person or entity holding title for purposes of securing performance of any obligations, including the trustee and/or beneficiary under a deed of trust or mortgagee under a mortgage.

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

(W) "Plat(s)" shall mean an official and recorded plat of The Cottages at Kays Creek, a PRUD Subdivision and Adult Community, when recorded, as approved by the City and recorded in the office of the Davis County Recorder, as it may be amended from time to time.

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

(Y) "Rules" mean any instrument adopted by the Board to govern the Association.

(Z) "Subdivision" shall mean all of The Cottages at Kays Creek, a PRUD Subdivision and Adult Community and all Lots, and other property within the Subdivision as shown on the Plat(s) covering the Property.

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

## ARTICLE I

### EASEMENTS

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

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

- (a) The right of the Association to govern by Rules the use of the Common Areas for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;
- (b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.
- (c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service; and
- (d) The right of the Association to dedicate or transfer any part of the Common Areas to any third party for such purposes and subject to such conditions as may be agreed to by unanimous vote of the Board.

1.3 Reservation of Access and Utility Easements. Declarant hereby reserves an easement for access, and utilities (including but not limited to electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under,

along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner so as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

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

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

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

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

- (b) For inspection, maintenance, repair and replacement of portions of the Common Areas;
- (c) For correction of emergency conditions on one or more Lots or on portions of the Common Areas;
- (d) For the purpose of enabling the Association, the Architectural Review Board or any other committees appointed by the Association or Board of Directors to exercise and discharge during reasonable hours their respective rights, powers and duties; and
- (e) For inspection during reasonable hours of the Lots and Common Area in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

## **ARTICLE II**

### **COMMON AREAS**

2.1 The Common Areas shall be and are hereby conveyed to the Association, a Utah non-profit corporation, subject to this Declaration and subject to appropriate access by governmental authorities, including all law enforcement and fire protection authorities.

2.2 The Common Areas consist of areas so designated on the recorded Plat(s), including the Detention Basin(s) designated on the recorded Plat(s), including any structures related to the operation or maintenance of any existing Detention Basin(s), together with any rights or way and utilities, as shown on the recorded Plat(s).

2.3 Notwithstanding anything contained in this Declaration to the contrary, all Common Areas appurtenant to each recorded Plat of the Subdivision shall be conveyed to the Association upon recordation of a Plat depicting such Common Areas, reserving a perpetual, nonexclusive easement for ingress and egress and development access across, under, over and upon such roads, rights of way and utilities located on the Property to and from any real property both (i) owned by the Declarant and (ii) located adjacent to or in the same area of the Property. Said easement being reserved to the Declarant, its successors and assigns, is intended hereby to run with the land in perpetuity to burden the Property for the benefit of Declarant's real property located near or adjacent to the Property, subject to the payment of a pro rata share of the costs of maintenance thereof. The Association shall maintain the Common Areas.



### **ARTICLE III**

#### **OWNERS**

3.1 "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot which is part of the Property, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale and the contract specifically so provides, then the purchaser (rather than the fee Owner) will be considered the Owner.

### **ARTICLE IV**

#### **MEMBERSHIP**

4.1 One (1) membership in the Association shall be granted per Lot. No Owner, whether one (1) or more Persons, shall have more than one (1) membership in the Association per Lot owned. In the event the Owner of a Lot is more than one (1) Person, voting rights and rights of use and enjoyment shall be exercised as provided by this Declaration and as agreed amongst such interest holders. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the Bylaws. The membership rights of a Lot owned by a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association, subject to the provisions of this Declaration and the Bylaws. Notwithstanding the foregoing, the Declarant, as owner of the Undeveloped Land, shall also be granted voting rights as a Class "B" Member, as defined below.

