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Amended Restrictive Covenants  
Russell Shirts Washington County Recorder  
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By CANYON BREEZE OWNERS ASSN

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**THIRD AMENDMENT**

**TO THE**

**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS**

**OF**

**CANYON BREEZE R.V. RESORT**

**1150 W Red Hills Parkway**

**Washington, Utah**

**APRIL 2010**

Unofficial Copy

**RICHARDS, KIMBLE & WINN**

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April 15, 2010

Open Letter to Canyon Breeze Homeowners

RE: Canyon Breeze Owners Association – Amendments to CC&Rs

Dear Homeowners:

This firm represents the Canyon Breeze Owners Association. We are happy to inform the homeowners in the Association that we have been working with your Board in the effort to revise and amend the current Declaration of Covenants, Conditions & Restrictions of Canyon Breeze R.V. Resort (the "CC&Rs"). As you can imagine, it is important that the CC&Rs clearly spell out the rights, as well as the obligations, of the homeowners in relation to the Association. Prior to the revisions being submitted to the membership for approval, we reviewed them in order to ensure that they complied with Utah State law, the federal Housing for Older Persons Act, and to ensure that they were consistent with the remaining provisions of the CC&Rs. We found that they were, after some minor changes were made.

These revisions were recently submitted to the membership for their review and approval. The revisions were voted on and officially adopted as the "Third Amendment to the Declaration of Covenants, Conditions & Restrictions of Canyon Breeze R.V. Resort."

We hope the revisions serve the Association well and provide for the smooth and cohesive operation of Canyon Breeze. We thank you for the consideration you have given to this matter.

Sincerely,

**RICHARDS, KIMBLE & WINN, PC**



Curtis G. Kimble

Note to Recorder:  
Record against All Lots  
In Canyon Breeze PUD,  
Including All Real Property  
Described in Exhibit A.

WA-CBRV

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF CANYON BREEZE R. V. RESORT**

**(A Community Intended and Managed For  
Housing for Older Persons, 55 Years of Age or Older)**

THIS Amended and Restated Declaration of Covenants, Conditions and Restrictions of Canyon Breeze R. V. Resort, a planned unit development, supersedes and replaces the Declaration of Covenants, Conditions and Restrictions of Canyon Breeze R. V. Resort dated June 17, 1999, and recorded on the same date as Entry No. 00652090 in the records of the Washington County Recorder, in its entirety, including any amendments or supplements thereto.

THIS Amended and Restated Declaration of Covenants, Conditions and Restrictions of Canyon Breeze R. V. Resort (the "Declaration") incorporates all prior amendments, but is specifically intended to incorporate and consolidate that Third Amendment to the Declaration of Covenants, Conditions and Restrictions of Canyon Breeze R. V. Resort recorded on March 31, 2010, as Entry No. 20100010139 in the records of the Washington County Recorder, into the Declaration.

The Declaration of Covenants, Conditions and Restrictions of Canyon Breeze R. V. Resort shall be restated as follows:

THIS DECLARATION of Covenants, Conditions and Restrictions, hereinafter called "Declaration," is made and executed in St. George City, Washington County, State of Utah, by the Canyon Breeze Owners Association ("Association"), a Utah Non-Profit Corporation.

**RECITALS**

- A. Association and its individual members own that certain real property located in Washington County Utah, which is more particularly described below.
- B. The Canyon Breeze Owners Association has been formed to administer the terms of this Declaration. Owners of lots within the property described are members of the Association.
- C. Association may annex additional land which may be subdivided into individual lots, the owners of which will become members of Association and will be entitled and subject to all rights, powers, privileges, covenants, restrictions, easements, charges, and liens hereinafter set forth.

D. Pursuant to Article XIV, Section 1 of the Declaration, approval of sixty-seven percent (67%) of the Unit Owners was duly received to adopt and record this amendment to the Declaration.

E. It is necessary to provide important housing opportunities for older persons, and to establish Association Property as Housing for Older Persons and to create a community intended and operated for occupancy by at least one (1) person of age 55 or older per unit as defined in the Housing for Older Persons Act of 1995; therefore, the Canyon Breeze Owners Association hereby maintains a policy of prohibiting occupancy of R.V.'s, park models, or constructed "stick built" dwellings on any Lot by persons under 18 years of age unless one (1) of the occupants of the residence is over age 55, and hereby requires that at least eighty percent (80%) of the homes on Association Property be occupied by at least one person age 55 or older, as permitted by the Fair Housing Act of 1988 and the Housing for Older Persons Act of 1995. See 42 U.S.C. §§ 3601, et seq.

NOW, THEREFORE, Association hereby declares that the Declaration of Covenants, Conditions and Restrictions for the property shall provide as follows:

#### DECLARATION

Association declares that all of the property described or which may be additionally acquired by Association in the future shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, assessments, charges, liens, and to the Official Plat Map previously recorded. This is for the purpose of protecting the value and desirability of said property and of maintaining said property as Housing for Older Persons pursuant to law. This Declaration and the Official Plat Map shall be construed as covenants of equitable servitude which shall run with the land and shall be binding on all parties having any right, title, or interest in the described property, or any addition to or part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

The properties are located in Washington County, Utah, and are more particularly described as follows:

BEGINNING at the Northeast corner of the Southwest 1/4 of the Southwest 1/4 of Section 15, Township 42 South, Range 15 West, Salt Lake Base and Meridian, said point of beginning also being S 0°53' E 1322.37 feet along the section line and N 89°35'15" E 1318.77 feet along the 1/16 line from the west 1/4 corner of said section 15 and running thence S 0°34'55" E 80.15 feet to a point on the Northerly right-of-way line of P-15 frontage road and a curve to the left, the radius point of which is S 48°06'56" E 1979.86 feet; thence Southwesterly 42.64 feet along the arc of said curve to the point of tangency; thence S 40°39'02" W 378.00 feet along said right-of-way to a point of a curve to the right, the radius point of which is N 49°20'58" W 1839.86 feet; thence Southwesterly 280.98 feet along the arc of said curve to the point of tangency; thence S 49°24'02" W 94.75 feet along said right-of-way; thence N 32°30' W 389.57 feet; thence S 50°59' W 230.00 feet to a point on the northerly right-of-way line of Red Ledge Road; thence N 29°30' W 17.945 feet along said right-of-way to a point of a curve to the left, the radius point of which is S 60°30' W 200.00 feet; thence northwesterly 212.81 feet along the arc of said curve and along said right-of-way to the point of tangency; thence S 89°32' W 665.00 feet along said right-of-way; thence N 20°00' E 373.89 feet to the north line of the Southeast 1/4 of the Southeast 1/4 of Section

16, Township 42 South, Range 15 West, Salt Lake Base and Meridian; thence N 89°32' E 335.00 feet along said 1/16 line to the 1/16 corner; thence N 89°35'15" E 1318.77 feet along said 1/16 line to the point of beginning.

WHICH PROPERTY is also known as all of Canyon Breeze R. V. Resort as described on the plat recorded in Washington County, State of Utah on December 17, 1984, as entry No. 269798, Book 365, Page 145.

Containing 15.26 acres.

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.

Association may acquire additional property in the future which will be subject to this Declaration.

#### ARTICLE I DEFINITIONS

The following definitions control in this Declaration. Words and phrases not defined in this Article shall be given their ordinary meaning.

Section 1. "Act" shall mean and refer to the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and further amended by the Housing for Older Persons Act of 1995, 42 U.S.C. §§ 3601, et seq.

