



Recorded at the request of:  
Rio Virgin Homeowners Association

**Record against the Property  
described in Exhibit A**

After Recording mail to:  
Jenkins Bagley, PLLC  
Attn: Bruce C. Jenkins  
285 W. Tabernacle, Ste 301  
St. George, UT 84770

**SECOND REVISED AND RESTATED DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF RIO VIRGIN RV PARK  
(A COMMUNITY PROVIDING HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER)**

THIS SECOND REVISED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS OF RIO VIRGIN RV PARK ("Declaration") is made and executed this 16 day of October, 2017, pursuant to Article 10, Section 10.5, of the REVISED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS (the "Revised and Restated Declaration") of said Park, and amends the Revised and Restated Declaration, recorded June 16, 2000 as Entry No. 00688519, in Book 1371, at Page 2510 through 2529, of the records of Washington County, and affects the property described below.

The Revised and Restated Declaration of Protective Covenants, Conditions and Restrictions of Rio Virgin RV Park, referred to above, shall be amended, revised and restated in its entirety to read as follows:

**RECITALS**

Declarant was the Owner of certain real Property (the "Properties") in St. George, Washington County, Utah, which is more particularly described below.

Declarant conveyed the Properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth.

Declarant desired to provide for the preservation of the values and amenities in Rio Virgin RV Park (the "community") and for the maintenance of open spaces and other common facilities, and to this end, desired to subject the real property described in Exhibit A, hereto, to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which are for the benefit of the Properties, the community and each Owner, and

Declarant had deemed it desirable for the efficient preservation of the values and amenities in the community to have a Homeowners' Association, to which is delegated and assigned the powers to maintain and administer the community properties and facilities, and to administer and enforce the covenants, restrictions and provisions of this Declaration, including the collection and disbursement of assessments and charges hereinafter created; and

Declarant had caused, under the laws of the State of Utah, an association to be formed, known as RIO VIRGIN HOMEOWNERS ASSOCIATION (the "Association"), for the purpose of exercising the functions aforesaid, all in accordance with the laws of the State of Utah; and

Declarant has formed a Limited Liability Company and all rights and obligations of the Developer herein shall be deemed to include and inure to the benefit of the Limited Liability Company; and

Declarant intended that the Limited Liability Company, would, for the purposes of administrating and maintaining the community properties and facilities, and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created, convey and surrender its right, title and interest in the Properties, as recorded on the Official Plat Map in the Office of the Recorder of Washington County, to the Association upon completion of the Development as hereinafter described; and

The policies and procedures governing the Development as stated herein demonstrate (i) the intent to provide housing for persons fifty-five (55) years of age or older per Living Unit; and (ii) that at least eighty percent (80%) of the Living Units shall be occupied by at least one (1) person fifty-five (55) years of age or older.

#### DECLARATION

The Community Association Act, Utah Code §57-8a-101, et seq. (the "Act"), as amended from time to time, shall supplement this Declaration. If amended to, this Declaration adopts a specific section of the Act, such amendment shall grant a right, power, and privilege permitted by such section of the Act, together with all correlative obligations, liabilities and restrictions of that section.

The Properties described below shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Plat of record in the office of the Washington County Recorder. This is for the purpose of protecting the value and desirability of the Properties. This Declaration and the Plat, as they may be amended from time to time, shall be construed as covenants of equitable servitude; shall run with the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

The Properties are located in St. George, Washington County, Utah, and are described as: SEE EXHIBIT "A" THAT IS ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

## ARTICLE 1 – DEFINITIONS

The definitions in this Declaration are supplemented by the definitions in the Act. In the event of any conflict, the more specific and restrictive definition shall apply. These terms, though defined, are generally not capitalized in the Declaration.

Section 1.1. Declaration means this instrument, and any amendments.

Section 1.2. Plat or Map means the subdivision plat for Rio Virgin RV Park on record with the Washington County Recorder, or any replacements thereof, or additions thereto.

Section 1.3. Property or Properties means that certain real Property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration.

Section 1.4. Common Area means that portion of Property owned by the Association, shown on the Plat as Common Area. Common Area is dedicated to the common use and enjoyment of the Owners.

Section 1.5. Limited Common Area means that portion of Property owned by the Association, shown on the Plat as Limited Common Area. Unless otherwise provided by written declaration or conveyance, the Owner of the Lot to which such Limited Common Area is adjacent and/or appurtenant has the use and enjoyment of that Limited Common Area and may exclude other Owners therefrom. Limited Common Area is subject to the covenants, conditions and restrictions set forth in this Declaration.

Section 1.6. Lot means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership, but specifically excludes the Common and Limited Common Areas.

Section 1.7. Owner means the entity, person, or group of persons owning fee simple title to any Lot which is within the Properties. Regardless of the number of parties participating in ownership of each lot, the group of those parties shall be treated as one (1) "Owner."

Section 1.8. Association means Rio Virgin Homeowners Association, its successors and assigns.

Section 1.9. Member means every person or entity who holds membership in the Association. Every Member is an Owner, and every Owner is a Member.

Section 1.10. Trustees means the governing body of the Association.

Section 1.11. Declarant and/or Developer means H. Leon Blake, Billie Blake, and Gary Davis and the Declarant's heirs, successors and assigns.

Section 1.12. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 1.13. 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, 42.U.S.C. Section 3601, et seq., and shall include any future changes or amendments.

Section 1.14. Familial Status shall mean and refer to

- a. One (1) or more individuals who have not attained the age of eighteen (18) years, being domiciled with:
  - i. A parent or another person having legal custody of the individual or individuals;
  - ii. 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 (1) or more individuals who have not attained the age of eighteen (18) years; and
- c. A person who is pregnant.