### **ARTICLE V**

#### **VOTING**

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

- (A) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" membership shall be entitled to one (1) equal vote for each Lot in which they are an Owner. There shall be only one (1) vote per Lot. In any situation where an Owner is entitled personally to exercise the vote for his Lot and more than one (1) Person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determine among themselves and advise the Board, in writing, prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

- (B) Class "B". The Class "B" Member shall be Declarant, or its designated builder, Ovation Homes, LLC, when title to a Lot has been conveyed to Ovation Homes, LLC to construct a Dwelling. In all matters requiring a vote, the Class "B" membership(s) shall receive ten (10) votes for each recorded Lot owned by Declarant or Ovation Homes, LLC. The Class "B" membership shall also be entitled to appoint the members of the Board of Trustees during the Class "B" Control Period.

## **ARTICLE VI**

### **CONTROL PERIOD**

6.1 The Class "B" Member Control Period runs until the first of either (1) When the total number of votes for the Class B Member is less than the total number of votes for the Class A Members; or (2) When, at its discretion, the Class B member so determines.

## **ARTICLE VII**

### **HOMEOWNERS ASSOCIATION**

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

7.2 Enforcement Powers. The Association shall have the power to enforce these covenants by actions in law or equity brought in the name of the Association, and the power to retain professional services needed for the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record and/or foreclose liens against an Owner's Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) terminate an Owner's right to utilize Common Area and/or amenities; and (5) any other action or remedy allowed by the Governing Documents or Utah law. The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. However, this shall not limit the individual right of Owner(s) personally to enforce these covenants in their own name. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances or other matters of general application and interest to the Owners. Owners may appear individually. The Association shall have the authority to compromise claims and

litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Lot, an Owner or Owners to enforce the Governing Documents, and the Association prevails in a court of law, then the Association shall have the right to assess the costs of such litigation against the lot(s) or Owner(s) in question. The Board of Directors shall be afforded discretion to utilize its reasonable judgment to determine whether and how to impose fines, record liens, pursue legal action, otherwise enforce the Governing Documents and when/how to settle/compromise claims/disputes.

7.3 Maintenances of Yard, Common Areas by the Association. The Association shall (1) maintain the Common Areas, which generally include all landscaped areas within the Project and (2) maintain and operate the Detention Basin(s), to the extent owned by the Association, including any structures related to the operation or maintenance of the Detention Basin(s), and any other Common Areas shown on the Plat or acquired by the Association. The maintenance performed by the Association shall include the removal of snow from all sidewalks and driveways within the Subdivision and any other Common Area requiring snow removal. The costs for said snow removal shall be a common expense and borne by all Lot Owners. The Association shall have authority to assess its Members for the costs of said maintenance and for restoring any damage to any such property owned by the Association.

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

- (A) All such amounts shall be, constitute and remain: (1) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (2) the personal, joint and several obligations of the Owner(s) of such Lot when the assessment becomes due. No Owners may exempt themselves or their Lot from liability for payment of assessments by waiver of their rights in the Common Areas or by abandonment of their Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

- (B) The Association may levy special assessments for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by other assessments. No special assessment will be levied without approval of a majority of a quorum of the Owners at a special meeting called for that purpose or upon the written consent of a majority of Owners.
- (C) In addition, the Association may levy a special assessment (1) on every Lot, the Owner or occupant of which causes any damage to the Common Areas necessitating repairs, and (2) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken under the provisions of the Governing Documents. The aggregate amount of any such special assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lots(s) according to the cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work.
- (D) The Association may levy a reserve fund assessment, as set forth in this article.
- (E) The Association may levy other assessments or fees, as authorized by the Governing Documents.

7.5 Budget. The Board of Directors is authorized and required to adopt a budget for each fiscal year, no later than 30 days prior to the beginning of the fiscal year. The adopted budget shall be presented to the Owners at or before each annual meeting. The Board shall provide a copy of the approved budget to all Owners within 30 days after the adoption of the budget or adoption of a revised budget. The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously anticipated. The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories. Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments. The Association shall not borrow money without the approval of at least 67% of a quorum of Owners who attend a meeting to vote on the issue or 67% of all Owners if the vote is completed by written ballot provided to all Owners.