Section 2. "Articles and By-laws" shall mean and refer to the Articles of Incorporation and the By-laws of the Association.

Section 3. "Association" or "Canyon Breeze Owners Association" shall mean and refer to the Canyon Breeze Owners Association, its successors and assigns, a Utah non-profit corporation.

Section 4. "Board of Trustees" shall mean and refer to the governing board of the Canyon Breeze Owners Association.

Section 5. "Common Area" shall mean all real property (including the improvements thereto, if any) owned by the Canyon Breeze Owners Association or hereafter acquired for the common use and enjoyment of the members except for that dedicated for use by the general public (e.g., roads dedicated to use by the public). Specifically exempted from common area are all lots designated on the plat except for lot 47, any dedicated public streets which are identified on the official plat and/or plats prepared pursuant to Article X, as recorded on the official records of the Washington County Recorder and as the same, may hereafter be modified, amended or supplemented in accordance with the provisions of this Declaration. Common Area shall also include all land which the Association has an easement right in, if any.

Section 6. "Constructed 'Stick Built' Dwelling" shall mean a permanent dwelling framed and built on site on blocks or some other type of foundation, and having an approved exterior.

Section 7. "Conveyance" shall mean and refer to actual conveyance of fee title to any lot to any owner by a warranty deed or other document of title and shall also mean the execution of an installment sales contract.

Section 8. "Declaration" shall mean and refer to this Declaration of Covenants,

Conditions and Restrictions applicable to the properties, and any amendments or supplements thereto, recorded in the office of the Recorder of Washington County, State of Utah.

**Section 9.** "Familial Status" shall mean and refer to:

(a) One or more individuals who have not attained the age of 18 years being domiciled with:

(1) A parent or another person having legal custody of the individual or individuals;

(2) The designee of the parent or other person having custody, with the permission of the parent or other person;

(b) A parent or other person in the process of acquiring legal custody of one or more individuals who have not attained the age of 18 years; and

(c) A person who is pregnant.

**Section 10.** "Guest" shall mean and refer to any individual who is not an owner and who occupies or otherwise resides in a Home for 21 days or fewer in any 3 month period.

**Section 11.** "Home" shall mean and refer to Recreational Vehicles (R.V.'s), park-model homes and constructed "stick built" dwellings placed on a lot within the Project. Multiple family dwellings as well as Tents or other outdoor camping structures are not included in this definition and are not allowed in the project.

**Section 12.** "Lot" shall mean and refer to any plot of land shown upon any recorded plat map of the Properties and specifically excepting Common Area and areas dedicated to the use of the general public.

**Section 13.** "Member" shall mean and refer to every owner who holds Membership in the Association, or described in Article III, Section I.

**Section 14.** "Mortgagee" shall mean and refer to any person named as a first mortgagee or beneficiary, owner or holder of a first deed of trust.

**Section 15.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract buyers, but excluding those having an interest merely as security for the performance of an obligation.

**Section 16.** "Park Model" shall mean a dwelling that conforms to the size and dimension requirements contained elsewhere in this Declaration, which dwelling contains plumbing, heating and electrical systems and which dwelling is manufactured somewhere other than on site and transported in one or more sections to the lot and placed upon a block foundation.

**Section 17.** "Person" shall mean and refer to one or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under the United States Bankruptcy Code, receivers and fiduciaries.

**Section 18.** "Plat" or "Plat Map" shall mean and refer to the Plat entitled "Canyon Breeze R.V. Resort" consisting of 1 page recorded in the office of the County Recorder of Washington County, Utah, on the 17th day of December, 1984, in Book 365 at page 145, Entry 269798, and as the same and any additional plat created pursuant to Article 10 may hereafter be modified, amended or supplemented in accordance with the provisions of this Declaration or supplements to this Declaration.

**Section 19.** "Properties," "Property" and "Project" shall mean and refer to that certain real property herein before described.

**Section 20.** "R.V." shall mean a vehicular unit other than a mobile home primarily

designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle, and which includes but is not limited to a travel trailer, motor home, and/or fifth wheel that is at least twenty-four (24) feet in length. Vehicles which are originally constructed as a bus but which are converted for use as a recreational vehicle are not allowed unless approved by the Board.

**Section 21.** "Utilities" shall mean public utilities, including, but not limited to, sewer, water, drainage, natural gas, telephone, electricity, and cable television.

## ARTICLE II PROPERTY RIGHTS

**Section 1. Owners' Easements of Enjoyment.** Every lot owner shall have a right and easement of use and enjoyment in and to the Common Area and to any and all significant facilities and services specifically designed to meet the physical or social needs of older persons. This Easement is appurtenant to and passes with Title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area. Fees charged by the Association shall in no way affect its status as a non-profit corporation

(b) The right of the Association, in accordance with its Articles of Incorporation and Bylaws and with the approval of two-thirds of the membership to borrow money for the purpose of upgrading or improving the Common Area and in aid thereof to mortgage said property; the rights of such mortgage in said property to be subordinate to the rights of the Owners hereunder.

(c) The right of the Association to suspend the voting rights of a member and to deny said member use of any recreational facility and common area for any period during which any assessment against his Lot remains unpaid; and for a period of not to exceed sixty days for any infraction of its published rules and regulations.

(d) With the approval of a majority of the holders of first mortgage liens on lots, and owner approval as provided below, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of the members, agreeing to such dedication, sale, or transfer and the legislative body of The City of Washington approves the Plat change that is necessitated by the dedication, sale, or transfer, at a public hearing held in accordance with Utah Code Ann. § 10-9-801 et seq. (1953, as amended).

(e) The right of the Association to seek to abandon, petition, subdivide, encumber, sale, or transfer the Common Areas owned, directly or indirectly, by the Homeowners Association for the benefit of the Lots. The granting of an Easement for public utilities or other public services consistent with the intended use of the Common Area is not a transfer within the meaning of this clause. No such abandonment, petition, subdivision, encumbrance, sale, or transfer shall be effective unless (1) an instrument has been signed by two-thirds (2/3) of the members and the legislative body of the City of Washington approves the Plat change necessitated by the abandonment, petition, subdivision, encumbrance, sale, or transfer at a public hearing held in accordance with Utah Code Ann. § 10-9-801 et seq. (1953, as amended) OR (2) all owners consent in writing to such abandonment, petition,

subdivision, encumbrance, sale or transfer.

(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 right of the Association to grant and reserve easements and rights-of-way through, under, over and across the Common Area for the installation, maintenance and inspection of lines and appurtenances for public or private utilities.

(h) The right of the Association to make, publish and enforce reasonable rules pertaining to the regulation and use of all common areas by owners, guests, invitees and tenants of owners, including limiting the total number of visitors that can use the recreational facilities to a maximum number determined by the Board.

(i) The terms of this Declaration.

(j) The right of the Association with approval of two-thirds of the owners to enter into Agreements or leases which provide for use of the Common Areas and facilities by a similar Association in consideration for use of the Common Areas and facilities of the other Association, or for cash consideration; AND

(k) The right of the City of Washington and any other governmental entity or quasi-governmental body having jurisdiction over the property to access and to have the right of ingress and egress over open spaces and Common Areas contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service.