Section 1.15. Living Unit shall mean any structure, located within the community, which is built or manufactured for use as a dwelling and which meets all conditions and requirements set forth herein.

Section 1.16. Occupant shall mean and refer to any person residing in a Living Unit.

Section 1.17. Approved Occupant shall mean and refer to any person who has met the minimum age requirements and who has submitted all the necessary age verification documents. An Approved Occupant is not necessarily a Member.

Section 1.18. Renter or Tenant of Owner shall mean and refer to any person who rents or leases a Lot, or a Lot and Living Unit from an Owner.

Section 1.19. Single Family shall mean and refer to not more than three (3) Approved Occupants. Multiple family dwellings are not included in this definition and are not allowed in the community.

Section 1.20. Utilities shall mean and refer to public utilities, including, but not limited to sewer, water, drainage, natural gas, telephone, electricity, and cable television.

Section 1.21. Conveyance shall mean and refer to actual conveyance of fee title of any Lot to any Owner by a warranty deed, or other document of title, and shall not mean the mere execution of an installment sales contract.

ARTICLE 2 – PROPERTY RIGHTS

Section 2.1. Title to the Common Area. The Developer shall convey the Common Area and Limited Common Area to the Association. Said conveyance shall be made free and clear of any mortgage or other encumbrance upon the Common Area and Limited Common Area.

Section 2.2. Owners; Easements of Enjoyment. Every Owner has a right and easement of use and enjoyment in and to the Common Area and Limited Common Area. This easement is appurtenant to and passes with the title to every Lot subject to:

- a. The right of the Association to charge reasonable admission, use, service and other fees for the use of any service provided by the Association upon the Common Area, or parking facility situated upon the Common Area. No fees shall be charged for parking specifically designated on the Plat as appurtenant to a Lot.
- b. The right of the Association, as provided in its Bylaws, to suspend the voting rights of a Member and to deny said Member his/her enjoyment rights for any period during which any assessment against his/her Lot remains unpaid for more than thirty (30) days, and to suspend his/her voting rights for infractions of published community rules and regulations, if such infractions are not corrected within a reasonable length of time after proper notification of such infractions.
- c. The right of the Association to enter into agreements or leases which provide for use of the Common Area and facilities by a similar association, in consideration for use of the Common Area and facilities of the other association, or for cash consideration.
- d. The right of the Association to enter into agreements or leases which provide for use of the Common Area and facilities by a similar association, in consideration for use of the Common Area and facilities of the other association, or for cash consideration.
- e. The right of the Association, with the approval of sixty-seven percent (67%) of the Owners, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility.
- f. The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.
- g. The right of the Association to take such steps as are reasonable necessary or desirable to protect the Common Area against foreclosure.
- h. The terms and conditions of this Declaration
- i. The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the Common Area.

Section 2.3. Reserved.

Section 2.4. Delegation of Use. An Owner, or one having a right of use of facilities, is deemed to delegate any right of enjoyment to the Common Area and facilities to family members, tenants, or contract purchasers who reside within the Properties, subject to community

rules, Association bylaws and this Declaration. 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 a Member, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area, facilities or personal property shall be an assessment charged to the Lot Owner.

Section 2.5. Rules. The Board may adopt, amend, cancel, limit, create exceptions to, expand or enforce rules and design criteria of the Association that are not inconsistent with the Declaration or the Act. Except in the case of imminent risk of harm to a Common Area, a limited Common Area, an Owner, a Lot or a dwelling, the Board shall give at least fifteen (15) days advance notice of the date and time the Board will meet to consider adopting, amending, canceling, limiting, creating exceptions to, expanding or changing the procedures for enforcing rules and design criteria under considerations. A rule or design criteria adopted by the Board is only disapproved if member action to disapprove the rule or design criteria is taken in accordance with the limitations under Section 217 of the Act.

Section 2.6. Professional Management. The Trustees may employ a manager or contract with an independent contractor or management agent to perform all of or any part of the duties and responsibilities of the Association which are properly the subject of delegation. The Manager shall be responsible for managing the Properties for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association, including, but not limited to the fiscal responsibilities of collection of assessments and the payment of bills as they become due.

Section 2.7. Board Acts for Association. Except as limited in the Declaration or the Association Bylaws, the Board acts in all instances on behalf of the Association.

### ARTICLE 3 - MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every Owner is a Member of the Association. The Term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance for an obligation, unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

Section 3.2. Voting Rights. Members are entitled to one (1) vote for each Lot owned. When more than one (1) person is an Owner of any Lot, such co-Owners shall be and constitute one Member for voting purposes. The vote for any such Lot shall be exercised as the co-Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such co-Owners, whether in person, by ballot, or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned, unless written objection is made prior to that meeting, or verbal objection is made at that

meeting, by another co-Owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

Section 3.3 Authorization to Vote. In the event that any Owner, after having been given notice of action requiring a vote of the Members of the Association, which notice is given in accordance with the provisions of this Declaration or the Association's Bylaws, fails to register its vote in person, by ballot, or by written proxy, then such Owner shall be deemed to have appointed the President of the Association, or the President's duly appointed delegate, as Owner's attorney in fact to execute a proxy on Owner's behalf, where by owner's shall be case in accordance with the majority recommendation of the Board of Trustees.

#### ARTICLE 4 – FINANCES AND OPERATION

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual or monthly assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them. The Association and each Lot Owner hereby conveys and warrants pursuant to Sections 212 and 302 of the Act, and Utah Code §57-1-20, to attorney Bruce C. Jenkins, or any other attorney that the Association engages to act on its behalf to substitute for Bruce C. Jenkins, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration.

