

WEST BOUNTIFUL CITY

ORDINANCE NO. 466-23

AN ORDINANCE APPROVING AN AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COTTAGES AT HAVENWOOD SUBDIVISION

WHEREAS, CAPITAL REEF MANAGEMENT, LLC (the “*Developer*”) and WEST BOUNTIFUL CITY (the “*City*”) entered into a Development Agreement dated May 6, 2016, with respect to The Cottages at Havenwood Subdivision;

WHEREAS, attached to and incorporated in the Development Agreement as Exhibit F was the form of the Declaration of Covenants, Conditions and Restrictions for The Cottages at Havenwood, a PUD Subdivision and Adult Community (the “*CCRs*”). The Developer recorded the CCRs in the office of the Davis County Recorder on or about August 23, 2017, as Entry No. 3040342 in Book 6834, beginning at Page 38;

WHEREAS, both the Development Agreement and the CCRs provide that no amendment may be made to the CCRs without the City’s written approval;

WHEREAS, an Amended Declaration of Covenants, Conditions and Restrictions for The Cottages at Havenwood, a PUD Subdivision and 55 & Older Community, a copy of which is attached as **Exhibit A** (the “*Amended CCRs*”), was presented to the city council for review and approval;

WHEREAS, the city council has reviewed the Amended CCRs and finds them to be acceptable and in the best interest of the health, safety, and welfare of the City and its residents.


NOW, THEREFORE, BE IT ORDAINED by the city council of West Bountiful City that the Amended CCRs for The Cottages at Havenwood Subdivision are hereby approved. This ordinance constitutes the City’s written approval of the Amended CCRS for purposes of Section 20.4 of the original CCRs. Any amendment of the Amended CCRs will be subject to the City’s further written approval.

This ordinance will become effective upon signing and posting.

[Signatures on following page.]

Adopted this 21st day of February 2023.

By:


Kenneth Romney, Mayor

Attest:


Cathy Brightwell, City Recorder

Voting by the City Council:

	Aye	Nay
Councilmember Ahlstrom	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Bruhn	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Councilmember Enquist	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Preece	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Wood	<input checked="" type="checkbox"/>	<input type="checkbox"/>



EXHIBIT A

Amended CCRs

When recorded mail to:

The Cottages at Havenwood
PO Box 1694
Bountiful, UT 84011-1694

AMENDED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

For The Cottages at Havenwood,
a PUD Subdivision and 55 & Older Community
West Bountiful, Davis County, Utah

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for the Cottages at Havenwood, a Planned Unit Development (PUD) subdivision and 55 & Older community (the "Declaration") is made and executed on this ___ day of _____, 2023, by The Cottages at Havenwood Homeowner Association, Inc., a Utah non-profit corporation (hereinafter "the Association").

RECITALS:

A. The original "Declaration of Covenants, Conditions and Restrictions For The Cottages at Havenwood" was recorded on August 23, 2017 in the office of the Davis County Recorder as Entry No. 3040342 in Book 6834, beginning at Page 38 ("the Original Declaration").

B. The Association, through its Members, desires to update the Original Declaration in order to adopt recent changes in applicable state law, eliminate certain restrictions, clarify the rights of the Association and Owners, eliminate provisions related to Declarant rights that have now expired, provide for a general plan for managing the Property and Subdivision, and make additional changes in furtherance of the Association's efforts to efficiently and economically provide a quality living environment and protect and enhance the value of the Lots and the Subdivision.

C. As certified below, this Declaration and the attached Amended Bylaws were approved by an affirmative vote of the Members representing not less than sixty-seven percent (67%) of the total votes of the Association, as required by section 20.4 of the Original Declaration.

D. As certified below, this Declaration is made with the written approval of West Bountiful City, as required by section 20.4 of the Original Declaration.

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

F. The Association is a PUD, whereby each member is the owner of their own lot within certain real property located at approximately 690 West 1600 North, West Bountiful, in Davis County, Utah and more particularly described as follows (the "Property"):

PARCEL 1:

BEGINNING AT A POINT 26.11 CHAINS WEST FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, UNITED STATES SURVEY, AND RUNNING THENCE NORTH 18.79 CHAINS; THENCE WEST 3.885 CHAINS; THENCE SOUTH 18.79 CHAINS; THENCE EAST 3.885 CHAINS TO THE POINT OF BEGINNING.