7.6 Reserve Fund Analysis. Following the Class B Control Period, the Board of Directors shall cause a reserve analysis to be conducted no less frequently than every

five (5) years to analyze the cost of repairing, replacing or restoring Common Area that has a useful life of three years or more and a remaining useful life of less than 30 years. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

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

7.7 Reserve Fund Account Creation. Based on the results of the reserve analysis, the Board shall create a reserve fund account that is separate and distinct from the Association's general account, into which the Board shall cause to be deposited those Common Area assessments collected from Owners. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners, which assessment shall be collected on the same terms and conditions as other common expenses, in an amount sufficient to fund the reserve fund according to the findings of the reserve analysis.

7.8 Transfer Fee. The Board shall have power to levy a one-time transfer fee when a change in ownership of a Lot occurs in an amount to be determined by the Board, but no more than a maximum fee of \$450.00. No transfer fee may be assessed on a newly constructed Dwelling that is being conveyed when the Dwelling has not previously been occupied.

7.9 Date of Commencement of Assessments on Improved Lots. The assessments provided for herein shall commence as to each fully improved Lot (having received a certificate of occupancy) on the first day of the first month following: (i) the date of conveyance of the Lot to the Owner; or (ii) the effective date of the first budget, whichever is later. Assessments shall be due and payable in a manner and on a schedule as the Board may provide.

7.10 Assessments on Unimproved Lots. There shall be no assessments on unimproved Lots.

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

7.12 Hearing Process. The Board shall have authority to create a reasonable hearing process applicable when the Association takes an adverse action related to any particular Owner or Lot.

7.13 Association Rules. The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things, (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; (e) other matters concerning the use and enjoyment of the Property and the conduct of residents; and additional architectural guidelines, as deemed necessary by the Board. Any rules promulgated by the Board may not contradict the Governing Documents. All rules adopted by the Board shall be provided to all Owners within thirty (30) days of their adoption.

7.14 Statement of Account. Any Owner may request the Association to provide a statement of his account to any lender or prospective buyer of that Lot showing the assessments to be paid in full, or the amount of any past due assessments. The Buyer or Lender for whom such statement was prepared will be entitled to rely on its accuracy, and will not be held liable for any amounts now shown on the statement. The Association may charge a fee, not to exceed \$50.00 for providing such statements.

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

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

7.17 Election. The elections for members of the Board of Trustees, or any other matter which is presented to the Association, each Owner, including the Declarant, shall be entitled to cast one vote for each Lot he or she owns. In the case of a Lot with multiple Owners, the Owners will agree among themselves how the vote applicable to that Lot will be cast, and if no agreement can be reached, no vote will be received from that Lot. Any of the multiple Owners appearing at the meeting in person or by proxy is deemed to be acting with proper authority for all the other Owners of that Lot unless the other Owners are also present or have filed written objections to that Owner's representation of the other Owners of the Lot in question.

7.18 Notice of Election, Notice of Meeting. Notice of any meeting for the election of members to the Board of Trustees or for any other purpose shall be sent to

the Owners at their last known address provided to the Board or Declarant. If an Owner has failed to provide such information, there shall be no obligation on the part of the Board or the Declarant to search for a contact address. Notice will be mailed not less than 21 days, nor more than 60 days in advance of the meeting. Any notice will state the purpose of the meeting, and the time, date and place of the meeting. At any such meeting, a quorum will exist if 51% of the voting rights are present. Those present at the meeting may vote to continue the meeting to any date within 30 days. Notice of the continued meeting will be given by mail, and at the subsequent continued meeting, a quorum will consist of those members present. The Chairman of the Board will give notice of any meetings, and will chair meetings of the Owners.

7.19 Special Meeting. When circumstances warrant, a special meeting of the Owners may be called by the Board of Trustees or by 10% of the Lot owners in the Subdivision. No business may be conducted at a special meeting without a full quorum of the 51% voting rights of the Lots being present in person or by written proxy.

7.20 Number of Board, Officers, Term of Office. Unless otherwise provided in the By-Laws of the Association, there shall be three members of the Board of Directors, who will serve for terms of three years, or until their successors have been elected. At such time as the first Board of Directors is named, which may be by appointment by the Declarant or by election from among the Members, the Trustees will draw lots to divide themselves into terms of one, two and three years. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association. The Declarant may appoint not only the first Board of Directors, but also the officers, who shall be Board members and shall consist of a President, Vice-President and Secretary/Treasurer. Once appointed or elected, that officer shall serve in that capacity for the duration of his/her term as a Director.