Section 4.2. Budget. At least annually the Board shall prepare and adopt a budget for the Association and the Board shall present the budget at a meeting of the members. A budget presented by the Board is only disapproved if member action to disapprove the budget is taken in accordance with the limitations under Section 215 of the Act.

Section 4.3. Purpose of Assessments. The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties; and (b) for the improvement and maintenance of the Properties, services, and facilities devoted to this purpose. The assessments must provide for, but are not limited to, the payment of taxes on Association Property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those Common Areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Trustees shall determine to be

necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges including (without limitation) maintenance, management, utility, cable television, trash collection, sewer and water charges.

Section 4.4. Assessments.

- a. Regular Assessments. The regular monthly assessments shall be one hundred percent (100%) of the actual monthly costs of maintenance and operation of the Common Areas and other facilities, payment of insurance, premiums for the Common Areas and other facilities, and the estimated monthly water fees for the Properties, and may include a reasonable management fee.
- b. Maximum Assessment. Until January 1 following recording of this Declaration, the maximum monthly assessment shall be Sixty Dollars (\$60.00) per Lot. This amount shall be the basis of calculation for future maximum assessments. From and after the foregoing date, the Trustees may increase the maximum assessment for any month, by not more than ten percent (10%) above the maximum assessment for the previous month, without a vote of the Members. The Members may change the basis and maximum of the assessments fixed by this Section prospectively for any monthly period; provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of the Members, voting in person, by ballot, or by proxy, at a meeting duly called for such purpose, and, provided further, that in no event shall the level of assessment be less than the actual operating expenses which are the obligation of the Association.

The actual monthly assessment need not increase monthly. The Trustees shall set the actual monthly assessment on a monthly basis. Notice of monthly assessments shall be given to each Owner as provided in this Declaration.

Section 4.5. Special Assessments for Capital Improvements. In addition to regular assessments authorized herein, the Trustees of the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of described capital improvements, including the necessary fixtures and personal property related thereto; provided that any special assessment exceeding three thousand dollars (\$3,000.00) in improvement costs shall require Member approval by affirmative vote of at least two-thirds (2/3) of the votes of the Members who are voting in person, by ballot, or by proxy at a meeting duly called for that purpose.

Section 4.6. Additional Assessments. In addition to regular assessments and special assessments for capital improvements, as authorized herein, the Trustees of the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring any damage or destruction to streets or other Common Areas resulting from the activities of the City of St. George in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the community is the owner of said utility lines, underground facilities or otherwise, up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.



Section 4.7. Notice and Quorum for Any Action Authorized Under Sections 4.3 and 4.4. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 4.3 and 4.4 shall be sent to all Members at least thirty (30) days in advance of said meeting, which notice shall specifically set forth the purpose for such meeting. At the first meeting called, the presence at the meeting of Members, of ballots, or of proxies, entitled to cast fifty percent (50%) or more of all the votes shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be fifty percent (50%) 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 4.8. Assessment Period. The assessment period for regular assessments shall be one (1) month. All regular assessments shall be fixed at a monthly rate and may be adjusted by the Trustees to reflect current costs of maintenance and operations. All assessments must be fixed at a uniform rate for all Lots.

Section 4.9. Date of Commencement of Regular Assessment: Due Dates. The regular assessments provided for herein shall commence and become due and payable on the first day of each month beginning on the month of the closing of the purchase of any Lot by an Owner. Assessment amounts paid by the seller in the month of sale of any Lot shall be prorated between the buyer and seller, by the title company or escrow agent, to the first of the following month. In the absence of a determination by the Trustees as to the amount of a regular assessment, the regular assessment shall be an amount equal to ninety percent (90%) of the maximum assessment determined as provided above. Furthermore, the Trustees may provide for the payment of special assessments in installments.

The Trustees shall prepare and maintain a roster of the Lots and the assessments applicable thereto, which roster shall be kept by the Treasurer of the Association or the Treasurer's delegate, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times. The Association shall, upon demand, and for a reasonable charge, furnish a writing setting forth whether the assessment on a specified Lot has been paid. Such writing, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 4.10. Effect of Non-Payment of Assessment – Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum until paid. In addition, the Trustees may assess a late fee for each regular assessment payment which is not paid within ten (10) days of the due date thereof.

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

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

A power of sale is hereby conferred upon the Association, which it may exercise. Under the power of sale the Lot of any Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

Section 4.11.

a. Delinquent Member. As used in this section, "Delinquent Member" means a lot owner who fails to pay an assessment when due.

- (i) The Board of Trustees may terminate a Delinquent Member's right:
  - (A) to receive a utility service for which the Member pays as a common expense; or
  - (B) of access to and use of recreational facilities.

b. (i) Before terminating a utility service or right of access to and use of recreational facilities under Subsection a(i) the Manager or Board of Trustees shall give the Delinquent Member notice. Such notice shall state:

- (A) that the Association will terminate the Member's utility service or right of access to and use of recreational facilities, or both, if the Association does not receive payment of the assessment within fourteen (14) calendar days;
- (B) the amount of the assessment due, including any interest or late payment fee; and
- (C) the Member's right to request a hearing under Subsection c.

(ii) A notice under Subsection b(i) may include the estimated cost to reinstate a utility service if service is terminated.

c. (i) The Delinquent Member may submit a written request to the Board of Trustees for an informal hearing to dispute the assessment.

(ii) A request under Subsection c(i) shall be submitted within fourteen (14) days after the date the Delinquent Member receives the notice under Subsection b(i).

d. The Board of Trustees shall conduct an informal hearing requested under Subsection c(i) in accordance with the hearing procedures of the Association.

e. If the Delinquent Member requests a hearing, the Association may not terminate a utility service or right of access to and use of recreational facilities until after the Board of Trustees:

- (i) conducts the hearing; and
- (ii) enters a final decision.

f. If the Association terminates a utility service or a right of access to and use of recreational facilities, the Association shall take immediate action to reinstate the service or right following the Member's payment of the assessment, including any interest and late payment fee.

g. The Association may:

- (i) levy an assessment against the Delinquent Member for the cost associated with reinstating a utility service that the Association terminates as provided in this section; and
- (ii) demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in a notice under Subsection b(ii).

