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RICHARDS LAW, PC
2040 E. Murray-Holladay Rd., Suite 106.
SLC, UT 84117
(801) 274-6800

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Amended Restrictive Covenants
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By DIXIE DOWNS RESORT OWNERS ASSOC

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS
OF
DIXIE DOWNS RESORT OWNERS ASSOCIATION**

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This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made and executed on the date evidenced below by the Dixie Downs R.V. Resort Inc., also known as the Dixie Downs Resort Owners Association and shall be liberally construed to give effect to the intent of the parties. Dixie Downs R.V. Resort is referred to herein as the "Association."

NOTICE OF AGE RESTRICTED COMMUNITY: DIXIE DOWNS R.V. RESORT IS INTENDED TO, AND SHALL BE MANAGED, TO PROVIDE HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER, AND SHALL PROHIBIT OCCUPANCY BY PERSONS UNDER THE AGE OF 18 YEARS, AS WELL AS ALL OTHERS FALLING WITHIN THE DEFINED TERM OF FAMILIAL STATUS UNDER FEDERAL LAW; EXCEPT THAT PERSONS UNDER AGE 18 MAY VISIT ANY DWELLING UNIT FOR LESS THAN FOURTEEN (14) CONSECUTIVE DAYS WITHOUT VIOLATING THIS DECLARATION, BUT UNDER NO CIRCUMSTANCES SHALL AN UNDERAGE PERSON'S VISITS EXCEED A TOTAL OF THIRTY (30) DAYS IN ANY CALENDAR YEAR. FURTHER EXCEPT AS PROVIDED IN THE POLICIES AND PROCEDURES CONCERNING HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER, EACH AND EVERY LIVING UNIT WITHIN THE PROPERTY, IF OCCUPIED, SHALL BE OCCUPIED BY AT LEAST ONE PERSON 55 YEARS OF AGE OR OLDER. WITHOUT LIMITING THE FOREGOING, AT NO TIME SHALL LESS THAN 80% OF THE OCCUPIED LIVING UNITS SUBJECT TO THIS DECLARATION BE OCCUPIED BY AT LEAST ONE PERSON 55 YEARS OF AGE OR OLDER.

RECITALS

- A. Exhibit "A" of this Declaration defines the property subject to this Declaration. All Lots therein are part of the Association and each Owner of Lot is a member thereof. The Association was created as a planned development for recreational vehicles and contains certain Common Areas for the benefit of the Owners of Lots therein.
- B. The Association desires to continue to provide for the preservation and enhancement of the property values and amenities of the Property and for maintenance of the Common Areas.
- C. The Association deems it necessary, desirable and in the best interests of all Owners to amend this Declaration in its entirety to update the provision herein to more fully comply with current laws and trends in community association management and operation.
- D. The Association deems it desirable to better define and clarify the managing entity that possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. The Association shall be incorporated under the laws of the State of Utah as a nonprofit corporation, known as **Dixie Downs Resort Owners Association** (the "Association").
- E. All additional land has been annexed into the Association and such annexed land is subject in all respects to this amended Declaration.
- F. The Association is intended for occupancy of residents 55 years of age and older as defined in the Fair Housing Act, 42, U.S.C. §§ 3601 et seq.

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

ARTICLE I
DEFINITIONS

1.1 “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, 42 U.S.C. §§3601, et seq.

1.2 “Architectural Review Committee” or “ARC” means that committee constituted and acting pursuant to Article IX below.

1.3 “Articles and By-Laws” shall mean and refer to the Articles of Incorporation and the Bylaws of the Association. The Bylaws are attached hereto as **Exhibit “B.”**

1.4 “Assessment” means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of this Declaration, the Bylaws or applicable law.

1.5 “Association” shall mean and refer to Dixie Downs R. V. Resort Owners Association, a Utah nonprofit corporation.

1.6 “Board of Directors” or “Board” shall mean and refer to the Board of Directors of the Dixie, Downs R. V. Resort Owners Association.

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

1.8 “Community” means all of the land described in Article II hereof and any other property that has been annexed to this Declaration.

1.9 “Community Wide Standard” means the standard of conduct, maintenance, or other activity generally prevailing in the community, as defined by the Board of Directors from time to time.

1.10 “Declaration” shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as the same may hereafter be further modified, amended, supplemented, or expanded from time to time.

1.11 “Development” shall mean and refer to the Dixie Downs R. V. Resort Development created by this Declaration as it exists at any given time, including future addition as allowed by this Declaration.

1.12 “Familial Status” means and refers to:

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

(i) a parent or another person having legal custody of the individual or

individuals; and

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

(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;

1.13 "Improvements" means every structure or improvement of any kind, including but not limited to landscaping required under Section 7.3 below and any Living Unit, deck, porch, awning, fence, garage, carport, driveway, storage shelter or other product of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

1.14 "Leasee" or "Renter" means an individual, individuals, or entity that has been granted the right to use or occupy a living Unit for a specific or indefinite term, in exchange for consideration; money, property, or other goods and services, but shall not include joint ownership of the unit or other forms of co-ownership.

1.15 "Living Unit" or "Unit" means a structure situated upon a single Lot that is designated and intended for use and occupancy as a residency by a single family.

1.16 "Lot" shall mean and refer to any of the separately numbered and individually described plots of land shown as Phase I of the Plat. Upon recordation of the Supplementary Declarations for the additional lands, Lot shall include the separately numbered and individually described plots of land shown in the respective plans of the additional lands.

