

DOC # 20180050210

Restrictive Page 1 of 95  
Russell Shirts Washington County Recorder  
12/20/2018 03:05:59 PM Fee \$ 198.00  
By BUSH AND GUDGELL



**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS, TERMS AND  
RESERVATIONS**

**FOR**

**Desert Color Community**

**St. George, Utah**

**December 20, 2018**

Upon Recording, Please Return To:

Desert Color Manager LLC  
c/o Clyde Properties LLC  
730 North 1500 West  
Orem, Utah 84058

[NOTE: A Notice of Reinvestment Fee Covenant will be separately recorded with the office of the Recorder of Washington County, Utah pursuant to Utah Code Ann. Section 57-1-46(6) and (7)].

STG 3488023.25

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**Exhibits**

- Exhibit A – Property
- Exhibit B – Additional Property
- Exhibit C – Regular Assessment Calculation Formula
- Exhibit D – Exclusivity Restriction - Map
- Exhibit E – Bylaws

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS, TERMS AND RESERVATIONS  
FOR DESERT COLOR COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, TERMS AND RESERVATIONS FOR DESERT COLOR COMMUNITY (this "Declaration") is made this 20<sup>th</sup> day of December, 2018 by DESERT COLOR ST. GEORGE, LLC, a Utah limited liability company, hereinafter referred to as "Declarant."

**Recitals:**

- A. These Recitals refer to and utilize certain capitalized terms which are defined in this Declaration.
- B. The State of Utah, acting through the School and Institutional Trust Lands Administration ("SITLA") is currently the owner of the real property ("Property") described on Exhibit "A", which is attached hereto and incorporated herein by reference.
- C. Declarant and SITLA entered into that certain Development Lease Number 1100 with respect to the Property on September 13, 2017 (the "Lease"), which gives Declarant all rights as Declarant and initial owner under this Declaration with respect to the Property and Additional Property which may be annexed to this Declaration during the Declarant Control Period.
- D. Pursuant to the Lease, Declarant has the right to acquire and develop the Property, in accordance with the terms of the Lease, and to establish covenants, conditions, restrictions, easements, terms and reservations for the development of the Property as provided in this Declaration.
- E. Declarant intends to develop the Property as a mixed-use real estate master-planned community located in St. George, Utah, east of Interstate 15 and adjacent to the Southern Parkway to be known as Desert Color Community ("Community" or "Desert Color Community").
- F. Desert Color Community is a large master-planned development within the meaning of Utah Code Ann. Section 57-1-46(1)(f), and as such is authorized to impose a Reinvestment Fee Covenant upon the Property.
- G. As part of the development of the Property, Declarant also intends to Record various Neighborhood Declarations and Supplemental Declarations covering portions of the Property, which will designate the purposes for which such portions of the Property may be used and developed and may set forth additional covenants, conditions, restrictions, Assessments, charges, servitudes, liens, reservations and easements applicable to such portions of the Property.
- H. The Master Association (as defined herein) will operate and maintain the Common Areas (as defined herein) on behalf of the Owners and will administer and enforce the covenants, conditions and restrictions set forth in this Declaration.

**NOW, THEREFORE**, in consideration of foregoing Recitals and the covenants and agreements contained herein, Declarant hereby declares that the Property, and such additions thereto as may hereafter be made pursuant to Article IX hereof is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

**ARTICLE I – Creation of Desert Color Community**

**1.1 Purpose and Intent**

This Declaration imposes upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the Property. In furtherance of such plan, this Declaration provides for the creation of Desert Color Community Master Association, Inc. (the "Master Association") to own, operate and maintain Common Areas; provided, however, that the Master Association may in its discretion convey some or all of what

would otherwise be Common Areas to a Local District or sub-owners' association and delegate to the Local District or the sub-owners' association the obligation to operate and maintain the Common Areas conveyed to the Local District or sub-owners' association, respectively. The Master Association shall also administer and enforce the provisions of this Declaration and the By-Laws.

This Declaration sets forth the basic covenants, conditions and restrictions that will apply to Desert Color Community. Declarant plans to develop within Desert Color Community parcels of land for single family residential detached and cluster attached lots, multi-family town homes and condominium units, hotel(s), convention, meeting and event space, bed and breakfast/boutique inns, general mixed-use commercial and retail, resort areas, open space, and supporting infrastructure.

Accordingly, it is contemplated that the Property will be developed as a residential, mixed-use commercial, and resort development with permitted uses allowed pursuant to the review and direction of the Master Association, with public and/or private streets, open space, sidewalks or trails, street lights, and Common Areas and improvements for the benefit of the Owners of Lots made subject to the terms of this Declaration.

Declarant hereby declares that all of the Property and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Property, their heirs, successor, successors-in-title, and assigns, and shall inure to the benefit of each other of any portion of the Property.

**This document does not and is not intended to create a condominium within the meaning of Utah Code Ann. Section 57-8-1, et seq.**

## **1.2 Mission Statement**

The mission of Declarant and the Master Association is to preserve, promote and manage Desert Color Community's natural resources to ensure that the community lives in harmony with its surroundings. As stewards of the land, the Master Association will develop, operate and maintain the community parks, recreational facilities and trails which are conveyed to the Master Association. Declarant or the Master Association may, in their discretion, cause such community parks and trails to be conveyed to a Local District pursuant to Title 17B of the Utah Code Annotated 1953, as amended, Limited Purpose Local Government Entities – Local Districts ("Local District") or to sub-owners' association, who shall then have the responsibility, respectively, to operate and maintain such community parks, recreational facilities and trails. It is also charged with administering the Design Guidelines and the design review process when delegated by Declarant. In addition, the Master Association may perform such other community services and undertake such other responsibilities as its Board of Directors may deem advisable from time to time to create and preserve an aesthetically pleasing, functionally convenient, environmentally sound and attractive community for residents seeking privacy and security in a beautiful environment.

## **1.3 Binding Effect**

This Declaration governs the Property and any Additional Property subjected to this Declaration in the future by a Recorded Supplemental Declaration. This Declaration shall run with the title to such property and shall bind anyone having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns.

In consideration of the advantages which Declarant and future Owners will receive from the sale and ownership of restricted land, Declarant and its successors and assigns do hereby covenant and agree with all other persons, firms, or corporations now owning or hereafter acquiring any portion of Desert Color Community, for full value received, and the landowner covenants and agrees upon acceptance of a deed or deeds of conveyance to any of the lots or units making up Desert Color Community, that Desert Color Community is hereby subjected to this Declaration and associated Governing Documents relating to the use and occupancy thereof and shall run with the land and its subsequent owners.

## **1.4 Governing Documents**

The Governing Documents create a general development plan for Desert Color Community. The Governing Documents shall provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of Desert Color Community as a planned community. The Governing

Documents may be supplemented by additional covenants, conditions, and restrictions applicable to particular Neighborhoods or Commercial Areas. The following outline identifies and summarizes the Governing Documents, each as they may be amended.

**Declaration.** Creates obligations which are binding upon the Property submitted to and developed as part Desert Color Community and all present and future owners of property in Desert Color Community.

**Supplemental Declaration.** Adds Property to Desert Color Community and may impose additional obligations or restrictions on such property.

**Neighborhood Declaration.** Separate Neighborhood Declarations may be established and Recorded for such purposes as mixed-use commercial areas, resort areas, specialty use districts, and residential neighborhoods with specific declarations, covenants, conditions and restrictive covenants which more specifically regulate such neighborhood.

**Articles of Incorporation.** Establishes the Desert Color Community Master Association, Inc. as a non-profit corporation under Utah law.

**By-Laws of Master Association.** Establish rules, policies, and procedures of the Master Association's internal governance and activities and regulates operations and use of Common Areas (except to the extent such function is delegated to a Local District or sub-owners' association). A copy of the By-Laws is attached hereto as Exhibit "E".

**Design Guidelines.** Establish site planning, thematic and architectural standards and guidelines for improvements and modifications to Lots, Parcels, or Units including structures, landscaping, and other items and aesthetic issues.

**Use Restrictions.** Govern use of property and activities within Desert Color Community, as adopted by the Board.

**Development Agreement.** The Desert Color Community Development Agreement as approved by St. George City establishing the terms and conditions of Declarant's right to develop the Property and provides certain obligations of Declarant.

**Desert Color Resort Club.** The Membership Documents of the Desert Color Resort Club (hereinafter defined) which establish the procedures, rules, regulations, requirements, privileges, and governance of members thereof.

If there is a conflict between or among the Governing Documents and any Neighborhood Organization's covenants, restrictions, or policies, then this Declaration and the Development Agreement shall control. Additional restrictions or provisions which are more restrictive than the provisions of this Declaration may be imposed by a Neighborhood Organization. The more restrictive provisions will be controlling over the less restrictive provisions in this Declaration. However, no Person shall Record any additional covenants, conditions, or restrictions affecting any portion of Desert Color Community or Additional Property described in Exhibit "B" during the Declarant Control Period without Declarant's written consent. Any instrument Recorded without the required consent is void and of no force and effect.

This Declaration applies to all Owners and any occupants of a Lot, Parcel or Unit and also applies to tenants, guests, visitors, and invitees. If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications of the provision.

## ARTICLE II – Definitions

The following are terms that shall be considered as defined terms under this Declaration and the same definition shall be applicable whether the word is shown as singular or plural, capitalized or not. The terms used in this Declaration are given their natural, commonly accepted definitions unless otherwise specified.

**"Additional Property"** means all or any portion of that certain real property which is more particularly described on Exhibit "B" which is attached and incorporated herein, and shall mean any tract of land by this reference and which real property is subject to annexation to the terms of this Declaration in accordance with Article IX.

**"Affiliate"** as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including with correlative meanings, the terms

“controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. For purposes of this definition, a Person shall be deemed to be “controlled by” a Person if such Person possesses, directly or indirectly, power to vote 10% or more of the securities or interests having ordinary voting power for the election of directors or manager(s) of such Person.

“Articles” means the Articles of Incorporation of Desert Color Master Association, Inc., filed with Utah Department of Commerce, Division of Corporations and Commercial Code, and/or as they may be amended.

“Assessments” means collectively, the Regular Assessment, Special Assessment, Neighborhood Investment and Reinvestment Fee imposed by the Master Association and this Declaration.

“Board of Directors” or “Board” means the body responsible for the general governance and administration of the Master Association, selected as provided in the By-Laws.

“By-Laws” means the By-Laws of the Master Association as they may be amended.

“Builder(s)” means anyone acquiring a Lot or Parcel for the purpose of constructing homes or commercial improvements for later sale to third parties, or who purchases land within the Community for further subdivision, development, and resale in the ordinary course of its business.

“Commercial Areas” means areas within the Community zoned PD Commercial and designated by Declarant on the Master Plan or in any Supplemental Declaration for commercial uses.

“Commercial Unit” means any building, or part of a building, on a Lot or Parcel which is intended for commercial use and occupancy. All Commercial Units shall be constructed in accordance with the restrictions and conditions set forth herein.

“Common Expenses” means the actual and estimated expenses the Master Association incurs, or expects to incur, for the general benefit of all Owners, including any reserves the Board finds necessary or appropriate. Common Expenses do not include any Neighborhood Expenses or any expenses incurred during the Declarant Control Period for initial development or other original construction costs unless a majority of the Owners approve such expense.

“Common Maintenance Areas” means the Common Areas, together with any other area for which the Master Association has or assumes maintenance or other responsibility.

“Common Parcels” or “Common Areas” means all real and personal property, including easements, which the Master Association owns, leases, or otherwise has a right to possess or use for the common use and enjoyment of the Owners. Common Parcels or Common Areas include the Limited Common Areas, and those areas, if any, that are:

- (a) expressly designated by Declarant as “Common Parcels” or “Common Areas” on Recorded plats for the use and enjoyment of Owners of Lots, Parcels and/or Units within Desert Color Community; and
- (b) described as Common Parcels or Common Areas in a Supplemental Declaration filed in the office of the County Recorder for Washington County, Utah. Prior to the expiration of the Declarant Control Period as provided below, Declarant shall convey by Special Warranty Deed or Quit Claim Deed or by an easement instrument ownership and/or use of the Common Parcels to the Master Association. PROVIDED HOWEVER, before the Recording of the Supplemental Declaration as provided above, Declarant has the right to remove any portion of the property denoted as “Common Parcels” or “Common Areas” on a Plat and subject said area to its exclusive dominion without the need for any Lot, Parcel or Unit owner approval or Master Association consent.

“Common Parcels” or “Common Areas” as used herein do not include those areas which might otherwise be considered common parcels or common areas which are conveyed to a Local District or sub-association or areas denoted as “Future Development” or as “Reserved Areas”, or as Private Amenities or those areas not labeled on the plats of Record for Desert Color Community. “Common Parcels” or “Common Areas” do not include the property situated within the boundaries of a Condominium as hereinafter defined.

**"Community-Wide Standard"** means the standard of conduct, maintenance, or other activity generally prevailing throughout the Desert Color Community, or the minimum standards established pursuant to the Design Guidelines, Use Restrictions, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard. The Community-Wide Standard may contain objective elements, such as specific landscape or building maintenance requirements, and subjective elements, such as matters subject to the Board's or the DRC's discretion. The Community-Wide Standard may or may not be in writing. The Community-Wide Standard may evolve as development progresses and as Desert Color Community evolves.

**"Condominium"** or **"Unit"** means a residential dwelling unit which is subject to a Declaration of Condominium under Utah law or any other covenant, condition and restriction created at a future date. Nothing in this Declaration shall be construed as a creation of a Condominium under Utah Law.

**"Consideration"** means the total of money paid and the Gross Sales Price of any property delivered, or contracted to be paid or delivered (including all lease payments for a lease which qualifies as a Transfer), in return for the Transfer of any Lot, Unit or Parcel, and includes the amount of any note, contract indebtedness, or rental payment payable to the Transferor in connection with such Transfer, whether or not secured by any lien, deed of trust, or other encumbrance given to secure the Gross Sales Price, or any part thereof, or remaining unpaid on and encumbering such Lot, Unit or Parcel at the time of Transfer, whether or not assumed by the Transferee. The term "Consideration" does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements, in favor of the United States, the State of Utah, or a municipal or quasi-municipal governmental corporation or district.

**"Declarant"** means, during the term of the Lease, Desert Color St. George, LLC, a Utah limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant; provided, however, there shall be only one (1) "Declarant" hereunder at any one time. Upon expiration or early termination of the Lease, SITLA, or any successor developer designated by SITLA, shall be Declarant.

**"Declarant Control Period"** means the period of time during which Declarant has development rights under the Lease, owns or has the right to control any property which is subject to this Declaration, any Additional Property or any Private Amenity, or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 9.1; provided, however, the Declarant Control Period shall not terminate prior to the time when one hundred percent (100%) of the total number of Lots, Parcels and Units permitted by the Master Plan for the property described on Exhibit "A" and "B" have certificates of occupancy issued thereon by the controlling governmental authority, have been conveyed to Persons other than Declarant or an Affiliate of Declarant and initial vertical construction on each Lot is complete. Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and/or terminate the Declarant Control Period upon an earlier date by Recording a written instrument in the Public Records.

