

Recorded at Request of:  
Lava Bluff HOA

After Recording Mail to:  
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RUSSELL SHIRTS \* WASHINGTON CO RECORDER  
1999 MAR 23 08:25 AM FEE \$62.00 BY DES  
FOR: LAVA BLUFF HOMEOWNERS ASSEN

**RESTATED AND AMENDED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
LAVA BLUFF MANUFACTURED HOME PARK  
(formerly known as Lava Bluff Mobile Home Park)**

**Age Restriction - Housing for Persons 55 Years of Age or Older.** THE LAVA BLUFF MANUFACTURED HOME PARK IS INTENDED TO, AND SHALL BE MANAGED TO, PROVIDE HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER, AND SHALL PROHIBIT OCCUPANCY BY PERSONS UNDER AGE 18, AS WELL AS ALL OTHERS FALLING WITHIN THE DEFINED TERM OF FAMILIAL STATUS UNDER FEDERAL LAW, EXCEPT THAT PERSONS UNDER AGE 18 MAY RESIDE IN ANY MANUFACTURED HOME ON A LOT, BUT NOT FOR MORE THAN TWO WEEKS CONSECUTIVELY NOR MORE THAN THIRTY(30) DAYS IN ANY CALENDAR YEAR. FURTHER, EXCEPT AS PROVIDED IN THE POLICIES AND PROCEDURES CONCERNING HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER, ADOPTED BY THE BOARD, EACH AND EVERY MANUFACTURED HOME WITHIN THE PROPERTY, IF OCCUPIED, SHALL BE OCCUPIED BY AT LEAST ONE PERSON 55 YEARS OF AGE OR OLDER (QUALIFYING OCCUPANT). WITHOUT LIMITING THE FOREGOING, AT NO TIME SHALL LESS THAN EIGHTY PERCENT (80%) OF THE OCCUPIED MANUFACTURED HOMES SUBJECT TO THIS DECLARATION BE OCCUPIED BY AT LEAST ONE PERSON 55 YEARS OF AGE OR OLDER; UNLESS ALL REMAINING LOTS ARE RESERVED FOR OCCUPANCY OF THE MANUFACTURED HOME THEREON BY AT LEAST ONE PERSON 55 YEARS OF AGE OR OLDER.

THE BOARD SHALL ESTABLISH POLICIES AND PROCEDURES FROM TIME TO TIME AS NECESSARY TO MAINTAIN THE PROPERTY AS AN AGE RESTRICTED COMMUNITY INTENDED FOR HOUSING PERSONS 55 YEARS OF AGE OR OLDER UNDER STATE AND FEDERAL LAW.

LB 3.RESTATED CC&Rs.159.02

**RESTATED AND AMENDED DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS OF  
LAVA BLUFF MANUFACTURED HOME PARK  
(formerly known as Lava Bluff Mobile Home Park)**

This Restated and Amended Declaration of Covenants, Conditions, and Restrictions of Lava Bluff Manufactured Home Park, restates, amends, and supersedes the following: (i) Amended Declaration of Covenants, Conditions, and Restrictions of Lava Bluff Mobile Home Park (Phase I), dated December 19, 1992, recorded January 11, 1993, as Entry No. 423661, in Book 702, at pages 164-187; (ii) Lava Bluff Owners Association Amendment to Covenants, Conditions and Restrictions dated October 2, 1996, recorded January 28, 1997, at Entry No. 555830, in Book 1071, at pages 561-563; and (iii) Amendment to the Covenants, Conditions, and Restrictions of Lava Bluff Owners Association, recorded May 7, 1997, as Entry No. 565122, in Book 1098, and beginning on page 68.

This Restated and Amended Declaration of Covenants, Conditions and Restrictions for Lava Bluff Mobile Home Park effects the following real property, all located in Washington County, State of Utah:

All of Lots 1 through 181, including any and all Common Area, as shown on the Official Plat for the Lava Bluff Mobile Home Park, recorded on the official records of the Washington County Recorder as Entry No. 298789, in Book 420, at Page 634; and

All of Lots A-D and Lots 49 and 50, as shown on the "Addendum to Lava Bluff Mobile Home Park" plat map, recorded on the records of the Washington County Recorder as Entry No. 434743, in Book 7331, at Page 132.