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

1.18 "Mortgagee" shall mean any person named as a first mortgagee or beneficiary under or holder of a first deed of trust. First Mortgagee shall refer to the mortgagee who holds first lien priority.

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

1.20 "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, and trustees in cases under the United States Bankruptcy Code, receiver and fiduciaries.

1.21 "Plat" means the plat entitled, "Dixie Downs RV Resort Phase I" recorded among the Recorder's Office of Washington County, State of Utah, and any plats recorded among the Recorder's Office in substitution therefor or amendment thereof.

1.22 **"Property"** shall mean and refer to all of the real property which is covered by this Declaration and is described in Exhibit "A" of this Declaration, and such portions of additional land which have been annexed into the Association.

ARTICLE II **DESCRIPTION OF PROPERTY**

The Property which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Amended Declaration, consists of the real property situated in Washington County, State of Utah, and more particularly described in Exhibit "A" attached hereto and incorporated by this reference.

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, including specifically that certain Right of Way Easement described on the Plat.

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

ARTICLE III **HOUSING FOR OLDER PERSONS**

The policies and procedures governing the project as stated herein demonstrate (i) the intent to provide housing for persons 55 years of age or older per living unit and (ii) that at least 80% of the Living units shall be occupied by at least one person 55 years of age or older. The policies and procedures of the Project are intended to make the project housing for older persons and exempt the Project from regulation under the Act as provided by Section 3607 thereof. Thus, to this end, all owners shall be bound by, and the Association shall manage the project in compliance with, this Amendment to the Declaration of Covenants, Conditions and Restrictions of Dixie Downs R. V. Resort Owners Association, a Planned Unit Development.

3.1 **Advertising, Marketing and Sales.** All advertising, marketing and sales materials or displays of any kind shall reflect that the Project is intended for "housing for older persons." All print ads shall contain the following language:

"The Dixie Downs R. V. Resort Project is intended and operated for residents 55 years of age or older as defined in the Fair Housing Act. As such it is the policy of the Dixie Downs R.V. Resort Owners Association to prohibit permanent residence of persons under 18 years of age as is permitted under an exemption of the Act."

3.2 **Approved Occupancy.** The project is intended to be managed for occupancy

by persons 55 years of age or older, as set forth in the Act and regulations relating thereto. See 24 C.F.R. §§100.304 (as may be amended from time to time). The Act (providing housing for older persons) exempts the project from the prohibition against discrimination on the basis of familial status and thus permits the following restriction:

"NO LIVING UNIT MAY BE OCCUPIED BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE, EXCEPT THAT SUCH PERSONS UNDER EIGHTEEN MAY BE PERMITTED TO VISIT FOR REASONABLE PERIODS NOT TO EXCEED TWO CONSECUTIVE WEEKS ON ANY ONE OCCASION OR THIRTY DAYS IN ANY CALENDAR YEAR."

In order to assure that the project meets the age requirements for occupants set forth in the Act, the Association shall execute the Verification form on file with the Association and shall be responsible for enforcing and carrying out the terms of this provision of the Declaration of Covenants, Conditions and Restrictions of Dixie Downs R. V. Resort Owners Association, a Planned Unit Development, specifically including the following:

(a) Approved Occupant Status. It shall be the responsibility of the owner/renter to do "background checks" and represent and to verify "good character" of any proposed occupants before submitting an "Association Membership Application and Age Verification form to the Board for approval. The Board's only responsibility is to verify the age of the proposed occupant. No person shall be permitted to occupy a living unit in the project unless such person is an "Approved Occupant" in accordance with the terms and provisions hereinafter set forth. If it is determined that an occupant has not obtained "Approved Occupant" status, the Association may pursue any remedies available to them under the Amended Declaration, including imposition of fines against a violator, said fines to be set by the Board. However, the Board's remedies are not limited to fines and may include any and all legal remedies to ensure compliance with this Declaration.

(b) Visitors. Persons who are not "Approved Occupants" shall not be permitted to occupy any living unit within the project; however, visitors do not have to be approved as occupants and shall be permitted to visit for such reasonable periods of time, and upon such reasonable conditions, as provided for from time to time by the majority of the Board, subject to the specific limitations regarding visits by persons under eighteen years of age as hereinabove set forth.

(c) Procedure For Approving Occupants. Persons may become "Approved Occupants" based on the following terms and conditions:

(i) A person desiring to become an "Approved Occupant" shall submit to the Board a written "Association Membership Application and Age Verification" form along with proof of age (copy of valid Driver's License or other document), which form is available from the Association.

(ii) Within five (5) days of receipt of such written application for an "Approved Occupant", the Board shall issue written notification to the Applicant, and to the potential seller or lessor of the living unit the Applicant desires to purchase or lease, as to the outcome of the Board's decision stating "Approved" or the reason for disapproval.

(iii) If an approved Applicant fails to timely submit appropriate

documentation, then such person shall not be permitted occupancy of the living unit.

(iv) The Association shall retain all documents and records relating to its consideration of an application for "Approved Occupant" status.

3.3 Resale or Rental.

(a) Obligation of Owner: Contents of Agreements. Should a current resident wish to sell or rent his or her living unit, the same procedures described above in Section 3.2 and Section 12.4 will be followed. The prospective buyer or renter will be required to complete a Membership Application and Age Verification form. Review of this form will be done pursuant to Section 3.2 and Section 12.4. Owners shall inform all prospective purchasers or renters of this procedure and shall provide the Board with the information required in this Article.