**"Declarant-Controlled Facilities"** means any amenities or improvements owned (or controlled under the Lease) by Declarant or its successors and/or assigns or Desert Color Club, not meeting the definition of "Common Parcels" above.

**"Declaration"** means this Declaration and any amendments thereto.

**"Desert Color Community"** or **"Community"** means the real property described in Exhibit "A," together with such Additional Property as is subjected to this Declaration and described on future Recorded plats and Supplemental Declarations at such times and in such phase as determined by Declarant in its sole discretion.

**"Desert Color Resort Club"** or **"Club"** means an entity organized by Declarant under the laws of State of Utah, its successors or assigns, owning recreational amenities and related land and facilities located within the Community and elsewhere.

**"Design Guidelines"** means the design guidelines for the development of all the Property subject to this Declaration as established by Declarant and/or the DRC from time to time. Declarant and the DRC reserve the right to modify the Design Guidelines, including the Desert Color Residential Community and Desert Color Commercial Community. The Design Guidelines include architectural, construction, design, landscaping and site planning guidelines and review procedures as adopted and/or amended by Declarant or the DRC. The Design Guidelines may impose, without limitation, certain restrictions regarding a dwelling unit's mandatory minimum and maximum square footage, building materials used, architectural standards and other matters. There is no assurance that such Design Guidelines will not change from time to time, and they may change

with respect to unsold Lots, Units or Parcels, subject to this Declaration, after one or more such Lots, Units or Parcels have been sold by Declarant.

**“Design Review Committee”** or **“DRC”** means the committee established to review plans and specifications for the construction or modification of improvements and to administer and enforce the architectural and design controls as described in the Design Guidelines.

**“Development Agreement”** means the Development Agreement described in Section 1.4 above.

**“Future Development”** or **“Reserved Areas”** means any parcel of land owned by Declarant or subject to Declarant’s development rights under the Lease and depicted on Site Plans or other advertising material or Recorded plats for Desert Color Community as “Future Development” or “Reserved Areas” which may or may not be included within Desert Color Community as determined in Declarant’s sole discretion and wherein Declarant reserves the right to impose use restrictions that may differ from those set forth in this Declaration.

**“Governmental Entity”** means any and all federal, state or local governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of Desert Color Community.

**“Gross Sales Price”** means with respect to a Lot, Unit or Parcel subject to Transfer, in the case of a Transfer that is in all respects a bona fide sale, the Consideration given for the Transfer less actual customary expenses of sale or lease (or the equivalent thereof which would have been received by the Transferor had the transaction been an arms-length, third-party cash transaction, in the event the Transfer is not an arms-length, third-party cash transaction) of the Lot, Unit or Parcel subject to Transfer.

**“Limited Common Area”** means a portion of the Common Parcels or Common Areas designated for the exclusive use of one or more but fewer than all of the Lots, Parcels or Units, and includes all Limited Common Area (Neighborhood), Limited Common Area (Residential), and Limited Common Area (Resort). All such Limited Common Area (including, with respect to Limited Common Area (Neighborhood), the particular Neighborhood(s) to which it applies) shall be designated on Plats or in a written, Recorded instrument and may include, but not be limited to, shared access driveways, parking areas, recreational facilities and amenities.

**“Limited Common Area (Neighborhood)”** means a portion of the Common Parcels or Common Areas reserved for the exclusive use of Owners and permitted occupants of Lots, Parcels or Units within specifically designated Neighborhoods.

**“Limited Common Area (Residential)”** means a portion of the Common Parcels or Common Areas reserved for the exclusive use of Owners and permitted occupants of all residential Lots, Parcels or Units.

**“Limited Common Area (Resort)”** means a portion of the Common Parcels or Common Areas reserved for the exclusive use of (i) Owners and permitted occupants of all resort Lots, Parcels or Units, and (ii) Owners and tenants (under leases that comply with the requirements of this Declaration) of all other residential Lots, Parcels or Units.

**“Lot”** means a portion of the Desert Color Community, whether improved or unimproved, which may be independently owned and conveyed and upon which a residential, resort or commercial use is intended. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Residence or commercial improvement, on the Lot. The boundaries of each Lot shall be shown on a Plat; provided, in the case of a building containing multiple Residences or Commercial Units for individual sale (e.g. attached condominium or townhouse units), each Residence or Commercial Unit shall be a separate Lot or Unit.

**“Master Association”** means Desert Color Community Master Association, Inc., a Utah non-profit corporation, its successors and/or assigns, organized to administer and enforce the covenants, conditions and restrictions set forth in this Declaration, and to exercise the rights, powers and duties set forth in this Declaration, the Articles, the Bylaws and any other governing documents of the Master Association.

**“Members”** means members of the Master Association. All Owners are required to be Members of the Master Association.



**"Mixed-Use Master Planned Development"** means the approved land use plan (sometimes referred to as **"Master Plan"**) for Desert Color Community by St. George City, as it may be amended from time to time, including all of the Property. Declarant is not obligated to submit all property shown on the Master Plan to this Declaration. In addition, Declarant may submit property to this Declaration which is not shown on the Master Plan.

**"Modular Residence"** means a residential dwelling delivered with or without a chassis to a Lot in completely constructed box-sections to be fastened together on-site and complying with St. George City Building Code requirements.

**"Mortgage"** means a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

**"Neighborhood"** means a defined group of Lots, Parcels or Units designated by Declarant as a separate Neighborhood within Desert Color Community. Lots within a neighborhood may share Limited Common Areas and/or receive benefits or services which are not provided to all Lots. A Neighborhood may include more than one housing type or use and may include parcels which do not border on each other. If benefits or services are provided to less than all Lots within a particular Neighborhood, then the Neighborhood Organization may levy a Neighborhood Assessment against just those Lots for such benefits or services. This Declaration does not require the creation of any Neighborhoods.

**"Neighborhood Assessments"** means a Specific Assessment levied against the Lots, Parcels and/or Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses.

**"Neighborhood Association"** means a non-profit corporation or other entity or association organized by Declarant, the Master Association or a Neighborhood Organization to administer and enforce the covenants, conditions and restrictions set forth in a Neighborhood Declaration, and to exercise the rights, powers and duties set forth in such Neighborhood Declaration and any other governing documents of such Neighborhood Association.

**"Neighborhood Declaration"** means a declaration with respect to a Neighborhood Recorded pursuant to this Declaration. A Neighborhood Declaration shall contain restrictions on use and establish a land use classification or classifications for each Parcel covered by the Neighborhood Declaration. It is contemplated that a Neighborhood Declaration will be, in contrast to a Supplemental Declaration, a more comprehensive and detailed document. Separate Neighborhood Declarations may be established and Recorded for such purposes as mixed-use commercial areas, resort areas, specialty use districts, and residential neighborhoods, with specific declarations, covenants, conditions and restrictive covenants which more specifically regulate such neighborhood.

**"Neighborhood Expenses"** means the actual and estimated expenses which Declarant or its assignees incurs or expects to incur for the benefit of Owners within a particular Neighborhood, including any reserve for capital repairs and replacements and administrative charges authorized by this Declaration or the Supplemental Declarations or Neighborhood Declarations applicable to such Neighborhood.

**"Neighborhood Organization"** means any owners organization having jurisdiction over a Neighborhood which is subordinate to the Master Association's rights under this Declaration. This Declaration does not require the creation of any Neighborhood Organization. A Neighborhood Organization may only be formed by Declarant or by the Board of Directors with the consent of Declarant.

**"Owner"** means and refers to the owner or owners as shown by the real estate Records in the office of the County Recorder for Washington County, Utah, of fee simple title to any Lot, Parcel or Unit situated within the Community. The Owner is the Record title holder to any Lot, Parcel or Unit but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (e.g., a Mortgage). If a Lot is sold under a Recorded contract of sale and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. As used herein, the term "Owner" shall not include Declarant or SITLA.

**"Panelized Residence"** means a residence constructed from wall-sections that are delivered to a property in panel-form wherein the outside is typically finished but the inside is unfinished at the time the panels are brought on-site.

**"Person"** means an individual, a corporation, a partnership, a trustee, or, any other legal entity.

**"Parcel"** shall be deemed to be a single Lot until such time as a Plat subdivides all or a portion of the parcel. Thereafter, the subdivided portion shall contain the number of Lots shown on the Plat. Any portion not subdivided shall continue to be a single Lot.

**"Plat"** means any existing or future plat of Desert Color Community signed by Declarant and placed of Record in the Washington County, Utah Recorder's Office, together with all amendments thereto, as approved by the governmental entity, if any, having authority to regulate subdivisions.

**"Private Amenities"** means real property and facilities located adjacent to, near, or within Desert Color Community, which Persons other than the Desert Color Community own and operate for recreational or resort related purposes on a membership basis or otherwise and which is designated by Declarant as being a Private Amenity. Private Amenities may include the hotel(s), golf course, club houses, other recreational amenities and related land and facilities of the Desert Color Community.

**"Property"** means the real property described in Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any addition or withdrawal of property in accordance with Article IX and X.

**"Record," "Recording," or "Recorded"** means to file, the filing of, or filed of Record a legal instrument in the Office of the Recorder of Washington County, Utah, or such other place designated as the official Washington County location for Recording documents affecting title to real estate.

**"Regular Assessment"** means the annual assessments levied to fund Common Expenses for the general benefit of all Owners.

**"Reinvestment Fee"** means the fee assessed by the Master Association upon the Transfer of any Lot, Unit or Parcel in accordance with Section 6.15. The Reinvestment Fee shall be payable to the Master Association by the Transferee at the time of the Transfer. During the Declarant Control Period, Declarant shall have the right, in its sole discretion, to exempt certain phases or Neighborhoods of the Desert Color Community from the Reinvestment Fee or to establish from time to time different Reinvestment Fees for different phases or Neighborhoods. The Master Association may also grant, in its discretion, waivers of the Reinvestment Fee in connection with Transfers by Owners who purchase another Lot, Parcel or Unit within the Community.

**"Reinvestment Fee Levy Date"** means the date and time of a Transfer, and the Reinvestment Fee shall be payable on the date of the closing of the Transfer. Each Reinvestment Fee not paid within 10 days of the Reinvestment Fee Levy Date, shall accrue interest until fully paid at five percent (5%) per annum over the rate of interest announced from time to time by Zions First National Bank, a national banking association, as its "prime rate" for commercial loans; such interest shall be payable on demand, computed monthly, and if unpaid, compounded monthly, not in advance, at the rate so calculated as of ten (10) days after the Reinvestment Fee Levy Date, and all accruing interest shall become a part of the Reinvestment Fee due and owing to the Master Association.

**"Reinvestment Fee Rate"** means one percent (1%) of the Gross Sales Price for a residential Lot, Unit or Parcel, and one-half of one percent (0.5%) of the Gross Sales Price for a Lot, Unit or Parcel in the Commercial Areas, unless and until the Board shall adopt a different rate, provided that the Board shall not set a rate higher than two percent unless such rate is approved by the affirmative vote of a majority of the votes entitled to be cast by members of the Master Association at a meeting duly called for such purpose.

**"Residence"** means any building, or part of a building, on a Lot which is intended for use and occupancy as a separate residence. All residential dwellings shall be constructed in accordance with the restrictions and conditions set forth herein. This term shall include detached and attached units, a town house unit, a patio home and condominiums in designated areas developed for such styled residences.

**"Residential Areas"** means areas within the Community zoned TNZ Residential and designated by Declarant on the Master Plan or in any Supplemental Declaration for residential, recreational and related uses.

**"Resort Areas"** means areas within the Desert Color Community zoned TNZ Resort and designated by Declarant on the Master Plan or in any Supplemental Declaration for residential, hotels, resort cottages and condominiums available for overnight stay, time-share or interval ownership units, facilities of the Club and related commercial and incidental uses.

**“Special Assessment”** means any special assessment charged against all Lots, Parcels or Units in the Community or a subset of Lots, Parcels or Units in the Community, including without limitation, one or more Neighborhoods, in accordance with Section 6.7.

**“Special Declarant Rights”** means rights reserved for the benefit of Declarant including, but not limited to, the right (i) to complete improvements indicated on plats and plans filed with the Declaration and supplements thereto; (ii) to annex Additional Property to Desert Color Community; (iii) to remove property from Desert Color Community, except for Common Parcels, (iv) to maintain sales offices, management offices, signs advertising Desert Color Community and models; (v) to use easements through the Common Parcels for the purpose of making improvements within Desert Color Community or within areas outside Desert Color Community, whether or not said areas are added to Desert Color Community; (vi) to use easements, without limitation, that are reserved to Declarant; (vii) to make Desert Color Community part of a larger planned community or group of planned communities; (viii) to make the planned community subject to the Master Association; (ix) to appoint or remove any member of the Board of Directors of the Master Association during the Declarant Control Period except as limited in the By-Laws; (x) to exercise special voting rights as provided in the By-Laws; or (xi) any other rights provided Declarant in this Declaration or by Utah law.

**“Specific Assessment”** means an assessment charged against a particular Lot, Unit or Parcel or group of Lots, Units or Parcels in accordance with Section 6.8, and, including without limitation, Neighborhood Assessments.

**“Structure”** means:

- (a) any thing or object placed upon a Lot or Parcel that may affect the appearance of such Lot or Parcel, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, dock, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot or Parcel;
- (b) any excavation, grading, fill, ditch, diversion dam, or other thing or device which affects or alters the natural flow of surface waters from, upon, or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash, or drainage channel from, upon, or across any Lot or Parcel; and
- (c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section applies to such change.

**“Transfer”** means, whether in one transaction or in a series of related transactions, any sale, conveyance, assignment, lease, or other transfer of any beneficial ownership of or interest in any Lot, Unit or Parcel, including but not limited to (1) the conveyance of fee simple title to any Lot, Unit or Parcel, (2) the transfer of any ownership interest in any timeshare or fractional ownership interest or vacation club interest; (3) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Lots, Units or Parcels, (4) the transfer of more than 50 percent of the interest in net profits or net losses of any partnership, joint venture or other entity which, directly or indirectly, owns one or more Lots, Units or Parcels; and (5) the long-term lease of any Lot, Unit or Parcel for a term greater than ten (10) years, provided, however, that “Transfer” shall not mean or include, any of the following, except to the extent that they are used for the purpose of avoiding the Reinvestment Fee:

- (a) Any Transfer to the United States, or any agency or instrumentality thereof, the State of Utah, any county, city, municipality, district, or other political subdivision of the State of Utah.
- (b) Any Transfer to the Master Association or its successors or assigns.
- (c) An involuntary Transfer.
- (d) A Transfer that results from a court order.
- (e) A bona fide Transfer to a family member of the seller within three degrees of consanguinity who, before the Transfer, provides adequate proof of consanguinity.