**Section 2. Delegation of Use.** Any member may designate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or his guests who reside on the property. In the event an owner leases his lot, the tenant and not the owner shall retain the keys to the recreational facilities, and the owner and his family and guests shall only have access to said facilities if they are invitees of the tenant. All use and enjoyment of the Common Area and facilities by family members, tenants, guests or contract purchasers shall be subject to this Declaration, the Bylaws and the Rules and Regulations to be promulgated by the Board of Trustees. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the member, shall create a debt to the Association. Debts owed to the Association as a result of Damage to the Common Area and facilities shall be an assessment charged to the Lot owner as provided in Article IV.

**Section 3. Title to the Common Area.** The Canyon Breeze Owners Association possesses fee simple title to the Common Area, including Lot 47, and covenants 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 quality standards.

**Section 4. Rules.** A 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 available for inspection and copying by the members during reasonable hours.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** Every owner of a Lot which is subject to assessment



shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. When more than one person owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at an Association meeting by any of such co-owners, whether in person or in proxy, shall be conclusively presumed to be both attributable to the Lot concerned unless written objection is made prior to said meeting, or verbal objection at said meeting by another co-owner of the same Lot. In the event objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

**Section 2. Effect on Voting Rights of Additional Land Acquired by the Association.** If additional lands are acquired by the Association, and in the event that said additional lands are to be divided into lots rather than to be used for common areas, no voting rights shall vest in lots in said additional lands during the time such lots are owned by the Association. Upon sale of said lots and consequent ownership of said new lots by other than the association, voting rights for such lots shall be the same as for all other lots as described above.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Each owner of any Lot, whether or not it shall be so expressed in said owner's Deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments, (b) special assessments, (c) insurance assessments, if any, (d) additional assessments, (e) individual assessments, (f) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration, and (g) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. The assessments shall be a charge on the land and shall be a continuing lien on the Lot against which such assessment is made. Each such assessment shall also be the personal obligation of the person who is owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessment shall not pass to a Lot owner's successor in Title unless expressly assumed by them.

**Section 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 and for maintenance of Association property as Housing for Older Persons. The use made by the Association of funds obtained from assessments may include payment of the cost of: maintenance of the grass and sprinkling system on individual owner's lots; taxes and insurance on the Common Areas; management and supervision of the Common Areas; repair and maintenance 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 or to perform or fulfill its obligations, functions or purposes in providing housing for older persons, 55 years of age or older, which includes any expenditure to provide significant facilities and services specifically designed to meet the physical or social needs of such older persons to the extent providing such facilities and services are necessary and practicable.

**Section 3. Basis and Maximum of Annual Assessments.** The maximum annual

assessment may be increased by the Board of Trustees each year not more than fifteen percent (15%) above the maximum assessment for the previous year except upon the vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken incident to a merger or consolidation which the Association is authorized to participate in under its Articles of Incorporation.

**Section 4. Special Assessments.** In addition to the annual assessments authorized above, the Association with approval of two-thirds (2/3) of the members may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement, or significant facilities and services designed to meet the physical or social needs of older persons, upon the Common Areas, including fixtures and personal property related thereto and for such other purposes reasonably necessary to fulfill the intent of this Declaration.

**Section 5. Additional Assessments.** In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring any damage or disruption to Common Areas that may occur.

**Section 6. Individual Assessments.** Each owner of a lot shall also be assessed from time to time for (i) all fines, penalties and damages to which its owner is subject as a result of a violation of the terms of this Declaration and rules and regulations prescribed by the Board for the use of the Common Areas, (ii) for damages caused to the Common Areas by the negligence or willful misconduct of such owner, and (iii) for any other liability, indebtedness or other obligation of the owner to the Association arising under the provision of this Declaration. Notice of all Individual Assessments shall be given by the Board or management of the Association to the Owner of each lot assessed within fifteen (15) days of the adoption of the Individual Assessment. Individual Assessments shall be due and payable within thirty (30) days following written notice thereof.

**Section 7. Notice and Quorum for any Action Authorized Under Sections 3, 4 and 5.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4, or 5 shall be sent to all members not less than thirty (30) days, but no more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty-six and two thirds percent (66-2/3%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) 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 8. Rate of Assessment.** Annual, special and capital assessments shall be fixed at uniform rates for all lots and may be collected on a monthly basis.

**Section 9. Regular Assessments: Due Dates.** The Board of Trustees shall fix the amount of the annual assessment against each Lot prior to the annual meeting. Written notice of the annual assessment shall be provided to every owner subject thereto. The due dates for payment of said assessment shall be established by the Board of Trustees on either a monthly, quarterly or annual basis, or some combination thereof.

A certificate or written statement of account signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid shall be provided to any requesting Lot owner or any encumbrancer or potential encumbrancer of the Lot in question, and may also be provided to another requesting party if said party's request has previously been approved by the Board. Furthermore, a first mortgage holder, upon request, is entitled to a written certificate from the Association advising of any default by the Lot owner of any obligation not cured within sixty (60) days. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 10. Effect of Non-Payment of Assessments: Remedies of the Association**  
Assessments are due the First day of the month and become delinquent on the 10th. 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. Any assessments not paid within thirty (30) days after the due date, thereof shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lower rate as the Trustees shall determine appropriate) until paid. The Association shall have the remedies provided in the subsections below if payment is not made when due.

(a) **Remedies.** For delinquent assessments the Association shall be entitled to (1) record a notice of lien for delinquent assessments against the lot to which the assessments relate and/or (2) bring an action at law against the owner, personally obligated to pay such delinquent assessment without waiving the lien or assessment or (3) foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of selling Deeds of Trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (4) withhold, interrupt, or terminate any or all services performed by the Association in behalf of the delinquent member. The remedies set forth herein shall be cumulative and may be exercised singularly or concurrently.

(b) **Additional Remedies.** In addition to the remedies stated above, Trustees may assess a late fee for each delinquent installment, which fee shall be in an amount to be set by the Board but which amount shall not exceed twenty percent (20%) of the installment.

(c) **Costs and Attorneys Fees.** The costs and expenses of any judicial action, arbitration, sale or foreclosure, preparation of Notice of Lien, and any other costs and expenses directly or indirectly related to the delinquent payment, including reasonable attorney's fees, shall be an assessment charged to the lot owner.

(d) **Right to Bring Action.** Each lot owner by his acceptance of a deed to a Lot expressly grants to the Association, its successors, assigns, or agents the right and power to bring any action(s) against such owner personally for the collection of any assessment or amount due. Such assessment or amount due shall stand as a debt, and the Association shall have the right and power to pursue collection of said debt as a lien on the property, and to use all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as foreclosure of a mortgage or trust deed lien on real property, and such

owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association, acting on behalf of the lot owners, shall have the power to submit a bid in any such foreclosure sale and to acquire and hold, lease, mortgage, sell and convey any property interest obtained thereby.

**Section 11. Non-use and Abandonment.** No owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by non-use of any Common Area or abandonment of his Lot.

**Section 12. Subordination of the Lien to Mortgages.** The lien created hereunder upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all lots including the mortgaged Lot. Any first mortgagee, who obtains title to a lot in the development pursuant to the remedies in the mortgage/deed of trust or through foreclosure of the mortgage/deed of trust or any other security instrument, shall not be liable for more than six (6) months of the lot's unpaid dues or charges which have accrued before the acquisition of title to the lot by the mortgagee through foreclosure. However, no such sale or transfer shall relieve such Lot from liability for any assessments which thereafter become due or from the lien thereof.

**Section 13. Exempt from Property.** The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by any local public authority;
- (b) The Common Areas, including lot 47.