7.21 Independent Accountant. The Association may retain the services of an independent accountant to assist the Board of Trustees and Officers to maintain accurate financial records of the Association.

7.22 Professional Management. The Board or Declarant may also retain the services of a professional property manager to assist in any and all aspects of management that otherwise would be performed by the Board or Declarant.

## **ARTICLE VIII**

### **NON-PAYMENT OF ASSESSMENTS AND REMEDIES**

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

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

8.3 Lien. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure.

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

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

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

8.7 Appointment of Trustee. The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a- 4022 to Craig T. Jacobsen, Esq. a licensed member of the Utah State Bar, or his duly qualified designee, with power of sale, any Lot and all improvements thereon for the purpose of securing payment of



Assessments under the terms of this Declaration.

## **ARTICLE IX**

### **SUBORDINATION OF THE LIEN TO INSTITUTIONAL FIRST AND SECOND MORTGAGES**

9.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of an institutional first or second Mortgage, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee holding an institutional first or second Mortgage of record or other purchaser of a Lot obtains title pursuant to remedies under the Mortgage, its successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

## **ARTICLE X**

### **USE RESTRICTIONS AND MAINTENANCE OBLIGATIONS**

10.1 Single Family. All Lots shall be used only for single-family residential purposes, and no more than one Dwelling shall be constructed on any Lot. "Single Family" shall mean one household of persons related to each other by blood, adoption or marriage and not more than three persons in a two bedroom Dwelling and four persons in a three bedroom Dwelling.

10.2 Owner Occupied. With the exception of up to four Lots owned by the Declarant or Declarant's assignee. All Dwellings are intended to be Owner occupied and leasing, renting or occupation of Dwellings by non-Owner occupants shall be prohibited. Declarant or its assignee may continue to own up to four Lots for the express purpose of leasing the Dwellings to tenants, but each Dwelling leased must have one tenant who is at least 55 years of age, so as to comply with for Older Persons Act of 1995 and the intent of this Declaration. If and when Declarant or its assignee has conveyed any of its four

leasable Dwellings, such Dwellings shall be restricted to Owner occupation, the same as all other Dwellings within the Subdivision. Notwithstanding the foregoing restrictions, the Board of Directors, in its sole discretion, may make exceptions in the following circumstances:

- (A) A Dwelling owned by a person serving in the military may be non-Owner occupied for period in which the Owner is deployed;
- (B) A Dwelling to be occupied by an immediate family member of the Owner of the Dwelling;
- (C) A Dwelling whose Owner (i) moves due to temporary (three years or less) humanitarian, religious, or charitable activity or service, and (ii) has the intent to return to occupy the Dwelling when the service has concluded;
- (D) A Dwelling whose Owner was relocated by the Owner's employer for a period of not more than two years;
- (E) A Dwelling owned by an Owner who uses the Dwelling as a primary residence and due to health reasons will be living in an assisted living, rehabilitation, or other long-term healthcare facility for one year or more;
- (F) A Dwelling owned by a trust or other entity created for estate planning purposes, when occupied by a person intended to benefit from the estate planning vehicle; and
- (G) Other limited exceptions for extenuating circumstances, as determined by the Board of Directors, in its sole discretion.

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

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

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

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

10.7 Livestock, Poultry and Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's control; provided further that no more than two such household pets shall be kept on any lot. "Control," for the above purposes shall mean that the animal is kept on a leash or lead, within a vehicle, within the residence of the owner, or within fenced confines on the premises of the owner. Fierce, dangerous or vicious animals or animals that cause a nuisance by barking or other offensive activity shall not be permitted. The Board of Directors is empowered to order the removal of any animal that is deemed to be dangerous or vicious, and may levy a recurring penalty upon an Owner who does not comply with such order.