Any sale and rental agreement shall be in writing and shall (1) provide that occupancy of the property shall be subject to the provisions of this Amended Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and (2) state the following: **"The Dixie Downs R. V. Resort project is intended and operated for residents 55 years of age or older as defined in the Fair Housing Act. As such it is the policy of the Dixie Downs R. V. Resort Owners Association to prohibit permanent residence of persons under 18 years of age except as is permitted under an exemption of the Act."**

In addition, rental agreements and deeds of trust shall provide that failure by the lessee or trustor to comply with the terms of this Amended Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association shall be default under the agreement. Sale and Rental Agreements shall be consistent with Section 3.2 and 12.4 herein.

(b) Records. The Association shall maintain the following:

(i) For all persons who execute a purchase or lease agreement with an owner, the name of each such person(s), their current address and prospective address in the project, the age of each proposed occupant of the dwelling together with a copy of the documents provided to verify their ages, and the date of the agreement. Such information may be included in the "Association Membership Application and Age Verification" form.

(ii) A log or other record of all persons; occupying a living unit. Such record to be updated quarterly and shall include names, address, and ages.

(iii) For each subsequent transfer of a living unit, a log or other record identifying the transferor, the transferee, the address of the dwelling, the names and ages of the new occupants, the documentation provided to verify those ages, the method of transfer (sale, lease, devise, etc.), and the date the transfer was approved and by whom.

(iv) For the sale, lease, or other transfer of a living unit rejected by the Association, a log identifying the persons involved in the proposed transfer and their current addresses, the ages of the prospective occupants, the reasons for their rejection, and

the date of the rejection.

3.4 **Occupancy by at Least One Person 55 years of Age or Older per Living Unit.** The Association will not approve any applicant if the granting of "Approved Occupant" status will defeat the primary purpose of the project which is to provide housing for older persons within the meaning of the Act.

To maintain the exemption under the Act for housing of older persons, the living units must be occupied by at least one person 55 years of age or older. However, to prevent the disruption of the lives of surviving spouses and cohabitants under age 55 when the over age 55 member of the household dies or otherwise leaves the living unit, up to 20% of occupants may be under Age 55 provided they meet the specific exemptions as stated under (1), (2), and (4) defined below.

The Department of Housing of Urban Development (HUD), has indicated in the preamble to its regulations that so long as the 80% rule is not violated, occupancy of a living unit can be approved, in the following situations, where there is no occupant over age 55: (1) the individual has relatives in the project who would benefit from their residence nearby; (2) the individual inherited the property from a former occupant; (3) the individual is the surviving spouse or cohabitant of a former occupant; (4) the individual is a nurse or other medical professional whose presence would be beneficial to a resident. It is expressly provided that the Association shall not set aside a certain number of living units for persons under 55 years of age.

3.5 **Applicability.** The provisions of this Article shall not apply to prohibit the occupancy of any person presently occupying a living unit in the project before the date of this amendment or prohibit the occupancy by any child born to such occupant while that occupant is a resident of the project, so long as the 80% rule is not violated. Any sale or rental of the living unit by such occupant, however, must be in accordance with the provisions of this Amendment to the Declaration of Covenants, Conditions and Restrictions of Dixie Downs R. V. Resort Owners Association, a Planned Unit Development, specifically including this Article.

ARTICLE IV **MEMBERSHIP AND VOTING RIGHTS**

4.1 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Persons or entities holding such an interest merely as security for the performance of an obligation shall not be a member.

4.2. **Voting Rights.** There shall be one (1) vote for each Lot. Members shall be entitled to one vote for each Lot in which, the interest required for membership in the Association is held.

4.3 **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to

the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

ARTICLE V

PROPERTY RIGHTS IN COMMON AREAS

5.1 **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may designate, in accordance with the policies of the Association, their right of enjoyment to the common area and facilities to the members of their family, their tenants or contract purchasers who reside on the Property. Any and all use of the Lots, the common areas and facilities by family members, guests, tenants, invitees and contract purchasers shall be subject to all of the terms, conditions, covenants, conditions and restrictions of this Declaration, the Bylaws and the Rules and Regulations of the Association.

5.2 **Easement for Recreational Areas.** All owners are hereby granted a permanent easement for the right of use of all facilities for the laundry/recreational use of the owners. This use of this easement may be limited by reasonable rules and regulations and regular hours of operation. The easement itself shall be deemed common area and subject to reasonable use assessments to pay the cost of maintenance and repair of the laundry/recreational facilities, together with a reserve for future replacements.

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

Lot No. _____ of the Dixie Downs R. V. Resort, as the same is identified in the Plat recorded in the office of the Washington County Recorder, and in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of the Dixie Downs R. V. Resort (the Declaration) recorded as Entry No. _____ of the official records of Washington County, Utah, TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas, described and as provided for in the Declaration and Plat. SUBJECT TO all of the provisions of the Declaration and subject, also, to liens for current taxes.

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

5.4 **Ownership of Common Areas.** The Association shall hold title to all Common Areas of the Development.

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

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

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

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

5.6 **Encroachments.** If any portion of an improvement on a Lot encroaches upon the, Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. However, nothing in this section shall prohibit or limit an owner, who's Lot is being encroached upon, from requiring that the encroachment cease and taking further action if compliance is not voluntarily made.