#### ARTICLE V SEPARATION WALLS

**Section 1. Separation Fences and Walls.** It shall be the responsibility of the Association to maintain and repair the fences and walls located on the common area surrounding the property, except that certain wall between the property and the adjacent Canyon Cove subdivision, which wall was installed solely by Canyon Cove after it removed the fence originally installed by Canyon Breeze, is to be maintained and repaired solely by Canyon Cove according to the understanding of the Association.

**Section 2. Repair and Maintenance.** The Association shall have the right to enter upon any owner's lot for the purpose of repairing and maintaining separation walls. No changes or alterations to separation fences or walls shall be made by lot owners without approval of the Architectural Control Committee. The cost of repair for damage caused to separation walls or fences by the willful or negligent acts of lot owners or their guests and assigns shall be a lien upon such owner's lot and shall be added to that owner's annual

assessment.

**Section 3. Arbitration.** Any dispute arising concerning a separation wall may be resolved by arbitration. In such arbitration, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## ARTICLE VI ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS

**Section 1. Architectural Control Committee.** Three members of the Architectural Control Committee (hereinafter sometimes referred to as "ACC") shall be appointed by the Board of Trustees. Appointed members may be either members of the Association or their spouse. In addition to the three appointed members, the committee shall also include one member of the Board of Trustees who is appointed to that position by the Board of Trustees, and may also include the Association manager as a nonvoting member of the Committee. As such, this committee shall consist of (4) members. The function of the committee shall be to insure that all exteriors of homes and landscaping within the property harmonize with existing surroundings and structures. The committee need not be composed of owners. If such a committee is not appointed as described above, the board itself shall perform the duties required of the committee. The Board shall decide any tie votes of the ACC, but the ACC member who is also a Board member shall abstain from any such tie breaking votes of the Board.

(a) **Submission to Committee:** No home, accessory or addition to a home, landscaping, or other improvement of a lot shall be constructed, maintained, or accomplished, and no alteration of the exterior of any home shall be performed, unless complete plans and specifications therefore have first been submitted to and approved by the Architectural Control Committee.

(b) **Meetings of Committee:** The Architectural Control Committee shall meet from time to time as may be necessary to perform its duties hereunder. Any action taken by the Architectural Control Committee shall require the written approval of a majority of its members.

(c) **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 into the rules and regulations adopted by the board and the Architectural Control Committee, or the board, as the case may be, shall act in accordance with such guidelines and procedures.

(d) **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.

(e) **Construction:** Once begun, any improvements, construction, landscaping, or alterations approved by the committee shall be diligently pursued 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 Area in the

vicinity of the activity.

(f) **Disclaimer of Liability:** Neither the Architectural Control Committee, nor any member thereof acting in good faith, shall be liable to the Association or any owner for any damage, loss, or prejudice suffered or claimed on account of:

- (1) The approval or rejection of, or the failure to approve or reject, any plans, drawing, or specifications;
- (2) The development or manner of development of any of the property; or
- (3) Any engineering or other defect in approved plans and specifications.

(g) **Non-Waiver:** The approval of the Architectural Control Committee of any plans and specifications; for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications subsequently submitted

**Section 2. Building Restrictions.**

(a) **Type of Occupancy:** Occupancy is limited to two (2) adult persons per lot, and is further restricted to at least one occupant per lot of age 55 or older in 80% of the dwellings as further described in Article XIV below. Guests may stay up to 14 consecutive calendar days per quarter. An individual that occupies or otherwise resides in the dwelling for more than 21 days per quarter shall be considered an 'occupant' and not a 'guest' for purposes of this section.

(b) **Building Type, Size and Location:** All lots shall be used only for commercially built Recreational Vehicles (R.V.'s) except that "Park Model" homes and constructed "stick built" dwellings shall be expressly allowed as long as aluminum, painted wood, vinyl or PVC skirting is installed within six (6) months of the time such homes or dwellings are moved onto the Lot. No R.V.'s, park model homes or constructed "stick built" dwellings more than ten (10) years old will be permitted to enter the park on an available lot unless expressly permitted by the Architectural Control Committee. The Association reserves the right to request that any R.V. 25 or more years old shall be required to leave the park unless expressly permitted to stay by the Architectural Control Committee. All R.V.'s, park models or constructed "stick built" dwellings shall be placed on the designated pad. No R.V., less than twenty-four (24) feet in length shall be permitted. No more than one (1) R.V., park model or constructed "stick built" dwelling plus two (2) other parked vehicles will be permitted upon any Lot. No painting of the concrete around the R.V., park model or constructed "stick built" dwelling is permitted. In compliance with the Fire codes, no circuit breakers on the power pedestals are to be locked up. All living areas; of the R.V., park model or constructed "stick built" dwelling must maintain at least a six (6) foot separation between the home and the neighboring property line. No boat trailer, boat, or utility trailer shall be stored more than fourteen (14) total days per calendar quarter on any Lot within the development.

(c) **Building Use:** All lots shall be used only for single family residential purposes as Housing for Older Persons, and no professional or commercial use shall be made of the same, or any portion thereof, nor shall any resident's use of a lot endanger the health or disturb the reasonable enjoyment of any other owner or resident. 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. Carports and other

outdoor parking facilities are not permitted unless two-thirds of the members vote for the same at a regularly scheduled meeting of members. All structures shall be constructed in accordance with the zoning and building ordinances of The City of Washington.

(d) **Driveways:** There shall be sufficient driveway parking for two (2) vehicles per lot. Each driveway shall conform to Washington City zoning requirements, including an appropriate setback from the gutter.

(e) **Easements:** Easements for installation and maintenance of utilities, drainage facilities and ingress and egress are reserved as shown upon the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements or which may impede ingress and egress. Landscaping in the easement area of each lot shall be maintained continuously by the Association, except for those improvements for which a public authority or utility company is responsible.

(f) **Yards walls and Fences:** No yard walls and/or fences will be allowed on individual lots.

(g) **Temporary and Other Structures:** No structure of a temporary nature; trailer, bus, house, tent, shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently. No old or second-hand structures shall be moved onto any of said lots. It being the intention hereof that all dwellings and other buildings to be erected on said lots, or within the Project shall be new construction of good quality workmanship and materials.

(h) **Landscaping:** Lot owners are permitted to landscape their individual Lots according to the guidelines in this section and as approved by the Architectural Control Committee. Landscaping may consist of grass, trees, shrubs, flowers and gardens. The maximum width of planting areas alongside cement pads shall be 18 inches. If a lot owner's flowerbeds, shrubs or garden disrupts the ability of the lawn sprinklers to properly water the grass areas, said owner shall be responsible to either remove the plants or arrange and pay for any upgrading of the sprinklers that may be required. Rose bushes are discouraged as the thorns create a hazard for lawn mowing personnel. One tree per lot is recommended. The Association shall maintain the lawn and sprinkler systems, but trees, shrubs, flowers and gardens shall be the responsibility of the individual lot owners. All landscaping shall be maintained at a reasonable standard compatible with other homes in the Project, and must be of a size and design that are approved by the Architectural Control Committee prior to installation. Shrub and tree planting on corner lots shall be located so as not to create a hazard for the movement of vehicles along streets. No trees or shrubs shall be planted on any corner. All landscaping must be properly cared for and maintained to remain healthy and alive. Lot owners that plant trees or bushes as part of their landscaping must ensure that said trees or bushes are properly trimmed so as not to form a hazard to person or property in the event of a windstorm. If the Association determines that a particular tree or bush does form such a hazard, they have the right to remove or to require the removal of said tree or bush.