PARCEL 2:

BEGINNING AT A POINT 26.11 CHAINS WEST FROM THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, UNITED STATES SURVEY, AND RUNNING THENCE SOUTH 4.80 CHAINS, THENCE WEST 3.885 CHAINS, THENCE NORTH 4.80 CHAINS, THENCE EAST 3.885 CHAINS TO THE POINT OF BEGINNING.

PARCEL 3:

ALL OF THE WESTERLY 3.29 FEET OF LOT 206, BIRNAM WOODS PHASE 2 WEST BOUNTIFUL CITY, DAVIS COUNTY, UTAH

As set forth in Section 8.2 of this Declaration, the Subdivision 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 Lots 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 occupying the lot is 55 years of age or older. Absent express approval of the Board, no persons under the age of 18 are permitted to reside in the community or 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.

G. The Subdivision has been developed pursuant to the Community Association Act, Utah Code Sections 57-8a-101, *et seq.*, and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Subdivision.

H. The Association possesses the powers to collect and disburse the assessments and charges provided for in this Declaration and otherwise administer and enforce the provisions of this Declaration.

I. The Association is governed by the terms of this Declaration, the Articles of Incorporation for The Cottages at Havenwood Homeowner's Association, Inc., and the Amended Bylaws for The Cottages at Havenwood 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.

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. "Architectural/Structural Improvement Application" shall mean application form to be completed by Owner and submitted to the ARB requesting any improvements and/or changes to the Dwelling or Lot (except landscape changes). As defined in the "Improvement" definition of this chapter.
- D. "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.
- E. "Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time.
- F. "Association" shall mean THE COTTAGES AT HAVENWOOD HOMEOWNERS ASSOCIATION, INC. and as the context requires, the officers and directors of that Association.
- G. "Board" or "Board of Directors" shall mean the duly elected and acting Board of Directors of THE COTTAGES AT HAVENWOOD HOMEOWNERS ASSOCIATION, INC.
- H. "Bylaws" shall mean the Bylaws of the Association as amended from time to time, a copy of which is attached hereto as Exhibit "A."
- I. "City" shall mean West Bountiful City, Utah and its appropriate departments, officials and boards.
- J. "Common Areas" shall mean all property intended 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.
- K. "County" shall mean Davis County, Utah and its appropriate departments, officials and boards.
- L. "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) providing services and other benefits to Owners as set forth in this Declaration; (B) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (C) levying, collecting and enforcing the Assessments, charges, fines, penalties and liens imposed pursuant hereto; (D) operating the Association; and (E) creating reserves for any such costs, expenses and liability as required by this

Declaration or other applicable laws and ordinances.

- M. "Declaration" shall mean this Amended Declaration of Covenants, Conditions and Restrictions for the Cottages at Havenwood, a PUD Subdivision and Adult Community, together with any subsequent amendments or additions.
- N. "Dwelling" shall mean the single-family residence built on any Lot, including attached garage.
- O. "Family" shall mean one household of persons related to each other by blood, adoption or marriage consisting of 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, sheds, walkways, retaining walls, driveways, fences, landscaping, patios, decks, stairs, poles, lighting, signs, solar panels, generator power systems, satellite dishes, or other antennas, and any mechanical equipment located on the exterior of any building.
- R. "Landscape Improvement Application" shall mean application form to be completed by Owner and submitted to the ARB requesting any improvements and/or changes to the Landscape of the Lot as defined in the "Improvement" definition of this section.
- S. "Lot" shall mean any numbered building Lot shown on any official and recorded Plat(s) of all or a portion of the Subdivision.
- T. "Manager" shall mean any entity or person engaged by the Board of Directors to manage the Subdivision.
- U. "Member" shall mean and refer to every person who holds membership in the Association, including an Owner as set forth herein.
- V. "Plat(s)" shall mean an official and recorded plat of The Cottages at Havenwood, a PUD 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.
- W. "Property" shall have the meaning set forth in the recitals.
- X. "Rules" mean any instrument adopted by the Board to govern the Association.
- Y. "Structure Improvement" (see "Improvement").
- Z. "Subdivision" shall mean all phases of The Cottages at Havenwood, a PUD 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.

BB. “Water Wise Landscaping” (see Xeriscaping).