- (f) A Transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution.
- (g) The Transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the Transfer of the burdened property.
- (h) Any Transfer made (A) by a majority-owned subsidiary to its parent corporation or by a parent corporation to its majority-owned subsidiary, or between majority-owned subsidiaries of a common parent corporation, in each case for no Consideration other than issuance, cancellation or surrender of the subsidiary's stock; (B) by a partner, member or a joint-venturer to a partnership, limited liability company or a joint venture in which the partner, member or joint venture has not less than a 50 percent interest, or by a partnership, limited liability company or joint venture to a partner, member or joint venture holding not less than a 50 percent interest in such partnership, limited liability company or joint venture, in each case for no Consideration other than the issuance, cancellation or surrender of the partnership, limited liability company or joint venture interests, as appropriate; or (C) by a corporation to its shareholders, in connection with the liquidation of such corporation or other distribution of property or dividend in kind to shareholders, if the Lot, Unit or Parcel is transferred generally pro rata to its shareholders and no Consideration is paid other than the cancellation of such corporation's stock; or (D) by a partnership, limited liability company or a joint venture to its partners, members or joint venturers, in connection with a liquidation of the partnership, limited liability company or joint venture or other distribution of property to the partners, members or joint venturers, if the Lot, Unit or Parcel is transferred generally pro rata to its partners, members or joint venturers and no Consideration is paid other than the cancellation of the partners', members' or joint venturers' interests; or (E) to a corporation, partnership, limited liability company, joint venture or other association or organization where such entity is owned in its entirety by the persons transferring the Lot, Unit or Parcel and such persons have the same relative interests in the Transferee entity as they had in the Lot, Unit or Parcel immediately prior to such Transfer, and no Consideration is paid other than the issuance of each such persons' respective stock or other ownership interests in the Transferee entity; or (F) by any person(s) or entity(ies) to any other person(s) or entity(ies), whether in a single transaction or a series of transactions where the Transferor(s) and the Transferee(s) are and remain under common ownership and control as determined by the Board in its sole discretion applied on a consistent basis; provided, however, that no such Transfer or series of transactions described in subparts (A) through (F) above shall be exempt unless the Board finds that such Transfer or series of transactions (1) is for no Consideration other than the issuance, cancellation or surrender of stock or other ownership interest in the Transferor or Transferee, as appropriate, (2) is not inconsistent with the intent and meaning of this Subsection, and (3) is for a valid business purpose and is not for the purpose of avoiding the obligation to pay the Reinvestment Fee.
- (i) Any Transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership or in connection with a divorce, except to the extent that additional Consideration is paid in connection therewith.
- (j) Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously Recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights of way, or licenses.
- (k) Any exchange of Lots, Units or Parcels between Declarant and any original purchaser from Declarant of one or more Lots, Units or Parcels being transferred to Declarant in such exchange. To the extent that Consideration in addition to previously purchased Lots, Units or Parcels is paid to Declarant in such an exchange, the additional Consideration shall be a Transfer subject to the Reinvestment Fee for which such original purchaser shall be responsible to pay. To the extent that Declarant, in acquiring by exchange Lots, Units or Parcels previously purchased from Declarant, pays Consideration in addition to transferring Lots, Units or Parcels, the amount of such additional Consideration shall be treated as reducing the original assessable Transfer and shall entitle an original purchaser from Declarant, who exchanges with Declarant Lots, Units or Parcels previously purchased from Declarant, to a refund from the Master Association of the amount of the Reinvestment Fee originally paid on that portion of the original Transfer.

- (l) A Transfer to Declarant, any Affiliate of Declarant, or their successors, who shall assume the responsibilities of Declarant hereunder or a portion thereof with respect to such transferred property.
- (m) Any Transfer to secure a debt or other obligation or to release property that is security for a debt or other obligation, including transfers in connection with foreclosure of a deed of trust or mortgage or transfers in connection with a deed given in lieu of foreclosure.
- (n) The subsequent Transfer or Transfers of a Lot, Unit or Parcel involved in a "tax free" or "tax deferred" exchange under the Internal Revenue Code, wherein the interim owner acquires such Lot, Unit or Parcel for the sole purpose of reselling that Lot, Unit or Parcel within 30 days after the exchange. In these cases, the first Transfer of title is subject to the Reinvestment Fee, and subsequent Transfers will only be exempt as long as a Reinvestment Fee has been paid in connection with the first Transfer of such Lot, Unit or Parcel in such exchange.
- (o) The Transfer of a Lot, Unit or Parcel to an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended, provided that the Master Association specifically approves such exemption in each particular case.
- (p) Any Transfer made by a corporation or other entity, for Consideration, (i) to any other corporation or entity that owns 100 percent of its equity securities ("Holding Company"); or (ii) to a corporation or entity whose stock or other equity securities are owned, directly or indirectly, 100 percent by such Holding Company.
- (q) Any Transfer of two or more Lots, Units or Parcels by a Mortgagee or an affiliate thereof to an affiliate of such Mortgagee or to a third party, where the intent of such Transferee is not to make personal use of such Lot, Unit or Parcel but is rather to resell the same.
- (r) Any Transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where Consideration is paid for, or in connection with, such Transfer; however, unless such Transfer is otherwise exempt, such exemption shall apply only to the extent of the direct or indirect beneficial interest of the Transferee in the Transferor immediately prior to the Transfer. For example, if corporation A owns 60 percent of corporation B, and corporation B owns 100 percent of corporation C and corporation C conveys a Lot, Unit or Parcel to corporation A for \$2,000,000, 60 percent of the Reinvestment Fee would be exempt, and a Reinvestment Fee would be payable only on \$800,000 (i.e., 40 percent of the \$2,000,000 Consideration).
- (s) The consecutive Transfer of a Lot, Unit or Parcel wherein the interim owner acquires such Lot, Unit or Parcel for the sole purpose of immediately reconveying such Lot, Unit or Parcel, but only to the extent there is no Consideration to the interim Owner and such interim Owner receives no right to use or enjoyment of such Lot, Unit or Parcel, provided the Board specifically approves such exemption in each particular case. To the extent that Consideration is paid to, or for the benefit of, the interim Owner, the additional Consideration shall be a Transfer subject to the Reinvestment Fee. In these cases, the first Transfer of title is subject to the Reinvestment Fee and subsequent Transfers will only be exempt as long as a Reinvestment Fee has been paid in connection with the first Transfer of such Lot, Unit or Parcel in such consecutive transaction and only to the extent there is no Consideration to the interim Owner.
- (t) All Transfers of the common stock of Declarant or Declarant's parent to another entity, its members and/or its designees.

"Transferee" means all parties to whom any interest in or to a Lot, Unit or Parcel passes by a Transfer, and each party included in the term "Transferee" shall have joint and several liability for all obligations of the Transferee with respect to the Reinvestment Fee and shall be subject to all other provisions of this Declaration including, without limitation, the lien provisions hereof.

"Transferor" means all parties from whom any interest in or to a Lot, Unit or Parcel passes by a Transfer, and each party included in the term "Transferor" shall have joint and several liability for all obligations of the Transferor with respect to the

Reinvestment Fee and shall be subject to all other provisions of this Declaration including, without limitation, the lien provisions hereof.

“Use Restrictions” means the rules, and regulations governing the use of and activities on the Lots, Parcels, Units, Common Areas and Private Amenities as set forth and/or as they may be otherwise amended.

### ARTICLE III – Creation and Maintenance of Community Standards

#### 3.1 Restrictions on Use, Occupancy and Alienation

As part of the general plan of development, this Declaration establishes a framework of covenants, easements, and restrictions which govern the Desert Color Community. Within that framework, the Board and the Owners must have the ability to respond to unforeseen problems and changes affecting the Community. This Article establishes procedures for modifying and expanding the Use Restrictions to respond to such changes.

This Article is not intended to apply to reasonable rules and regulations relating to use and operation of the Common Area, which the Board may adopt by resolution, or other administrative rules, unless the Board chooses, in its discretion, to submit to such procedures.

#### 3.2 Owner's Easements of Enjoyment to Common Parcels

Each Owner shall have a permanent and perpetual right and easement of enjoyment in and to the Common Parcels (other than any Limited Common Areas which have not been designated for use and enjoyment by such Owner), existing now or in the future, which shall be appurtenant to and shall pass with the title to any Lot, Parcel or Unit, subject to:

- (a) The right of the Board to convey any Common Parcels or subject same to a security interest with a concurring vote of a majority of the votes entitled to be cast by members of the Master Association;
- (b) The right of the Board to lease or convey easements or licenses of use over the Common Parcels without a vote of the members of the Master Association;
- (c) The right of the Board to dedicate any road and utility rights of way within Desert Color Community to any Governmental Entity or public utility without a vote of the membership of the Master Association;
- (d) The right of the Master Association, after an opportunity for a hearing as provided in the By-Laws, to suspend the use of the Common Parcels (except for access to a Lot, Parcel or Unit) by an Owner, his tenant or their invitees for any period during which any Assessment against his Lot, Parcel or Unit remains unpaid or for any infraction of the use restrictions contained in this Declaration or the rules and regulations promulgated by the Board;
- (e) The right of the Board to reasonably regulate, locate, and direct access routes and to designate parking locations;
- (f) The right of Declarant, as determined in Declarant's sole discretion, to grant and reserve unto itself, its successors and/or assigns the right of access for road and utility purposes over the Common Parcels to any parcel of land, whether located within or outside Desert Color Community whether owned or not owned by Declarant and regardless of the use of the beneficial parcel; and
- (g) The right of Declarant to add additional properties to be subject to this Declaration and to allow the owners of those properties to become members of the Master Association.

#### 3.3 Waiver of Unlimited Access

Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, Parcel or Unit, does waive all rights of unlimited and uncontrolled access, ingress to and egress from such Lot or Unit, and agrees that:

- (a) To attempt to provide a more secure environment, access, ingress, and egress to and within non-public areas within Desert Color Community may be controlled, restricted, and limited to exclude uninvited members of the general public; and
- (b) Access, ingress and egress from any Lot, Parcel and Unit shall be limited to the roads, walkways, and paths designated as Common Parcels on the Plat. For Units, access, ingress and egress may be further restricted by the association managing the Condominium.

Provided, however, vehicular and pedestrian access between Lots, Parcels or Units and adjacent public roadways shall be available at all times.

### 3.4 Gates and Attendants

Declarant and/or the Master Association may, but shall not be required to, provide a gate at or near the entrance to private residential or resort Neighborhoods which gate may or may not be attended by one or more attendants for the purpose of limiting vehicular and pedestrian access to such private residential or resort Neighborhoods.

### 3.5 Easements to Government Entities

Subject to the provisions of this Declaration, Declarant does hereby grant a permanent, perpetual and non-exclusive easement to each department, branch or agency of any Governmental Entity, and to any agents or employees of said Governmental Entity, over, across and through all roads within Desert Color Community, now or in the future, for the purpose of performing such duties and activities as may be necessary or desirable for the common welfare of all owners or for the Master Association which may include, but are not limited to, duties and activities related to law enforcement, fire protection, garbage collection, mail delivery, medical and emergency services, and utility installation and maintenance.

### 3.6 Easements to Utility Providers

Subject to the provisions of this Declaration, Declarant does grant to the Master Association and to any other utility service providers as designated by Declarant, and their successors and/or assigns, a permanent, perpetual and non-exclusive easement over, across, under and through:

- (a) All Common Parcels;
- (b) All Units; and
- (c) All other Lots and Parcels,

as specified on any Plat now or in the future, for the purpose of installing, replacing, constructing, maintaining, and operating utilities or utility systems which are necessary or desirable for the use of any part of Desert Color Community which include, but are not limited to, publicly or privately owned and operated electrical service, communication service, water service, sewer service, gas service, cable television, telephone and wireless communication services, drainage systems, pipes, lines, conduits, storage devices, equipment, machinery or other devices necessary to the provision of such utility services. The easements established, reserved and granted herein shall include the right, where reasonably necessary, to cut and remove trees and other vegetation, to dig, excavate fill and take any other action necessary to provide for the installation, maintenance, replacement, relocation or operation of any utility service.

Notwithstanding the foregoing, the easements herein granted or reserved shall not cause any undue interference with the use or occupancy of any Lot, Parcel or Unit. Further, Declarant and/or the Master Association shall use good faith efforts to attempt to cause any utility provider to repair any damage caused by such utility provider's use of such easements.

### 3.7 Easements Reserved to Declarant

- (a) Easements for Access. Declarant reserves to itself, its successors and assigns, a perpetual alienable right to provide access over and across the roads and other Common Parcels, if any, to any parcels of land, whether

within or outside Desert Color Community, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(b) Easements for Utilities. Declarant reserves to itself, its successors and assigns the utility easements referred to in Section 3.6 above and Declarant, in its sole discretion, may make such utility easements appurtenant to any parcel of land whether within or outside Desert Color Community, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(c) Easements for Storm Water and Drainage. Declarant, its successors or assigns, may cut drainage ways or utilize existing natural drainage ways for surface or storm water wherever and whenever such action may appear to Declarant to be necessary in order to maintain proper drainage and reasonable standards of health, safety and appearance. Declarant, in its sole discretion, may make such utility easements appurtenant to any parcel of land whether within or outside Desert Color Community, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel. The foregoing provisions shall not apply to any Lot or Parcel to the extent the exercise of such rights would be inconsistent with any engineered storm water drainage plans for such Lot or Parcel previously approved by the DRC and any applicable Governmental Entity.

(d) Easements for Vegetative, Pest or Fire Control. Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on and over and under all Common Areas within Desert Color Community to dispense pesticides and take other action which in the opinion of Declarant is necessary or desirable to control insects, vermin and undesirable vegetation. Declarant reserves the right to cut fire breaks and other activities on, over and under all Common Areas within Desert Color Community which in the opinion of Declarant are necessary to control fires. Declarant, however, is under no duty to take such actions as herein above provided.

(e) Easements for Declarant-Controlled Facilities. Declarant hereby reserves easements for vehicular access and utilities, of every kind and nature, over, under and across all roads within Desert Color Community and within all utility easements referred to herein for the benefit of and appurtenant to any Declarant-Controlled Facilities.

### 3.8 Restrictions on Use, Occupancy and Alienation for Residential Neighborhoods

(a) Residential and Related Uses. Subject to Section 3.8(b) below, the Residential Areas shall be used only for residential, recreational and related purposes. Related purposes may include offices for the Master Association or its management agent(s), Declarant's business or sales office(s) (including ongoing real estate resale brokerage operations), and any business use which meets the conditions of Section 3.8(b) below. In addition, Declarant may permit any other commercial activity permitted by applicable zoning that does not detract from the Community's overall character.

(b) Business Use. Declarant shall be entitled to designate, develop and operate commercial uses consistent with applicable zoning and such other commercial uses as may be approved by St. George City in such locations as Declarant may determine. No business shall be conducted in or from any Lot, except that an Owner or a resident of the Lot may conduct business activities within the Residence if the business activity:

- (i) is not apparent or detectable by sight, sound, or smell from outside the Residence;
- (ii) complies with applicable zoning requirements;
- (iii) does not involve regular visitation of the Residence by clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and
- (iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous, offensive or illegal use, or threaten the security or safety of others within the Community, as determined in the Board's sole discretion.



"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (A) such activity is engaged in full or part time, (B) such activity is intended to or does generate a profit, or (C) a license is required.

This Section does not apply to Resort Areas, Commercial Areas, the activities of the Desert Color Community, to Declarant's activities, or the activities of Persons which Declarant approves with respect to the development and sale of property or to the provision of services in the Community. Additionally, this Section shall not apply to any Desert Color Community activity related to operating, maintaining, or advancing the residential aspects of the Community's character.