(i) **Architectural Controls:** No building shall be erected, placed, or altered on any lot until the construction plans and specifications and plans showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation.

(j) **Construction Materials:** In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines are applicable to the property:

(1) Home style, design, alterations, and additions will conform to standards established by the Architect Control Committee.

(2) All air conditioning equipment, utility pipes, antennas and utility equipment shall be placed as discreetly as possible. Roof mounted air conditioning equipment will not be allowed on park models or constructed "stick built" dwellings, but may be allowed on trailers as long as said equipment does not extend more than 16 inches above the roof of the trailer.

(k) **Maintenance of Lot During Construction:** Contractors or subcontractors as owners/builders are required to clean up the site daily to maintain a clean work site during construction or are required to cleanup daily.

(l) **Lateral and Subjacent Support and Drainage:** An owner's activities which affect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for all damage proximately caused by drainage from their lot(s) to adjacent landowners. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels.

**Section 3. Damages.** Any damage inflicted on existing improvements such as curbs, gutters or streets by the owner or their guests; assigns, agents or independent contractors on any particular lot must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the owner. Damages not repaired by the owner shall be an assessment to the lot as provided in Article IV.

**Section 4. Enforcement.** The Architectural Control Committee may refer any infraction of the requirements of the Building Restrictions found in this Article VI to the Board. The Board shall have the right to suspend the voting rights and the rights to use recreational facilities, or to impose a fine of up to Two Hundred Dollars (\$200.00) for each such infraction, and any such fine shall be a continuing lien on the land of the Lot owner the same as any assessment. No penalty shall be imposed under this section unless the Lot owner said to be in violation is given at least 15 days prior notice of the proposed penalty and is given the opportunity of electing to have a hearing before the Board with respect to the alleged violation prior to the date the penalty is to take effect, if the Lot owner elects to have a hearing, any fine imposed shall be due and payable only if reaffirmed by the Board at the hearing.

## ARTICLE VII OPERATION AND MAINTENANCE

**Section I. Maintenance of Common Areas and Significant Facilities.** The Common Areas shall be maintained by the Association so as not to detract from the appearance of the property and so as not to affect adversely the value or use of any Lot. The Association shall also be responsible to maintain the grass and sprinkling system for each lot. The Association shall also be responsible to provide and maintain any significant facilities and services specifically designed to meet the physical or social needs of older persons, to the



extent such facilities and services are necessary and practicable.

**Section 2. Maintenance By Owner.** Each owner shall be solely responsible for maintenance of the trees, shrubs and plants on his Lot and the exterior of his home. In the event any owner shall fail to perform this maintenance in a manner consistent with the terms of this Declaration, the Association shall have the right to enter upon such Lot in order to perform any necessary maintenance. The cost of such additional maintenance shall be added to and become part of the assessment to which such Lot is subject.

**Section 3. Utilities.** The Association, by decision of the Board of Trustees, retains the right to assume responsibility for paying all or a portion of the utilities assessed to each individual lot, and to thereafter include as a part of each lot owner's regular assessment a payment for that particular utility service. Each lot owner shall independently pay for all utility services or portions of a utility service which are not expressly assumed by the Association. Such utilities may include, but are not limited to; cable TV service, sewer, garbage pick-up, water, electricity, telephone and gas.

**Section 4. 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 at reasonable hours.

**Section 5. Duties of 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. With the approval of the Board of Trustees, the manager may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association in relation to the Common Areas and all general maintenance and repairs within the project. Any such contract with independent contractors or managing agents shall be limited to a duration of one (1) year; provided, however, that contracts may be renewable for successive one (1) year periods with the approval of the majority of the Board of Trustees.

**Section 6. Terms of Management Agreement.** Any agreement for professional management of the Development 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 written notice.

## ARTICLE VIII EASEMENTS

**Section 1. Minor Encroachments.** Each Lot and the Common Area shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.

**Section 2. Utilities Easement.** There is hereby granted and conveyed to the City

of Washington, cable television companies, Mountain Fuel Supply Company, telephone companies, and other governmental or quasi-governmental entities, their successors and assigns, a blanket easement upon, across, over and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as deemed appropriate by the provider of the utility. By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television and/or telephone company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common Areas. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, or repair of utilities, or which may change the direction of flow of drainage channels in the easement, or which may obstruct or retard the flow of water through drainage channels in the easements,

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon Common Areas in the performance of their duties. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Association shall have the right to grant such easement on said property without conflicting with the terms hereof.

**Section 3. Easements for Ingress and Egress.** An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Areas and any Lot to perform the duties of maintenance and repair of the home, yard and landscape area, or Common Area provided for herein.

## ARTICLE IX INSURANCE

**SECTION 1. INSURANCE ON LOTS AND HOMES.** THE ASSOCIATION SHALL HAVE NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE OR SIMILAR CASUALTY COVERAGE FOR LOT OR HOME, OR FOR THE CONTENTS OF ANY HOME. THE ASSOCIATION ALSO SHALL HAVE NO DUTY TO INSURE AGAINST ANY NEGLIGENT ACTS OR EVENTS OCCURRING AT OR ON A LOT OR IN THE HOME.

**Section 2. Assessments.** Funds for insurance to be maintained by the Association shall be provided for from annual assessments as allowed by Article IV

**Section 3. Required Insurance.** The Association shall secure and at all times maintain the following insurance coverage:

(a) **Multi-peril Coverage.** A multi-peril type policy covering the Common Areas and facilities. Such policy shall provide coverage against loss or damage by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, fire, earthquake, hailstorm, water damage, and such other risks as customarily are covered with respect to projects similar to this Project in its construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than

100% of the full insurable value (based upon replacement cost). Such policy shall include an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, an "increased cost of construction endorsement" or its equivalent, and a "contingent liability from operation of building laws endorsement" or its equivalent.

(b) **Broad-form Public Liability Coverage.** A comprehensive policy insuring the Owners, the Association, its trustees, officers, agents and employees against all damage or injury caused by their negligence to the public, invitees, tenants or Owners on the Common Areas. Limits of the liability under such coverage shall not be less than \$1,000,000 for all claims for personal injury or property damage, or both, arising out of a single occurrence. Such policy or policies shall be issued on a comprehensive liability basis, shall provide that cross-insurers 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 others.

(c) **Fidelity Coverage.** A fidelity policy or policies to protect against dishonest acts on the part of a trustee(s), officer(s), manager, employee(s) of the Association and all others, including volunteers, who handle or are responsible for handling funds of the Association. The 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 100% of the 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.

**Section 4. Additional Provisions.** The following additional provisions shall apply with respect to insurance:

(a) **Approval of Policies.** All policies shall be written by a reputable company approved by the Board of Trustees,

(b) **Contribution.** Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual owners or their mortgagees.

(c) **Flood Insurance.** In the event that some part of the Project is now or may in the future be classified by the Housing and Urban Development as an area having special flood hazards, a blanket policy of flood insurance on the flood areas shall be maintained in an amount customarily required in projects of this type to ensure against flood damage.

(d) **Premiums Maintained in the Name of the Association as Trustee.** Premiums for all insurance coverage obtained by the Association shall be written in the name of the Association as trustee for each of the home owners.

(e) **Review of Insurance Policies.** The Board of Trustees shall periodically, and whenever demand is made 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 actions to any mortgagee or any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board of Trustees shall be available for inspection by the Owners.