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

10.9 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot, including the creation or loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

10.10 Automobiles and Other Vehicles. No automobiles, trailers, boats, R.V.'s, or other vehicles are to be parked or stored on the front street, side street, driveway, or anywhere else on the Lot. With the exception of a single car that may remain in the driveway, any other vehicle must be stored within the garage on the Lot.

10.11 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during construction of any Dwelling unit or addition); open storage or construction equipment; accumulations of construction debris or waste; household refuse or garbage except as

stored in tight containers in an enclosure such as a garage; lawn or garden furniture except during the season of use; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that is visible from any other Lot or any public street.

10.12 No Annoying Lights. Other than lighting incorporated into the final plat or a governing development agreement, outdoor lighting shall be subject to approval by the Architectural Committee, and no outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by the City.

10.13 No Annoying Sounds. No speakers, windbells, windchimes, or other noise making devices may be used or maintained on any Lot which create noise that might reasonably be expected to be unreasonably or annoyingly loud to adjoining Lots, except for security or fire alarms.

10.14 No Fuel Storage. No fuel oil, gasoline, propane (except one propane tank that is part of an outdoor gas barbecue grill), or other non-portable fuel storage tanks may be installed or maintained on the property. Dwellings shall be heated with natural gas, solar, or electric heat. Propane or other such containerized fuels may be used only during construction of the Dwelling until the permanent heating system is installed and operational.

10.15 No Transient Lodging Uses. The Lots are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding house, a bed and breakfast, or other uses for providing accommodations to travelers. No leases of any Dwelling on a Lot shall be for a period of less than 30 days. No Dwelling on a Lot shall be subjected to time interval ownership.

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

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

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

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

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

10.21 Drainage. No Owner shall alter the direction of natural drainage from his/her Lot without first using reasonable means to dissipate the flow energy.

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

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

10.24 Construction. No Dwelling or structure shall be permitted to remain incomplete for a period in excess of one (1) year from the date of commencement of construction unless any delays are approved in writing by the Architectural Review Board. Declarant is exempt from this restriction.

10.25 Duty to Maintain. It is the obligation of each Owner to maintain his Lot at all times in order to preserve and enhance the enjoyment of the Subdivision. The Owner of each Lot shall maintain his Lot, including the rear yards, those side yards that are not adjacent to a street or private lane, and the driveway to each such Lot, and the improvements on the Lot in a good state of repair and in an attractive, safe and healthy condition.

10.26 Repair by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision. In

addition, each Owner hereby grants to the Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages or pursuant to the rights provided the Association in the Governing Documents. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the rate of 18% per annum or 1.5% monthly.

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

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

## **ARTICLE XI**

### **INSURANCE**

11.1 Casualty Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not available, then at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction to the Common Areas and Limited Common Areas from any insured hazard.

11.2 Liability Insurance. The Board, or its duly authorized agent, shall also obtain a public liability policy covering the Common Areas and Limited Common Areas,

the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, their invitees, guest, successor or assigns. The public liability policy shall be in an adequate amount as determined by the Board from time to time.

11.3 Premiums. Premiums for all insurance on the Common Areas, Limited Common Areas and shared party wall-related exteriors shall be Common Expenses of the Association and shall be included in the Base Assessment.

11.4 Name of the Association. All insurance coverage obtained by the Board of Trustees shall be written in the name of the Association as trustee for the respective benefited parties, as further identified in below. Such insurance shall be governed by the provisions hereinafter set forth:

(A) All policies shall be written with a company licensed to do business in Utah which holds a Best's rating of A or better and is assigned a financing size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or if not available, the most nearly equivalent rating.

(B) All policies on the Common Areas and Limited Common Areas shall be for the benefit of the Association, its Members, and Mortgagees providing construction financing on the Common Areas and Limited Common Areas.

(C) Exclusive authority to adjust losses under policies obtained by the Association on the Property shall be vested in the Association's Board of Trustees; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(D) In no event shall the insurance coverage obtained and maintained by the Association's Board of Trustees hereunder be brought into contribution with insurance purchased by individual Owners, occupants or their Mortgagees.