Terms contained in this preamble and the Recitals below, which are hereafter defined in Article I, shall be given the meaning assigned to them in Article I.

**RECITALS**

A. On or about December 19, 1992, Nelson and Thompson Engineering acceded to all the rights of the original Declarant, pursuant to foreclosure of all the unsold Lots of the Property described above. The original Declaration of Covenants, Conditions and Restrictions for Lava Bluff Mobile Home Park (Phase I), recorded on August 1, 1986, as Entry No. 298790, in Book 420, at pages 635-658, of the official Washington County records (the "Original Declaration") was then amended as set forth in the Amended Declaration of Covenants, Conditions, and Restrictions of Lava Bluff Mobile Home Park (Phase I), dated December 19, 1992.

B. The Association and its members intend and declare that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges, liens and age restrictions, hereinafter set forth, and as set forth in the Plat recorded concurrently with the Original Declaration.

C. This Declaration is undertaken pursuant to Article XII of the Amended Declaration, and was approved by at least two-thirds (2/3) of all membership votes represented in person or by proxy at a meeting held for the purpose of approving this Declaration on the 13<sup>th</sup> day of March, 1999, or, and in lieu of the vote, written consent was obtained as provided for in Article XII, Section 4.

D. These Recitals shall be deemed as covenants as well as recitals.

NOW, THEREFORE, for the foregoing purposes, Successor Declarant and the Association declare that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the amended covenants, conditions restrictions, easements, charges and liens hereinafter set forth, and as set forth in the plat recorded concurrently with the original Declaration.

### I. DEFINITIONS

When used in this Declaration (including in that portion hereof under "RECITALS") the following terms shall have the meaning indicated.

1. Restated and Amended Declaration shall mean and refer to this instrument as the same may hereafter be modified or amended. Original Declaration shall refer to the Original Declaration referred to above, which is hereby superceded. Amended Declaration shall refer to the Amended Declaration referred to above, which is hereby superceded.

2. Plat shall mean and refer to the plat of the "LAVA BLUFF MOBILE HOME PARK" consisting of one page, executed and acknowledged by Declarant, prepared and certified by Matt B. Judd a registered Utah Land Surveyor, and recorded in the office of the County Recorder of Washington County, Utah, filed concurrently with the Original Declaration.

3. Property shall mean and refer to all of the real property which is covered by the Plat, a description of which is stated in Exhibit "A" of this Declaration.

4. Lot shall mean and refer to any of the separately numbered and individually described plots of land shown as Phase I on the Plat.

5. Common Areas shall mean and refer to that portion of the property which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon.

6. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in a Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a Mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

7. Association shall mean and refer to LAVA BLUFF OWNERS ASSOCIATION, a Utah nonprofit corporation.

8. Articles and By-Laws shall mean and refer to the Articles of Incorporation and the By-Laws of the Association.

9. Board of Trustees and the Board shall mean and refer to the Board of Trustees of the LAVA BLUFF OWNERS ASSOCIATION.

10. Member shall mean and refer to every person who holds membership in the Association.

11. Mortgagee shall mean any person named as a first Mortgagee or beneficiary under or holder of a first deed of trust.

12. Development shall mean and refer to the LAVA BLUFF MANUFACTURED HOME PARK created by this Declaration as it exists at any given time.

13. Successor Declarant shall mean and refer to NELSON AND THOMPSON ENGINEERING, which has acceded to the interest of the original Declarant, LAVA BLUFF ESTATES, a Utah joint venture. Successor Declarant shall also refer to NELSON AND THOMPSON ENGINEERING'S successors and assigns, or with any successor or assign to whom all or substantially all of its interest in the development of the Property is conveyed.

14. Manufactured Home shall mean and refer to a single-family residential unit constructed off premises and transported to a Lot, excluding tent trailers, recreational vehicles, and manufactured homes with metal roof. The minimum size of a manufactured home shall be 900 square feet with a minimum width of 24 feet.

## II. DESCRIPTION OF PROPERTY

The property which is initially associated with the Development and which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists

of the real property situated in Hurricane City, Washington County, State of Utah, and more particularly described in above.