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment for the Lot.

Section 4.12. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender or insured by the Federal Housing Administration or the Veterans Administration if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after taking title or from the lien of such later assessments.

Section 4.13. Books, Records and Audit. The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records, and financial statements, which shall all be available for inspection by Owners, and by holders, insurers or guarantors of first mortgages, during normal business hours upon reasonable notice as provided for in the Bylaws. An Owner or holder, insurer or guarantor of first mortgage may obtain an audit of Association records relating to the specific Lot for which such person is a holder, insurer or guarantor, at its own expense so long as the results of the audit are provided to the Association.

Section 4.14. Tenant Payment of Assessments.

a. The Board may require a tenant under a lease with a Lot owner to pay the Association all future lease payments due to the Lot owner if the Lot owner fails to pay an assessment for a period of more than sixty (60) days after the assessment is due and

payable, beginning with the next monthly or periodic payment due from the tenant and until the Association is paid the amount owing. Before requiring a tenant to pay lease payments to the Association, the Association's manager or Board shall give the Lot owner notice, which notice shall state: (i) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees; (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of lease payments; and (iii) that the Association intends to demand payment of future lease payments from the Lot owner's tenant if the Lot owner does not pay the amount owing within fifteen (15) days.

b. If a Lot owner fails to pay the amount owing within fifteen (15) days after the Association's manager or Board gives the Lot owner notice, the Association's manager or Board may exercise the Association's rights by delivering a written notice to the tenant. The notice to the tenant shall state that: (i) due to the Lot owner's failure to pay an assessment within the required time, the Board has notified the Lot owner of the Board's intent to collect all lease payments until the amount owing is paid; (ii) the law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid; and (iii) the tenant's payment of lease payments to the Association does not constitute a default under the terms of the lease with the Lot owner. The manager or Board shall mail a copy of this notice to the Lot owner.

c. A tenant to whom notice is given shall pay to the Association all future lease payments as they become due and owing to the Lot owner: (i) beginning with the next monthly or other periodic payment after the notice is delivered to the tenant; and (ii) until the Association notifies the tenant under Subsection (6) that the amount owing is paid. A Lot owner shall credit each payment that the tenant makes to the Association under this section against any obligation that the tenant owes to the owner as though the tenant made the payment to the owner; and may not initiate a suit or other action against a tenant for failure to make a lease payment that the tenant pays to an Association as required under this section.

d. Within five (5) business days after the amount owing is paid, the Association's manager or Board shall notify the tenant in writing that the tenant is no longer required to pay future lease payments to the Association. The manager or Board shall mail a copy of this notification to the Lot owner. The Association shall deposit money paid to the Association under this section in a separate account and disburse that money to the Association until the amount owing is paid; and any cost of administration, not to exceed twenty-five dollars (\$25), is paid. The Association shall, within five (5) business days after the amount owing is paid, pay to the Lot owner any remaining balance.

Section 4.15. Reinvestment Fee Assessment. In addition to all other assessments and upon the conveyance of a Lot there shall be one Reinvestment Fee charged to the buyer or seller, as the buyer and seller may determine, comprised of one or more of the following charges:

- a. An assessment determined pursuant to resolution of the Board and charged for:

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- (i) Common planning, facilities, and infrastructure,
  - (ii) Obligations arising from and environmental covenant,
  - (iii) Community programming,
  - (iv) recreational facilities and amenities,
  - (v) the following association expenses:
    - (A) the administration of the common interest association;
    - (B) the purchase, ownership, leasing, construction, operation, use, administration, maintenance, improvement, repair, or replacement of association facilities, including expenses for taxes, insurance, operating reserves, capital reserves, and emergency funds;
    - (C) providing, establishing, creating, or managing a facility, activity, service, or program for the benefit of property owners, tenants, common areas, the burdened property, or property governed by the common interest association; or
    - (D) other facilities, activities, services, or programs that are required or permitted under the common interest association's organizational documents; and
- b. Expenses reasonably charged to the Owners Association by the Association's Manager for the administration of the conveyance.
- c. No reinvestment assessment shall exceed 0.5% of the fair market value of the Lot, plus all improvements. When the seller is a financial institution, the reinvestment assessment shall be limited to the costs directly related to the transfer, not to exceed two hundred and fifty dollars (\$250.00.) The Association may assign the charges in Section 4.14b directly to the Association's manager.

#### ARTICLE 5 – INSURANCE

Section 5.1. Casualty Insurance on Insurable Common Area. The Trustees shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular assessments made by the Association.

Section 5.2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the

Association may make a reconstruction assessment against all Lots to cover the additional cost of repair or replacement not covered by the insurance proceeds, which may be in addition to any other assessments made against such Lots.

Section 5.3. Liability Insurance. The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the Common Area and Limited Common Area for at least one million dollars (\$1,000,000.00) per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a “severability of interest” clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 5.4. Fidelity Insurance. The Trustees shall obtain fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Trustees shall seek a policy which shall (1) name the Association as obligee or beneficiary, (2) be written in an amount not less than the sum of (i) three (3) months’ operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of “employee.”

Section 5.5. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to protect the Association from potential liability and/or to make any necessary repairs or replacements of property which may be damaged or destroyed.