5.7 **Alienation of Common Areas.** The Common properties may not be alienated, encumbered or transferred without the approval of at least eighty percent (80%) of the votes of the Association.

ARTICLE VI ASSESSMENTS

6.1 **Tax Collection From Lot Owners by Washington County Authorized.** It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot as a Member of the Association and as part of his monthly common assessment will be required to pay to the Association his pro rata share of such taxes.

Notwithstanding anything to the contrary contained in the Declaration, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event that the assessor shall separately assess Common Areas to the Association, the Board of Trustees may require the unit owners to pay a special assessment, on a pro rata basis, for property taxes.

6.2 **Covenant for Assessment.**

(a) Each Owner, by acceptance of a deed, conveying any Lot to the Owner within the Association, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of

assessments:

(1) Annual assessments ("Annual Assessment") as provided in Section 6.3 below;

(2) Special assessments ("Special Assessments") as provided in Section 6.8 below;

(3) Individual assessments ("Individual Assessments") as provided in Section 6.11 below.

(b) Assessments shall be established and collected as provided in this Article.

(c) No member may exempt itself from liability for Assessments by abandonment of any Lot owned by such member.

6.3 Annual Budget and Assessment.

(a) Adoption of Budget.

(1) The Board of Directors shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the landscaping and exteriors of Units and for the administration, management and operation of the Association. If Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

(b) Determination of Annual Assessment.

(1) The Board of Directors of the Association shall fix the amount of the annual assessment ("Annual Assessment") against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning any assessment period.

(2) The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

6.4 Apportionment of Assessments. Assessments shall be apportioned as follows:

(a) Annual and Special Assessments. All Lots, as originally platted, shall pay a pro rata share of the Annual Assessment and Special Assessments commencing upon the date the Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such assessment divided by the total number of Lots. In the event that two Lots have been combined into one (1) Lot, then two distinct assessments shall be paid, one for each Lot so platted.

(b) Individual Assessments. Individual Assessments shall be apportioned

exclusively against the Lots benefited or to which the expenses are attributable as provided in Section 6.12 below.

(c) Payment of Assessments. Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

6.5 Lien. The Annual Assessment and all other Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article V and shall be construed as a real covenant running with the land.

6.6 Personal Obligation and Costs of Collection.

(a) Assessments imposed under this Declaration, together with a reasonable late fee and interest at a rate to be established by resolution of the Board of Directors, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

(b) The personal obligation for any delinquent Assessment, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

6.7 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community, and including, but not limited to:

(a) The improvement and maintenance, operation, care, and services related to the maintenance of the landscaping;

(b) The improvement and maintenance, operation, care, and services related to the maintenance of the Common Areas;

(c) The payment of insurance premiums;

(d) The costs of utilities and other services which may be provided by the Association for the Community as may be approved from time to time by a majority of the members of the Association;

(e) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws;

(f) The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements in accordance with Section 6.17 below; and

(g) Any other items properly chargeable as an expense of the Association.

6.8 **Special Assessments.** In addition to the Annual Assessments authorized in this Article, the Association may levy in any assessment year, a special assessment ("Special Assessment"), for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the of the Common Areas or the landscaping; provided that such assessment shall first be approved by two-thirds (2/3) of the votes of members of the Association, voting in person or by proxy at a meeting duly called for such purpose. Notwithstanding anything to the contrary herein contained, the Association may, by Board Action alone, levy special assessments up to \$500 per year. Any special assessments beyond \$500 per year must be approved by the members as outlined in Section 6.9.

6.9 **Notice and Quorum for any Action Authorized Under Section 6.8 & 6.11.**

(a) Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Sections 6.8 and 6.11 of this article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all of the votes of members entitled to be cast at such a meeting shall be necessary and sufficient to constitute a quorum.

(b) If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.10 **Commencement and Due Date of Assessments.** All Lots subject to this Declaration shall be subject to assessment as provided in Section 6.1 above. The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by resolution of the Board of Directors, and shall be delinquent if not paid within thirty (30) days after the due date. The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment.

6.11 **Individual Assessments.**

(a) Any expenses benefiting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefited ("Individual Assessment"). Individual Assessments shall include, but are not limited to:

(1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association.

(2) Any reasonable services provided to an abandoned Lot by the Association due to an Owner's failure to maintain the same in order to protect the health, safety and welfare of adjoining Lot owners and the Association in general.

6.12 **Nonpayment of Assessments.** Any assessment or portion thereof not paid within thirty (30) days after the due date (which shall be established by resolution of the Board of Directors):

(a) Shall be delinquent and shall bear interest from the date of delinquency at the rate, established by resolution of the Board of Directors, not to exceed the maximum rate permitted by law, and

(b) Shall be subject to a late charge of ^{five}Twenty Dollars (\$25.00) per month until paid, and: _{was}

(c) If paid by installments, may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days' written notice to the Owner.

(d) Liens may be filed, recorded and foreclosed as provided for below.

6.13 **Subordination of Lien to Mortgages.**

(a) The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as provided in subsection (b) of this section.

(b) The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, nor from the lien of any future assessment.