Leasing a Residence is not a "business" within the meaning of this subsection.

- (c) **Leasing.** For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a Residence by any Person other than the Owner, for which the Owner receives any Consideration or benefit, including a fee, service, or gratuity. The Residence, if leased, may be leased only in its entirety (e.g., separate rooms within the same Residence may not be separately leased).

There shall be no subleasing of a Residence or assignment of leases except with the Board's prior written approval. All leases shall be in writing, must require that tenants and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents, and shall have a term of at least six months (6) months, except with the Board's prior written consent, or as Declarant initially authorizes in a Supplemental Declaration for Lots located within certain Neighborhoods.

Within ten days of the lease being signed, an Owner shall notify the Board or the Desert Color Community's managing agent of any lease and provide any additional information the Board may require. The Owner must give the tenant copies of the Governing Documents. The Board may adopt reasonable Use Restrictions and rules regulating leasing and subleasing. The restrictions on lease terms set forth in this paragraph shall not apply to Lots Declarant owns or Lots owned by a Builder where Declarant approves an exception to the foregoing restrictions.

- (d) **Occupants Bound.** Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents and shall be responsible for all violations and losses they cause to the Common Maintenance Areas, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.
- (e) **Subdivision of a Lot and Time-Sharing.** Except within Resort Areas, Lots may not be subdivided or their boundary lines changed without the Board's prior written approval, which approval may be withheld in the Board's sole discretion; provided, Declarant may subdivide, change the boundary line of, and re-plat any Lot it owns. In addition, for so long as Declarant is in the Declarant Control Period, it may convert Lots into Common Area. Except within Resort Areas, timesharing, fraction-sharing, or similar programs whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years is prohibited. The foregoing restriction shall not be applicable to Lots owned by Declarant or the Master Association.

### 3.9 Framework for Regulations

As part of the general plan of development, the Governing Documents establish a framework of covenants, easements, and restrictions which govern the Community. Within that framework, the Board and the Owners must have the ability to respond to unforeseen problems and changes affecting the Community. This Article establishes procedures for modifying and expanding the initial Use Restrictions to respond to such changes.

This Article is not intended to apply to reasonable rules and regulations relating to use and operation of the Common Area, which the Board may adopt by resolution, or other administrative rules, unless the Board chooses, in its discretion, to submit to such procedures.

### 3.10 Owners' Acknowledgment and Notice to Purchasers

All Owners are given notice that use of their Lots and the Common Area is limited by the Use Restrictions as amended, expanded, and otherwise modified from time to time. Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot, Parcel or Unit can be affected by the Use Restrictions and Board rules, which may change from time to time. All Lot, Parcel or Unit purchasers are on notice that the Desert Color Community may have adopted changes to the Use Restrictions and that such changes may not be set forth in a Recorded document. Copies of the current Use Restrictions and Board rules may be obtained from the Desert Color Community.

### 3.11 Rule Making Authority

- (a) Subject to the terms of this Section and the Board's duty to exercise business judgment and reasonableness on behalf of the Master Association, the Board may change (i.e., modify, cancel, limit, create exceptions to, or expand) the Use Restrictions. The Board shall send notice to all Owners of any proposed change at least five business days before the Board meeting to consider the change. Any Owner shall have a reasonable opportunity to be heard at such Board meeting.

The proposed change shall be approved unless disapproved by Owners together representing a majority of the Master Association. The Board is not obligated to call a meeting of the Owners to consider disapproval unless it receives a petition which meets the By-Law's requirements for special meetings. If the Board receives such a petition before the change's effective date, the change shall not become effective until after a meeting is held, and then subject to the outcome of the meeting.

- (b) Before any Use Restriction change becomes effective, the Board shall send a copy of the new or changed Use Restriction to each Owner. The change does not become effective until 30 days following distribution to Owners. The Board shall provide to any requesting Owner or Mortgagee, without cost, a copy of the Use Restrictions then in effect.
- (c) No action taken under this Section shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

### 3.12 Protection of Owners and Others

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth herein, the Board's actions with respect to Use Restrictions and rules must comply with the following:

- (a) Similar Treatment. Similarly situated Owners must be treated similarly; however, the Use Restrictions and rules may vary by neighborhood.
- (b) Displays. Subject to Design Guideline restrictions on construction and exterior lighting, Owners' rights to display religious and holiday signs, symbols, and decorations on their Lots, Parcels, or Unit of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, except that the Board may adopt time, place, and manner restrictions with respect to such displays. The Board shall not regulate the content of political signs; however, it may regulate the time, place, and manner of posting such signs (including design criteria). All other signs, posters, circulars, and billboards, including "for sale" and "for rent" signs, are prohibited except those required by law or those which meet the standards set forth in the Design Guidelines.
- (c) Household Composition. The Board shall not interfere with any Owner's freedom to determine the composition of his/her household, except that it may limit the total number of Persons entitled to permanently occupy a Residence based upon the fair use of the Common Areas and impacts on all Community services.
- (d) Activities within Dwellings. The Board shall not interfere with activities carried on within a Residence, except it may prohibit activities not normally associated with residential property, and it may restrict or

prohibit activities that create monetary costs for the Board or other Owners, that are illegal, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Residence, or that are an unreasonable source of annoyance or nuisance.

- (e) **Allocation of Burdens and Benefits.** The Board shall not reallocate financial burdens among the various Lots, Parcels or Units or change Common Area use rights to the detriment of any Owner over that Owner's written objection. This does not prevent the Board from changing the Common Area available, from adopting generally applicable rules for using the Common Area, or from denying use privileges to anyone who is late in paying Assessments, who abuses the Common Area, or who violates the Governing Documents. This provision does not affect the right to levy Neighborhood Assessments or to increase the amount of Assessments.
- (f) **Alienation.** Except as provided above, the Board shall not prohibit leasing or transfer of any Lot, or require the Board's consent prior to leasing or transferring a Lot. The Board may require that Owners use Desert Color Community approved lease forms (or include specific lease terms) and may impose a reasonable review or administrative fee on the lease or transfer of any Lot. The Board may adopt rules to regulate or prohibit nightly rentals of residential property.
- (g) **Abriding Existing Rights.** The Board may not require an Owner to dispose of personal property that was in or on a Lot or Parcel in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.
- (h) **Reasonable Rights to Develop.** The Board may not unreasonably impede Declarant's right to develop Desert Color Community.
- (i) **Interference with Private Amenities.** The Board may not interfere with the use or operation of any Private Amenity, any approved commercial activity or any use within a Resort Area or Commercial Area designated by Declarant.

The limitations in subsections (a) through (i) of this Section shall only limit rule-making authority exercised under Section 3.11; they shall not apply to amendments to this Declaration.

#### ARTICLE IV – Design Guidelines

##### 4.1 General

No structure or thing shall be placed, erected, or installed upon any Lot or Parcel, and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations, or planting or removal of landscaping) shall take place upon any Lot or Parcel within Desert Color Community, except in compliance with this Article and the Design Guidelines.

No design review approval shall be required to repaint the exterior of a structure in accordance with its most recently approved color scheme or to rebuild in accordance with previously approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of structures (including the Residence) on his or her Lot without design review approval. However, modifications to the interior of screened porches, patios, and any other portions of a Lot visible from outside a structure are subject to design review approval. Although design review is not required under the limited circumstances set forth above, each Owner will still have the responsibility to comply with any applicable Board rules and any applicable laws.

Each Residence shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant, in its sole discretion, or its designee otherwise approves.

This Article shall apply to public safety parcels and structures built thereon. The same philosophy governing the design of homes and non-residential uses within Desert Color Community shall apply to these parcels. Designs on these parcels need to be especially sensitive to:

- Building Massing – Incorporate smaller masses as much as possible and practicable.
- Vehicular traffic and parking lot layout – Buffer parking and vehicular traffic with the buildings, landscaping, walls and berming.
- Lighting – Exterior lighting shall be designed to minimize nuisance to home sites within Desert Color Community consistent with Desert Color Community’s low level lighting requirements.
- Streetscape along Desert Color Community roadways should enhance the landscape and be consistent with Desert Color Community’s emphasis on native or drought tolerant vegetation.
- Signage – The signage system shall be consistent with Design Guidelines signage system.
- Mechanical Equipment – Buffer from home site views and sound.

This Article does not apply to Declarant’s activities during the Declarant Control Period.

#### 4.2 Design Review

- (a) By Declarant. Declarant shall have exclusive authority to administer and enforce architectural and design controls and to review and act upon all applications for architectural and other improvements within the Community. Declarant’s rights under this Article IV shall continue during the Declarant Control Period. Declarant may designate one or more Persons to act on its behalf in reviewing applications. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant’s interest and owes no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to the Master Association. Any such delegation shall be in writing, specifying the delegated responsibilities, and shall be subject to (i) Declarant’s right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant’s right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

- (b) Design Review Committee. Upon Declarant’s delegation or upon expiration or termination of Declarant’s rights under this Article, the DRC shall assume jurisdiction over architectural matters to the extent of such delegation. When appointed, the DRC shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced at the Board’s discretion. Members of the DRC need not be members of the Master Association or representatives of Owners, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish.

During the Declarant Control Period, the DRC shall notify Declarant of any action to be taken under this Article. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any action the DRC takes; provided, Declarant’s right to veto must be exercised within 10 days after it receives notice of the DRC’s action. The party submitting the plans for approval shall not be notified of the DRC’s approval or disapproval until after Declarant’s right to veto has been exercised or has expired.

The Board may create and appoint subcommittees of the DRC. Subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and shall be governed by procedures the Board or the DRC may establish. Any subcommittee’s actions are subject to review and approval by Declarant for as long as Declarant may review the DRC’s decisions, and the DRC. Notwithstanding the above, neither the DRC nor Declarant shall be obligated to review all actions of any subcommittee, and the failure to take action in any instance shall not be a waiver of the right to act in the future.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the DRC or Declarant’s rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

- (c) Reviewer. For purposes of this Article, the “Reviewer” is the entity having jurisdiction in a particular case. Declarant and the Master Association may employ architects, engineers, or other Persons to perform the review.

In reviewing applications and other materials, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

- (d) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board may include the compensation of such persons in the Master Association's annual operating budget.

#### 4.3 Guidelines and Procedures

- (a) Design Guidelines. Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Desert Color Community as well as specific provisions that may vary from one part of the Community to other parts. The Design Guidelines are intended solely to provide guidance to Owners and Builders. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines during the Declarant Control Period. Declarant's right to amend the Design Guidelines shall continue even if reviewing authority is delegated to the DRC unless Declarant irrevocably delegates the power to amend the Design Guidelines to the DRC. Upon termination or delegation of Declarant's right to amend, the DRC may amend the Design Guidelines at its sole discretion.

Amendments to the Design Guidelines shall be prospective only. Subject to Sections 5.2 and 8.4 hereof to the contrary, the Design Guidelines shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. Subject to the Community-Wide Standard, the scope of amendments to the Design Guidelines is unlimited, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within Desert Color Community. In Declarant's discretion, the Design Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

- (b) Procedures. Any design review procedures set forth in the Design Guidelines shall govern the application and review process. Unless the Design Guidelines provide otherwise, no construction activities or other activities may begin until a request is submitted to and approved by the Reviewer. The request must be in writing and accompanied by plans and specifications and other information the Reviewer or the Design Guidelines require.

The Reviewer shall make a determination on each application after receipt of a completed application and other information it requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Reviewer approval is not a substitute for any approvals or reviews required by St. George City or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters. Design Review Committee approvals must be approved by the Reviewer prior to submitting plans for permits to St. George City or any other municipality or governing agency.

The Reviewer shall notify the applicant in writing of the final determination on any application within 45 days after its receipt of a completed application and all required information. If the Reviewer fails to respond in a timely manner, approval

shall be deemed given, subject to Declarant's right to veto. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notice shall be deemed given at the time the envelope containing the response is deposited in U.S. mail. Personal or electronic delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant. As part of any approval, the Reviewer may require that construction in accordance with approved plans commence within a specified time period. If construction does not commence within the required period, approval shall be deemed withdrawn and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction work shall be completed within one year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Master Association, Declarant, or any aggrieved Owner.

The Reviewer may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. For example, Builders may submit and receive pre-approval of landscaping or other plans for general application. Such pre-approved plans shall not require resubmission prior to use on a particular Lot.

#### **4.4 No Waiver of Future Approvals**

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, at which time, it may be unreasonable to require that such objectionable features be changed. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### **4.5 Variances**

The Reviewer may authorize variances from compliance with the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires Declarant's written consent during the Declarant Control Period.

#### **4.6 Limitation of Liability**

The standards and procedures established by this Article are a mechanism for maintaining and enhancing the overall aesthetics of Desert Color Community and do not create any duty to any Person. The Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, or for ensuring that every Residence is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

Declarant, the Master Association, its officers, the Board, the DRC, any committee, or any member of any of the foregoing (the "Released Parties") shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a Builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Master Association shall defend and indemnify any Released Party as provided in this Section 4.6.

#### **4.7 Certificate of Compliance**

At the conclusion of any construction, renovation and landscaping improvements, an Owner shall request in writing that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or

the Design Guidelines or specifying any violations that the Reviewer or the Master Association knows to exist. The Reviewer shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall stop Declarant or Master Association from taking enforcement action against an Owner for any condition known to the Reviewer or the Master Association on the date of the certificate. A certificate of compliance must be issued by the Reviewer or Master Association prior to applying to St. George City for a Certificate of Occupancy.

#### 4.8 Enforcement

Any construction, alteration, or other work done in violation of this Article or the Design Guidelines is subject to enforcement action. Upon written request from the Master Association or Declarant, Owners shall, at their own cost and expense and within a reasonable time frame identified in the request, cure the violation or restore the Lot and/or Residence to substantially the same condition as existed before the violation occurred. Should an Owner fail to cure the problem or otherwise restore the property as required, the Master Association, Declarant, or their designees shall have the right to enter the property, remove the violation, and restore the property. All costs, together with the interest at the rate the Board establishes (not to exceed the maximum rate then allowed by Utah law), may be assessed against the benefited Lot and collected as a Specific Assessment.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline imposed, Declarant or the Master Association may enter upon the Lot and remove or complete any incomplete work and assess all costs incurred against the Lot and its Owner as a Specific Assessment, which shall be due 10 days after it is assessed.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Community. In such event, neither Declarant nor the Master Association, or their officers and directors, or any other person associated with the Community shall be held liable to any Person for exercising the rights granted by this paragraph.