CC. “Xeriscaping” (aka: Water Wise Landscape, Zero-Scape, Desert-Scape, etc.) pursuant to Utah Code Ann. § 57-8a-231, shall mean the process of landscaping and gardening, that reduces or eliminates the need for irrigation to produce greenspaces.

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:

- 1.2.1 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;
- 1.2.2 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;
- 1.2.3 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
- 1.2.4 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, subject to the City’s written consent.

1.3 Reservation of Access and Utility Easements. Easements and rights-of-way over, under, or through the Subdivision for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Subdivision are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Areas and the Lots by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over, or under the Common Areas for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities, and 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. Such Owner and those claiming by, through, or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no such easement can be granted if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Lot.

1.4 Easements for Encroachments. If any part of the Common Areas as originally improved by the developer now or hereafter encroaches upon any Lot, or if any structure originally constructed by the developer 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 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:

- 1.5.1 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;
- 1.5.2 For inspection, maintenance, repair, and replacement of portions of the Common Areas;
- 1.5.3 For correction of emergency conditions on one or more Lots or on portions of the Common Areas;
- 1.5.4 For the purpose of enabling the Association, the Architectural Review Board or any other committees appointed by the Association or Board to exercise and discharge during reasonable hours their respective rights, powers, and duties; and
- 1.5.5 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

OWNERS

2.1 “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. If a Lot is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors, the lessee (rather than the fee owner) will be considered the Owner.

ARTICLE III

MEMBERSHIP

3.1 Membership Interests. 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.

3.2 Right to Access and Inspect Association Documents. The Association shall make available to the Owners current copies of the Governing Documents and other minutes, books, records, and financial statements related to the operations of the Association. The term “available” as used in this section shall mean available for inspection and copying within thirty (30) days after receiving a proper request, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Board of Directors determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it.

ARTICLE IV

VOTING

4.1 Owners 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.

ARTICLE V

HOMEOWNERS ASSOCIATION

5.1 Creation and Membership of the Association. 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 Subdivision 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.

5.2 Registration with the State. In compliance with Utah Code Ann. § 57-8a-105, the Association shall be registered with the state Department of Commerce and shall update its registration with any changes to: (a) the name or address of the Association; (b) the name, address, telephone number, and e-mail address of the president of the Association; (c) contact information for the Manager; and (d) the name, address, telephone number, and e-mail or facsimile number of a primary contact person who has Association payoff information that a closing agent needs in connection with the closing of an Owner's financing, refinancing, or sale of the Owner's Lot.

5.3 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; and (4) 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 interests of the Association 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.

5.4 Maintenance Responsibilities of the Association. The Association is responsible for the following:

5.4.1 Landscaping. The Association is responsible for landscaping and maintaining each Lot's front and side yard areas, including areas in front of each Owner's fence separating the backyard from the front yard and the side yard areas adjacent to dedicated streets in the Subdivision, but excluding driveways. The standard of maintenance shall be determined by the Board in its sole discretion and in accordance with any written guidelines adopted by the Board. (Backyard landscaping and maintenance is the responsibility of the owner)

- 5.4.2 Snow Removal. The Association is responsible for removing snow from all sidewalks and driveways in front of each Owner's home. The costs for said snow removal shall be a common expense that is borne by all Lot Owners.
- 5.4.3 Perimeter Fence. The Association shall maintain the perimeter fence that encompasses the Subdivision. Owners are responsible for all side fences extending from the rear fence on the sides of their Lots.
- 5.4.4 Drainage Pipes. The Association shall maintain the underground discharge pipe carrying excess surface water from Owner's back yard to the City's drain location. The Association shall have the authority to assess Members for the costs of said maintenance, repairs, or replacement.

5.5 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.

- 5.5.1 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 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.
- 5.5.2 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.
- 5.5.3 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.

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

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

5.6 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.

5.7 Reserve Fund Analysis. The Board of Directors shall cause a reserve analysis to be conducted no less frequently than every five (5) 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. The Board may not use money in a reserve fund:

5.7.1 For daily maintenance expenses, unless a majority of the Owners vote to approve the use of reserve fund money for that purpose;

5.7.2 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

5.7.3 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.

5.8 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 excess funds 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.

5.9 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.

5.10 Date of Assessments on Improved Lots. Assessments shall be due and payable on the first of each month or on a schedule as the Board may provide.

5.11 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.

5.12 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.