Section 5.6. Insurance for Trustees, Officers and Agents. The Association may purchase and maintain insurance on behalf of any person who is or was a Trustee, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

## ARTICLE 6 – ARCHITECTURAL CONTROL COMMITTEE

Architectural Control and Building Restrictions. No dwelling, structure, building, fence, wall or addition, extension or expansion shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration to any Lot or dwelling be made until the plans and specifications showing the nature, kind, shape, height, materials, colors, size and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their designated committee, fail to approve or disapprove such design and location within thirty (30)

days after said plans and specifications have been submitted to it, approval and compliance with this article will be deemed to have been satisfied.

Limit on fee for approval of plans. The Association may charge a plan fee that is equivalent to the cost of reviewing and approving the plans. As used in this section, “plans” mean any plans for the construction or improvement of a lot which are required to be approved by the Association before the construction or improvement may occur.

## ARTICLE 7 – OCCUPANCY RESTRICTIONS

Section 7.1. Approved Occupant Status. The community is a 55 years of age or older housing facility and anyone who, by virtue of acquiring any property in the community, is bound by the provisions of this Declaration, and shall be obligated, by law, to adhere to all requirements that the Developer and or Association has set forth in this Declaration, together with the Bylaws, Rules and Regulations adopted by the Association.

Section 7.2. Occupancy by at Least One Person, Fifty-Five (55) Years of Age or Older per Living Unit. To maintain an exemption under the Housing for Older People Act (HOPA) for housing of older persons, at least eighty percent (80%) of the Living Units must be occupied by at least one person fifty-five (55) years of age or older. The primary purpose for permitting twenty percent (20%) of the units to be occupied by persons younger than fifty-five (55) is: (1) the individual is the surviving spouse or cohabitant of a former occupant; (2) the individual inherited the property from a former occupant; (3) the individual has relatives in the community who would benefit from their residence nearby; (4) the individual is a nurse or other medical professional whose presence would be beneficial to residents of the community. It is expressly provided that the Association shall not set aside a certain number of Living Units for persons under fifty-five (55) years of age. Persons under fifty-five (55) years of age who were residing in any Living Unit when the 55-and-older declaration was made may continue to reside in the community, but shall be required to comply with the fifty-five (55) years and older occupancy requirement if the property is sold, leased, or otherwise conveyed in any respect.

Section 7.3. Visitors. Persons who are not “Approved Occupants” shall not be permitted to permanently occupy any Living Unit within the community, however, such persons may be considered as visitors. As set forth in HOPA, the community is exempt from prohibition against discrimination on the basis of “Familial Status”, as defined in Article 1, Section 1.14, thereby permitting the following restriction within the community: NO LIVING UNIT MAY BE OCCUPIED BY ANY PERSON UNDER EIGHTEEN (18) YEARS OF AGE, except that such persons under eighteen (18) may be permitted to visit for reasonable periods as the Association shall set forth in its Bylaws and/or Rules and Regulations. Adult visitors shall be allowed to visit for a reasonable amount of time. Rules and Regulations adopted by the Association shall not discriminate between adults and children.

Section 7.4. Advertising, Marketing and Sale of Lots. Any advertising, marketing or sales materials relating to a Lot within the community must contain language that reflects that the community is intended as “housing for persons age 55 or older.”

Section 7.5. Resale or Rental: Obligation of Owners: Contents of Agreements. All Owners desiring to rent, lease or sell their Lot(s), including "For Sale by Owners" are required to have any prospective tenants or buyers complete the age verification document and verify their ages with some form of formal proof of age document.

Any sale and lease or rental agreement shall be in writing and shall be compatible with the intent of the community to be operated as a 55 and older facility. Any lease or rental agreement shall be in writing and shall provide that (1) the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, (2) that any failure by a tenant to comply with the terms of such documents shall be a default under the lease, and (3) shall contain a statement which is substantially similar to the following:

"The Rio Virgin RV park is a fifty-five (55) and older community, developed to provide Housing for Persons 55 Years of Age or Older, as that housing is defined by federal law, including the Fair Housing Act (the "Act"). As such, it is the policy of the Rio Virgin Homeowners Association (the "Association") to prohibit permanent residence of person under eighteen (18) years of age, as is permitted under an exemption of the Act. Each grantee of a deed for a lot within the properties acknowledges by acceptance of that deed that this purpose of the development, and the facilities within the development designed for fifty-five (55) and older, are a significant consideration in the purchase of the lot. A dwelling on a lot must be occupied by at least one person over the age of fifty-five (55), or by the surviving spouse of a person over the age of fifty-five (55) who has occupied the dwelling. Each resident or occupant must provide such information as may be required by the Association for verification of age and to otherwise comply with applicable Association and governmental regulations which preserve this status for the community."

Sales contracts, by Utah State law, have to be on state approved forms. Notwithstanding this use of an approved form, some means of FULL DISCLOSURE must be made to a prospective buyer as to the status of the community as a 55 years of age or older facility and sales persons shall have age verification forms completed with some form of proof of age or affidavit attached at the time an offer to purchase is made.

Section 7.6. Records. The Association shall file, maintain, update and retain all verification of age documents and shall be able to produce these records on the filing of a discrimination complaint and/or a request of any person, as required by paragraphs 100-307 of HOPA. These inspections shall normally require reasonable notification and shall be by appointment.

## ARTICLE 8 – USE RESTRICTIONS

Section 8.1. General Use Restrictions. Except as otherwise provided herein, the Properties which are subject to this Declaration are hereby restricted to residential dwellings, and



buildings in connection therewith, including but not limited to community buildings located on the Common Area.