(f) **Rebuilding After Damage or Destruction.** In the event of damage or destruction by fire or other casualty to any properties covered by insurance written in the name of the Association as trustee for the Owners, the Board of Trustees shall, upon receipt of insurance proceeds, contract to rebuild or repair such damage or destroyed portions of the Properties to as good a condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by the signatures of at least two (2) members of the Board of Trustees. The Board of Trustees and/or the Association treasurer shall advertise for sealed bids with any licensed contractors. The contractors shall be required to provide a full performance and payment bond for the repair, construction, or rebuilding of destroyed property. In the event the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, or both, to the same condition as formerly, the Board of Trustees shall levy a special assessment against all Owners in such proportions as the Board of Trustees deems fair and equitable in light of the damage sustained.

## ARTICLE X LOT 47 AS COMMON AREA

**Section 1. Common Area.** Lot 47 is the sole exception to the plat designation that all numbered lots constitute private ownership. Lot 47 is owned by the Association, forms part of the common area, and shall be used for the benefit of the Association membership. The uses of Lot 47 shall be determined by the Board, and may include such things as use as an office and a location for the Association to receive mail, use as an area for the provision of facilities such as public restrooms and a laundry area, use as an area for recreational facilities, or whatever other uses the Board may decide by majority vote are appropriate. The Association shall have the responsibility to maintain Lot 47 and all improvements thereon in the same manner as in all other common areas.

**Section 2. Exception to Private Lot Requirements.** Lot 47 shall not be subject to any restriction or limitation enumerated in this Declaration that pertain to other privately owned lots, such as (but not limited to) the following: assessments, occupancy limitations, use restrictions, building type, size and location designations, etc.

**Section 3. Potential Sale.** In the event that a suitable location for an alternate office is chosen and approved by a vote of 2/3 of the members, the Association shall have the right thereafter to sell Lot 47 under the same restrictions regarding transfer of Common Area described elsewhere in this Declaration. Immediately upon such sale the exceptions pertaining to Lot 47 described above shall be of no more force or effect. In the event that Lot 47 is sold, it shall not be used for commercial purposes, but must become a privately owned residential lot the same as all other lots in the Resort, and shall be subject to all the requirements of this Declaration that pertain to such privately owned lots.

**ARTICLE XI  
ADDITIONAL PROPERTIES**

**Section 1. Additional Properties.** The Association may, with the consent of two-thirds (2/3) of the members, expand the Properties held by the Association and its members by acquiring adjacent property. All such property acquired shall be subject to the terms, covenants and conditions of this Declaration

**Section 2. Limitations on Acquiring Additional Property.** The following limitations shall apply to the acquisition of new properties as described above:

(a) Any such acquired land may be comprised either in whole or in part of common areas and/or individually divided lots for detached residential single-family dwellings. If the acquired property is to be comprised of owner-occupied lots, said lots shall be occupied by at least one person age 55 or older. The Association, with the consent of two-thirds (2/3) of the members, shall develop the Common Areas in said addition(s) and include any facilities or amenities thereon that are deemed necessary.

(b) If additional subdivisions are created by the above-described acquisition process, the lot owners in said addition(s) shall be members of the Association and shall be subject to the same rules and restrictions and have the same rights to the use and enjoyment of the property and facilities of the Association as any other member. The Association shall have the same duty to maintain the Common Areas in any such additionally acquired properties as they do for such areas currently possessed by the Association.

**ARTICLE XII  
USE RESTRICTIONS**

**Section 1. Housing for Older Persons.** A minimum of 80% of the Association dwellings must be occupied by at least one person age 55 or older, as more fully described in Article XV below.

**Section 2. Residential Use.** No owner shall occupy or use his home, or permit any part of his home to be occupied or used for any purpose other than as a private residence. No commercial activities of any kind whatsoever shall be conducted in any residence or on any portion of the lot.

**Section 3. Fee Conveyed.** Each Lot shall be conveyed as a separately designated and legally described freehold estate, the owner taking title in fee simple, subject to the terms, conditions, and provisions hereof.

**Section 4. Uses Permitted by Association.** It shall, be expressly permissible for the Association to maintain upon the Common Areas such facilities as may be reasonably required, convenient or incidental to the ongoing maintenance of the property, including, but not limited to, a business office, storage areas, signs, and other needed maintenance facilities.

**Section 5. Household Pets Permitted.** No animals, livestock or poultry of any

kind may be raised, bred, or kept on any Lot or in the Common Area, other than household pets as described below. A maximum of two household pets, such as dogs or cats, are allowed for each home in the project. Any such allowed pet must be kept inside the dwelling or on a porch unless being walked, and may only be "staked out" if the pet's owner is on the premises and if the pet is confined entirely to the owner's property. Pets being walked must be on a leash that is less than six feet in length. Pets may not enter lots other than their owner's without the express permission of the affected lot owner. Any "droppings" produced by the pet, be it on the owner's lot, another resident's lot or the common area, shall be immediately picked up and properly disposed of by the pet's owner. The Association shall have the right to clean up droppings or repair damage caused by pets if the owner refuses to correct the same, and to charge the cost of said cleanup or repair to the owner. Owners shall not allow their dogs or other pets to make sounds that disturb others. The Association may issue a warning to a pet owner if it receives complaints regarding messes or pet noise or other problems caused by the pet, and if the messes, noise or other problem is not satisfactorily terminated or dealt with, the Association has the right to prohibit the owner from keeping the pet in the project, **NO DOGS, CATS OR OTHER HOUSEHOLD PETS WILL BE ALLOWED TO REMAIN OUTSIDE THE HOME BETWEEN DUSK AND DAWN, UNLESS ACCOMPANIED BY THE OWNER AT ALL TIMES.** Keeping of household pets shall also be subject to any additional rules and regulations adopted by the Board of Trustees.

**Section 6. Obstruction of the Common Area.** There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board of Trustees.

**Section 7. Oil and Mining Operations.** No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common Area.

**Section 8. Alteration of Common Area.** Nothing shall be altered or constructed, or removed from the Common Area, except with the written consent of the Board of Trustees.

**Section 9. Leases.**

(a) **Deposit Required.** Each owner, before leasing a lot in the Project, shall be required to deposit a bond with the Association in the amount of \$500.00 per lot so leased, hereafter referred to as the "Lessor's Bond." The Association shall retain each Lessor's Bond deposited with it for the purpose of immediately offsetting any fines or charges assessed against such lot by the Association for violations of this Declaration or the rules or regulations of the Association. Following any such offset, the Association may assess against the Owner the amounts of the fines in order to replenish the Lessor's Bond for that lot. The Association shall have all remedies for collection of such assessment in the same manner as other assessments, and as may be set forth elsewhere in the Declaration or applicable statute.

(b) Any Owner that is leasing a lot in the project on the date that this Amendment is recorded with the County Recorder shall have a period of sixty (60) days from such date to deposit the Lessor's Bond with the Association for any lot so leased. Failure of an owner to comply with this subsection shall subject such owner to a fine in the amount of \$50 per week beginning on the 61<sup>st</sup> day after this Amendment is recorded. That fine amount may be modified from time to time by the Board.

(c) Should an Owner cease to lease a lot, the Owner may notify the Association in writing and the Association shall return any unused portion of the Lessor's Bond back to the Owner within thirty (30) days of receipt of the written notice or of the moving out of the tenants, whichever occurs last. Nothing herein shall prevent an Owner from requiring a lessee to remit the Lessor's Bond or any part thereof to the Association, however, the Owner shall in all cases remain the primary obligor to the Association for remission and replenishment of the Lessor's Bond.