5.13 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, the use of the Common Areas; the use of any facilities owned by the Association; the collection and disposal of refuse; the maintenance of animals on the Property; other matters including but not limited to additional architectural and landscaping guidelines, as deemed necessary by the Board. Any rules promulgated by the Board may not contradict the Governing Documents. All rule adopted by the Board shall be provided to all Owners within thirty (30) days of their adoption.

5.14 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.

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

5.16 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.

5.17 Election. The elections for members of the Board of Directors, or any other matter which is presented to the Association, each Owner, 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.

5.18 Notice of Election, Notice of Meeting. Notice of any meeting for the election of members to the Board of Directors or for any other purpose shall be sent to the Owners at their last known address, or electronic email address, provided to the Board by Owner. If an Owner has failed to provide such information, there shall be no obligation on the part of the Board to search for a contact address. Notice will be mailed or emailed 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 President

of the Board will give notice of any meetings and will chair meetings of the Owners.

5.19 Special Meeting. When circumstances warrant, a special meeting of the Owners may be called by the Board of Directors 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.

5.20 Number of Board, Officers, Term of Office. Unless otherwise provided in the Bylaws 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. Board members shall consist of a President, Vice-President, and Secretary/Treasurer. Once elected, that officer shall serve in that capacity for the duration of his/her term as a Director.

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

5.22 Professional Management. The Board 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.

ARTICLE VI

NON-PAYMENT OF ASSESSMENTS AND REMEDIES

6.1. 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.

6.2. 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 fifteenth 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.

6.3. 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.

6.4. 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.

6.5. Requiring Tenant to Pay Rent to Association. In accordance with Utah Code Ann. § 57-8a-310, the Association shall have the right to demand and collect rent from any tenant occupying a Lot for which an assessment is more than 60 days late.

6.6. 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.

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

6.8. Appointment of Trustee. The Association shall have all rights of foreclosure granted by the Act, both judicially and nonjudicially. Pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association or its appointed legal counsel, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified trustee by executing and recording an appointment of trustee form.

ARTICLE VII

SUBORDINATION OF THE LIEN TO INSTITUTIONAL FIRST AND SECOND MORTGAGES

7.1 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 VIII

USE RESTRICTIONS AND MAINTENANCE OBLIGATIONS

8.1 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 consisting of not more than three persons in a two-bedroom Dwelling and not more than four persons in a three-bedroom Dwelling.

8.2 Occupancy by Persons Aged 55 and Over. The community is intended to provide housing for older persons. Therefore, residency of the Units is limited to persons who are age 55 or older ("Qualified Residents"), with the ONLY exceptions outlined in subsection 8.2.2 below.

8.2.1 Compliance with Federal and State Laws. The provisions of this section 8.2 are intended to comply with the requirements of the Federal Fair Housing Act, as amended, and the Housing for Older Persons Act, as well as the Utah Fair Housing Act, codified at Utah Code Ann. § 57-21-1 (collectively, "the Housing Acts"). To the extent that any provision herein is inconsistent with the provisions of the Housing Acts, the provisions of the Housing Acts shall supersede these provisions as necessary to comply with such Housing Acts and maintain the Association as restricted age housing.

8.2.2 Exceptions. Persons under the age of 55 who fall into one of the following categories are permitted to reside in the Units:

8.2.2.1 "Disabled Person" meaning a person with a disability under state or federal law who is a child or grandchild of a Qualified Resident and who needs to live with the Qualified Resident because of the disability.

8.2.2.2 "Health Care Resident" meaning a person hired to provide live-in, long-term, or terminal health care to a Qualified Resident. For the purposes of this section, the care provided must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

8.2.2.3 "Partner" meaning a person under the age 55 who is the spouse or partner of a Qualified Resident so long as he or she is living with the Qualified Resident. In the event of divorce, separation, or death of the Qualified Resident, a Partner may continue to reside in a Dwelling only so long as 90% or more of the Dwellings are occupied by a Qualified Resident.

8.2.2.4 "Special Exception" meaning a person under the age 55 who has received express written approval from the Board to reside in the Dwelling due to extenuating circumstances that, if such occupation were not permitted, would cause a hardship to the person or the Qualified Resident. Special Exception status shall only be granted if it does not, in the sole discretion of the Board, threaten the protected status of the Association under the Housing Acts and is on a temporary basis with a definitive ending.