Section 8.2. Authority to Prohibit and Control. Any person, company, corporation, trust and/or any other entity, by virtue of purchase, inheritance, gift or other means of obtaining an ownership interest in any Lot in Rio Virgin RV Park shall be bound to this Declaration. Acquisition of property in Rio Virgin RV Park shall also require all Owners to be bound to obey the Bylaws, Rules and Regulations of the Association and/or community, which may be adopted from time to time by the Trustees.

Section 8.3. Vehicle Requirements. Any vehicle remaining semi-permanently positioned on the Properties and intended to be a Living Unit, shall be a recreational vehicle ("R.V."). All R.V.'s shall be parked, while in use as a Living Unit, on a designated parking pad and the total length of any R.V. and its towing vehicle shall not exceed the length of the Lot, unless otherwise approved by the Trustees or Architectural Committee.

Section 8.4. Use of Lots. No Owner shall occupy or use his Lot, or permit the same or any part thereof to be occupied or used for any purpose other than as a single family or the Owner's lessee, tenant, or guests.

Section 8.5. Commercial Use. No commercial activities of any kind whatsoever shall be conducted in any residence or on any portion of any Lot located on the Properties.

Section 8.6. Health and Enjoyment. The use of any Lot by an Owner, Member or other resident shall not endanger the health or disturb the reasonable enjoyment of any other Owner, Member or resident.

Section 8.7. Prohibited Dwellings or Structures. Mobile homes, manufactured homes and tent trailers are prohibited. No tents or outdoor overnight camping will be allowed on the Properties.

Section 8.8. Application or Restrictions. Use of any Lot, or portion thereof, or of any Common Area or facilities located on the Properties, by Owners, Members, family members, tenants, contract purchasers, or guests of any of the foregoing, shall be subject to this Declaration and to the Restrictions contained in this Article 8.

Section 8.9. Reserved.

Section 8.10. Permanent Residence Limitations. Other than on those Lots where a Recreational Vehicle pad has been permitted, in no event shall any Recreational Vehicle, camper, trailer, tent trailer, or motor home be used for a permanent residence in or on the Common Area or any unimproved Lot. Other than as provided above, Recreational Vehicles must be parked in designated Recreational Vehicle parking areas and no more than one (1) Recreational Vehicle will be permitted or maintained upon any Lot.

Section 8.11. R.V. Limitations. All Lots shall only be used for R.V. concrete pads, homes built on site, or commercially built Recreational Vehicles (R.V.'s) (including Park Model R.V.'s). R.V.'s cannot be more than ten (10) years old at the time of their first use on the Lot, exceptions to this may be granted by the Trustees or Architectural Control Committee upon a showing that the R.V. is in good condition, which determination shall be made by the sole discretion of said authority.

Section 8.12. Outdoor Burning. No outdoor burning of trash or other debris shall be permitted. This shall not prohibit the use of a normal residential barbecue or other similar outside grill.

Section 8.13. Storage of Property. No utility trailer, boat trailer, boat, camper, camp trailer, or pickup shell shall be stored overnight on any Lot within the community. There will be designated storage areas within the community that may be used, and a charge for said use, if any, shall be at the discretion of the Association. Use of storage areas shall be controlled by rules established from time to time by the Trustees.

Section 8.14. Signage Restrictions. No sign or billboard, temporary or permanent, other than "For Rent" or "For Sale" signs, shall be erected or installed, placed, permitted or maintained on any Lot, except the name of the Owner and the Lot number, unless the sign is that of a realtor, builder, sale by owner and/or property management company.

Section 8.15. Outdoor Laundry Facilities. No laundry may be dried in any location on any Lot unless completely enclosed and screened from view from any other Lot. No outside clothes-lines may be erected or maintained.

Section 8.16. Animals and Pets. No animals, livestock, fowl, or reptiles shall be raised, bred or kept on the Properties, except household dogs, cats or pets owned and kept by the Owner of the Lot on which they are kept. No animal shall be allowed off the Lot of the Owner EXCEPT ON A LEASH; and no dog, cat, or other pet shall be kept on any Lot by anyone if, in the discretion of the Association, that pet is or becomes a nuisance, threat or otherwise is objectionable to surrounding Owners. NO DOGS, CATS OR OTHER HOUSEHOLD PETS WILL BE ALLOWED TO REMAIN OUTSIDE A DWELLING BETWEEN DUSK AND DAWN, UNLESS AT ALL TIMES ACCOMPANIED AND LEASHED BY THE OWNER. Each Owner shall be responsible for the cleanup of his pet's waste and shall not permit his pet to excrete any waste on the Common Area or on the property of any other Owner.

Section 8.17. Tanks and Water Systems. No elevated tanks, or water supply systems of any kind shall be erected, or placed or permitted on any Lot.

Section 8.18. Other Storage. No Lot shall be used in whole or part for the storage of rubbish, trash, used or new metal, trucks, automobiles, or machines in whole or in parts. No type of inoperable motor vehicle, which is inoperable for any reason, shall be permitted to be parked upon any street, Lot or portion of the Properties. This clause is expressly intended to prohibit inoperable vehicles; however, it does not prohibit the parking of regularly used and operating vehicles.

Section 8.19. Nuisances. No personal property, substance, thing or material shall be kept on any Lot or any part thereof that will emit foul or noxious odors, or that will cause any noise that might disturb the peace and quiet of the surrounding Owners, or will cause the Lot or any part thereof to appear in an unclean or untidy condition.

Section 8.20. Overnight Parking. No on-street overnight parking is permitted within the community except in designated areas as established by the Trustees of the Association.

Section 8.21. Obstruction of 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 Trustees.

Section 8.22. Ground Disturbance. No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common Area.

Section 8.23. Alteration of Common Area. No facilities, fixtures or other improvements shall be altered, constructed, or removed from the Common Area, except with the written consent of Trustees.