Declarant shall be primarily responsible for enforcing this Article. In addition to the foregoing, the Master Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the Reviewer's decisions. If the Master Association or Declarant prevails, they shall be entitled to recover all costs including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

### ARTICLE V – Maintenance and Repair

#### 5.1 Maintenance and Repair

- (a) Maintenance of Lots, Parcels and Units. Each Owner shall maintain his or her Lot, Parcel or Unit, including all Structures, landscaping and other improvements comprising the Lot, Parcel or Unit, in a manner consistent with the Governing Documents, the Community-Wide Standard, and any other applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Master Association or a Neighborhood Organization under any Supplemental Declaration or additional covenants applicable to such Lot.
- (b) Maintenance of Neighborhood Property. Upon Board resolution, Owners within any Neighborhood created in accordance with this Declaration shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining, and insuring certain portions of the Common Maintenance Areas within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and green space between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that the Master Association may perform such maintenance. In any event, all Neighborhoods which are similarly situated shall be treated the same. In Neighborhoods comprising commercial property, the Neighborhood Association for such area shall be responsible for maintaining the landscaping, parking lots and other features other than the buildings, and may assess the owners of such properties according to their pro-rata ownership of land in the commercial Neighborhood.

The Master Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood Organization or because, in the opinion of the Board, the level and quality of service that are being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

Any Neighborhood Organization shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

## **5.2 Responsibility for Repair and Replacement**

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless either his or her Neighborhood Organization, if any, or the Master Association carries such insurance (which they may, but are not obligated to do). If the Master Association or any Neighborhood Organization assumes responsibility for insuring a Lot, the insurance premiums shall be levied as a Specific Assessment against the benefited Lot and the Owner.

In the event of damage to or destruction of a structure on a Lot, the Owner shall promptly repair or reconstruct the structure in a manner consistent with plans and specifications to be submitted to the DRC for approval in accordance with Article IV and the Design Guidelines in effect at the time of such submission of plans and specifications to the DRC. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs insurance proceeds do not cover.

This Section applies to any Neighborhood Organization responsible for common property within the Neighborhood in the same manner as if the Neighborhood Organization was an Owner and the common property was a Lot. Additional Recorded covenants applicable to any Neighborhood may establish requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lots within the Neighborhood and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

## **ARTICLE VI – Master Association Membership and Assessments**

### **6.1 Membership in the Master Association**

Every Owner is a Member and shall be bound by the Governing Documents and the Rules and Regulations as hereafter promulgated. There shall be only one membership per Lot, Parcel or Unit. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of the membership, subject to reasonable Board regulation. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner which is not an individual may be exercised by any officer, director, partner, member, trustee, or individual the Owner designates from time to time in a written instrument provided to the Board's Secretary.

### **6.2 Purpose of the Master Association**

Except to the extent Common Parcels are conveyed to the Local District, the Master Association is the entity responsible for management, maintenance, operation, and control of the Common Parcels expressly designated by Declarant as "Common Parcels" on Recorded plats or Supplemental Declarations filed and Recorded by Declarant, and will own and maintain Desert Color Community's private road system and maintain the private trail system. In addition, the Master Association may perform such other community services and undertake such other responsibilities as its Board may deem advisable from time to time. The Master Association also has responsibility for enforcing the Governing Documents. The Master Association shall have such powers and perform its functions as they are enumerated in its Articles of Incorporation, its



By-Laws or as provided in under the laws of Utah. The Master Association may delegate some or all of its responsibilities under this Section to Neighborhood Associations.

### 6.3 Membership in Club

Every Owner of a Lot, Parcel or Unit within the Resort Areas is required to be a member of the Desert Color Resort Club, subject to the Club's admission policies, and agrees to be bound by the Club's Membership Plan, Membership Application and Agreement, By-Laws and Club Rules and Regulations. In addition, Owners of Lots, Parcels or Units in Residential Areas may become a member of the Desert Color Resort Club subject to the admission policies and agrees to be bound by the Club's Membership Plan, Membership Application and Agreement, By-Laws and Club Rules and Regulations.

### 6.4 Creation of the Lien and Personal Obligation Assessments

Assessments are hereby created for Master Association expenses as the Board of Directors may specifically authorize from time to time. Assessments include: (a) Regular Assessments to fund Common Expenses for the general benefit of all Lots and Units as described in Section 6.6; (b) Special Assessments as described in Section 6.7; (c) Reinvestment Fees as described in Section 6.15; and (d) Specific Assessments as described in Section 6.8. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Property, is deemed to covenant and agree to pay these Assessments. All such Assessments, together with interest, costs and reasonable attorney's fees for the collection thereof shall be a charge and lien upon a Lot, or Parcel and its improvements or a Unit and its appurtenant interest in the Common Parcels of the Condominium. The amount owed shall be a continuing lien upon the applicable property against which such Assessment is made, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against the Lot, Parcel or Unit and (ii) liens and encumbrances Recorded before the Recordation of the Declaration.

All Assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorney fees, shall be a charge and continuing lien upon each Lot, Parcel or Unit against which the Assessment or charge is made until paid. Each such Assessment or charge, together with interest, late charges, costs, and reasonable attorney fees, also shall be the personal obligation of the Person who was the Owner of such Lot, Parcel or Unit at the time the Assessment arose. Upon a transfer of title to a Lot, Parcel or Unit, the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot, Parcel or Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title where the first Mortgagee's deed of trust was recorded on the Owner's property prior to the Master Association's Assessment lien, except as provided by law.

The Master Association shall, upon request, furnish to any Owner liable for any type of Assessment a written statement signed by a Master Association officer or designee setting forth whether such Assessment has been paid. Such statement shall be conclusive evidence of payment. The Master Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Master Association's Board of Directors may establish. The Master Association may require advance payment of Assessments at closing of the transfer of title to a Lot, Parcel or Unit and impose special requirements for Owners with a history of delinquent payment. If the Master Association's Board of Directors so elects, Regular Assessments and Special Assessments may be paid in two (2) or more installments. Unless the Master Association otherwise provides, the Regular Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year, which for purposes of this Declaration shall be the calendar year in the absence of a specific alternative fiscal year designation by the Master Association's Board of Directors. If any Owner is delinquent in paying any Assessments or other charges levied on its Lot, Parcel or Unit, the Master Association may require any unpaid installments of all outstanding Assessments to be paid in full immediately. Any Assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by the Master Association's Board of Directors resolution.

The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Master Association or its Board of Directors to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Master Association or its Board of Directors. The

Master Association is specifically authorized to fully or partially exempt certain Lots, Parcels or Units from liability for and payment of Assessments as the Board of Directors may from time to time determine in its sole discretion.

The Master Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant, any Affiliate of Declarant, or other entities for payment of Common Expenses.

The Governing Documents applicable to each Neighborhood Organization may designate one or more Persons who shall be responsible for collecting all Assessments levied against Lots, Parcels or Units within such Neighborhood (such Person or Persons hereinafter defined and referred to as the "Neighborhood Assessor"). The Neighborhood Assessor shall pay the full amount of such Assessments to the Master Association on or before the date that such Assessments are due. No Neighborhood Assessor may claim set-off nor abatement based upon such Person's inability or failure to collect such Assessments from the Owners of Lots, Parcels or Units within such Neighborhood. If the Governing Documents applicable to a particular Neighborhood Organization create a Neighborhood Association, the Neighborhood Association shall serve as the Neighborhood Assessor.

### **6.5 Purpose of Assessments**

The Assessments levied by the Master Association shall be used for the purposes in keeping with a nonprofit corporation as set forth in the Master Association's Articles of Incorporation. Specifically, the Assessments shall be used to promote the health, safety and welfare of the Owners and residents of the Community and for the improvement, maintenance and repair of the Common Parcels and Common Areas, and easements appurtenant thereto, for the provision of reserve funds, the employment of attorneys, accountants, and other professionals to represent the Master Association, when necessary, for payment of local taxes, insurance and special governmental assessments on or to the Common Parcels together with payment of services, if any, provided to the Owners and residents of the Community by the Master Association, and for any other purpose or purposes permitted by applicable law which are determined by the Master Association to be necessary and/or appropriate for the welfare and benefit of the Owners and residents of the Community.

### **6.6 Computation of Regular Assessments**

At least thirty (30) days before the beginning of each fiscal year, the Board of Directors shall prepare a budget covering the estimated Common Expenses during the coming year. The budget may also include an amount to establish a reserve fund in accordance with a budget separately prepared.

Subject to Section 6.9 below, Regular Assessments to be levied against each Lot, Parcel, or Unit shall be calculated in accordance with the formula set forth in Exhibit "C". The aggregate amount of the assessments shall be set at a level which is reasonably expected to produce total income for the Master Association equal to the total budgeted Common Expenses, including any reserves. In determining the level of assessments, the Board of Directors, in its discretion, may consider other sources of funds available to the Master Association, including any surplus from prior years, any assessment income expected to be generated from any additional Lots, Parcels, Units reasonably anticipated to become subject to assessment during the fiscal year, and any income expected to be generated from any cost sharing agreement that the Master Association may enter into.

During the Declarant Control Period, Declarant may, but shall not be obligated to, reduce the Regular Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials which may be treated as either a contribution or a loan, in Declarant's discretion. The Master Association, specifically including members of the Board of Directors appointed by Declarant, shall be authorized to execute a promissory note or notes on behalf of the Master Association to evidence the repayment obligation of the Master Association; provided however, the failure to execute such a note shall in no way diminish such obligation. Any anticipated payment or contribution by Declarant shall be disclosed as a line item in the Common Expense budget. Payments by Declarant in any year shall under no circumstances obligate Declarant to continue such payments in future years, unless otherwise provided in a written agreement between the Master Association and Declarant.

### **6.7 Special Assessments**

In addition to other authorized assessments, the Master Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted and to pay special governmental assessments. The Master

Association may also levy in any fiscal year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any acquisition, construction, reconstruction, repair or replacement of a capital improvement upon the Common Parcels, including, but not limited to, fixtures and personal property (such as roads, road signs, lights, etc.) related thereto. Any such Special Assessment may be levied against all Lots, Units or Parcels, if such Special Assessment is for Common Expenses, or against the Lots, Units or Parcels within any Neighborhood if such Special Assessment is for Neighborhood Expenses.

During the Declarant Control Period, only the consent of the Declarant shall be required to approve any such Special Assessment. After the end of the Declarant Control Period, any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total votes allocated to Lots, Units or Parcels which will be subject to such Special Assessment. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

### 6.8 Specific Assessments

The Master Association shall have the power to levy Specific Assessments against a particular Lot, Unit or Parcel or group of Lots, Units or Parcels (including a Neighborhood) as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s), Unit(s), Parcel(s) or Occupants thereof upon request of the Owner pursuant to a list of choices of special services which the Master Association may from time to time authorize to be offered to Owners and Occupants (which might include, without limitation, landscape maintenance, patrols or security services, pest control service, cable, digital or similar television services, internet or intranet service, utilities and special/promotional events coordination), which may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;
- (b) to cover the costs associated with maintenance, repair, replacement and insurance of any Common Areas (including Limited Common Area) assigned to and/or benefitting one (1) or more Lots, Parcels, Units or Neighborhoods;
- (c) to cover all costs incurred in bringing the Lot(s), Unit(s) or Parcel(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, Unit or Parcel, their agents, contractors, employees, lessees, licensees, invitees, clients, customers or guests; provided that, to the extent the Master Association intends to levy such assessment against the Lots, Units or Parcels within an entire Neighborhood for the purpose of bringing the Neighborhood and any applicable Neighborhood Organization into compliance with the Governing Documents, the Board of Directors shall give prior written notice to the Neighborhood Assessor and the Owners of Lots, Units or Parcels in the Neighborhood and an opportunity for the Owners within the Neighborhood to be heard before levying any such assessment.; and
- (d) to cover the costs associated with landscaping those portions of a Lot or Parcel for which the Master Association is responsible or for which the Owner fails to landscape pursuant to Governing Documents and Community-Wide Standards.

### 6.9 Rate of Assessment

The determination of the total amount of Common Expenses for any given fiscal year of the Master Association shall be within the sole discretion of the Board. The Board shall allocate assessments for Common Expenses in such amounts to be fixed from year to year and the Board may establish different rates for various general classifications of Lots, Parcels or Units according to the use and location of said Lots, Parcels and Units. Notwithstanding the above, the Board shall allocate assessments for Common Expenses based, at least, in part on whether a Lot, Parcel or Unit is improved or unimproved. It is within the Board's discretion to determine what assessment is warranted in cases where a Lot is combined or subdivided.

The Board of Directors shall send a copy of the budget and notice of the amount of the Regular Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. If the Board of Directors fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. If the Board of Directors fails to determine a budget for any year, or if the budget proves inadequate for any reason, or if the use of a Lot, Unit or Parcel changes and affects the assessment obligation of the Owner of such Lot, Unit or Parcel, the Board of Directors may prepare a revised budget for the remainder of the fiscal year. The Board of Directors shall send a copy of the revised budget to each Owner at least thirty (30) days prior to it becoming effective. The revised budget shall become effective.

#### 6.10 Effect of Nonpayment of Assessments

- (a) **Remedies of the Master Association.** Assessments which are not paid when due as determined by this Declaration and the Board of Directors will be considered delinquent. If the Assessment is not paid within thirty (30) days after the due date, the Master Association shall have a lien against each Lot, Unit or Parcel to secure payment of Assessments and other charges, as well as interest at a rate to be set by the Board of Directors (subject to the maximum interest rate limitations of Utah law), late charges in such amount as the Board of Directors may establish (subject to the limitations of Utah law), costs of collection and reasonable attorney's fees. The Master Association may bring action at law against the Owner personally obligated to pay the same, or foreclose the lien against his property, and interest, costs and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such Assessment. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value, except to the extent provided by law. Such lien may be enforced by suit, judgment, and judicial or non-judicial foreclosure. All other Persons acquiring liens or encumbrances on any Lot, Unit or Parcel after this Declaration has been Recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for Assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Each such Owner, by his acceptance of a deed to a Lot, Parcel or Unit, hereby expressly vests in Master Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges and liens as a debt and to enforce the aforesaid charge and lien by methods available for the enforcement of such liens. The available enforcement remedies include, but are not limited to, those rights stated under the laws of Utah. The lien provided for in this Section shall be in favor of the Master Association and shall be for the benefit of all members of the Master Association. The Master Association, acting on behalf of its members, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same, and to subrogate so much of its right to such liens as may be necessary or expedient. No owner of a Lot, Parcel or Unit may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Parcels or abandonment of his Lot, Parcel or Unit. After notice and opportunity to be heard, the Master Association may restrict the use of Common Parcels (not including rights of access to Lots, Units or Parcels) by a Lot, Parcel or Unit Owner who is delinquent in paying Assessments.

Declarant, any Affiliate of Declarant, or the Master Association may bid for the Lot, Unit or Parcel at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot, Unit or Parcel. While a Lot is owned by the Master Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be levied on it; and (c) each other Lot, Unit or Parcel shall be charged, in addition to its usual Assessment, its pro-rata share of the Assessment allocated to the Lot owned by the Master Association. The Master Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot, Unit or Parcel shall not affect the Assessment lien or relieve such Lot, Unit or Parcel from the lien for any subsequent Assessments. However, the sale or transfer of any Lot, Unit or Parcel pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such Assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for Assessments on such Lot due prior to such acquisition of title, although an Assessment lien shall continue as a lien on the subject property, except as disallowed by applicable law. To the extent such Assessment lien is disallowed by law or otherwise uncollectible, the amount thereof shall be deemed to be Common Expenses collectible from Owners of all Lots subject to Assessment.