8.2.3 Guests. Notwithstanding any other provision of this section 8.2, a person of less than 55 years of age, who is not a Qualified Resident, may visit and stay in a Unit as the guest of a Qualified Resident for not more than 60 days in any year and not more than one month at a time.

8.2.4 Required Survey Forms. Upon request of the Board of Directors, each occupant or prospective occupant of a Dwelling shall promptly complete a survey form with age verification, in such form as required by the Board of Directors, attesting to the individual's qualifications to reside in a Dwelling pursuant to the provisions of this section 8.2. Furthermore, upon request, each resident shall produce reliable documentation (which may include a birth certificate, passport, immigration card, military identification, driver's license, state identification card, and/or other reliable governmental issued identification containing a birth date) required by the Board of Directors to establish that the Association qualifies as housing for older persons under federal and state laws. A new survey shall be completed at least every two (2) years.

8.3 Leasing. Any lease or rental agreement must be in writing, must be for an initial term of at least twelve (12) months, and shall provide as a term of the agreement that the tenant(s) shall comply with the Declaration, the Bylaws, and any rules, and that any failure to comply shall be a default under the lease or rental agreement. If a lease or rental agreement does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the tenant(s). Prior to the commencement of the lease term, the Owner must provide the Association with a notice stating the total number of occupants, with their ages, and the number of vehicles.

8.4 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 Subdivision. No Lot may be occupied in a manner that is in violation of any applicable statute, law or ordinance.

8.5 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.

8.6 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 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 Subdivision and may not noticeably increase the traffic flow to the Subdivision.

8.7 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.

8.8 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 properly supervised and contained barbecues).

8.9 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.

8.10 Automobiles and Other Vehicles. No automobiles, trailers, boats, R.V.'s, 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.

8.11 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.

8.12 No Annoying Lights. Any outdoor lighting shall be subject to approval by the Architectural Review Board, and final approval by the Board of Directors. 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.

8.13 No Annoying Sounds. No speakers, wind-bells, 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.

8.14 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.

8.15 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.

8.16 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, including a boarding house, a bed and breakfast, VRBO, Airbnb, or other uses for providing accommodations to travelers. No leases of any Dwelling on a Lot shall be for a period of less than 12 months. No Dwelling on a Lot shall be subjected to time interval ownership.

8.17 Restriction on Signs. The Subdivision may be identified by permanent signs to be installed

by the Association. 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 four square feet in area or three feet in height (including post). 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.

8.18 Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Subdivision 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.

8.19 Drainage. No Owner shall alter the direction of natural drainage from his/her Lot without first using reasonable means to dissipate the flow energy. The Owners shall be responsible to maintain their rear yard drains and drain lines so as to ensure proper drainage.

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

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

8.22 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 and the Board of Directors.

8.23 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. Prior approval for backyard landscaping changes is not required with the exception of tree/bush planting location to ensure that at maturity, the root system and limbs do not infringe on adjacent property. With regards to structural changes, improvements, or additions to the backyard or Dwelling, the Owner is required to seek and obtain prior approval from the ARB and Board before making changes, as outlined in this Declaration.

8.24 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.

8.25 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 and Board of Directors. 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 and final approval by the Board of Directors.

8.26 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 Review Board, 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 Review Board, 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 IX

INSURANCE

9.1. 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. 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 outside perimeter fence encompassing the Subdivision from any insured hazard.

9.2. Liability Insurance. The Board, or its duly authorized agent, shall also obtain a public liability policy covering 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.

9.3. Premiums. Premiums for the above insurance shall be Common Expenses of the Association and shall be included in the Base Assessment.

9.4. Name of the Association. All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties, as further identified below.

9.5. Requirements. Such insurance shall be governed by the following provisions:

9.5.1 All policies shall be written with a company licensed to do business in Utah which holds an A.M. 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.

- 9.5.2 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.
- 9.5.3 Exclusive authority to adjust losses under policies obtained by the Association on the Property shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- 9.5.4 In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants or their Mortgagees.
- 9.5.5 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.
- 9.5.6 The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - 9.5.6.1 a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests,
 - 9.5.6.2 a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash,
 - 9.5.6.3 a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners,
 - 9.5.6.4 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 Mortgage,
 - 9.5.6.5 that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
 - 9.5.6.6 that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

9.6 Worker's Compensation. In addition to the other insurance required by this section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law; the Board's and officers' liability coverage, if reasonably available, a fidelity bond or bonds on the

Board, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the Board's best business judgment. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

ARTICLE X

DAMAGE & DESTRUCTION

10.1. 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.

