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**DOC # 20090020755**

Amended Restrictive Covenants  
Russell Shirts Washington County Recorder  
05/28/2009 12:00:00 AM Fee \$ 46.00  
By EVANS TED

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**AMENDED AND RESTATED DECLARATION OF COVENANTS CONDITIONS  
AND RESTRICTIONS OF  
SANTA FE AT RED CLIFFS**

“This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made and executed on the date evidenced below by the Santa Fe at Red Cliffs Homeowners Association (the “Association”) and it applies to all lots in Santa Fe at Red Cliffs Phases 1, 2, 3, 4, 5 and all amendments and annexations thereto.”

**RECITALS**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions supersedes and replaces in its entirety that previously recorded Declaration recorded on August 19, 1992 as Entry No. 00417392, Book, 686, Page 77 et seq., in the Washington County Recorder’s office and the Amendments thereto recorded on, January 10, 2006 as Entry No. 400996285 Book 1832, Page 1950 et seq., and on June 1, 2007, as Entry No. 20070028486 in the Washington County Recorder’s office and any and all supplemental Declarations, Bylaws or Amendments thereto.

Santa Fe Homeowner’s Association is the owner of certain real property in St. George, Washington County, Utah which is more particularly described below.

The properties have been subjected to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth.

The Association is intended for occupancy of residents 55 years of age and older as defined in the Fair Housing Act, 42, U.S.C. §§ 3601 et seq.

In accordance with Article X, Section 4 of the Covenants, Conditions and Restrictions, the approval of not less than sixty-percent (67%) of the owners has been obtained to make and execute this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Santa Fe at Red Cliffs.

**DECLARATION**

The Association hereby declares that all of the properties described below shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Map recorded

concurrently. This is for the purpose of protecting the value and desirability of the Properties. This Declaration and the Map, shall be construed as covenants of equitable servitude, shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

The properties are located in St. George, Washington County containing 25.237 acres, more or less, in all five (5) phases. A plat map for each of the five (5) phases is stored in association files with an official description of the legal boundaries and acreage for each.

#### **ARTICLE I - DEFINITIONS**

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1. Declaration means this instrument, and any amendments.

Section 2. Plat or Map means the subdivision plat maps of all five (5) phases recorded and entitled "Santa Fe at Red Cliffs". Dates, acreage, engineering, and other contributing professionals are identified on the individual Plat Maps located in the Homeowner Association's Files.

Section 3. Property or Properties means that certain real property herein before described, and such additions thereto as may hereafter are subjected to this Declaration.

Section 4. Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 5. Limited Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant. Limited Common Area is subject to rights of the Association set forth in this Declaration.

Section 6. Lot means a separately numbered and individually described plot of land shown on the plat designated for private ownership, but specifically excludes the common and limited common areas.

Section 7. Townhome means a single family dwelling, with or without walls or roofs in common with other single family dwelling lots. "Townhome" includes fee title to the real property lying directly beneath the single family dwelling, within lot boundary lines.

Section 8. Owner means the entity, person, or group of persons owning fee simple title to any lot which is within the Properties, Regardless of the number of parties participating in ownership of each lot; the group of those parties shall be treated as one "owner."

Section 9. Association means Santa Fe at Red Cliffs Homeowners Association, its successors and assigns.

Section 10. Member means every person or entity who holds membership in the Association. Every Member is an owner, and every Owner is a member.

Section 11. Trustees mean the governing body of the Association.

Section 12. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 13. Declarant includes Rocky Mountain Company and the Declarant heirs, successors and assigns.

## **ARTICLE II – PROPERTY RIGHTS**

Section 1. Title to the Common Area The Declarant has conveyed fee simple title to the common area and limited common area to the Association free and clear of all encumbrances and liens, prior to the conveyance of the first lot, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common area in good repair and condition at all times and to operate the common area at its own expense in accordance with high standards.

Section 2. Owners' Easements of Enjoyment Every owner has a right and easement of use and enjoyment in and to the common area. This easement is appurtenant to and passes with the title to every lot, subject to:

- (a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service or recreational storage, or parking facility situated upon the common area. No fees shall be charged for parking specifically designated on the plat as appurtenant to a lot.
- (b) The right of the Association to limit the number of guests of members using the common area.
- (c) The right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (d) The right of the Association with the approval of sixty-seven percent (67%) of owners, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the common area or any interest therein to any private individual, corporate entity, public agency, authority, or utility.
- (e) The right of the Association to grant easements for water, sewer, gas, telephone, electricity and drainage purposes.
- (f) The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.
- (g) The terms and conditions of this Declaration.