Section 8.24. External and Rooftop Appliances. No large television or radio antennas, satellite dishes, or other external antennas or rooftop appliances, other than roof mounted heat pumps or coolers, of any type or style shall be erected, placed, or maintained upon any of the Properties, or in front of or at the side of any building constructed thereon without the prior written approval of the Trustees or Architectural Control Committee and said authorities shall have the right to remove or cause removal of any such items erected, placed, or maintained without said prior approval. This clause prohibits radio or television transmitting stations.

Section 8.25. Lot Maintenance. Without limiting any other provision of this Declaration, each Owner shall maintain and keep such owner's Lot at all times in a safe, sound and sanitary condition and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners within the community.

Section 8.26. Motor vehicle Repairs. No major repairing or overhauling of cars, trucks or other motor vehicles is permitted on any Lot, or on the streets, driveways, or parking areas of the community.

Section 8.27. Abatement of 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 be abated by the Association or affected Owner(s). Any remedy or remedies shall be deemed to be cumulative and not exclusive.

Section 8.28. Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any part of the Properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the community or any portion thereof, or which shall in any way

interfere with the quiet enjoyment of any Owners or which shall in any way increase any rate of insurance on the Properties.

Section 8.29. Garbage Removal. The Owner or occupant of each Lot shall regularly remove all rubbish, trash and garbage from the Lot and such items shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 8.30. Interior Utilities. All Utilities, fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall not act nor do any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Lots or Owners.

#### ARTICLE 9 – EASEMENTS

Section 9.1. Encroachments. Each Lot and the property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing Lots is partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments of parts of the adjacent Lots or Common Area due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 9.2 Utilities. There is hereby created a blanket easement upon, across, over and under all of the Properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Properties to lay construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Properties, provided that all such services shall be placed underground. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties in such a way as to unreasonably encroach upon or limit the use of the Common Area or any structure thereon. After a utility service has initially exercised its easement rights under this Section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Association shall have the right to grant such easement on the Properties without conflicting with the terms hereof.

Section 9.3 Police, Fire and Ambulance Service. An easement is hereby granted to all police, fire protection, ambulance services and all similar person to enter upon the streets and Common Area in the performance of their duties.

Section 9.4 Maintenance by Association. An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair.

Section 9.5 Other Easements. The easements provided for in this Article shall in no way affect any other recorded easement.

#### ARTICLE 10 – GENERAL PROVISIONS

Section 10.1. Enforcement. The Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the non-prevailing party in such enforcement action shall pay to the prevailing party a reasonable attorney's fee. The remedies in the Act and the Declaration – provided by law or in equity – are cumulative and not mutually exclusive.

Section 10.2. Penalties. The Association, through its Board, shall have the power to levy fines for violations of the Association's governing documents and fines may only be levied for violations of the governing documents. In addition to the levy of fines, the Board may elect to pursue other enforcement remedies and/or damages permitted under the governing documents. Furthermore, pursuant to Utah Code 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the governing documents by the tenant. The Board shall adopt a rule for the procedure to enforce the governing documents and levy fines, including a schedule of fines.

Section 10.3. Severability. All of the conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Association and Owners, their successors, heirs and assigns, shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 10.4. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat or otherwise void a provision of this Declaration, the Articles, Bylaws, Plat, Rules or other governing document of the Association. If for any reason

the Declaration does not comply with the Act, such noncompliance does not render a Lot or Common Area unmarketable or otherwise affect the title if the failure is insubstantial.

Section 10.5. Amendment. The covenants, conditions and restrictions of this Declaration may be amended by an affirmative vote of not less than fifty-one percent (51%) of the Members votes. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Section 10.6. Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when delivered in a manner provided for in the Bylaws.

Section 10.7. Gender and Grammar. The singular, whenever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 10.8. Waivers. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 10.9. Captions and Headings. The captions and headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

Section 10.10. Reserve Fund. The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years and shall review and, if necessary, update a previously prepared reserve analysis every three (3) years. The Board may conduct the reserve analysis by itself or may engage a reliable person or organization to conduct the reserve analysis. The Board shall annually provide Owners a summary of the most recent reserve analysis or update and provide a complete copy of the reserve analysis or update to an Owner upon request. In formulating the budget each year, the Board shall include a reserve line item in an amount required by the governing documents, or, if the governing documents do not provide for an amount, the Board shall include an amount it determines, based on the reserve analysis, to be prudent.

Section 10.11. Display of Flag. The Association may not prohibit an Owner from displaying the United States flag inside a dwelling or on the Owner's Lot or Limited Common Area appurtenant to the Owner's Lot if the display complies with United States Code, Title 4, Chapter 1. The Association may, by rule of the Board, restrict the display of a United States flag on the Common Area.

#### ARTICLE 11 – ARBITRATION

In the event a dispute should arise as to the application, interpretation or effect of this Declaration, or any condition, covenant, restriction or provision hereof, either between an Owner

and the Association or between Owners, then the matter shall be submitted to arbitration, with the agreement of all parties, by appointing three (3) arbitrators. Each side to any such dispute shall appoint an arbitrator and said arbitrators shall choose the third arbitrator. A determination of the matter signed by two of the arbitrators shall be binding upon all parties and the cost of such arbitration shall be divided equally between the adverse parties. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then that other party shall have the right and power to choose both arbitrators who will in turn choose the third arbitrator.