The property shall consist of 181 improved manufactured home lots and related streets and other common areas as shown on the plat.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described land or any portion thereof including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cables, wires, utility lines, and similar facilities.

RESERVING UNTO SUCCESSOR DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Successor Declarant or for any assignee or successor of Successor Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration):

- (i) To construct and complete the improvements as Successor Declarant deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith;
- (ii) To improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners or Successor Declarant or as such assignee or successor may reasonably determine to be appropriate.

If, pursuant to the foregoing reservations, the above-described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire seven (7) years after the date on which this Declaration is filed for record in the Office of the County Recorder of Washington County, Utah.

**III. MEMBERSHIP AND VOTING RIGHTS**

1. **Membership.** Every owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. **Voting Rights.** Members shall be all of the Owners, including Successor Declarant. Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one vote exist with respect to any Lot. (Formerly, the Successor Declarant held Class B votes; however, such Class B voting rights have now expired and are of no further effect.)

3. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

**IV. PROPERTY RIGHTS IN COMMON AREAS**

1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and 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. Any Member may grant the use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot. There shall be no easement, however, to the recreational vehicle parking area and a Member's right to use the recreational vehicle parking area shall be governed by separate contract with the Association, which shall not be assignable.

2. **Form For Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

All of Lot of LAVA BLUFF MOBILE HOME PARK, according to the official plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions, all on file in the office of the Washington County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

3. Transfer of Title. Successor Declarant agrees that it shall, on or prior to the first conveyance of a Lot, convey to the Association title to all Common Areas of the Development, and Successor Declarant further agrees that it will discharge all liens and encumbrances on said Common Areas on or before the sale and closing of the last Lot in the Development.

4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to suspend a Member's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

(b) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(c) The right of the County of Washington and any other governmental or quasi-governmental body having jurisdiction over the property to access and rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service;

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date; and

(e) The requirement that all persons under age eighteen (18) be accompanied by an adult Member (Members eighteen (18) years of age or older) while in the clubhouse.

5. Encroachments. If any portion of a permanent improvement encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting,

settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

## V. ASSESSMENTS

1. **Personal Obligation and Lien.** Successor Declarant, for each Lot owned and each Owner shall, by acquiring or in any way becoming vested with an interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made, and (b) the personal obligation of the person who is the owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such liens, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the unit recorded prior to the date any such common expense assessments become due. Television cable service is available to the Members by contract through Falcon Cable. The cable TV service is an additional fee to be added to the monthly assessments and must be paid with each monthly assessment.

2. **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, replacement, and improvement of the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

3. **Base for Assessment.** Each Lot which has been conveyed to an Owner shall be assessed at a same and equal rate.

4. **Date of Commencement of Annual Assessments.** The Board shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by a majority vote of the Board. Annual Assessments shall commence on all Lots in a Phase of Development on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot in such Phase of Development. The first Annual Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The due



dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

5. **Corrective Assessments.** In addition to the Base Monthly Assessments and any Special Assessments, the Association may levy Corrective Assessments against a particular Owner and his Lot to pay the following: (i) collection of fines levied against a Member for violation of this Declaration, Association Rules and Regulations, and Policies, Procedures and Rules for Housing of Persons Age 55 or over; (ii) costs directly attributable to, or reimbursable by, that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, including without limitation Article VI, Sections 1 and 2; Article VII, Sections 1, 2, 4, 7, 8, 10, and 12, Article VIII concerning architectural standards adopted thereunder, plus interest and other charges on such Corrective Assessments, (iii) costs incurred by the Association attributable to violations of this Declaration which require or allow the Association to take corrective action to cure the Member's violation; and (iv) attorney fees and costs incurred hereunder.

The Board shall deliver a Notice of Corrective Assessment to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and payable within (45) days following delivery of Notice of Corrective Assessment and shall bear interest thereafter at the rate of eighteen percent (18%) per annum until paid in full.

6. **Special Assessments.** In addition to the monthly assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable for being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repair or replacement in connection with the Common Areas. Any such special assessment must be assented to by more than fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

7. **Quorum Requirements.** The quorum required for any action authorized by Section 6 above shall be as follows: at the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 6) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

8. Equal Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform (equal) rate for all Lots, subject to the provision of paragraphs 3 and 4 above regarding the Successor Declarant, or his assigns.

9. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the date a deed is delivered to the first purchaser of a Lot (or contract of sale) or the date of occupancy under an occupancy agreement whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy, as the case may be. At least 15 days prior to the effective date of any change in amount of the monthly assessment the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

10. Certificate Regarding Payment. Upon the request of any Owner or Prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

11. Effect of Non-payment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot, provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments become due. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payments. Such personal liability shall not pass to the owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, a fee in an amount not to exceed twenty-five percent (25%) of the monthly installment shall be assessed for each month the assessment is delinquent. This delinquency fee shall initially be set at Ten Dollars (\$10.00) and may be amended from time to time by the Board of Trustees, in accordance with the provisions hereof.

12. Tax Collection From Lot Owners by Washington County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of his common monthly assessment will be required to pay to the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on equal basis) of taxes directly from each owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event that the assessor shall separately assess Common Areas to the Association, the Board of Trustees may require, in its discretion a special assessment to pay such taxes, or they may be included in the regular assessment budget.

## VI. OPERATION AND MAINTENANCE

1. Maintenance of Lots and Living Units. The yard of a Lot, including without limitations, front, side and rear yards, shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Lot. The Association shall have no obligation regarding maintenance or care of Lots except as provided in Paragraph 2 of this Article VI.

2. Operation and Maintenance by Association. The Association, by its duly delegated representative, shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair. Notwithstanding the provisions regarding Lot maintenance by Owners, in the event an Owner of any Lot in the Property shall fail to maintain his Lot in a manner satisfactory to the Architectural Control Committee of the Board, the Association, after approval by 2/3 vote of the Board, shall have the right, through its agents, employees, or through an independent contractor to enter upon such Lot and repair, maintain, and restore the portion of the Lot maintainable by the Owner. The costs incurred by the Association in maintaining, repairing or restoring those portions of a Lot maintainable by the Owner shall then be added to and become an assessment and lien against the Lot and subject to collection as described in Article V, Section 9, of this Declaration.

3. Utilities. The Association shall pay for the monthly water for each Lot. Each Lot Owner shall pay for all other utility services including power, garbage pickup, and sewer which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

4. Insurance. The Association shall secure and at all times maintain the following insurance coverages:

(a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "LAVA BLUFF OWNERS ASSOCIATION for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear".

(b) A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of

others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an owner in the Development because of negligent acts of the Association or other Owners.

(c) A fidelity policy or policies to protect against dishonest acts on the part of Trustees, Officers, Manager, Employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one-hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to all first Mortgagees of Lots.

The following additional provisions shall apply with respect to insurance:

- (1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.
- (2) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or equivalent rating. Each insurer must be specifically licensed in the State of Utah.
- (3) The Association shall have the authority to adjust losses.
- (4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.
- (5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association

without a prior written demand that the defect be cured, that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

(6) Notwithstanding any provisions to the contrary herein, so long as the Mortgagee or its designee holds a mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

(7) Mortgagee Clause. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(8) Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

(9) Lots and Manufactured Home Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot or Manufactured Home and acts and events occurring thereon.

(10) Unacceptable Policies. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Lot Owner, Mortgagee or Mortgagee's Designee from collecting insurance proceeds.

(11) Flood Insurance. The Development is not located in an area identified by the Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Development should be declared to be in such flood area, a blanket policy of flood insurance on the Project shall be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Lots comprising the

Development or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

5. Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. The Association, through its Board of Trustees, shall perform background checks and obtain references on any proposed Manager in advance of entering into a management agreement. The attorney for the Association shall review any proposed management agreement.

6. Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Successor Declarant, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

## VII. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas, except as may be approved by a three member clubhouse committee appointed by the Board, or if such committee is not appointed, by the Board itself, for commercial services provided for the benefit of Lot Owners. Costs of repair for damage to the Common Areas caused by Members or their guests, relatives, invitees, or assigns will be assessed as a Corrective Assessment.