(d) Any lease agreement between a home owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation of the Association, the Bylaws of said Association, and all rules enacted and published by the Board of Trustees, and that any failure by lessee to comply with the terms of such documents and rules shall be a default under the lease. Furthermore, all leases shall be in writing and a copy of each signed lease shall be delivered to the office of the Association by the homeowner within 14 days of the signing of the lease. Failure to provide the Association with a copy of the signed lease shall subject the owner to fines and such owner shall be responsible for all costs and fees incurred by the Association in obtaining a copy of the signed lease.

**Section 10. Recreational Vehicles.** No recreational vehicles may be parked within the Common Areas or upon the driveway of any Lot. In no event shall any recreational vehicle, camper, trailer, tent trailer, or motor home be used for camping or for overnight accommodations by the lot owner or by the lot owner's guests in and on the Common Areas of the project or on the driveways of the homes.

**Section 11. Nuisances.** No noxious or offensive activities shall be carried on or upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the Project.

**Section 12. Violation Constitutes a Nuisance.** Any act or omission, whereby any restriction, condition, or covenant as set forth in this Declaration, if violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by the Association or affected property owners through fines, actions at law, or otherwise, and such remedy shall be deemed to be cumulative and not exclusive. Furthermore, any act or omission which is proscribed as a criminal violation by any Local, state, or Federal law, if committed upon the Project is also declared to be and shall constitute a nuisance, and may be abated by the Association or affected property owners. Should a tenant of any owner commit such a criminal violation upon the Project, and be convicted of the same, the Board of Trustees shall have the right to make written demand upon such owner for the eviction of said tenant from the project. Should the owner not take action to evict the tenant within thirty (30) days following the date of the Board's written demand, then the Board may take action to enforce its demand, including through imposition of fines upon the owner, in amounts as may be determined by the Board, or through action at law or equity against the owner or tenant or both, not inconsistent with the provisions of this Declaration.

**Section 13. Signs.** Unless otherwise required by the zoning ordinances of Washington City, no sign or billboard of any kind shall be displayed to the public view on any portion of the property or any Lot advertizing the property for sale or rent, except as

follows: one sign that does not exceed 144 square inches in size may be used to advertise a Lot, R.V., park model or constructed "stick built" dwelling for sale or rent. The sign advertising a dwelling must be placed inside the window, and the sign advertising a Lot for sale must be placed on a backing and stake and placed at the front of the utility pipe area and cannot extend upwards more than two (2) feet above the top of the cement surface.

**Section 14. Garbage and refuse Disposal.** No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Garbage is to be placed in dumpsters provided by the Association. No individual refuse containers are allowed. And no rubbish, trash, garbage, or other waste from outside the Project may be dumped in Association dumpsters. No littering or dumping of rubbish, trash, garbage or other waste is permitted upon common area or facilities. The Board of the Association shall have power to impose fines or penalties for the violation of this sections, which shall be assessed against an Owner at any time such violation can be attributed to the Owner or his or her lessee, or the Owner's or Lessee's guests, visitors, or invitees.

**Section 15. Water Supply.** No individual water supply system or landscape irrigation system shall be used or permitted on any lot or group of lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State Health Department and the Architectural Control Committee.

**Section 16. Noise.** No person in the Project shall make, continue, or cause to be made or continued any loud, unnecessary or unusual noise, or any noise which annoys, disturbs, injures or endanger the comfort, repose, health, peace or safety of others within the Project. The following acts when prolonged, unusual and unnatural in thier time, place and use, may be considered a violation of this provision: horns, radios, stereos, televisions, loudspeakers, yelling or shouting, hitting or pounding on unit walls, exhausts, motor vehicles, drums or musical instruments, barking or other animal noises, construction equipment, or powered equipment of any kind. "Unusual or unnatural" with respect to time shall be deemed to mean the overnight hours from 9:00 p.m. to 8:00 a.m. each day, which shall be considered quiet time. The Board of the Association shall have power to impose fines or penalties for the violation of this section which shall be assessed against an Owner at any time such violation can be attributed to the Owner or his or her lessee's, or the Owner's or lessee's guest, visitors or invitees. The Board shall have the sole discretion in determining when and what noise levels are subject to a fine.

**Section 17. Trailers and inoperable Vehicles.** No trailer or inoperable vehicles shall be permitted to remain anywhere in the Project, including lots (whether vacant or occupied) and Common Areas and facilities, including parking areas, streets and walks, for more than fourteen (14) cumulative days per calendar quarter. For purposes of this section, "trailers" shall be broadly interpreted to include all trailers of all types, including, but not limited to, devices towed behind a vehicle for the transportation of personal watercraft, all-terrain or other vehicles, boats, motorcycles, horses, or other animals, and bicycles. "Inoperable vehicle" shall mean and refer to any vehicle which either: (a) is not licensed or currently registered in the state in which it is licensed, or otherwise not legal for use on public roadways, or (b) cannot be driven from the Project under its own power. Parking for some vehicles may be permitted in the clubhouse facility parking area by obtaining a time-limited parking permit from the Association office, subject to the rules adopted by the Board to govern such permits, the Board of the Association shall have the right to have any offending vehicles towed from the Project at the Owner's sole expense, and shall have the



power to impose fines or penalties for the violation of this section, either or both of which shall be assessed against an Owner at any time such violation can be attributed to the Owner or his lessee, or the Owner's or lessee's guest, visitor, or invitees.

### ARTICLE XIII GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any owner or first mortgagee, shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, Bylaws or Articles of Incorporation or the Rules and Regulations. Specifically, the aggrieved party may seek to recover damages and for injunctive relief and the prevailing party shall be entitled to recover attorney's fees and costs for such action. Furthermore, the Association shall be authorized to enact rules and regulations to carry out the intent of this Declaration and its individual provisions, as well as to enact fines and penalties for the violation of this Declaration or the rules and regulations enacted. Fines and penalties assessed against any Owner shall be subject to the same methods of enforcement and collection as any other assessment authorized herein, without limitation. The violation of any terms of this Declaration by a Lot's Owner, occupant, guest, invitee, tenant, or visitor is subject to a fine levied against the Owner of such Lot. Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event any Covenant, Conditions or Restriction included herein is inconsistent or in conflict with restrictions set forth in the subdivision, building, zoning or other ordinances of the City of Washington/the ordinances shall govern so long as the restrictions contained in the ordinances are more restrictive than the terms of this Declaration. However, where the terms of this Declaration are more restrictive than those contained in the ordinances of the City of Washington, owners shall be subject to the enforcement of the terms of this Declaration.

**Section 2. Severability, Construction and Validity of Restrictions.** All of said conditions, covenants and restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or restrictions, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or restriction, or any part thereof, shall be thereby affected or impaired, and the Association and lot owners, their successors, heirs and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable,

**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 representative, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods often (10) years,

**Section 4. Prohibition on Abandonment of Association's Responsibilities.** Unless 2/3 of all first mortgagees and 2/3 of the membership shall have given their prior written approval, the Association shall not be entitled by act or omission to change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the upkeep of the

Common Areas, or to fail to maintain the required insurance on the property as designated in Article 9. In the event the Association fails to continue the designated insurance coverage, any first mortgagee shall have the right to provide such insurance, or to pay overdue premiums on lapsed insurance. Any first mortgagee paying for insurance under this section shall be entitled to immediate reimbursement by the Association, and shall be subrogated to the rights of the Association in this event.