- (h) The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the common area.

**Section 3. Limited Common Area** A lot owner is entitled to the exclusive use of the limited common area adjacent and appurtenant thereto, if any, and to exclusive use of the parking area, if any, designated with his lot number on the plat. Limited Common Area is subject to rights of the Association set forth in the Declaration. The Association, through its Trustees, may adopt rules and regulations concerning use of the limited common area.

**Section 4. Delegation of Use** An owner is deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is non-resident shall have any such right to enjoyment.

**Section 5. Lot** Each lot is owned in fee simple by the owner. However, area within the surveyed lot boundaries but outside the originally constructed townhome walls shall be treated as limited common area for use purposes, and as exterior area for maintenance purposes. After the initial construction on a lot, subsequent construction, if any, on that lot must nevertheless conform to the location, size and appearance of the originally constructed townhome.

**Section 6. Combination of Lots** In the event two or more adjacent lots are held in identical ownership, the lots may be combined for use. The common or limited common areas which are between the private ownership areas in each of the adjacent lots may be occupied for construction of a single townhome, the owner having an easement for this purpose under, across and over such common and limited common areas. For example, if lots 3 and 4 of the original plat were owned by the same owner, and the owner desired to construct a single townhome, the townhome could occupy any area between lots 3 and 4 which is designated on the plat as common area. The owner would be required to respect the common areas in the other, non-adjacent boundaries of the lots.

In the event of such townhome construction across common or limited common areas between adjacent lots, all easement and rights of the Association, its members and third parties, such as utilities, in such area which had been exercised prior to construction of the townhome would remain in place, in perpetuity. However, all easement and other rights which had not been used prior to construction of the townhome could not thereafter be exercised.

**Section 7. Rules** The Board of Trustees shall have the authority to promulgate rules and Regulations for the governance of the Properties, and persons within the Properties. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Trustees.

### **ARTICLE III – MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership** Every owner of the Association. The term “owner” includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be

separated from lot ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

**Section 2. Voting Rights** The Association has only one class of voting membership:

**CLASS A.** Class A members are all members of the Association. Class A members are entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to that meeting, or verbal objection is made at the meeting, by another co-owner of the same lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

#### **ARTICLE IV - FINANCES AND OPERATIONS**

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

**Section 2. Purpose of Assessments** The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and (b) for the improvement and maintenance of properties, services, and facilities devoted to this purpose. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve to be replaced on a periodic basis; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges including without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges.

**Section 3. Maximum Annual Assessment** Until January 1 following recording

of this Declaration, the maximum annual assessment shall be One Thousand Two Hundred Dollars (\$1,200) per lot. This amount shall be the basis of calculation for future maximum annual assessments.

- (a) From and after the date referred to above the maximum annual assessment shall be increased each year by five percent (5%) above the maximum for the previous year, without a vote of the membership.
- (b) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty-seven (67%) of the votes, those voting in person or by proxy, at a meeting duly called for this purpose.

**Section 4. Special Assessments for Capital Improvements** In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of all members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

**Section 5. Additional Assessments** In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage of disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

**Section 6. Notice and Quorum for any Action Authorized Under Sections 3, 4, and 5** Written Notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to at least sixty percent (60%) of all the votes shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Uniform Rate of Assessment: Periodic Assessment** Both annual and special assessments must be fixed at a uniform rate for all lots. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgages.

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

**Section 8. Date of Commencement of Annual Assessments: Due Dates** The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Trustees as to the amount of said assessment, the first annual assessment shall be an amount equal to 90% of the maximum annual assessment provided above.

At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a pre-requisite to validity of the assessment.

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

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

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

**Section 9. Effect of Non-Payment of Assessment – Remedies of the Association** Any assessment or installment thereof not paid within thirty (30) days after the due date therefore shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the trustees shall determine appropriate) until paid. In addition, the Trustees may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment.

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

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

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the lot of an owner may be sold in the manner provided by the Utah law pertaining to deeds of trust as if said Association were beneficiary under the deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure. No owner may waive or

otherwise escape liability for the assessments provided for herein by non-use of the common are or by abandonment of his lot.