2. Use of Lots. All Lots, except those containing recreational amenities, shall be used only for commercially built manufactured homes that are new when installed. Lots are to be occupied within two (2) years of the closing on that Lot. Should compelling circumstances occur which would prevent a Lot owner from complying with this two-year limit, they may apply to the Architectural Control Committee for an extension. Any exceptions to the minimum size and minimum width of manufactured homes as set forth in Article I must be approved by the Architectural Control Committee. All manufactured homes shall be a complete modern living unit, equipped with plumbing for toilet and bath facilities according to State and County Health Department regulations. All occupied manufactured homes shall have inside plumbing and shall be

connected to utilities (water, sewer and electricity). Within forty-five (45) days after a manufactured home is installed upon a Lot, it shall be equipped with a complete undercarriage coverage known as skirting to be of masonry material only, or as approved by the Architectural Control Committee prior to application. The floor level of the manufactured home shall be 16" above the highest point of the street in front of the manufactured home, or as approved by the Architectural Control Committee. All tongues and/or towing devices shall be removed from the manufactured home prior to skirting. All manufactured homes must be secured to a concrete foundation with metal tie down straps or other fasteners, all in accordance with Hurricane City Ordinance and Building Codes. Vinyl sided manufactured homes may be permitted with the prior written approval of the Architectural Control Committee, provided that there is wood backing behind the vinyl siding.

Suitable storage or coverage must be provided for all property or materials to be stored on the premises and no loose property or materials of any kind shall be stored outside to detract from appearances. No detached buildings or outbuildings shall be constructed on any residential Lot other than one detached storage building no larger than twenty (20) feet by twenty-two (22) feet constructed of new material approved by the Architectural Control Committee. Cabanas or covered patios attached to a manufactured home may be constructed provided that any such cabana or covered patio shall contain not less than one hundred twenty (120) square feet of floor space.

For any manufactured home placed on a Lot from and after December 11, 1994, the manufactured home shall have a carport or enclosed garage constructed of new materials.<sup>1</sup> If within ninety (90) days from the date this Declaration is recorded on the Records of the Washington County Recorder, or ninety (90) days from the date the manufactured home was placed on the Lot, whichever last occurs, a carport or enclosed garage has not been constructed by the Lot Owner, the Association through its Board of Trustees, shall have the right to enter upon the Lot and cause a carport to be constructed at the Owner's expense. All costs of constructing the carport incurred by the Association shall be included, again, in the Corrective Assessments against the Lot as provided for in this Declaration. For any manufactured home placed on a Lot prior to December 11, 1994, the Owner shall have no obligation to construct a carport or enclosed garage until the manufactured home is transferred to a third party by sale, gift, or inheritance. Upon such occurrence, the new Owner thereof shall be obligated to construct a carport or enclosed garage within ninety (90) days from the date of transfer and if not, the Association, through its Board of Trustees, shall have the right to enter upon the Lot and cause a carport to be constructed at the Owner's expense. All costs of construction of the carport incurred by the Association shall be included in the corrective assessments against the Lot as provided for in this Declaration. Any variance to the provisions of this paragraph must be obtained in writing from the Board of Trustees and based upon a hardship to the Owner.

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<sup>1</sup>The effective date of this restriction concerning carports or garages is based upon the requirement that all manufactured homes have garages or carports as set forth in those certain Restated and Amended Architectural Control Guidelines of the Lava Bluff Owners Association adopted on December 10, 1994.

All carports constructed pursuant to the preceding paragraph are to be the full length of the Manufactured Home, or a minimum of 36' long, and 12' wide, unless otherwise approved by the Architectural Control Committee. Further, all carport and garage plans must come before the Architectural Control Committee and be approved before construction is commenced. All such construction must conform to standard building practices, be approved by Hurricane City Building Inspection, and approved by the Architectural Control Committee.

All Lots shall be improved with a concrete pad for two car parking. Such concrete pad shall be provided by the Lot owner prior to moving on of a manufactured home. Lighting and utility hookups are provided. All manufactured homes or structures are required to have a front setback a minimum of ten (10) feet. No Lot shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any owner or in a way that would result in an increase in the cost of insurance covering the Common Areas. No outdoor burning of trash or other debris shall be permitted. This shall not prohibit the use of a normal residential barbecue or other similar outside grill.