- (b) **Remedies of Declarant** To the extent that any Lot, Parcel or Unit Owner fails to pay his Assessments relating to the Common Expenses, Special Assessments, Neighborhood Assessment, Reinvestment Fees, and Specific Assessments, then Declarant shall have during the Declarant Control Period, the right, but not the obligation, in addition to the Master Association, to use any of the remedies enumerated above, including filing a lien against the defaulting Owner and pursuing the enforcement of such lien and other remedies as set forth under the laws of Utah.

The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or Master Association to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement.

#### **6.11 Date of Commencement of Assessments**

The obligation to pay Assessments shall commence as to each Lot, Unit or Parcel on the date which the Lot, Unit or Parcel is conveyed to a Person other than a Builder, Declarant or an Affiliate of Declarant. With respect to any Lot, Unit or Parcel owned by a Builder, Assessments shall commence upon the earlier of (a) actual occupancy of such Lot or Unit, excluding any period that such Lot or Unit is being used exclusively as a model home or a sales office approved by Declarant, or (b) one year from the date that such Builder or any entity or Person related to such Builder acquired title to such Lot, Unit or Parcel. The first annual Regular Assessment levied on each Lot, Unit or Parcel shall be adjusted according to the number of days remaining in the fiscal year at the time Assessments commence on the Lot, Unit or Parcel and shall be due and payable on the date of conveyance. Except as provided by Section 6.15, the Reinvestment Fee shall be due and payable at the closing of the sale of the Lot, Unit or Parcel.

#### **6.12 Master Association's Responsibilities for Maintenance, Repair and Improvement**

The Master Association and its Members are responsible for the maintenance, repair and improvement of the Common Parcels (which does not apply to Common Parcels that are conveyed to a Local District or Neighborhood Association).

#### **6.13 Surplus Operating Funds**

The Master Association shall have the right, but not the obligation, within its sole discretion, to impose Assessments on Lot owners, Parcel owners or Unit owners for the maintenance of reserve funds or operating expense surpluses. The Master Association, within its sole discretion, may apply surplus funds to any purpose of a non-profit corporation or may credit such funds to its members as provided under the laws of Utah.

#### **6.14 Payment of Assessments by Declarant and Affiliates of Declarant**

Notwithstanding anything provided in this Declaration to the contrary, neither Declarant (as a Member or as the owner of any Lot, Parcel or Unit) nor any Affiliate of Declarant shall be responsible for the payment of any Assessments with respect to any Lot, Unit or Parcel owned by Declarant or such Affiliate of Declarant unless such Lot, Unit or Parcel has been improved by the erection of improvements thereon and a certificate of occupancy has been issued by the controlling governmental authority, in which event the Owner of such Lot, Unit or Parcel shall pay Assessments.

#### **6.15 Reinvestment Fee**

Excluding any sales or Transfers between and among Declarant and SITLA or any Affiliates of Declarant and their successors and assigns as Declarant, and sales of Lots, Units or Parcels from Declarant or any Affiliate of Declarant (or their successors and assigns as Declarant) to any third parties, a reinvestment fee ("**Reinvestment Fee**") shall be paid by or on behalf of the purchaser of each Lot, Unit or Parcel equal to (a) 65/100 of one percent (0.65%) of the Gross Sales Price of each residential Lot, Unit or Parcel (either improved or unimproved), (b) one-half of one percent (0.5%) of the Gross Sales Price of each commercial Lot, Unit or Parcel (either improved or unimproved), or (c) one thousand dollars (\$1,000) for each Lot, Unit or Parcel (either improved or unimproved) purchased from a Builder. Notwithstanding anything in this Agreement to the contrary, the total amount of the Reinvestment Fee with respect to any single transaction shall be capped at Five Hundred

Thousand Dollars (\$500,000.00) (the "Cap"). The Cap shall be adjusted at the beginning of each calendar year by the percentage of increase in the "Consumer Price Index" as defined in the "United States City Average All Items for All Urban Consumers (CPI-U, 1982-84=100)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index is discontinued, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by Declarant shall be used for making such computations. Reinvestment Fees shall be payable to the Master Association at the closing of each Transfer of the Lot, Unit or Parcel. Reinvestment Fees may be used by the Master Association and/or the Local District (with approval of the Master Association) in their sole discretion for any lawful purpose to benefit the Property within the authority of Utah Code Ann. Section 57-1-46, including without limitation, payment for common planning, facilities and infrastructure; obligations arising from an environmental covenant; community programming; resort facilities; open space; recreation amenities; charitable purposes and Master or Neighborhood Association expenses. In the event of nonpayment of the Reinvestment Fee, the amount due shall bear interest and shall be collectible by the Master Association as set-forth in this Article 6. The Master Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds) or other such evidence.

#### **6.16 Impact Fees**

The Board shall have the right, but not the obligation, within its sole discretion, to impose a uniform schedule of impact fees to be applied to any Owner of a Lot, Parcel or Unit at the time that Owner applies for approval to construct a residence on the Lot or Parcel to offset the effect that Owner's development plans will have on the infrastructure and environment within Desert Color Community. This fee shall not be the exclusive remedy of the Master Association or Declarant in cases of any violations of these covenants by the Owner.

#### **6.17 Local District**

The Association shall have the right to convey some or all of the Common Areas to a Local District pursuant to Title 17B of the Utah Code Annotated 1953, as amended and to delegate its obligations for the operation and maintenance of the Common Areas to the Local District. From and after the date of such conveyance, the Local District shall have the right and responsibility to operate and maintain such Common Areas and Common Parcels and adopt and enforce rules and regulations for the use thereof. The Local District shall also have the right to levy and collect assessments against the owners of property located in the area covered by the Local District for the operation and maintenance of the Common Areas.

### **ARTICLE VII – Common Parcels**

#### **7.1 Roads and Access Easements**

All Owners acknowledge that certain of the roadways within Desert Color Community will be publicly maintained and are intended to be developed for takeover by St. George City Public Works Department. The roadways within Desert Color Community shall be constructed to minimum standards as outlined in the Development Agreement or as otherwise permitted by St. George City Public Works Department. The schedule and completion of the construction and the design of said roads shall be within the sole discretion of Declarant.

#### **7.2 Other Common Parcels**

During the Declarant Control Period, Declarant may, but is not obligated to, provide other properties within Desert Color Community as Common Parcels. The designation and transfer of these areas are solely in the discretion of Declarant and no parol or oral agreement or claims of estoppel shall be asserted by any resident providing rights to areas not explicitly denoted as "Common Parcels" on the Plats for Desert Color Community and identified as Common Parcels in a Supplemental Declaration. Before the Master Association and its members shall assume the responsibility for maintenance, repair and improvement of a Common Parcel not specifically defined in this Declaration (such as roads), Declarant shall Record a Supplemental Declaration and plat reasonably identifying the Common Parcel.

#### **7.3 Conveyances**

Any Common Parcels conveyed by Declarant to the Master Association, a Local District or a sub-owners' association shall be conveyed subject to:

- (a) All restrictions and uses contained in this Declaration;
- (b) All existing mortgages, provided, however, that in no event shall such entities be obligated to assume the payment or interest on any such mortgage;
- (c) The right of access for ingress, egress, and regress and utilities of Declarant, its successors and assigns, over and across such property including, without limitation those set forth in Article XI hereof; and
- (d) The right of Declarant, its successors and assigns, to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Parcels prior to the commencement of such activities or location of any object therein.

The Recording of a Deed or an Easement instrument from Declarant to the Master Association of a Common Parcel in the Public Records of the office of the County Recorder for Washington County, Utah shall be conclusive evidence that the Master Association has accepted such transfer.

### ARTICLE VIII – Use Restrictions

Subject to Article IX below for Additional Property, the following use restrictions shall apply to all property within Desert Color Community.

#### 8.1 Single-Family Residential Use: Principal Buildings

All single family residential detached or cluster attached lots and the principal building constructed thereon shall be used for residential purposes only. Single Family residential detached or cluster attached Lots are permitted within the Residential Areas and the Resort Areas. All Multi-family dwellings such as townhouses, patio homes and condominium units shall be used for residential purposes only. Multi-family dwellings are permitted within the Residential Areas, Resort Areas and Commercial Areas.

#### 8.2 Subdividing and Boundary Relocation

No subdivision, combination or boundary relocation shall be made without the written approval of Declarant, its successors and assigns except, however, Declarant hereby expressly reserves to itself, its successors or assigns, the right to re-plat, combine or subdivide any Lot or Lots, shown on the Recorded plats, prior to the conveyance thereof, in order to create a modified Lot or Lots. In re-platting any Lot, Declarant reserves the right, during the Declarant Control Period, to change the location of the boundaries of a Common Parcel. These restrictions herein apply to each Lot which may be created. Following the combination of two or more Lots into one larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of this Declaration. Once combined, the resulting larger Lot may only be subdivided with the written consent of Declarant, its successors and/or assigns. The Board, in its sole discretion, shall determine what effect, if any, the combination or subdivision of a platted Lot has on the Assessments for the modified Lot.

#### 8.3 Commercial Mixed-Use

All mixed-use commercial, retail, hospitality and related uses shall be located within the Commercial Areas. These areas are intended to include a diverse mix of residential and commercial uses located within close proximity to one another.

#### 8.4 Duty to Maintain and Rebuild

- (a) Each Owner shall, at such Owner's sole cost and expense, repair his, her or its Residence or Commercial Unit, keeping the same condition comparable to the condition of such Residence or Commercial Unit at the time of its initial construction, excepting only normal wear and tear.
- (b) Each Owner shall keep the grass on such Owner's Lot or Parcel properly cut, shall keep the lot free from trash, and shall keep it otherwise neat and attractive in appearance.



- (c) If all or any portion of a Residence or Commercial Unit is damaged or destroyed by fire, or other casualty, then the Owner shall, with all due diligence, promptly rebuild, repair or reconstruct such structure in a manner consistent with plans and specifications to be submitted to the DRC for approval in accordance with Article IV and the Design Guidelines in effect at the time of such submission of plans and specifications to the DRC. Alternately, the Owner shall completely raze the Residence or Commercial Unit and implement best management practices to control sediment on the applicable Lot or Parcel until such time as construction of a new Residence or Commercial Unit is begun.

#### **8.5 Temporary Structures; Mobile Homes, Modular Homes and Panelized Homes**

No unfinished structure of a temporary character shall be placed upon any portion of Desert Color Community at any time except where partially finished basements or partially complete single-family residences or units have a completed exterior finish, including windows, doors, and window coverings. Mobile homes, trailers, recreational vehicles, and tents, may not, at any time, be used as the permanent residences or be permitted to remain on any portion of Desert Color Community after completion of principal building constructed thereon. A Lot Owner may construct a modular or panelized residence with the written approval of the Committee.

#### **8.6 Exterior Construction**

The exterior of a single-family residence on a Lot as well as site work and landscaping must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner of a Lot due to strikes, fire, natural emergencies or natural calamities. Single family residences may not be occupied until the exterior thereof has been completed. If the exterior is not completed within one (1) year, the Board may impose a fine against the violating Lot owner for each day that the exterior remains uncompleted.

#### **8.7 Trees**

No living trees or shrubs shall be removed without the written approval of the Committee, unless said trees are located within ten (10) feet of a residence or within the right-of-way of driveways and walkways. Should a party remove any tree or vegetation as herein provided without the above-described written approval, the Board may fine the party for each day that a replacement plan or other remedial plan acceptable to the Board is not completed. In addition to the above remedies, the Master Association and its agents may enter the property to replace the removed tree or vegetation and charge the violating owner the costs of such replacement.

#### **8.8 Trash**

No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are pre-approved by the DRC or specifically permitted under the Design Guidelines, or as required by the applicable governing jurisdiction. Such containers shall be screened from view outside of the Lot except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. Rubbish, trash, and garbage must be removed from the Lots and may not accumulate on any Lot. Outdoor incinerators may not be kept, used or maintained on any Lot.

#### **8.9 Utilities; Antennae; Wireless Communication**

All utilities, wires, cables, antennae and the like, of any kind (such as telephone, electrical, television, radio and citizens band radios) must be placed underground except as may be expressly permitted and approved in writing by the Design Review Committee. No antenna, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside a Residence or Commercial Unit, except those devices whose installation and use is protected under federal law or regulations. Notwithstanding such protection, an application for such an antenna or other device must be submitted to the Design Review Committee for approval and approval will be granted only if:

- (a) First, the antenna or other device is designed for minimal visual intrusion (i.e., is located in a manner that minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and



- (b) Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations. (i.e., without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).

The Design Review Committee shall consider any such application on an expedited basis. Notwithstanding the above, Declarant and/or the Master Association may erect one or more antennas, satellite dishes, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Desert Color Community, should any master system or systems be used by the Master Association and require such exterior apparatus.

#### **8.10 Off-Street Parking**

Each Owner of a single-family residence on a Lot shall provide sufficient space for parking of any and all vehicles off the roadways for any of said Owner's vehicles or his guest's vehicles per applicable zoning requirements. No overnight parking on parking lots, private streets or alleys shall be allowed, except as authorized in connection with the operation of hotels or similar establishments.

#### **8.11 Vehicles**

As used in this Section, the term "vehicles" includes, without limitation, automobiles, trucks, boats, trailers, motorcycles, snowmobiles, campers, vans, and recreational vehicles. No vehicle may be left upon any portion of the Community except in a garage, driveway, designated on-street parking spaces or other area designated by the Board. No person shall park any recreational vehicles, mobile homes, trailers, campers, snowmobiles, boats or other watercraft, stored vehicles, and unlicensed vehicles or inoperable vehicles within the Community other than in enclosed garages. This Section shall not apply to emergency vehicle repairs. The Board shall have the power to place any reasonable restrictions upon the use of roadways, including but not limited to the types and sizes of vehicles using the roads, the maximum speeds of vehicles, all other necessary traffic and parking regulations and the maximum noise level of vehicles.

#### **8.12 Vehicle Storage**

Any recreational vehicles, boats, motor homes, campers and the like must be parked in an enclosed area screened from view. Garage doors shall remain closed at all times except when entering and exiting the garage.

#### **8.13 Lot Upkeep**

All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot in a manner which is unsanitary, unsightly, offensive or detrimental to any other portion of the Community, as determined by the Board. Woodpiles or other material shall be properly screened and stored in such a manner so as not to attract rodents, snakes, and other animals and or create a fire hazard, as the Board determines. No activities shall be conducted upon or adjacent to any Lot or within any structure on a Lot which are, or might be, unsafe or hazardous to any Person or property. Declarant or the Master Association shall have the right, but not the duty, to enter upon any property for the purpose of abating any unclean, unsightly or unkempt condition of buildings or grounds which tend to decrease the beauty of the specific area or the neighborhood as a whole. The cost of such abatement and any damage resulting from such entry shall be at the expense of the specific Lot or Unit Owner and said entry shall not be deemed a trespass.