**Section 10. Subordination of the Lien to Mortgages** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender or insured by Federal Housing Administration or the Veterans Administration if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which become due prior to such sale or transfer. No sale or transfer, however, shall relieve a lot or owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

**Section 11. Books, Records and Audit** The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by lot owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A lot owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

#### **ARTICLE V – INSURANCE**

**Section 1. Casualty Insurance or Insurable Area** The Trustees shall keep all insurable improvements and fixtures of the common area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the common area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Trustees may elect to obtain and continue in effect, on behalf of all owners, adequate blanket casualty and fire insurance such form as the Trustees deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Townhomes including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Townhomes shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the owners.



Section 2. Replacement or Repair of Property In the event of damage to or destruction of any part of the common area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such lot owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the townhomes, the Association shall repair or replace the same to the extent of the insurance proceeds available.

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

Section 3. Liability Insurance The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the common areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

Section 4. Fidelity Insurance The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. In procuring fidelity insurance the Trustees shall seek a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (i) three months operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee".

Section 5. Annual Review of Policies All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed.

#### **ARTICLE VI - ARCHITECTURAL CONTROL COMMITTEE**

No structure, building, fence, wall or addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alteration to any lot or townhome be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such committee is in existence, by the Architectural Control

Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this article will be deemed to have been made.

Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners, neither the Association nor the Architectural Control Committee shall have the power by act or omission, to change waive or abandon any plan scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of townhomes and lots, and the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

#### **ARTICLE VII – EXTERIOR MAINTENANCE**

Section 1. Exterior Maintenance by Owner Each owner shall be responsible for maintenance to the exterior of the townhome owned but not limited to the following: paint, general repair, replace and care for roof, gutters, down spout, windows, doors, exterior building surface and maintenance to other exterior improvements. The Trustees may, however, in the default the owner to perform maintenance which is the owner's responsibility, and after two-thirds (2/3) vote, and after ten days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each townhome and lot. The cost of such maintenance shall be assessed against the lot or townhome.

Section 2. Exterior Maintenance by Association The Association shall be responsible for maintenance upon the common area, the limited common area which is not adjacent to any lot, and the area of any lot outside the walls of the townhome which is of the same character as surrounding common or limited common area. The cost of such maintenance shall be a common expense.

Section 3. Access at Reasonable Hours For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.

Section 4. Alteration of Certain Maintenance Duties by Rule The duty of maintenance for the area of a lot outside the walls of the townhome, and limited common areas adjacent and appurtenant to the townhomes may be altered by Rule of the Association.

#### **ARTICLE VIII – USE RESTRICTIONS**

Section 1. General Use Restrictions All of the properties which are subject to this declaration are hereby restricted to residential dwellings and buildings in connection therewith, including but not limited to community buildings on the common property. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the properties. After the initial construction on a lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that lot. No building or structure of a temporary character,

trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

**Section 2. Signs, Commercial Activity** Only one commercial "For Rent or "For Sale" sign of not more than six (6) square feet containing no handwritten letters, numbers or symbols is permitted, and is restricted to placement in the limited common area to within one foot of the unit offered, and not in lawn area. No advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

**Section 3. Quiet Enjoyment** No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners or which shall in any way increase the rate of insurance.

**Section 4. Animals** No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except that dogs, cats or other household pets, two or less in total number may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to lot owners. All pets must be kept in the lots or on a leash when in the common areas. This provision may be made more restrictive by Rule of the Association.

**Section 5. Use of Common Area** Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

**Section 6. Parking** No motor vehicle which is inoperable shall be allowed within the Properties, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense. Parking spaces within the Properties shall be used for parking of motor vehicles actually used by the owner or his immediate family or guests, for personal use and not for commercial use, and for guest parking. Recreational vehicles, boats, travel trailers and similar property may not be parked within the Properties unless permitted by Rule of the Association.

**Section 7. Planting and Gardening** No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.

**Section 8. External Apparatus** No lot owner shall cause or permit anything of a permanent nature (including, without limitation, awnings, canopies or shutters) to hang be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

**Section 9. Exterior Television or Other Antennas** No exterior radio or other antennas, except one television satellite dish per FCC regulations per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Trustees.

**Section 10. Garbage Removal** All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

**Section 11. Oil and Mining Operations** No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot. No derrick lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any lot.