The Owner of a Lot shall make certain that all persons or interested entities who perform work on any manufactured home shall be bonded, licensed contractors in the State of Utah. Further, it shall be the responsibility of the Lot Owner to see that all such contractors remove all debris from the Property and Lot and that the Property and Lot shall be maintained in a clean and sanitary condition during all stages of construction. If the contractor fails to remove the debris from the Property or keep the Lot and Property in a safe and sanitary condition, then the Owner of such Lot shall be responsible for all cleanup and maintenance of the Lot and the Property. If the Lot Owner fails to keep the Lot and Property clean and maintained in a state of good condition, and upon approval of the Board, the Association may cause the Lot and the Property to be cleaned and maintained and include such costs in the assessment against the Lot.

3. Party Walls / Private Fences. Any wall built during original construction or by a Lot Owner and which is on or near a dividing line between the Lots or between a Lot and the perimeter of the property, shall constitute a Party Wall, and the following general rules with respect to Party Walls shall govern:

(a) Party Walls.

(i) The general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply to the extent that such general rules of law are not inconsistent with the provisions of this Article.

(ii) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.



(iii) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rules of law regarding liability for negligence or willful acts or omissions.

(iv) Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(v) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(vi) Alterations or removal of a party wall must be approved by all Owners sharing such party wall.

(vii) The Architectural Control Committee shall approve all new construction or alteration of a party wall.

(b) Private Fences. Any wall built during construction or by a Lot Owner which does not lay on a dividing line between the Lots shall be deemed a Private Fence. Private fences can be moved without the approval Lot Owners, but alterations and reconstruction of such fence must be approved by the Architectural Control Committee. Maintenance and repair of Private Fences shall be the sole responsibility of the Lot Owner.”

4. Landscaping. Each Lot owner shall submit for approval of the Architectural Control Committee a landscape plan. Said plan must be submitted and approved prior to moving a manufactured home on the Lot. The landscape plan must be installed within six (6) months of moving in the manufactured home. Front and back yards shall be landscaped, kept free of weeds and debris, and maintained by the Owner. All landscaping in the front and side yards must be installed within six (6) months of occupancy of the manufactured home and shall be landscaped in harmony with the predominant landscaping scheme within the Property.

5. Non-residential Use. No part of the Property shall be used for any commercial, manufacturing, mercantile, storing, vending, or other such non-residential purposes, except an Owner may conduct business as a Home Occupation approved by Hurricane City, provided there is no increase in traffic, noise, or parking. The Owner must file his application/request to be submitted to Hurricane City with the Board prior to the City taking action thereon. A copy of any approved Home Occupation license shall be filed with the Board by the Owner. Successor Declarant, its

successors or assigns, may use the Property for a model home site display, and as a sales and construction office during the construction and sales period.

6. Signs. No sign or billboard of any kind shall be displayed to the public view on any portion of the Property or any Lot except one sign for each Lot of no more than 18" x 24" (normal real estate size) advertising the property for sale or rent; including signs used by the Successor Declarant, its successor or assigns, to advertise the property during the construction and sales period.

7. Age Restriction/Quiet Enjoyment. The Lava Bluff Mobile Home Park is intended to, and shall be managed to, provide housing for persons 55 years of age or older, and shall prohibit occupancy by persons under age eighteen (18), as well as all others falling within the defined term of familial status under Federal law, except that persons under age eighteen (18) may reside in any manufactured home on a Lot, but not for more than two weeks consecutively nor more than thirty (30) days in any calendar year. Further, except as provided in the Policies and Procedures concerning housing for persons 55 years of age or older, adopted by the Board, each and every manufactured homes within the Property, if occupied, shall be occupied by at least one person 55 years of age or older (qualifying occupant). Without limiting the foregoing, at no time shall less than eighty percent (80%) of the occupied manufactured homes subject to this Declaration be occupied by at least one person 55 years of age or older, unless all remaining Lots are reserved for occupancy by at least one person 55 years of age or older.

The provisions of the Policies, Procedures and Rules shall not apply to occupants of a manufactured home who occupied the home prior to adoption of that certain "Restated and Amended Declaration of Covenants, Conditions, and Restrictions of Lava Bluff Manufactured Home Park (formerly known as Lava Bluff Mobile Home Park, dated March 13, 1999), to prohibit the occupancy of (i) persons under age 18 and (ii) a child born to an occupant who is pregnant at the time the Policies were adopted, so long as eighty percent (80%) of the occupied manufactured homes are occupied by at least one person age 55 or older. Any sale or rental of a manufactured home by such an Owner or occupant, however, must be in accordance with the provisions of the Policies, Procedures and Rules.