10.2. 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 West Bountiful 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 the Common Areas shall be repaired or reconstructed.

10.3. 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 portions of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

ARTICLE XI

DISBURSEMENT OF PROCEEDS

11.1 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 Perimeter Fence Areas shall be retained by and for the benefit of the Association and placed in the Reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner 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 the Reserve account. This is a covenant for the benefit of any Mortgagee of a Lot and may be enforced by such Mortgagee.

ARTICLE XII

REPAIR AND RECONSTRUCTION ASSESSMENT

12.1 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 Directors 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 XIII

CONDEMNATION

13.1 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 percent (75%) 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, members representing at least seventy-five percent (75%) of the total vote of the Association shall otherwise agree (and the 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 Directors of the Association shall determine.

ARTICLE XIV

WEST BOUNTIFUL CITY AS THIRD-PARTY BENEFICIARY

14.1 West Bountiful City is an intended 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. Nevertheless, West Bountiful City is not a party to this Declaration and may not be held liable for any provision of this Declaration or for the enforcement or lack of enforcement thereof.

ARTICLE XV

ARCHITECTURAL REVIEW BOARD (ARB)

15.1 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 Association has established the ARB, which is empowered to oversee and enforce the Architectural Design Standards set forth in this Declaration. The ARB will “recommend” to the Board of Directors their approval or disapproval of all projects submitted by Owners. The Board of Directors must give their final approval before a project begins.

15.2 Architectural Review Board Created. The ARB will consist of three members, at least one (1) of whom shall be a member of the Board of Directors of the Association and elected by the Owners; however, the ARB and Board may wish and is authorized to retain a qualified planning, design or architectural professional to handle the day-to-day work of the ARB.

15.3 Approval by ARB and Board Required. No construction, addition, alteration, removal, or replacement of any Improvement of any kind (including, but not limited to, buildings, dwellings, garages, sheds, walkways, retaining walls, driveways, fences, front and side yard landscaping, backyard tree/bush planting, patios, decks, stairs, poles, lighting, signs, yard art, paint (new color), solar panels, generator power systems, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building) will be made on any Lot without the ARB's and Board of Directors' prior written or electronic approval. Approval of the ARB and Board shall be sought in the following manner:

15.3.1 Submission of Application Form. Owners shall submit for review a completed *Architectural/Structural Improvement Application* and/or *Landscape Improvement Application*, as appropriate, to the ARB/Board, together with the associated improvement plan, listed below.

15.3.1.1 Architectural/Structural Improvement Plan. Owners shall submit a description and plan drawing(s) for the proposed construction, addition, alteration, removal, or replacement of any Improvements as set forth in this section (excluding landscaping).

15.3.1.2 Landscape Improvement Plan. Owners shall submit a description and plan drawing(s) for proposed changes to any part of the current landscaping in the front and side yards of the Lot, or for the planting of trees and/or bushes in the backyard. Changes include but are not limited to the removal, replacement or addition of Xeriscape, sod, cement, walkways, planters, trees, bushes, yard art, etc. Owners seeking approval for Xeriscape landscaping shall also comply with the requirements of Article XVII of this Declaration.

15.3.2 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 within compliance, the ARB will recommend to the Board of Directors to approve the plans. The ARB may also recommend conditional approval of 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 and Board of Directors will sign a copy of the plans, one of which shall be left with the Secretary/Treasurer of the Board of Directors. No construction that is not in strict compliance with the approved plans will be permitted.

15.3.3 Failure to Act. If the ARB and Board of Directors 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 and/or Board's failure to act, then the applicant may send, by certified mail, return receipt

requested, notice to President of the Board 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 and Board 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.

15.4 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 and Board 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.

15.5 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.

15.6 Board and ARB Not Liable. 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.

15.7 Limitations on Review. The ARB's and Board's review is limited to those matters expressly granted in this Declaration. The ARB and Board 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 and Board prior to construction.

ARTICLE XVI

ARCHITECTURAL RESTRICTIONS ON IMPROVEMENTS

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

16.2 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. No detached garages will be allowed.