**Section 12. Interior Utilities** All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

**Section 13. Leases** Prior to renting or leasing any townhome, the owner shall occupy their townhome for at least twelve (12) months before it can qualify as a permissible rental townhome. For the purposes of this section only, "occupy" shall mean that a townhome shall be owned by the same owner (s) for a period of at least twelve (12) consecutive months, whether physically occupied by said owner (s) or not, prior to being made available for rental or lease. All rental or lease agreements must be for a minimum period of six (6) months with any renewal also for a minimum period of six (6) months. Any lease or rental agreement shall be in writing and must be presented to the Board of Trustees for approval prior to occupancy. No unit shall be rented or leased for transient hotel purposes, commercial purposes or vacation time share. A renter or lessee may not sublet or allow a third-party to occupy the unit. The number of rental units in Santa Fe at Red Cliffs shall not exceed 10% or fourteen (14) units. Those units currently under lease prior to this amendment shall be granted a grandfather status until the unit is sold. Future rental units shall be approved on first-come first-served basis. Those wanting to place a unit on the potential rental list will notify Santa Fe at Red Cliffs Board of Trustee or their property management agent. Leases shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be subject to fines and termination of the lease.

**Section 14. Senior Community**

1. **Age Restrictions.** Santa Fe at Red Cliffs HOA is hereby designated as a participant in the Housing for Older Persons Act of the Department of Housing and Urban Development. By a vote of the majority of the homeowners on May 31, 2007, ninety percent (90%) of dwelling units within Santa Fe at Red Cliffs HOA must be occupied by at least one person 55 years of age or older. The remaining 10% of the units must have at least one resident 45 years of age or older. All new leases or purchase agreements regarding any unit must contain a provision, directly above the signatory lines, asserting that the new occupants are in compliance with the above age restrictions. A copy of such leases or purchase agreements shall immediately be provided to the Santa Fe at Red Cliffs HOA Board of Trustees. In accordance with the Housing for Older Persons Act, without limiting the foregoing, at no time shall less than 80% of the occupied dwelling units subject to this Declaration be occupied by at least one person 55 years of age or older in order to maintain this designation. The Board shall establish policies and procedures from time to time as necessary to maintain the properties as an age restricted community intended for housing persons 55 years of age or older or as herein described under state and federal law.

2. **Children.** Santa Fe at Red Cliffs HOA shall prohibit occupancy by persons under the age of 18, as well as all others falling within the defined term of Familial status under federal law, except that persons under the age of 18 may reside with any resident but not for more than 30 consecutive days nor more than 90 days in any calendar year.

3. **Survey.** Every other year, the President of the Association, or such persons designated by the Board of Trustees, shall conduct a survey of the persons in the community to determine if at least one person residing in each unit conforms to the age restrictions listed above. For each unit, the method of reliable identification includes: drivers license, birth certificates, passport, immigration cards, military ID, or other certifiable documents indicating age. Each person questioned shall sign the survey as to the truth of his or her response, and the surveyor shall affirm under oath that he has inspected the identifications provided, and that the information in the survey accurately reflects those documents.

4. **Initial Survey.** An initial survey of the community must be conducted within 180 days of the adoption of this amendment.

5. **Uncooperative Members.** If any persons in the community refuse to comply with these procedures, the surveyor may, if there is sufficient evidence, consider the unit to be in compliance with the age restrictions as outlined in 14.1. Such evidence may include: Government records or documents, prior forms or applications, a statement from individuals who have personal knowledge of the age of the inhabitant, setting forth basis of knowledge that the unit is occupied by a person complying with the age restrictions as outlined in 14.1.

6. **New Residents.** All persons intending to purchase or lease an interest in any unit must provide verification that at least one intended resident of the unit is in compliance with the age restrictions listed in 14.1 of this amendment to the Santa Fe at Red Cliffs HOA Board of Trustees or such person designated by them. Such verification shall include reliable identification as described above.

7. **Availability of Survey.** The survey must be available for inspection by any person upon reasonable notice as determined by the Board of Trustees.

8. **Exceptions.** Any owner may apply for relief or exception from the provisions as outlined in this amendments or in the Santa Fe at Red Cliffs HOA Policies, Procedures, and Rules, which cover this amendment due to circumstances not covered in

the HOPA of 1999. All Units now in Santa Fe at Red Cliffs HOA not meeting the requirements of this amendment are grandfathered. These units upon sale, rental or leasing after the date of recording this document must subsequently comply with the requirements herein. However, in no circumstance may the threshold of at least 80% of all units in the community having at least one person over the age of 55 be compromised.