#### **8.14 Nuisances**

No obnoxious or offensive activity shall be carried on upon any portions of Desert Color Community nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner of a Lot or Unit, tenant or guest thereof in any area of Desert Color Community thereby diminishing the enjoyment of other Lots or Units by their owners. No hazardous or toxic substances or wastes as defined by applicable law shall be dumped within Desert Color Community. No plant, animal, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of any portion of Desert Color Community by the Lot or Unit owners, tenants, and guests thereof, may be maintained. Except for Declarant activities, the Board has the right in its sole discretion to determine a nuisance, and upon ten (10) days' written notification by the Board, the activity must cease.

**8.15 Fires**

No outdoor fire shall be built within Desert Color Community without the Board's or Declarant's permission. No leaves, trash, garbage or similar debris shall be burned except as permitted in writing by the Board or Declarant. Outdoor fire pits and fireplaces may be used by Owners in accordance with applicable law. Outdoor grilling shall be done with great care.

**8.16 Signs**

No sign shall be erected within the Community except in accordance with the criteria set forth in the Design Guidelines. This restriction shall not apply to entry, directional, and marketing signs installed by Declarant or a Builder. The Master Association shall have the right to erect signs on the Common Area.

**8.17 Wetlands, Lakes, and Other Water Bodies**

No lake shall be constructed, neither shall the course of any stream be changed, nor any culverts installed in any stream without prior written approval of Declarant. An Owner of a Lot shall maintain a thirty (30) foot undisturbed buffer from all watercourses within Desert Color Community unless a detailed grading plan is approved by the Board or the DRC and the Owner has provided written confirmation of compliance from all Governmental Entities with jurisdiction over such project. Wetlands, lakes, ponds, and streams within the Community, if any, are aesthetic amenities only, and no active use of lakes, ponds, streams, or other bodies of water within the Community is permitted except for fishing in designated locations only. Declarant and/or Master Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to the Community.

**8.18 Solar Equipment**

No solar electricity generating or heating equipment or device is permitted outside any Residence except such devices whose installation and use is protected by federal or Utah law. Notwithstanding such protection, an application for such equipment or device must be submitted for and approved by the DRC prior to installation and approval will be granted, in the sole discretion of the DRC, only if:

- (a) First, such equipment or device is designed for minimal visual intrusion when installed (i.e., is located in a manner which minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and
- (b) Second, the equipment or device complies to the maximum extent feasible with the Design Guidelines within the confines of the applicable governmental regulation.

**8.19 Storage Tanks**

Underground fuel storage tanks are not permitted within Desert Color Community, except in Commercial Areas in conjunction with an authorized gas station. Above ground tanks are not allowed.

**8.20 Animals**

No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Community, except that for each Residence there shall be permitted a reasonable number of usual and common household pets, as determined in the Board's discretion. Pets shall not be permitted by their Owners to roam free, and any which are permitted to roam free, or, in the Master Association's sole discretion, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Owners or residents of any portion of the Community, shall be removed upon the Board's request at the Owner's expense. If the Owner fails to honor such request, the Board may cause the pet to be removed at the Owner's expense. No pets shall be kept, bred, or maintained on any home site for any commercial purpose.

**8.21 Vacant Lots, Reserved Areas and/or Future Development**

Unused and/or vacant lots, or property designated herein as Reserved Areas and/or Future Development are not to be trespassed upon for any reason.

**8.22 Wildlife**

Capturing, killing, or trapping wildlife is prohibited within the Community, except in circumstances imposing an imminent threat to the safety of Persons or pets.

**8.23 Firearms**

The discharge of firearms within the Community is prohibited except to the extent such discharge is confined within the facilities of a Private Amenity created for such purpose. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

**8.24 Exterior Lighting**

All exterior lighting must conform to the requirements of the Design Guidelines. Excessive exterior lighting on any Lot is prohibited. The Board in its sole discretion shall determine whether any exterior lighting is excessive.

**8.25 Storage of Goods**

Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Area (except by the Master Association), or, if not in active use, any portion of a Lot which is visible from outside the Lot is prohibited.

**8.26 Prohibited Conditions**

The following conditions, structures, or activities are prohibited on any Lot:

- (a) Dogs runs and animal pens of any kind, unless properly screened and approved;
- (b) Shacks or other structures of a temporary nature on any Lot except as may be authorized by Declarant during the initial construction of improvements within the Community. Temporary structures used during the construction or repair of a Residence or other improvements shall be removed immediately after the completion of construction or repair;
- (c) Except as expressly permitted pursuant to the Design Guidelines, permanent basketball goals, basketball standards, or backboards which are or would be visible from any street or Common Area; provided, portable basketball goals may be used on a Lot without prior approval, but must be stored so as not to be visible from any street or Common Area overnight or otherwise when not in use;
- (d) Except as expressly permitted pursuant to the Design Guidelines, freestanding flagpoles; provided, flags may be displayed using a bracket or other approved device mounted to the Residence so long as the size of the flag displayed does not exceed that of a standard United States flag (as determined in the Board's discretion and as may be set forth in a Board rule);
- (e) Compost piles or containers and statues other than specifically approved by the DRC; and
- (f) Outside clotheslines or other outside facilities for drying or airing clothes.

In any event, and notwithstanding the above list of prohibited conditions, as set forth herein, any structure, improvement, or thing proposed for construction, erection, installation, or placement on a Lot requires prior Reviewer approval unless otherwise specifically exempt under the Design Guidelines.

**8.27 Quiet Enjoyment**

Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Lots. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Community, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to others.

**8.28 Holiday Decorations**

Owners may display holiday decorations located or visible from outside their Residences if the decorations are of the kinds normally displayed in single family residential Neighborhoods, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed in season from December 1 to January 15 and, during other times of the year and from one week before to one week after any nationally recognized holiday.

**8.29 Pool Equipment**

All pool equipment stored on any Lot shall be screened from view from outside the Lot.

**8.30 Exclusivity Restriction**

(a) For so long as any portion of the parcel identified as the GAS Distomo Parcel on Exhibit "D" attached hereto shall be used as a fueling center (the "**Fuel Center Lot**") and provided the Owner of the Fuel Center Lot (the "**Subject Owner**") complies with its obligation to make an annual contribution to the Master Association on or before January 20<sup>th</sup> of each year of \$0.015 per gallon of fuel for all fuel sales from the Fuel Center Lot during the preceding year (the "**Annual Contribution Obligation**"), no other Lot or Parcel located within the restricted area depicted on Exhibit "D" may be used, in whole or in part, as a fueling center (the "**Exclusivity Restriction**"). Each annual contribution shall be accompanied by sales reports or other satisfactory documentation verifying the applicable fuel sales and the calculation of such annual contribution. In the event (i) that no portion of the GAS Distomo Parcel is used as a fueling center for a period of more than six (6) consecutive months (the "**Continuous Use Obligation**"), or (ii) the Subject Owner fails to comply with the Annual Contribution Obligation, and such failure of either the Continuous Use Obligation or Annual Contribution Obligation (each, an "**Exclusivity Restriction Default**") continues for a period of thirty (30) days after delivery of written notice of such failure to the defaulting Subject Owner (the "**Cure Period**"), the Master Association or Declarant, as applicable (the "**Authorized Party**"), shall be permitted (subject to Section 8.30(b) through (d) below, to Record a written notice of termination of the Exclusivity Restriction at any time following the expiration of such Cure Period, whereupon the Exclusivity Restriction shall be deemed terminated and of no further force or effect. Notwithstanding anything to the contrary set forth herein, but subject to the termination rights of the Authorized Party set forth above, this Section 8.30 may not be amended or modified without the prior written consent of the Subject Owner.

(b) Notwithstanding the foregoing, if the Subject Owner is delayed or hindered in or prevented from the performance of the Continuous Use Obligation by reason of strikes, lockouts, labor stoppages, inability to procure material, failure of power, modifications to and/or restrictive governmental laws or regulations, riots, insurrection, war, or other similar events beyond the reasonable control of the Subject Owner (collectively a "**Force Majeure**" delay) the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided that the Subject Owner delivers written notice to the Authorized Party setting forth the particular event, circumstance or other occurrence on which the Force Majeure delay is based, including the anticipated delay duration and a requested extension of Cure Period time corresponding to the Force Majeure delay, or where the duration of Force Majeure delay is not capable of being quantified, then the Subject Owner shall keep the Authorized Party apprised of the continuing Force Majeure delay on a regular basis, to be not less than monthly. Upon the submittal of a Force Majeure delay, the Authorized Party may agree to extend the Cure Period commensurate with such Force Majeure delay, which agreement shall not be unreasonably withheld. Within ten (10) business days or as otherwise agreed in writing between the parties, the Authorized Party shall provide written notice of its intent to grant some or all of the Subject Owner's requested Force Majeure delay and the amount of extension of the Cure Period.

(c) In the event that the Authorized Party refuses to grant any portion of the Subject Owner's Force Majeure delay request (the "Dispute"), the Subject Owner shall have the right, but not the obligation, to demand the Dispute be mediated by submitting a written request to the Authorized Party within ten (10) business days of receipt of a response to the Subject Owner's request for Force Majeure delay. The mediation shall take place in Washington County, Utah and shall be conducted by a mediator selected by mutual agreement of the parties. Such mediation shall be concluded within sixty (60) days of the Subject Owner's demand for mediation. If mediation is unsuccessful, either party may elect to arbitrate the Dispute, by issuing a written notice of intent to arbitrate within five (5) business days of the conclusion of mediation. Any such arbitration shall be conducted in Washington County, Utah by a single arbitrator through the American Arbitration Association in accordance with its rules for arbitration and shall be concluded within ninety (90) days of such demand for arbitration. Each party shall bear its own costs and fees, including attorney fees, in any mediation conducted in accordance with this Section 8.30(e) provided, however that in the event mediation is unsuccessful and the Dispute proceeds to arbitration, the prevailing party in such arbitration, as determined by the arbitrator, shall be entitled to recover from the non-prevailing party all costs and fees, including attorney fees, incurred by the prevailing party in such mediation and arbitration.

(d) The right of the Authorized Party to terminate and Record a written notice of termination of the Exclusivity Restriction shall be stayed until the completion of mediation or arbitration of any Dispute, whichever is later, and which stay period shall include the preparation of any documentation to memorialize or otherwise finalize any such mediation or arbitration. Upon (i) failure of the Subject Owner to demand mediation in response to the Authorized Party's refusal to grant any portion of the Subject Owner's Force Majeure delay request, or failure of either party to request arbitration following unsuccessful mediation, or (ii) final resolution of any Dispute by settlement, mediation, arbitration or otherwise upholding the Authorized Party's right to terminate the Exclusivity Restriction, the Authorized Party shall be permitted to proceed with Recording such written notice of termination without further notice to the Subject Owner or other action on the part of the Authorized Party.

### 8.31 Trespass

Whenever the Master Association or Declarant is permitted by these covenants to correct, repair, clean, preserve, clean out or do any action on any portion of Desert Color Community, including Lots or Units, entering such areas and taking such action shall not be deemed a trespass on the part of the Master Association or Declarant or their agents.

### 8.32 Enforcement

- (a) All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.
- (b) Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in the Act, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or Master Association to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover reasonable attorney's fees as a part of such action.

### 8.33 Responsibility for Others

Owners of a Lot, Parcel or Unit are obligated to assume the responsibility for all dependents, guests, servants, visitors and building contractors occupying, visiting or working for the Lot, Parcel or Unit Owner to observe and maintain all the rules, regulations, covenants and restrictions binding the Lot or Unit Owners themselves.

**8.34 Variances**

In case of hardship and for good cause shown, Declarant during the Declarant Control Period or the Board may in its sole discretion grant variances from any of these covenants and restrictions. The decision of Declarant or the Board to grant or not grant variances as herein provided is based upon Declarant's or Board's sole and absolute discretion.

**ARTICLE IX - Expansion of the Community**

**9.1 Annexation by Declarant**

Declarant may, from time to time, subject to this Declaration, annex additional properties to the terms of this Declaration and the general plan of development for Desert Color Community by Recording a Supplemental Declaration describing the property being subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Notwithstanding any provision of this Declaration to the contrary, Declarant, in its sole discretion, shall designate in the Supplemental Declaration the permitted uses within the Additional Property, which may be other than residential, and any other development restrictions affecting the use and enjoyment of said land. Notwithstanding the differences, if any, in the use restrictions for Additional Property, it is the intent of Declarant that properties once annexed be part of the general plan of development for Desert Color Community provided, however, during the Declarant Control Period, Declarant reserves the right to modify the boundaries of Desert Color Community to remove unsold properties from the Desert Color Community. This right to remove properties from the general plan of development for Desert Color Community does not apply to Common Parcels, except as provided in Section 10.1 or to the extent conveyed to a Local District or sub-owners' association as provided herein. This Article is to be construed to give Declarant the broadest flexibility to annex Additional Property to the Community with use restrictions tailored for each additional tract or to modify the boundaries of Desert Color Community when determined in the sole discretion of Declarant to be in the best interest of Desert Color Community.

Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the Property. Any such transfer shall be memorialized in a Recorded instrument executed by Declarant. Nothing in this Declaration shall require Declarant or any successor to subject additional property to this Declaration or to develop any additional property in any manner whatsoever.

**9.2 Additional Covenants and Easements**

By Supplemental Declaration, Declarant may impose additional covenants and easements on portions of the Community, including covenants obligating the Master Association to maintain and insure specific property and authorizing the Master Association to recover its costs through Neighborhood Assessments or other Specific Assessments. If the property is owned by someone other than Declarant, then such owner's consent and execution of the Supplemental Declaration is required. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

**9.3 Effect of Filing Supplemental Declaration**

A Supplemental Declaration shall be effective upon Recording unless otherwise specified. The Lots subjected to this Declaration by Supplemental Declaration shall have equal voting rights in the Master Association and equal pro rata liability for Regular Assessments with all other Lots.

**ARTICLE X - Additional Rights Reserved to Declarant**

**10.1 Withdrawal of Property**

Declarant reserves the right to amend this Declaration at any time during the Declarant Control Period, so long as it has a right to annex property pursuant to Section 9.1, to remove any unimproved portion of Desert Color Community from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Lots then subject to the Declaration by more than 10 percent. "Unimproved" means that no structure has yet been built on the property. Such amendment shall not

require the consent of any Person other than the Owners of the property to be withdrawn, if not Declarant. If the property is Common Area, the Master Association shall consent to such withdrawal.

### **10.2 Marketing and Sales Activities**

Notwithstanding anything in the Governing Documents to the contrary, Declarant and Builders may construct and maintain upon portions of the Common Area and other property owned or leased by Declarant or the Builder such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things include but are not limited to business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and Builders may park vehicles in areas other than garages or driveways, including on streets. Builders' rights under this Section are subject to Declarant's approval.

### **10.3 Right to Develop**

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

Each Owner acknowledges that Desert Color Community is a mixed-use master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes proposed by Declarant in uses or density of property outside portions of the property that are subdivided and final platted or (b) changes proposed by Declarant in the Community as it relates to property outside previously subdivided and final platted land.

### **10.4 Right to Approve Changes in Community-Wide Standards**

No amendment to or modification of any Use Restrictions, rules, or the Design Guidelines shall be effective without prior notice to and the written approval of Declarant during the Declarant Control Period.