The Board shall establish Policies and Procedures from time to time as necessary to maintain the Property as an age restricted community intended for housing persons 55 years of age or older under State and Federal law.

No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners of his respective Lot or which shall in any way increase the rate of insurance.

8. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, or other out building shall be used on any Lot at any time as a residence, either temporarily or permanently. Storage sheds may be constructed on the Lot upon approval of the Architectural Control Committee. Sheds must be located at the rear of the building Lot, but no closer than 7' from the back property line, according to the Hurricane City, Utah Mobile Home Ordinance. Any changes or additions to the existing improvements may be done only with the written approval of the Architectural Control Committee.

9. Animals. No animals of any kind shall be raised, bred or kept on any Lot, except that cats or other quiet household pets may be kept on the Lots provided that they are not kept, bred or maintained for any commercial purpose or kept in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious, by noise or otherwise, to Lot Owners. No dogs in excess of 25 pounds are permitted on the Lots or the Property, and the Association, through the Board, is vested with the right to cause any dog that becomes an annoyance to other Lot Owners to be removed and to include the cost of removal in the Assessment for the Lot of the subject Owner. This provision concerning dogs in excess of 25 pounds will not apply to Owners who, at the time of recording of this Declaration, have a dog in excess of 25 pounds, except that if such dog is sold, dies, or is otherwise disposed of, it can only be replaced by a dog of less than 25 pounds.. All pets must be kept in a fenced Yard of the Lot or on a leash in the Common Areas. All owners of pets shall be responsible for the clean up of pet's waste.

10. Garbage Removal Equipment, Etc. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. Outdoor clothes lines are permitted as long as they are not visible from the street. Woodpiles may be allowed if they are neat as defined by the Architectural Control Committee. Refuse containers other than those provided, storage areas, machinery and equipment shall be prohibited upon any Lot unless prior approval is obtained from the Architectural Control Committee.

11. Exception for Successor Declarant. Notwithstanding the restrictions contained in this Article VII, for the seven-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah, Successor Declarant shall have the right to use any Lot owned or leased by it and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Successor Declarant.

12. Vehicles. No wrecked automobiles, non-registered automobiles, or repair of automobiles shall be allowed either on the street or on the Lot. No more than one (1) Manufactured Home plus two (2) other parked vehicles will be permitted or maintained upon any Lot. No ATV, RVs, motorhomes, trailers, including but not limited to cargo, camp and boat trailers, or boats shall

be permitted on a Lot on the streets and Common Areas on more than one (1) occasion, for up to 48 hours per occasion. All vehicles, ATVs, RVs, motorhomes, trailers, and boats, and automobiles (motorized and non-motorized), in violation of this section may be towed by the Association, through its Board of Trustees, at the owner's expense, such expenses to be levied as a corrective assessment under the terms of this Declaration. No commercial type vehicles shall be allowed either on the streets or on the Lots, except for those which are on service calls or making deliveries. All motorhomes (RVs) are required to be parked in the designated RV storage area. Any exceptions to the provisions of this Section must be granted in writing in advance by the Board of Trustees.

13. Set Backs. All yard set backs shall be as required by Hurricane City Ordinance.

### VIII. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Committee, the function of which shall be to insure that all landscaping, buildings, fences and structures within the Property harmonize with existing surroundings and structures. Said Architectural Control Committee shall serve at the pleasure of the owners and developer of Lava Bluff Mobile Home Park; provided, however, that after all Lots in the development have been sold, the Committee shall consist of three expandable to five Lot owners who shall be elected at the annual meeting and serve at the pleasure of the majority of the Lot Owners.

2. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures. The Board may formulate general guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the Book of Resolutions and the Architectural Control Committee, or the Board, as the case may be, shall act in accordance with such guidelines and procedures.

3. Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted. The Committee shall provide written notice of its approval or disapproval to the applicant.

4. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of

the Common Areas in the vicinity of the activity. All contractors must be bonded and licensed in the State of Utah.

5. Disclaimer of Liability. Neither the Architectural Control Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

6. Nonwaiver. The approval by the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications.

7. Exception for Declarant. (Intentionally left blank.)

8. Declarant's Obligation. Declarant hereby covenants in favor of each Owner: (a) that all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another and (b) that on or before seven years from the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah, there shall be substantially completed and usable as part of the Common Areas all open spaces in the locations shown on the Plat.

#### IX. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Association shall reasonably determine; provided, however, that in the event of a taking in which any Lot(s) is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner(s) of such Lot(s) to such Owner(s) and any first Mortgagee(s) of such Lot(s), as their interests shall appear, after deducting the proportionate share of said Lot in the cost of debris removal.

#### X. RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first Mortgagee shall be in effect:

1. Preservation of Regulatory Structure and Insurance. Unless the holders of seventy-five percent (75%) of all first Mortgagees and seventy-five percent (75%) of the Lot Owners shall have given their prior written approval, the Association shall not be entitled:

- (a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the upkeep of the Common Areas of the Property;
- (b) to fail to maintain fire and extended coverage on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or
- (c) to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of improvements on the Common Areas.

2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least seventy-five percent (75%) of all first Mortgagees (based on one vote for each Mortgagee) of the Lots, and (2) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Declarant), the Association shall not be entitled:

- (a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or
- (b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

Neither this Article X nor the insurance provision contained in Article VI may be amended without the prior approval of all first Mortgagees.

3. Notice of Matters Affecting Security. The Association shall give written notice to any first Mortgagee of a Lot requesting such notice wherever:

- (a) there is any default by the owner of the Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within thirty (30) days after default occurs; or

(b) there occurs any substantial damage to or destruction of any Lot or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(c) there is any condemnation proceedings or proposed acquisition of a Lot or of any portion of the Common Areas within ten (10) days after the Association learns of the same, or

(d) any of the following matters come up for consideration or effectuation by the Association:

(i) abandonment or termination of the Planned Unit Development established by this Declaration;

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(iii) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

4. Notice of Meetings. The Association shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Records. Any first Mortgagee shall have the right to examine the books, records and audit financial statements of the Association.

6. Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

7. Exemption from any First Right of Refusal. Any first Mortgagee and any purchaser therefrom who obtains title to the Lot pursuant to the remedies provided in the first Mortgage, or by foreclosure of the first Mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant

to any power of sale or otherwise shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

8. Rights Upon Foreclosure of Mortgage. Each holder of a first Mortgage (or Deed of Trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale or otherwise will take the Lot free of, and shall not be liable for, any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

9. Restrictions Without Approval of Mortgages. Except as to the Association's right to grant easements for utilities and similar or related purposes, the Development's Common Areas may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of 75% of first Mortgage liens on the Lots.

10. Mortgagees Rights Concerning Amendments. Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article XII of the Declaration, no material amendment to the Declaration, By-Laws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least 75% of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment.

XI. DECLARANT'S RIGHT TO AMEND

(Intentionally left blank)

XII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or the President of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Chairman or any member of such Committee.

2. Rules and Regulations. The Board of Trustees shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and



used in a manner consistent with the interests of the Owners, and to establish penalties and fines for infraction thereof.

3. Amendment. Any amendment to this Declaration shall require the affirmative vote of at least two-thirds (2/3) of the membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose.

Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Declarant if the Class B membership then exists). In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

5. Reserve Fund. The Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

6. Lease Provisions. Any lease or rental agreement shall be in writing and provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations of the Association and the Policies and Procedures and rules of the Association for housing of persons 55 years of age or older. All leases must further provide that any failure by the lessee to comply with the terms of such documents shall constitute a default under the lease. A copy of all leases shall be placed in the office of the Association by the Owner.

7. Declarant's Covenant to Construct Common Areas. Declarant hereby covenants to construct all Common Areas and amenities thereto indicated on the Plat.

8. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

9. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

10. Covenants to Run With Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration and failure to comply with any of the foregoing shall be grounds for an action by the Association or any aggrieved Owner for the recovery of (i) attorney fees and costs, and (ii) damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