9. Notices, Signs, Advertising Marketing and Sales. All advertising, marketing, signs, notices and sales materials or displays of any kind shall reflect that Santa Fe at Red Cliffs HOA is intended for housing for older persons. All print ads shall contain the following language: **"The Santa Fe at Red Cliffs HOA is intended and operated for residents 55 years of age and older as defined in the Fair Housing Act. As such it is policy of the Santa Fe at Red Cliffs HOA to prohibit permanent residence of persons under 18 years of age as is permitted under an exemption of the Act."** A notice shall be placed in the Legal Section of local news media indicating the status of Santa Fe HOA as a "Senior Community", signs at all vehicular entrances to Santa Fe HOA shall be placed indicating senior status over 55 community, a notice shall be placed in the Santa Fe Clubhouse also indicating the community as a senior community for persons over 55 years of age. A notice to the Washington County Board of Realtors shall be provided indicating the status of Santa Fe HOA as a Senior Community for persons over the age of 55.

10. Single Family Residences. All units in Santa Fe at Red Cliffs HOA are designated as single-family residences. No unit or residence may be leased/rented or sold except as a single-family unit which is described as follows: A single family unit when used in the Declaration shall mean a group of not more than four (4) persons in a two bedroom unit and in no case shall the number of persons allowed in a unit exceed two (2) persons per bedroom, who are directly related either as spouses or significant others, parent and child, grandparent or grandchild, niece, nephew or as siblings.

Section 15. Timesharing No lot or any dwelling structure located thereon shall be used for operation of a timesharing, fraction-sharing, interval ownership, or similar program whereby the right to exclusive use of the lot or dwelling structure rotates among participants in the program on a fixed floating time schedule. Nothing in this provision shall prevent an owner from allowing friends and family to stay in the residence at the owner's discretion, for so long as such occupancy is not deemed restricted use set forth in this declaration.

#### **ARTICLE IX – EASEMENTS**

Section 1. Encroachments Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, limited to water, sewer, gas,

telephone and electricity. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties except as initially programmed and approved by the Association or thereafter approved by the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Association shall have the right to grant such easement on said property without conflicting with the terms hereof. All utilities that are installed in, upon or through the common areas of the properties shall be maintained under the direction of the Association.

**Section 3. Police, Fire and Ambulance Service** An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

**Section 4. Maintenance by Association** An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot to perform the duties of maintenance and repair.

**Section 5. Other Easements** The easements provided for in this Article shall in no way affect any other recorded easement.

## **ARTICLE X GENERAL PROVISIONS**

**Section 1. Enforcement** The Association or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty in accordance with UTAH CODE SECTION 57-8a-208 against any owner or tenant who fails to refrain from violation these Covenants or a rule of the Association.

**Section 2. Severability** All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or

reservation, or any part thereof, shall be thereby affected or impaired; and the Association and owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

**Section 3. Duration** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this declaration is recorded, after which time said covenants shall be automatically for successive periods of ten (10) years.

**Section 4. Amendment** The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than sixty-seven (67%) of the owners. Any amendment must be properly recorded in the records of Washington County, Utah to become effective.

**Section 5. Notices** Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

**Section 6. Gender and Grammar** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**Section 7. Waivers** No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

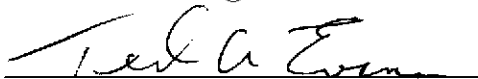
**Section 8. Topical Headings** The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

**ARTICLE XI – ASSIGNMENT OF POWERS**

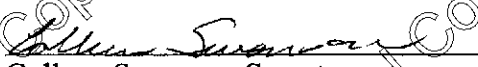
The Santa Fe at Red Cliffs Homeowner's Association has all rights and powers of this Declaration. This Declaration supercedes any previous document.

DATED THIS 28 DAY OF MAY 2009  
BY SANTA FE AT RED CLIFFS HOMEOWNERS ASSOCIATION

TRUSTEES

  
Ted Evans, President

Date 05/28/09

  
Colleen Swenson, Secretary

Date 05/28/09



**NOTARY PUBLIC**

Subscribed and sworn to before me this

28 day of MAY, 2009

Jeanette Christensen  
Notary Public