6.14 **Enforcement of Lien.** The Association may establish and enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration and Utah law. The lien is imposed upon the Lot against which the Assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration or by law or awarded by a court for breach of any provisions of this Declaration, the Bylaws or any rules and regulations of the Association. Liens may be foreclosed in the same manner of mortgages or in the same non-judicial manner of deeds of trusts pursuant to Utah law. In such instances, the Association's attorney shall be, and is hereby appointed by each Owner who accepts a deed to a Lot, the Trustee for purposes of all such foreclosure proceedings.

6.15 **Exempt Property.** All Lots owned by the Association or dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization even though exempt from taxation by the laws of the State of Utah shall not be exempt from the assessments created under this Declaration.

6.16 **Reserves Funds.**

(a) The Association shall establish and maintain a reserve fund for repairs and replacement of the Common Areas and landscaping by the allocation and payment monthly to such reserve fund in an amount to be designated from time to time by the Board of Directors. The fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America

(b) The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate.

(c) The proportional interest of any member of the Association in any reserve fund established under this section shall be considered an appurtenance of such Owner's Lot and shall not be separated from the Lot to which it appertains and shall be deemed to be transferred with the Lot.

6.17 **Initial Capital Contribution/Reinvestment Fee.** At settlement for each Lot, an amount equal to two (2) months of the current monthly Assessment amount for that type of Lot shall be paid from each prospective member of the Association for the purpose of contributing towards expenses and operating contingencies, including reserve fund contributions. Such amount shall be in addition to any pro rata share of Assessments due and adjusted at settlement. The Buyer and Seller shall negotiate who pay this Fee.

ARTICLE VII OPERATION AND MAINTENANCE

7.1 **Maintenance of Lots and Living Units.** Each Lot, Living Unit and its utility systems located upon a Lot, shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Lot. In the event an Owner does not maintain their Lot and/or Living Unit, the Board, after thirty (30) days' notice and an opportunity for the Owner to cure the violation, may enter the Lot and maintain the premises to the generally prevailing community standard. All costs of such maintenance and repairs shall be charged back to the Owner as an assessment.

7.2 **Operation and Maintenance by Association.** The Association, by its duly delegated representative, shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair. In addition to Section 7.1, in the event that special need for maintenance or repair of Lot should be necessitated through willful or negligent act of the Member, his family or guests, or invitees, the cost of such maintenance shall be added to and become a part of assessment to which such Lot is subject.

7.3 **Water and Garbage Removal.** The Association shall pay for all water and garbage removal services furnished to each Lot. Each Lot Owner shall pay for all utility services which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

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

(a) **Fire and Casualty.** The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Common Area. The amount of coverage shall be determined by the Board, but at no time shall the amount be less than the full replacement value of the improvements that are a part of the Common Area. This insurance shall be maintained for the benefit of the Association, the Owner, and their Mortgagees, as their interests may appear as named insured, subject, however, to any loss

payment requirements set forth in this Declaration. The name of the insured under each such policy shall be in form and substance similar to: "**Dixie Downs R.V. Resort Owners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear.**" All Owners shall obtain and maintain adequate insurance to cover the cost of their respective Lot and all improvements and contents thereon.

(b) Liability. A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the Development because of negligent acts of the Association or other Owners.

(c) Fidelity Insurance. A fidelity policy insuring against dishonest acts on the part of manager (and employees or volunteers) responsible for handling funds belonging to or administered by the Association of Unit Owners. The fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one hundred percent (100%) of the Project's estimated annual operating expenses, including reserves. Such 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.

7.5 Additional Insurance Provisions.

The following additional provisions shall apply with respect to insurance;

(a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.

(b) All policies shall be written, by a company holding a rating of Class IV or better from Best's Insurance Reports or other similar standard yielding this minimum quality of insurer. Each insurer must be specifically licensed in the State of Utah.

(c) The Association shall have the authority to adjust losses.

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(e) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the

conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

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

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

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

7.8 **Lots Not Insured by Association.** The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot any Recreational Vehicle and acts and events thereon.

7.9 **Situation When Owner's Insurance is Primary.** In the event that any loss to the common area, a Lot or Living Unit is attributable to the negligence or intentional misconduct of an Owner, their guests, tenants or invitees, then the "at fault" Owner's insurance policy shall be considered primary and claimed against prior to claiming and utilizing any of the Association's insurance described herein.

7.10 **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.

7.11 **Terms of Management Agreement.** Any agreement for professional management of the Development may not exceed one (1) year but may be reviewed towards the end of each year to determine whether a new agreement should be entered into. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on sixty (60) days or less written notice.

ARTICLE VIII USE RESTRICTIONS

8.1 **Use of Common Areas.** The Common Areas shall be used only in a manner

consistent with their community nature, consistent with any community wide standards adopted by the Board and consistent with the use restrictions applicable to Lots.

8.2 Use of Lots.

(a) All Lots shall be used only for commercially built Recreational Vehicle (R.V.'s) (including Park Model R.V.'s) no more than 10 years old at the time of their first use on the Lot. Exceptions to this may be granted by the Architectural Control Committee upon a showing that the R.V. is in a good and slightly condition, which determination shall be made in the sole discretion of said committee. Such Recreational Vehicles shall at no time exceed seven-hundred (700) square feet in size.

(b) All R.V.'s shall be parked on the designated parking pad and the total length of the R.V. and its towing vehicle shall not exceed the length of the Lot, unless otherwise approved by the Architectural Control Committee.