(E) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction along the Wasatch Front, State of Utah area.

(F) The Association's Board of Trustees shall be required to

make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Trustees, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled, subject to non-renewal on account of the conduct of any Trustee, officer, or employee of the Association or its duly authorized manager without prior demand, in writing, delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or any Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

## **ARTICLE XII**

### **DAMAGE & DESTRUCTION**

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



12.2 Repairs Mandatory. Any damage or destruction to the Common Areas and Limited Common Areas shall be repaired or reconstructed unless the Members, representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct, and the City approves such decision in writing. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction Mortgagees providing construction financing for such damaged property.

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

### **ARTICLE XIII**

#### **DISBURSEMENT OF PROCEEDS**

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

### **ARTICLE XIV**

#### **REPAIR AND RECONSTRUCTION ASSESSMENT**

14.1 If the damage or destruction to the Common Areas and Limited Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Trustees shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners

on the same basis as provided for Base Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## **ARTICLE XV**

### **CONDEMNATION**

15.1 Whenever all or any part of the Common Areas and Limited Common Areas shall be taken (or conveyed in lieu of a taking) or is under threat of condemnation by any authority having the power of condemnation/eminent domain, the Board, acting on the written direction of Members representing at least seventy five (75%) percent of the total Association vote, is entitled to act on behalf of the Association to defend or settle the taking proceeding. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the common areas on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Members representing at seventy-five percent (75%) of the total vote of the Association shall otherwise agree (and West Bountiful City approves such decision in writing), the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas and Limited Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Trustees of the Association shall determine.

## **ARTICLE XVI**

### **LAYTON CITY AS THIRD PARTY BENEFICIARY**

Layton City is a third-party beneficiary to all provisions of this Declaration and shall have all of the benefits and rights of the Association, the Board of Directors and any Owner to enforce all provisions of this Declaration.

## **ARTICLE XVII**

### **ARCHITECTURAL REVIEW BOARD**

17.1 Purpose. It is the intention and purpose of this Declaration to impose architectural standards on the improvements to any Lot of a type and nature that result in buildings which are architecturally compatible in terms of lot coverage, proportion, materials, colors and general appearance. To accomplish this goal, the Declarant hereby establishes the Architectural Review Board, which is empowered to oversee and enforce

the Architectural Design Standards set forth in this Declaration.

17.2 Architectural Review Board Created. The Architectural Review Board (“ARB”) will consist of three members, at least two of whom shall be members of the Board of Directors of the Association. The initial ARB will consist of three people appointed by the Declarant, who do not need to be Owners. At the time that all Lots on the Property have been built on, all of the members of the ARB will be elected by the Owners; however, the ARB may wish and is authorized to retain a qualified planning, design or architectural professional to handle the day to day work of the ARB.

17.3 Approval by ARB Required. No Improvements of any kind will be made on any Lot without the ARB’s prior written approval. Approval of the ARB will be sought in the following manner:

- (A) Plans Submitted. Two complete sets of the plans for the construction of any new Dwelling or Improvements must be submitted to the ARB for review. In the case of an addition or modification of an existing Dwelling, the ARB may waive any of the foregoing it feels are unnecessary to its review of the remodel or addition.
- (B) Review. Within 30 days from receipt of a complete submission, the ARB will review the plans and make an initial determination whether or not the plans comply with the conditions imposed by the Declaration. If they do not, the plans will be rejected. If they are in compliance, the ARB will approve the plans. The ARB may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The ARB will review preliminary plans, and make its comments known to the Owner provided, however, that no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission. Upon approval, the ARB will sign a copy of the plans, one of which shall be left with the ARB. No construction that is not in strict compliance with the approved plans will be permitted.
- (C) Failure to Act. If the ARB has not approved or rejected any submission within 45 days after submission of complete plans, the submission is deemed to have been disapproved. If the plans are disapproved as a result of the ARB’s failure to act, then the applicant may send, by certified mail, return receipt requested, notice to any member of the ARB that if the plans are not either approved or disapproved, as submitted, within 15 days from the date the notice is MAILED, then the plans will be deemed to be approved. If within such 15 day period, the ARB fails to

respond to the notice by either approving or disapproving the plans, then the plans will be deemed to have been approved; provided, however, that the submission and Improvements do not, in fact, violate any conditions imposed by the Governing Documents.