16.3 Architectural Standards. All Dwellings in the Subdivision will be single-story buildings with a maximum height of thirty (30) feet and a minimum square footage of 1500 square feet of living area (not including the garage). Each Dwelling shall use the following types of exterior construction materials: brick, rock, stone, stucco, or Hardy cementitious siding. The front, or street-facing façade of each home, shall have at least 50% brick, stone or rock masonry. Vinyl siding shall not be allowed. A Dwelling may be built next to a Dwelling with the same plan, but the exterior color materials used on such adjacent Dwellings, as well as the garage element design and color, must be different.

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

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

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

16.7 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 Board, 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. Solar panels installed at ground level must be located in the backyard, not visible from the street.

16.8 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.

16.9 Driveways and Trailer Pads. 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 and Board is first obtained. Trailer pads or driveway side extensions are not permitted.

16.10 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.

16.11 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 and Board, as set forth in Article XIV, above, and all dwelling construction must meet Architectural restrictions and architectural guidelines and the other requirements of these Covenants.

ARTICLE XVII

LANDSCAPE RESTRICTIONS ON IMPROVEMENTS

17.1 Landscaping. All landscaping for the Development shall conform to the Development Agreement executed with West Bountiful City and the landscape plan attached as Exhibit E thereto. In particular, each Lot shall have one tree in the park strip. Each Lot shall have vinyl perimeter fencing. All side-yard fencing shall be set at least 30 feet back from the front line of the improved Lot. The Association will maintain all front and side yard landscaping and perimeter fencing.

17.2 XERISCAPE (Water Wise Landscaping). Pursuant to Utah Code Ann. § 57-8a-231, Owners may incorporate water saving landscaping on their Lot provided they comply with the

Association's site plan review process administered by the ARB, and final approval is granted by the Board of Directors. The Board may adopt, and revise from time to time in its own discretion, water wise landscaping design requirements, which may regulate type and variety of vegetation, minimum and maximum vegetative coverage, allowable mulches and ground covers, restricted plants and materials, yard art, lighting, etc. All expenses incurred for incorporating Xeriscape landscaping will be borne by the Owner. The Association will not incur any of the expense or responsibility except for maintenance upon completion and final approval by the ARB and Board of Directors.

17.3 XERISCAPE (West Bountiful City Water Efficient Landscape Standards). In addition to section 17.2 above, owners who desire to implement waterwise landscaping must also comply with West Bountiful Municipal Code (WBMC) Chapter 12.28.

17.4 XERISCAPE Approval Process. Owners desiring to convert their parking strip or front/side yards to Xeriscape are required to submit a written request for approval to the ARB and Board consisting of the *Landscape Approval Application Form*, design site plan drawing, irrigation plan drawing, list of plants and other vegetation, list of ground cover materials, and any other materials to be utilized. The ARB and Board may request that Owners submit a sample of the proposed rock and plants, along with the expected life span of the plants.

17.5 XERISCAPE - Backyard Area. Owners are not required to obtain approval for Xeriscape landscaping in the backyard areas of their Lots, with the exception of the planting of trees and bushes. All conversion to Xeriscape, future expenses, maintenance, replacement, repairs, etc. are the responsibility of the Owner. The HOA assumes no financial or maintenance responsibility.

17.6 XERISCAPE - Maintenance Repairs & Fees. Upon completion of the project, the ARB and Board will review for "final approval." If accepted (approved), the Association will conduct regular maintenance of the front and sides of the front yard as well as the parking strip. The standard of maintenance shall be determined by the Board in its sole discretion and in accordance with any written guidelines adopted by the Board.

ARTICLE XVIII

DISPUTE RESOLUTION

18.1 General Policy. In the event of any dispute between the Association and Owners that do not involve an imminent threat to the peace, health, or safety of the community, the parties involved in the dispute shall work to resolve the dispute using the procedures set forth below prior to filing a complaint in court or otherwise initiating a legal proceeding. For each of the resolution processes, Utah law governs the process, and the parties do not waive their right to employ legal counsel at their own expense to assist them.

18.2 Exempt Disputes. This Article shall not apply to (a) any action to effect a judicial or non-judicial foreclosure; (b) any eviction or other summary proceeding to secure possession of real property or an interest therein; (c) any action in any bankruptcy proceeding to assert, collect, protect, realize upon, or obtain possession of the collateral for any amount owed; (d) any action to quiet title; (e) the levying of a fine in response to a violation of the Association's governing documents; and (f) any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing.