(c) All lots are or will be improved with a concrete pad for Recreational Vehicle parking and a patio. Electrical and sewer and cable television hookups are also provided. Cable television and other bulk services may be contracted for by the Board. In such cases, all assessments shall reflect the cost of any such bulk service contract and all Owners are responsible for the payment of said assessment, whether such service is presently used or not.

(d) 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.

(e) No more than one (1) Recreational Vehicle plus two (2) other parked vehicles will be permitted or maintained upon any Lot in said subdivision. Any inoperable and/or unlicensed vehicles shall be prohibited within the Property.

(f) No Lot or Lots shall be re-subdivided except for the purpose of combining two or more lots into one. In the event, however, that any lots are combined into one lot, the assessments shall be apportioned as if the Lots were never consolidated and shall be paid by the consolidated Lot Owner.

(g) 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.

(h) No Owner shall construct or build a canopy that shelters any Recreational Vehicle on their Lot.

8.3 Vehicle Requirements. All vehicles used for occupancy shall be Recreational Vehicles. No tents or outdoor overnight camping will be allowed, except that "Park Model" homes shall expressly be allowed. Skirting for such is required for all "Park Models" and is required for all "permanent" 5th Wheelers and Motorhomes. Permanent Parking is hereby defined as one year or more.

8.4 Fences. No fences will be allowed on the Lot. When violations occur, the Board shall give notice and allow the owner thirty (30) days to cure the violation. If not cured, the Board may enter the Lot and correct the violation at the owner's expense and

charge the expense to the owner as an assessment.

8.5 **Non-residential Use.** No part of the Property shall be used for any commercial, manufacturing mercantile, storing, vending, or other such non-residential purposes.

8.6 **Signs.** No unauthorized signs or billboards of any kind shall be displayed to the public view on any portion of the Property unless permitted in the Bylaws and Rules of the Association.

8.7 **Quiet Enjoyment.** No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners or which shall in any way increase the rate of insurance. Specifically, no generators or engines shall be run while parked on a Lot, except as is needed to move the vehicles. No unreasonable use or operation of machinery (e.g. generators, motors, and such equipment) will be permitted unless prior express written permission of the Board is obtained.

8.8 **Temporary Structures Equipment, Motor Vehicles, Etc.** No structure of a temporary character, tent, shack, garage, barn, or other out building shall be used on any Lot at any time as a residence, either temporarily or permanently. No motor vehicle whatsoever may be parked on any common street or driveway. Storage sheds may be constructed on the lot upon approval of the Architectural Control Committee. Any changes or additions to the existing improvements may be done only with the written approval of the Architectural Control Committee.

8.9 **Animals.** No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted on any Lot, except no more than two (2) dogs, cats, or other household pets may be permitted provided that they are not kept, bred, or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or a nuisance, by noise or otherwise, to Lot Owners. All pets must be kept in the Recreational Vehicle or on a leash attended by an owner in the Common Areas. All owners of pets shall be responsible for the cleanup of pet's waste.

8.10 **Garbage Removal.** All rubbish, trash and garbage shall be regularly removed from the Property and placed in the dumpster provided, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers woodpiles, and machinery and equipment shall be prohibited upon any Lot.

8.11 **Easement for Utilities.** An easement for utilities including sewer lines, water lines, telephone, power and cable television is reserved over all private roads and rights of ingress and egress for construction and/or maintenance are reserved over all lots. Specifically a 15-foot easement for all utilities is reserved, along the back lot line of each lot and a 10-foot easement, the center line of which is the common lot line of the following lots: 3 and 4, .7 and 8, 12 and 13, 15 and 16, 18 and 19, 21 and 22, 24 and 25, 27 and 28, 30 and 31, 33 and 34, 36 and 37, 39 and 40, 42 and 43, 45 and 46, 48 and 49, 50 and 51, 57 and 58, 63 and 64, 66 and 67, 69 and 70, 72 and 73, 75 and 76, 78 and 79, 31 and 82, 84 and 85, 87 and 88, 89 and 90, 90 and 91, 93 and 94, 96 and 97, 99 and 100, 102 and 103, 105 and 106, 108 and 109, 111 and 112, 114 and 115, 117 and 118, 120 and 121, 123 and 124, 126 and 127, 129 and

130,132 and 133, 135 and 136, 138 and 139, 141 and 142, 144 and 145, 146 and common area boundary, 148 and 149, 151 and 152, 154 and 155, 157 and 158, 160 and 161, 163 and 164, 167 and common area boundary, 169 and 170, 172 and 173, 175 and 176, 178 and 179, 181 and 182, in reserved for utilities to serve the named lots and neighboring lots; also 53 shall have 7 1/2 foot wide easement along its north boundary; also such other utility and drainage easements as are actually shown on, the Plat.

ARTICLE IX **ARCHITECTURAL CONTROL**

9.1 **General Architectural Objectives and Requirements.** All improvement of the Common Areas, Lots and Living Units shall be architecturally compatible with respect to one another and consistent with the Community Wide Standard. The Board shall have the authority to establish Architectural Guidelines that further clarify the architectural requirements and the Community Wide Standard of the community.

9.2 **Architectural Control Committee.** The Board may appoint a three (3) person Architectural Control Committee comprised of Owners, each person to serve for a one (1) year term. There is no limit on the number of subsequent terms that may be served by such appointed Owners. The Board shall fill, by majority Board vote, any vacancies that may occur on the Committee. In the event that no Owner desires to serve on the Committee, the Board shall act as the Architectural Control Committee.