**Section 5. Interpretation.** The singular wherever used in this Declaration 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. Terms used in this Declaration shall be construed according to their fair meaning.

**Section 6. Conflicts.** In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling.

**Section 7. 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, all compensation and damages shall be payable to the Association and shall be used promptly by the 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 therefore, 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 provided, however, that in the event of a taking in which any Lot is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Lot to such Owner and any first mortgagee of such lot, as their interests shall appear, after deducting the proportionate share of said Lot from the cost of debris removal.

**Section 8. Right of First Mortgagee to Examine Association Records.** Any first mortgagee shall have the right to examine the books, records and financial statements of the Association upon reasonable notice.

**Section 9. Non-meritorious Litigation.** In accordance with Utah Code Ann. § 78-27-56, the Association shall be entitled to an award of reasonable attorney fees if a court of competent jurisdiction determines that an action brought against the Association was without merit and was not brought or asserted in good faith. The Association shall also be entitled to all related costs and fees resulting from such an action.

**Section 9. Notices.** The Association shall give to any first mortgagee requesting the same, notice of all meetings of the Association, and the first mortgagee shall thereafter be entitled to have a representative attend all such meetings. The Association shall also give to any first mortgagee requesting the same, notice of the following: (a) any default by the owner of the lot subject to the first mortgage in the performance of said owner's obligations under this Declaration, the Articles of Incorporation, Bylaws or rules of the Association, which default has not been cured within thirty (30) days; (b) any substantial damage to any lot or the Common Areas the repair of which will cost more than \$5,000.00; (c) any proposed condemnation proceedings against any lot or the Common Areas; and (d) any proposal by the Association to either abandon the Planned Unit Development established by this Declaration,

or to pass any material amendment to the Declaration, Articles of Incorporation or Bylaws of the Association.

Any notice required or permitted to be given to any Owner or Mortgagee 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 or mortgagee, at the latest address for 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.

#### ARTICLE XIV AMENDMENT

**Section 1. Amendment.** This Declaration may be amended with the approval of not less than sixty percent (60%) of total votes of the Association, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all those holders of first mortgage liens that have requested such notice in advance, setting forth said amendment and advising them of the date that the members will vote on said amendment.

#### ARTICLE XV HOUSING FOR OLDER PERSONS

**Section 1. Familial Status Discrimination:** The Act prohibits discrimination on the basis of, among other things, familial status, except in the case of Housing for Older Persons. This Declaration and the policies, procedures and rules provided for hereunder, demonstrate that this Property is intended and operated for occupancy by persons 55 years of age or older; that not less than eighty percent (80%) of the occupied units are to be occupied by at least one person who is 55 years-of age and older as required by the Act; that the Association, will maintain a policy, except as provided in the Association's policies, procedures and rules and Section 3 below, that each and every R.V. park model or constructed "stick built" dwelling shall be occupied by at least one person 55 years of age or older; that the Association shall publish and adhere to policies, procedures and rules that demonstrate the intent required under the Housing for Older Persons Act of 1995 in order to be exempted from the prohibition against discriminating on the basis of familial status; and that the Association will comply with any and all policies and procedures promulgated by the Secretary of the Department of Housing and Urban Development in relation to Housing for Older Persons.

**Section 2. Policies, Procedures, and Rules:** The Association shall have the right and authority to publish policies, procedures and rules governing this Property as Housing for Older Persons, 55 years of age or older. Such initial Policies, Procedures and Rules demonstrating an intent to provide housing for persons age 55 or older, of even date herewith, shall be effective upon approval by the affirmative vote of not less than sixty-seven percent (67%) of the Association members. Thereafter, the Board of Trustees can modify, amend, add to or supersede the initial policies, procedures and rules in any manner to conform with such policies and procedures for Housing for Older Persons promulgated from time to time by the Secretary of the Department of Housing and Urban Development.

Section 3. **Applicability:** The provisions of this Article shall not apply to prohibit the occupancy of any person presently occupying an R.V., park model or constructed "stick built" dwelling on the Property before, the date of this Amendment, or to prohibit the occupancy by a child born to such occupant while that occupant is a resident on the Property, or to prohibit the ownership or occupancy of a dwelling by an heir or other person due to the departure from the property of a qualifying member over the age of 55 due to that member's death, divorce, separation or disability, so long as eighty percent (80%) of the dwellings, consisting of R.V.'s, park models or constructed "stick built" dwellings, are occupied by at least one person age 55 or older. However, any sale or rental of a dwelling by such an heir, occupant or owner must be in accordance with the provisions of this Amendment and the policies, procedures and rules provided for herein, and the Association reserves the right to enforce the age-related restrictions defined in this Article XV regardless of how ownership or occupancy of the property is obtained.

**ARTICLE XVI  
REGISTERED AGENT AND REGISTERED OFFICE**

The registered agent for the Association shall be the presently constituted president of the Association at any given time.

IN WITNESS WHEREOF, the Canyon Breeze Owners Association has executed this Amended and Restated Declaration as of the 20 day of APRIL, 2010, in accordance with Article III, Section 43 of the Declaration.

**CANYON BREEZE  
OWNERS ASSOCIATION**

*Leon Hansen*  
By: LEON HANSEN  
Its: president

STATE OF UTAH )  
COUNTY OF Wash. ) :SS

Leon Hansen personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed the same. Subscribed and sworn to before me on this 20 day of April, 20 10.



*Vicki Ann Nelson*  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION**

All Lots and Common Area in All Phases, CANYON BREEZE RV RESORT more particularly described as follows:

**BEGINNING** at the Northeast corner of the Southwest 1/4 of the Southwest 1/4 of Section 15, Township 42 South, Range 15 West, Salt Lake Base and Meridian, said point of beginning also being S 0°53' E 1322.37 feet along the section line and N 89°35'15" E 1318.77 feet along the 1/16 line from the west 1/4 corner of said section 15 and running thence S 0°34'55" E 80.15 feet to a point on the Northerly right-of-way line of I-15 frontage road and a curve to the left, the radius point of which is S 48°06'56" E 1979.86 feet; thence Southwesterly 42.64 feet along the arc of said curve to the point of tangency; thence S 40°39'02" W 378.00 feet along said right-of-way to a point of a curve to the right, the radius point of which is N 49°20'58" W 1839.86 feet; thence Southwesterly 280.98 feet along the arc of said curve to the point of tangency; thence S 49°24'02" W 94.75 feet along said right-of-way; thence N 32°30' W 389.57 feet; thence S 50°59' W 230.00 feet to a point on the northerly right-of-way line of Red Ledge Road; thence N 29°30' W 17.945 feet along said right-of-way to a point of a curve to the left, the radius point of which is S 60°30' W 200.00 feet; thence northwesterly 212.81 feet along the arc of said curve and along said right-of-way to the point of tangency; thence S 89°32' W 665.00 feet along said right-of-way; thence N 20°00' E 373.89 feet to the north line of the Southeast 1/4 of the Southeast 1/4 of Section 16, Township 42 South, Range 15 West, Salt Lake Base and Meridian; thence N 89°32' E 335.00 feet along said 1/16 line to the 1/16 corner; thence N 89°35'15" E 1318.77 feet along said 1/16 line to the point of beginning.

**WHICH PROPERTY** is also known as all of Canyon Breeze R. V. Resort as described on the plat recorded in Washington County, State of Utah on December 17, 1984, as entry No. 269798, Book 365, Page 145.

Containing 15.26 acres.

**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.