## ARTICLE 12 –INDEMNIFICATION

Section 12.1. Indemnification: Third Party Actions. The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Trustee, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney's fees), judgments, fines. And amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner, he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, or settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 12.2. Indemnification: Association Actions. The association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or such person shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 12.3. Determination. To the extent that a Trustee, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any action, suit, or

proceeding referred to in Sections 12.1 or 12.2 hereof, of in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Sections 12.1 or 12.2 hereof shall be made by the Association only upon a determination that indemnification of the Trustee, officer, employee, or agent if proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 12.1 or 12.2 hereof. Such determination shall be made either (1) by the Trustees, by a majority vote of a quorum consisting of Trustees who were not parties to such action, suit, or proceeding, (2) by independent legal counsel in a written opinion, or (3) by the Members by a vote of at least fifty percent (50%) of the total votes of the Association as authorized by this Article.

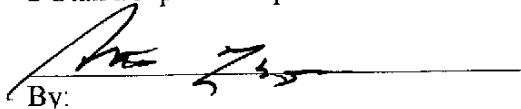
Section 12.4. Scope of Indemnification. The indemnification authorized by this Article shall apply to all present and future Trustees, officers, employees, and agents of the Association and shall continue as to such persons who cease to be Trustees, Officers, employees, or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

Section 12.5. Scope of Indemnification. The indemnification authorized by this Article shall apply to all present and future Trustees, officers, employees, and agents of the Association and shall continue as to such persons who cease to be Trustees, Officers, employees, or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

Section 12.6. Payments Out of Common Expense Fund. All payments made pursuant to this Article shall constitute expenses of the Association and shall be paid with funds provided by regular or special assessments, pursuant to the Declaration.

**IN WITNESS WHEREOF, the undersigned President of the Board of Trustees of The Rio Virgin Homeowners Association, certifies that the foregoing Second Revised and Restated Declaration of Protective Covenants, Conditions and Restrictions was adopted by an affirmative vote of not less than sixty-seven (67%) of the Members votes, pursuant to Article 10 Section 10.5 of the Revised and Restated Declaration of Protective Covenants, Conditions and Restrictions.**

**RIO VIRGIN HOMEOWNERS ASSOCIATION,**  
a Utah nonprofit corporation



By:  
Its: President

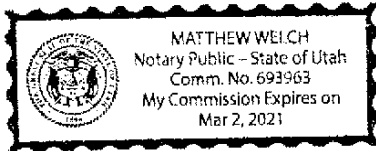
STATE OF UTAH, )


:ss.



County of Washington)

On this 10<sup>th</sup> day of October, 2017, before me personally appeared Steven Gasper, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the President of the Rio Virgin Homeowners Association, a Utah nonprofit corporation, and that the foregoing document was signed by him/her on behalf of the Association by authority of its Bylaws, Declaration, or resolution of the Board, and he/she acknowledged before me that he/she executed the document on behalf of the Association and for its stated purpose.



  
Notary Public

**EXHIBIT A**

**(Legal Description)**

This Second Revised and Restated Declaration of Protective Covenants, Conditions and Restrictions of Rio Virgin RV Park effects the following real property, all located in Washington County, State of Utah:

ALL OF RIO VIRGIN R V PARK 1 AMD (SG), LOT 1 THROUGH LOT 65, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE IN THE OFFICE OF THE RECORDER OF WASHINGTON COUNTY, STATE OF UTAH.

Tax Parcel ID# SG-RIOV-1-1 through SG-RIOV-1-62  
# SG-RIOV-1-63-A through SG-RIOV-1-65-A

ALL OF RIO VIRGIN R V PARK 2 (SG), LOT 72 THROUGH LOT 75, LOT 82 THROUGH LOT 85, LOT 91, LOT 122 THROUGH 127, LOT 129 THROUGH LOT 163 AND LOT 169 THROUGH LOT 183, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE IN THE OFFICE OF THE RECORDER OF WASHINGTON COUNTY, STATE OF UTAH.

Tax Parcel ID# SG-RIOV-2-72 through SG-RIOV-2-75  
# SG-RIOV-2-82 through SG-RIOV-2-85  
# SG-RIOV-2-91  
# SG-RIOV-2-122 through SG-RIOV-2-127  
# SG-RIOV-2-129 through SG-RIOV-2-163  
# SG-RIOV-2-169 through SG-RIOV-2-183

ALL OF RIO VIRGIN R V PARK 3 (SG) LOT 105 THROUGH LOT 121, LOT 164 THROUGH LOT 168 AND LOT 184 THROUGH LOT 196, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE IN THE OFFICE OF THE RECORDER OF WASHINGTON COUNTY, STATE OF UTAH.

Tax Parcel ID# SG-RIOV-3-105 through SG-RIOV-3-121  
# SG-RIOV-3-164 through SG-RIOV-3-168  
# SG-RIOV-3-184 through SG-RIOV-3-196

ALL OF RIO VIRGIN R V PARK 3-A (SG) LOT 92 THROUGH LOT 104,  
ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE IN THE  
OFFICE OF THE RECORDER OF WASHINGTON COUNTY, STATE OF  
UTAH.

Tax Parcel ID# SG-RIOV-3-A-92 through SG-RIOV-3-A-104

ALL OF RIO VIRGIN R V PARK 4 (SG) LOT 197 THROUGH LOT 280,  
ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE IN THE  
OFFICE OF THE RECORDER OF WASHINGTON COUNTY, STATE OF  
UTAH.

Tax Parcel ID# SG-RIOV-4-197 through SG-RIOV-4-280

ALL OF RIO VIRGIN R V PARK 5 (SG) LOT 66 THROUGH LOT 71,  
LOT 76 THROUGH LOT 81 AND LOT 86 THROUGH LOT 87,  
ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE IN THE  
OFFICE OF THE RECORDER OF WASHINGTON COUNTY, STATE OF  
UTAH.

Tax Parcel ID# SG-RIOV-5-66 through SG-RIOV-5-71  
# SG-RIOV-5-76 through SG-RIOV-5-81  
# SG-RIOV-5-86 through SG-RIOV-5-87