18.3 Procedures for Resolving Disputes. Parties to a dispute shall use the following procedures before initiating a legal proceeding in court:

- 18.3.1 Written Request. The Association or any Owner wishing to resolve a dispute (“Initiating Party”) will provide each other Party to the dispute with a written request (“Request for Resolution”) describing: (a) the nature of the dispute, including the date, time, location, persons involved, and the other party’s or parties’ role in the dispute; (b) a request for what the Initiating party would like the other party or parties to do or not do to resolve the dispute; and (c) times and dates that the Initiating Party may be available to communicate directly with the other party or parties to discuss in good faith ways to resolve the dispute.
- 18.3.2 Negotiation. The parties shall make reasonable efforts to communicate directly with each other in an attempt to reach an agreement that serves the interests of all parties prior to initiating any other dispute resolution procedures.
- 18.3.3 Mediation. Unless otherwise agreed, if the parties do not resolve the dispute within 20 business days of the date of receipt of the “Request for Resolution,” the parties will begin efforts to schedule a mediation session with a trained, neutral mediator to assist them in reaching their own solution. The mediator will facilitate the process but will not make decisions for the parties. The parties shall meet with the mediator within 60 days of the date of receipt of the Request for Resolution. Unless otherwise agreed, the parties shall select a mutually acceptable mediator within thirty (30) business days of the date of receipt of the Request for Resolution. The parties will work with the mediator to establish the date for the mediation meeting. The cost of mediation will be shared equally among the parties unless they agree otherwise. The mediator shall provide the parties, and the Association if the Association is not a party, with documentation noting who attended and that the mediation occurred.

ARTICLE XIX

OTHER PROVISIONS

- 19.1 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.
- 19.1.1 Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought 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.
- 19.1.2 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.
- 19.1.3 The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

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

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

19.3 Limited Liability. Neither the Association, 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.

19.4 Amendment. After their recording, no modifications or amendments may be made to this Declaration or any covenants set forth herein without the written approval of West Bountiful City. Subject to the foregoing, these covenants can be modified by the affirmative vote of the Members representing sixty-seven (67%) percent of the total votes of the Association.

19.5 Amendment To Conform to Law. Notwithstanding anything in this Declaration to the contrary, the Board of Directors may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to comply with any directive of any federal, state, or local government agency.

19.6 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.

19.7 Notices. Any notice to be given to an Owner must be in writing and may be delivered (a) personally; (b) via first class United States mail, postage prepaid, to the most recent address furnished by the Owner or the property address; (c) via email to an email address provided by the Owner; or (d) by facsimile to a number provided by the Owner. Any notice to be given to the Association must be in writing and may be delivered (a) personally to a director or managing agent; (b) via first class United States mail, postage prepaid, to the current registered business address of the Association; (c) via email to an email address provided by the Association; or (d) by facsimile to a number provided by the Association. All notices under this Declaration are deemed effective immediately if personally delivered or emailed, or 72 hours after mailing or faxing.

19.8 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.

19.9 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.

Executed on the date stated above

The below signatures certify that this Declaration was approved by an affirmative vote of the Members representing not less than sixty-seven percent (67%) of the total votes of the Association, as required by section 20.4 of the Original Declaration; that the Amended Bylaws attached hereto were approved by Owners holding at least fifty-one percent (51%) of the total membership at a regular or special meeting or by written consent, as required by Section 11.1 of the original Bylaws; and that West Bountiful City has approved in writing the amendments to the Original Declaration that are reflected in this Declaration by a duly adopted ordinance.

The Cottages at Havenwood Homeowners Association, Inc.
A Utah non-profit corporation

By: _____
Dave R. Hermansen
Its: President

By: _____
Barbara N. Kopenhefer
Its: Vice President

By: _____
Scott Y. Higgins
Its: Secretary/Treasurer

STATE OF UTAH)
 : ss
COUNTY OF DAVIS)

On this ____ day of _____, 2023, personally appeared before me Dave R. Hermansen, Barbara N. Kopenhefer, and Scott Y. Higgins, who being by me duly sworn, did say that they are the current Board of Directors of The Cottages at Havenwood Homeowners Association, Inc., a Utah non-profit corporation, and that the within and foregoing instrument was signed on behalf of said Corporation by authority, and said members duly acknowledged to me that said Corporation executed the same.

Notary Public

My Commission Expires: _____