9.3 **New Construction.** No newly constructed unit is allowed to be over 700 square feet of living space. Each unit shall be situated on the lot with zero lot line on the right side and no less than 5 feet from the unit on the adjoining lot on the left side. Materials used shall be "as approved" and the exterior color shall be appropriate for the Park.

ARTICLE X **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 Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Association shall reasonably determine provided, however, that in the event of a taking in which any Lot 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 in the cost of debris removal.

ARTICLE XI **RIGHTS OF FIRST MORTGAGEES**

Notwithstanding any other provisions of this Declaration, the following provisions

concerning the rights of first Mortgagee shall be in effect:

11.1 **Preservation of Regulatory Structure and Insurance.** Unless the holders of 100% of all first Mortgagees and 75% of the Lot Owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the upkeep of the Common Areas of the Property;

(b) to fail to maintain fire and extended coverage on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(c) to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of improvements on the Common Areas.

11.2 **Preservation of Common Area; Change in Method of Assessment.** Unless the Association shall receive the prior written approval of (1) at least 100% of all first mortgagees (based on one vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five percent (75%) of the Lots the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

Neither this Article XI nor the mortgagee insurance provisions may be amended without the prior approval of all first Mortgagees.

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

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

(b) there occurs any substantial damage to or destruction of any Lot or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$5,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

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

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

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

(ii) material amendment of the Declaration or the Articles or -Bylaws ...

the Association.

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

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

11.6 **Right to Pay Taxes and Charges.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the profits of the Association and shall be subrogated to the rights of the Association in this event.

11.7 **Exemption from any First Right of Refusal.** Any first Mortgagee and any purchaser therefrom who obtains title to the Lot pursuant to the remedies provided in the first Mortgage, or by foreclosure of the first Mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale or otherwise shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

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

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

11.10 **Mortgagees Rights Concerning Amendments.** No material amendment to the Declaration, By-Laws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least thirty percent (30%) of the Mortgagees who have requested in advance, and in writing, that they be notified and approve of any such amendment.

ARTICLE XII **MISCELLANEOUS**

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

delivering or mailing the same to the Chairman or any member of such Committee.

12.2 **Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

12.3 **Amendment.** Any amendment to this Declaration shall require: (a) the affirmative vote of at least fifty-one percent (51%) of all membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose.

Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Article 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting.

No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Article shall be accomplished through the recordation of an instrument executed by the Association. In such instrument an officer or director of the Association shall certify that the vote required by this Article for amendment has occurred.

12.4 **Lease Provisions.**

(a)(1) **Leasing and Renting of Dwelling Units.** The leasing and renting of Living Units by Owners shall be in accordance with this Section.

The terms "leasing," "lease," "renting," "rent," or "rental" used in reference to any Living Unit within the Association shall mean and refer to the granting of a right to use or occupy a Living Unit to any person or entity for a specific term or indefinite term (with rent stated on a periodic basis), in exchange for the payment of rent (money, property or other non-monetary goods or services of value); but shall not mean nor include joint ownership of a Living Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

(b)(1) **Exemptions.** The following Unit Owners and their respective Units, upon proof sufficient to the Board of Directors, are exempt from the rental restrictions outlined herein below unless otherwise stated:

- (i) A Unit that is occupied by a Unit Owner as the Unit Owner's primary residence while concurrently being occupied by someone other than a Unit Owner;
- (ii) A Unit occupied by a Unit Owner's parent, child, or sibling (as long as such occupant(s) meet the Association's age restriction requirements of the Declaration).
- (iii) A Unit Owner whose employer has relocated the Unit Owner for no less than two (2) years; or,
- (iv) A Unit Owned by a trust or other entity created for estate planning

purposes if the trust or other estate planning entity was created for the estate of:

- (a) A current resident of the Unit; or,
- (b) The parent, child, or sibling of the current resident of the Unit (as long as such occupant(s) meet the Association's age restriction requirements of the Declaration).
- (v) A Unit Owner whose absence is due to charitable service no longer twenty-four (24) months;

(c)(1) Restrictions. Subject to Section A above, all Owners and Living Units shall be subject to the following restrictions:

(i) No Living Unit may be rented or leased if the rental or lease results in more than sixteen percent (16%) of the Living Units ("Rental-Lease Limit") being rented or leased, except as provided in subsection (c) of this Section. In other words, there may never be more than thirty (30) Living Units rented at any given time.

(ii) No Owner may lease or rent their Living Unit for a period of less than six (6) consecutive months; any term less is deemed a prohibited short-term rental.

(iii) Owners desiring to rent or lease their Living Units shall submit a written application to the Board of Directors (and/or its agent). Additionally, the Owner shall submit to the Board of Directors within ten (10) days of occupancy by the tenants, the names of those occupying the Unit. The Board of Directors shall monitor and make a determination of whether the rental or lease will exceed the Rental-Lease Limit.

(i) Owners shall also submit a "tenant registration form" to the HOA for each existing tenant/lease, in a form prepared for the HOA by the Board of Directors, no less than thirty (30) days prior to executing or extending a lease.

(ii) Because the HOA is an "age restricted" community the "tenant registration form" will confirm that the occupant(s) complies with the "over 55" restriction as outlined in the Declaration.

The Board shall:

(i) Approve the application if it determines that the rental or lease will not exceed the Rental-Lease Limit; or

(ii) Deny the application if it determines that the rental or lease of the Unit will exceed the Rental-Lease Limit.