17.4 Variances. Variances to the design standards contained in this Declaration may be granted when strict application would create an unforeseen or unreasonable hardship to the Owner of any Lot, provided, however, that any variance granted is consistent with the intent of the Governing Documents. The ARB cannot grant any variance that has the effect of modifying applicable zoning or building code regulations. The burden of obtaining a variance is entirely on the applicant.

17.5 General Design Review. The ARB will use its best efforts to provide a consistent pattern of development, and consistent application of standards of the Governing Documents. These standards are, of necessity, general in nature, and it is the ARB's responsibility to apply them in a manner that results in a high quality, attractive and well-designed community.

17.6 Declarant, Board and ARB not Liable. The Declarant, the members of the Board of Directors, and the ARB members shall not be liable to the applicant or to the Owners of any Lots within the Subdivision for their actions, inactions, or approval or disapproval of any set of plans submitted to the ARB for review. Each Owner has an equal right to enforce these covenants against every other Owner, and may independently seek redress against another Owner if he/she believes such Owner has failed to comply with Governing Documents.

17.7 Limitations on Review. The ARB's review is limited to those matters expressly granted in this Declaration. The ARB shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the ARB prior to construction.

17.8 Exclusion of Declarant. Neither Declarant nor its assign/designated builder are subject to any review or conditions imposed upon other Lot owners by the ARB. Declarant and its designated builder need not receive any approval from the ARB

## **ARTICLE XVIII**

### **ARCHITECTURAL RESTRICTIONS ON IMPROVEMENTS**

18.1 Number of Dwellings. Only one Dwelling may be constructed on any Lot.

18.2 Dwelling Size. All Dwellings shall have a minimum square footage of no less than 1,500 square feet. The calculation of square footage shall only be for living space and shall not include the garage.

18.3 Attached Garage. All Dwellings shall have an attached garage for at least two cars and a maximum of four cars, unless prior written approval of the ARB is first obtained.

18.4 Architectural Standards. All Dwellings in the Subdivision will be single-story buildings, with a maximum height of thirty feet. The elevations of the Dwellings shall exhibit a prominent shift in the façade(s) where the separate units meet, which is predominantly visible from a public or private street. Each shift shall be in the form of either a ten foot (10') change in building façade alignment or a ten foot (10') foot change in roofline height, or a combined change in façade and roofline totaling ten feet (10'). Each Dwelling shall use the following types of exterior construction materials: brick, rock, stucco, or hardy board. The front, or street-facing façade of each home, shall have 75% brick or rock masonry. Vinyl siding shall not be allowed. Easily visible side building elevations (Lot numbers 30, 39, 41, 49, 50, 57, 72 and building pad 52) need to use brick or rock to break up the stucco wall. All other side building elevations that are not as visible need to have, at a minimum, a brick wains coat wrapping the front corner of the units for a depth of 1.5 to 2 feet. In addition to the oversight rights of the ARB, an interior design professional will work with each home buyer to ensure that no adjacent dwellings have the same color/design scheme.

18.5 Out Buildings. No storage building, out building, or habitable structure may be permitted on any Lot unless prior written approval of the ARB is first obtained.

18.6 Construction Completion. When construction has started on any residence or other structure, work thereon must be completed within twelve months, weather permitting.

18.7 Windows. All windows must be of at least double pane. No mirrored or reflective glass may be used.

18.8 Antennas. All antennas must be enclosed within the Dwelling. If possible, any satellite dishes must be located and screened in a manner so that they are not directly visible from adjoining Lots or streets. Solar panels will be permitted only with the consent of the ARB, and if permitted at all, must lie flat against the roof and may not differ in pitch or color from the roof surface on which they are mounted.

18.9 No Used or Temporary or Prefab Structures. No previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained on any Lot. No prefabricated housing may be installed or maintained on any Lot.