(d)(1) Eligibility. Notwithstanding the above, an Owner is not eligible to rent more than one Living Unit until the pending applications of:

(i) All Owners who are not currently renting or leasing a Living Unit have been approved; and

(ii) All Owners who are currently renting or leasing fewer Living Units than the applicant have been approved.

(e)(1) Application Process / Waiting List. Applications from an Owner for permission to rent or lease shall be reviewed and approved or denied by the Board as set forth in this subsection.

(i) The Board shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application. Within ten (10) business days of receipt, the Board shall approve or deny an application as provided herein and shall notify the Owner within fifteen (15) business days of receipt of the application if permission is not given and the reason for the denial.

(ii) If an Owner's application is denied, the applicant may be placed on a waiting list according to the date the application was received so that the Owner whose application was earliest received will have the first opportunity to rent or lease when the Rental-Lease Limit permits the same.

An application form, the application approval process, a waiting list, and any other rules deemed necessary by the Board to implement this section shall be established by rules or resolution adopted by the Board consistent with this Declaration and to ensure the consistent administration and enforcement of the rental restrictions contained herein.

(f)(1) Intent to Continue Leasing. Within thirty (30) calendar days after the date this Amendment is recorded, each Owner who is or was leasing their Living Unit as of the date this Amendment was adopted ("Amendment Date") and who desires to continue to lease their Living Unit, must notify the Board in writing of their intent to continue renting their Living Unit and must be in compliance with the provisions of this Amendment.

An Owner who fails to timely deliver a notice of intent to continue leasing to the Board or fails to come into compliance with the provisions of this Amendment shall lose the right to lease the Owner's Living Unit, which loss of the right to lease shall be effective as of the time the current lease expires.

(g)(1) Grandfathering of Units. Upon providing timely notice of intent to continue leasing to the Board, as required in paragraph (f)(1) above, and being in complete compliance with this Amendment, any Owner that is currently renting or leasing a Unit prior to the adoption and recordation of the rental restrictions contained herein, may continue to rent or lease the Unit until:

(i) The Unit Owner occupies the Unit; or,
(ii) The Unit Owner sells the Unit, at which time the new Owner must comply with the Rental-Lease Limit stated above. Prospective buyers, who desire to rent their Unit upon purchase, should inquire of the Association before purchasing in order to know whether or not the transfer of ownership terminates any grandfathered status making their proposed tenant subject to the Rental-Lease Limit; or

(iii) An officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, occupies the Unit.

(h)(1) Breach of the Rental Requirements. If an Owner fails to follow the requirements of this Section or any additional rules and procedures adopted by the Board and rents or leases his or her Living Unit, and/or rents or leases any Living Unit after the Board has denied the Owner's application, the Board may assess fines against the Owner and the Owner's Unit in an amount to be determined by the Board pursuant to a schedule of fines adopted by resolution.

(i)(1) Attorney Fees and Costs for Violations. The Association shall be entitled to recover from an Owner who violation this Article its costs and attorney's fees incurred for the enforcement of this Article regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the Owner and the Lot as an assessment pursuant to the Declaration.

(j)(1) Information to be Provided to Tenant. Permitted rental and lease agreements shall comply with this subsection.

(i) The Owner shall provide the tenant or lessee with a copy of this Declaration, the Bylaws, including any relevant amendments to such documents, and all rules and regulations then in effect and shall take a receipt for delivery of the documents. In the event any such documents are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant or lessee with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Board, or its membership. Owner shall provide written confirmation to the Board that governing documents have been provided to tenant.

(ii) Upon the commencement of the rental or lease period, the Owner shall provide the Association with all required tenant information as stated herein.

(k)(1) Additional Remedies. The Board may require the Owner to terminate a lease or rental agreement if the Board determines that any lessee or tenant has violated any provision of this Declaration, the Articles of Incorporation, the Bylaws, or any amendments thereto, or the rules and regulations adopted thereto. If an Owner fails to correct any such violations related to their tenants, or fails to terminate the lease pursuant to the above, the Owner hereby grants the Board standing to initiate eviction proceedings against their tenant and considers the Association a third-party beneficiary to its rental/lease agreement.

In addition to any other remedies available to the Association, fines may be assessed pursuant to Utah law and the Association's Schedule of Fines.

12.5 Rights of Owners of Leased Units. Upon lease of a unit, an Owner relinquishes all rights of ownership for use of facilities, for so long as the unit remains leased.

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

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

12.8 Effective Date. This Declaration and any amendment thereof shall take effect upon its being filed for record in the office of the County Recorder of Washington County, Utah.

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IN WITNESS WHEREOF, Upon vote and approval by the membership in accordance with the requirements of the Association's governing documents the President and Secretary of Dixie Downs Resort Owners Association have executed this instrument the day and year first hereinabove written.

DIXIE DOWNS RESORT OWNERS ASSOCIATION

Mary Ann Allred

By: _____
Its President

David Bryant

By: _____
Its Secretary

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On the 6 day of April, 2017, personally appeared before me Mary Ann Allred and David Bryant, who being by me duly sworn did that say that they are the President and Secretary of the Association and that the seal affixed to the foregoing instrument is the seal of said Association and that said instrument was signed and sealed in behalf of said Association by authority of its Board of Directors; and each of them acknowledged said instrument to be their voluntary act and deed.

Leslie J Bowler
Notary Public