18.10 Driveways. Every garage shall be serviced by a driveway, which shall be of sufficient width and depth so as to park two vehicles side by side completely out of the street right of way. However, as required by other sections of this Declaration, only one (1) automobile is allowed to be parked in the driveway. All driveways are to be constructed of concrete. No other driveway materials will be allowed unless prior written approval of the ARB is first obtained.

18.11 Finished Lot Grading. Lot owners and builders are responsible to complete the final grading of the entire lot so that the finish grading complies with City ordinance, lender requirements and proper water control, as well as any applicable master grading plan for the entire Development, as opposed to a slope plan determined solely for that particular Lot.

18.12 All Dwelling Construction is Subject to Prior Approval by the Architectural Committee. Prior to construction, all dwelling plans must be reviewed and approved by the ARB, as set forth in Article XVII, above, and all dwelling construction must meet Architectural restrictions and architectural guidelines and the other requirements of these Covenants.

18.13 Landscaping. The HOA will maintain all front yard landscaping and perimeter fencing. Notwithstanding the foregoing, each Owner may plant flowers, such as annual or perennials, as well as small shrubs in the planting areas adjacent to that Owner's Dwelling.

## **ARTICLE XIX**

### **ANNEXATION**

19.1 Annexation. Additional phases of the Cottages at Kays Creek may be added to the Property pursuant to the following procedures, and subject to the limitations as follows:

19.2 Annexation by Declarant. Declarant may from time to time and in its sole discretion expand the Property subject to this Declaration by the annexation of all or part of contiguous land that currently is undeveloped or not zoned for PRUD.

19.3 No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any additional land to the Property or to develop or preserve any portion of any additional land in any particular way or according to any particular time schedule. No land other than the Property, as defined on the date hereof and land annexed thereto in accordance with the terms of this Article shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat or map filed by Declarant or described or referred to in any documents executed or recorded by Declarant.

## ARTICLE XX

### OTHER PROVISIONS

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

- (A) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by any other Owner, or by the Association as an association of property owners. In any action brought to enforce these Covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including attorney fees and costs of court.
- (B) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.
- (C) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.
- (D) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

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

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

20.4 Amendment. During the Class B Control Period, the Declarant can modify the covenants set forth herein without a vote of other Members; thereafter, these covenants can be modified by the affirmative vote of the Members representing sixty-

seven (67%) percent of the total votes of the Association.

20.5 Constructive Notice. All persons who own, occupy or acquire any right, title or interest in any Lot in the Subdivision are conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the Covenants, Conditions and Restrictions against their Lot, whether or not there is any reference to this Declaration in the instrument by which they acquire their interest in any Lot.

20.6 Notices. All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must be postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

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

20.8 Mortgagee Protection Provision. The breach of any of the foregoing covenants shall not defeat or render invalid the lien of any mortgage or deed of trust lien on the Property that is made in good faith and for value; provided, however, that all of the covenants contained herein shall be binding upon and effective against any owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale or other foreclosure proceeding, from and after the date of such foreclosure, trustee's sale or other foreclosure proceeding.

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**Executed on the date stated above**

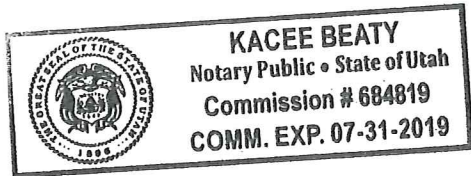
Capital Reef Management, LLC  
A Utah limited liability company

By: [Signature] Brad Frost  
Its: Managing Member

STATE OF UTAH            )  
  : ss  
COUNTY OF DAVIS        )

On this 23 day of October, 2017, personally appeared before me Brad Frost, who being by me duly sworn, did say that he is a Managing Member of Capital Reef Development, LLC, a Utah Limited Liability Company, and that the within and foregoing instrument was signed on behalf of said Limited Liability Company by authority and said member duly acknowledged to me that said Limited Liability Company executed the same.

[Signature]  
Notary Public



Residing at: Kaysville, ut

My Commission Expires: 07-31-19