### **10.5 Right to Transfer or Assign Declarant Rights**

Subject to the prior written approval of SITLA, which approval may not be unreasonably withheld, any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a Recorded instrument signed by Declarant. Declarant may allow other Persons to exercise, on a one time or limited basis, any Declarant right without transferring the entire right. In such case, a Recorded instrument is not required. Declarant may temporarily delegate to a committee appointed by Declarant its rights to perform some or all of the responsibilities regarding architectural review as provided herein, without Recording an instrument setting forth such delegation.

### **10.6 Exclusive Rights to Use Name of Development**

No Person shall use the name "Desert Color", "Desert Color Community", or any derivative of "Desert Color" in any printed or promotional material, or in logo or depiction, without Declarant's prior written consent. However, Owners may use the name "Desert Color Community" where such term is used solely to specify that particular property is located within Desert Color Community.

### **10.7 Right to Use Common Area for Special Events**

During Declarant Control Period, Declarant may use the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions:

- (a) The availability of the facilities at the time a request;

- (b) Declarant shall pay all costs and expenses incurred and shall indemnify the Master Association against any loss or damage resulting from the special event; and
- (c) Declarant shall return the facilities and personal property used in conjunction with the special event to the Master Association in the same general condition as existed prior to the special events.

Declarant shall have the right to assign its rights to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

#### **10.8 Easement to Inspect and Right to Correct**

Declarant reserves for itself and others it may designate, the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of Desert Color Community, including Lots, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency or in the case of an inspection relating to construction or in a case involving enforcement of a violation of this Declaration, the Design Guidelines or any condition of design review approval, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into the interior of an occupied Residence or other structure on a Lot shall be permitted without the Owner's consent. Except where entry is necessary to abate a violation of this Declaration, the Design Guidelines or any condition of design review approval, the Person exercising this easement shall promptly repair, and pay for, any resulting damage.

#### **10.9 Right to Notice of Design or Construction Claims**

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Desert Color Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the property Owner and conduct an inspection.

#### **10.10 Termination of Rights**

Rights granted under Sections 10.1 to 10.9 of this Article shall terminate upon the earlier of (a) the expiration of the Declarant Control Period or (b) Declarant's Recording of a statement that all sales activity and resale activity within Declarant's control has ceased. Thereafter, Declarant may continue to use the Common Parcels for the purposes stated in this Article. This Article shall not be amended without the written consent of Declarant during the Declarant Control Period.

### **Article XI – Property Rights within the Community**

#### **11.1 Easements in Common Areas**

Declarant grants to each Owner a right and easement of use, access, and enjoyment in and to the Common Area and Common Areas subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying the property to the Master Association;
- (c) The Board's right to:
  - (i) adopt rules regulating Common Area use, including rules limiting the number of guests who may use the Common Area;
  - (ii) suspend the right of an Owner to use any Common Area amenity (A) for any period during which any Assessment or other charge against the Owner's Lot remains delinquent, and (B) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;



- (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;
  - (iv) rent any portion of any Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
  - (v) permit use by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion;
  - (vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred; and
- (d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII.

Any Owner may extend his or her right to use the Common Area to the members of his or her family, tenants, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the tenants of such Lot for the lease term.

### 11.2 Easements of Encroachment

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. A permitted encroachment is a structure or fixture which extends unintentionally from one person's property on to another's a distance of less than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from wilful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

### 11.3 Easements for Utilities, Etc.

- (a) Installation and Maintenance. During the Declarant Control Period, Declarant reserves for itself, and may in its sole discretion grant to the Master Association and utility providers, perpetual non-exclusive easements throughout Desert Color Community (but not through a structure) to the extent reasonably necessary to:
- (i) install utilities and infrastructure to serve Desert Color Community, cable and other systems for sending and receiving data and/or other electronic signals, drainage systems, and security and similar systems;
  - (ii) install walkways, pathways and trails, street lights, and signage on property which Declarant or the Master Association owns or within public and private rights-of-way or easements reserved for such purpose on a Plat;
  - (iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and
  - (iv) access and read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

- (b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in Declarant's sole discretion, to develop the Property. The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

- (c) **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the general condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and, except in an emergency or otherwise as provided herein, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

#### **11.4 Technology Utility Easements**

Declarant reserves exclusive easements in or adjacent to all Master Association-owned roads, and trails and any public trail rights-of-way throughout Desert Color Community, on behalf of itself, and its nominees, successors, and assigns, for installing, operating, maintaining, repairing, and replacing telephone, cable television, telecommunications, security, and other systems for sending and receiving data and/or other electronic signals ("Technology Utilities"), serving Desert Color Community. Declarant shall have ownership and exclusive control of all conduit, cable, lines or other means of distributing Technology Utilities serving Desert Color Community. Declarant may grant or convey these easements to third parties. Declarant also reserves for itself the exclusive right and power to enter into contracts for the construction, installation, and provision of Technology Utilities and may grant exclusive rights to access or use the Technology Utilities.

Declarant may require that the Board enter into a bulk rate service agreement with Declarant or its assignee for the provision of Technology Utilities services to all Lots as a Common Expense. If particular services or benefits are provided to particular Owners or Lots at their request, the benefited Owners shall pay the service provider directly for such services, or the Master Association may assess the costs as a Neighborhood Assessment or other Specific Assessment, as appropriate.

#### **11.5 Easements to Serve Additional Property**

Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for enjoyment, use, access, and development of property that may be annexed at a future date whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities.

If the above easement grants permanent access to any property which is not submitted to this Declaration, Declarant or its successors or assigns, shall enter into a reasonable agreement with the Master Association to share the cost for maintenance the Master Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

#### **11.6 Easements for Maintenance, Emergency, and Enforcement**

Declarant grants to the Master Association easements over Desert Color Community as necessary for the Master Association to fulfill its maintenance responsibilities. The Master Association shall also have the right, but not the obligation, to enter upon any Lot, Parcel or Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board, and its duly authorized agents and assignees, including committee members, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Declarant grants to the Master Association, subject to any required notice, an easement and right to enter a Lot to abate a Governing Document violation and/or to remove any structure, thing, or condition which violates the Governing Documents. Any costs incurred, including reasonable attorneys' fees, shall be assessed against the Lot Owner as a Specific Assessment.

#### **11.7 Easements for Private Amenities**

The Lots and the Common Parcels of the Master Association or any Neighborhood Organization are burdened with an easement permitting recreational amenity instruments and parts thereof, unintentionally to come upon such areas, and for recreational amenity uses at reasonable times and in a reasonable manner to come upon the Common Parcels, common property of a Neighborhood Organization, or the exterior portions of a Lot to retrieve errant recreational amenity instruments and parts

thereof; provided, however, if any Lot is fenced or walled, the recreational amenity user shall seek the Owner's permission before entry. The existence of this easement shall not relieve recreational amenity users of liability for damage caused by errant recreational amenity instruments like golf balls, golf clubs, and parts thereof. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant amenity instruments or parts thereof, or the exercise of this easement: Declarant, the Master Association or its members (in their capacities as such); the owner of any golf course, its successors, successors-in-title to the golf course, or assigns; Builders (in their capacities as such); or any officer, director, or partner of any of the foregoing, or any officer or director of any partner.

The owner of any Desert Color Community recreational amenity or facility, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the operation, maintenance, repair and replacement of the recreational amenity or facility.

Any portion of the Community immediately adjacent to a recreational amenity is hereby burdened with a non-exclusive easement for overspray of water (which may include "raw" water and/or treated sewage effluent) from the irrigation system serving the recreational amenity. Under no circumstances shall the Master Association or the owner of the recreational amenity be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

The owner of the recreational amenity, its successors and assigns, shall have a perpetual, exclusive easement of access over the Common Areas for the purpose of retrieving recreational instruments from bodies of water and from land within the Common Areas.

#### **11.8 Easements for Lake and Pond Maintenance and Flood Water**

Declarant reserves for itself, the Master Association, and their successors, assigns, and designees, the non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Maintenance Areas to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Common Maintenance Areas; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Master Association, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Master Association, and their successors, assigns and designees, a perpetual nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not inside a Residence or other structure) adjacent to or within 10 feet of bodies of water and wetlands within Desert Color Community, in order to (a) temporarily flood and back water upon and maintain water over such portions of Desert Color Community; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Maintenance Areas; and (c) maintain and landscape the slopes and banks pertaining, to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from their intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences.

#### **11.9 Easements for Cross-Drainage**

Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Community; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Community without the consent of the Owners of the affected property, the Board, and Declarant (during the Declarant Control Period).

#### **11.10 Rights to Storm Water Runoff, Effluent, and Water Reclamation**

Declarant reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture, transport and discharge such water, runoff, and effluent. This Section may not be amended without Declarant's consent, and the rights created in this Section shall survive termination of this Declaration.

## Article XII – Limited Common Areas

### 12.1 Purpose

Certain portions of the Common Area may be designated as a Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods or a group of Owners outside of a Neighborhood as designated by Declarant in a Supplemental Declaration. For example, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area within a particular Neighborhood or Neighborhoods or benefitting a particular group of Lots. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhoods to which the Limited Common Areas are assigned, or shall be assessed as a Specific Assessment to benefited Owners.

### 12.2 Designation

Initially, any Limited Common Area shall be designated as such in a Supplemental Declaration, the deed conveying such area to the Master Association, or on a Plat; provided, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots and/or Neighborhoods, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

In addition, a portion of the Common Area may be assigned as Limited Common Area, and Limited Common Area may be reassigned, upon Board approval and the vote of members of the Master Association and within Neighborhood(s) or other areas outside Neighborhoods affected by the proposed assignment or reassignment. During the Declarant Control Period, Declarant's written consent also is required.

### 12.3 Use by Others

If a majority of Owners of Lots within the Neighborhood or other specified area to which any Limited Common Area is assigned approve, the Master Association may permit Owners of Lots outside of the Neighborhood or other benefited area to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Area.

## Article XIII – Party Walls and Other Shared Structures

### 13.1 General Rules of Law to Apply

Each wall, fence, driveway, or similar structure built as a part of the original construction on any Lot, Parcel or Unit which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to party structures. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

### 13.2 Maintenance; Damage and Destruction

Unless otherwise specifically provided in additional covenants relating to such Lots, Parcels or Units, the cost of necessary or appropriate party structure repairs and maintenance shall be shared equally by the Owners sharing the party structure; provided that with respect to any wall that separates a Lot from a Common Parcel or public right-of-way, the portion of such wall facing such Common Parcel or public right-of-way shall be deemed Common Area and shall be maintained by the Master Association as set forth in this Declaration. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner sharing the structure (or the Master Association, as applicable) may restore it. If other Owners thereafter share in the use of the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner or the Master Association to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**Article XIV – Dispute Resolution and Limitation on Litigation**

**14.1 Agreement to Encourage Resolution of Disputes without Litigation**

- (a) Declarant, the Master Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”), agree to attempt to resolve disputes involving Desert Color Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file a lawsuit for a Claim described in subsection (b), without first submitting the Claim to the alternative dispute resolution procedures described in Section 14.2.
- (b) As used in this Article, the term “Claim” shall refer to a claim, grievance, or dispute arising out of or relating to:
- (i) the interpretation, application, or enforcement of the Governing Documents;
  - (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;
  - (iii) any dispute between an Owner and an owner or user of property outside of Desert Color Community; or
  - (iv) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article IV, which shall not be subject to review, except that the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:
    1. any Master Association action to collect Assessments or other amounts due from any Owner;
    2. any Master Association or Declarant action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Master Association’s ability to enforce this Declaration (relating to creation and maintenance of Community standards);
    3. any suit between Owners, which does not include Declarant or the Master Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
    4. any suit in which any indispensable party is not a Bound Party; and
    5. any suit as to which the applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim’s statute of limitations to comply with this Article.

**14.2 Dispute Resolution Procedures**

- (a) Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice (“Notice”) by mail or personal delivery to each Respondent, and to the Board, stating plainly and concisely:
- (i) the nature of the Claim, including the Persons involved and Respondent’s role in the Claim;
  - (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

- (iii) the Claimant's proposed resolution or remedy; and
  - (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.
- (b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.
- (c) **Mediation.** If the Bound Parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with a person or an entity designated by the Master Association (if the Master Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the St. George, Utah area. Each Bound Party shall present the mediator with a written summary of the Claim and their position with respect thereto.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within 30 days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorney's fees, and each Party shall share equally all fees charged by the mediator.

- (d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.
- (e) **Adjacent Property Disputes.** Disputes between Desert Color Community Owners and the owners or users of adjacent lands will be addressed by the Master Association, and the Master Association and all Bound Parties will follow the foregoing dispute resolution procedures with respect to any such Claims on the condition that all parties also agree to be bound by such procedures. The Master Association shall use reasonable efforts to obtain the agreement of any such non-Desert Color Community parties to become "Bound Parties" and to follow the procedures set forth above in resolving disputes. In the event the non-Desert Color Community parties refuse, the Master Association shall use reasonable efforts to attempt to resolve any such dispute and to mitigate any adverse impacts caused by Desert Color Community parties upon the operations of neighboring property owners and users.

#### 14.3 Initiation of Litigation by Master Association

The Master Association shall not initiate any judicial or administrative proceeding unless first approved by Owners of at least 75% of the Master Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Declarant Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of Assessments and foreclosure of liens;

- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Master Association or to assert counterclaims in proceedings instituted against it.

## Article XV – Golf Carts, Low-Speed Vehicles and Small Motor Vehicles

### 15.1 Definitions

“**Golf Cart**” shall mean and refer to any self-propelled device of conveyance of at least four wheels (whether or not authorized for operation on public streets), designed for the primary purpose of transporting a person or persons on golf courses, including any device designated by its manufacturer as a “Golf Cart” on the manufacturer’s statement of origin. “**Golf Cart**” shall exclude any vehicle classified pursuant to Utah Code Annotated 41-1a-102 (1953, as amended) or other Utah state law as a “motor vehicle,” an “all-terrain type I vehicle,” or an “all-terrain type II vehicle,” the use of each of which upon the Roadways shall be governed by existing laws and ordinances.

“**Low-Speed Vehicle**” shall mean and refer to any device of conveyance as defined as such by the Utah Division of Motor Vehicles (“DMV”) and which is to be registered with the DMV. A Low-Speed Vehicle is further defined as a device of conveyance which: (a) is authorized for operation on public streets, (b) designed for operation at speeds of not more than 25 miles per hour, (c) with a carrying capacity of not more than four passengers, including the driver, and (d) may not be operated on a highway with a posted speed of more than 35 miles per hour.

“**Regulated Vehicle**” means a Golf Cart, Low-Speed Vehicle or Small Vehicle subject to the provisions of the Master CC&Rs, as defined herein.

“**Small Motor Vehicle**” shall mean and refer to any device of conveyance as defined as such by the DMV and which is to be registered with the DMV. A Small Vehicle is further defined as a device of conveyance which has an engine with 150 or less cubic centimeters or a motor that produces five or less horsepower.

### 15.2 Regulated Vehicles

The Master Association shall have the authority to regulate the use of Regulated Vehicles on the roads and Common Areas (including trails) within the Desert Color Community and to establish rules and regulations regarding such use, including, without limitation, the minimum age of the driver, the width of the Regulated Vehicle, noise limitations, speed limits, designated areas for crossing roads, etc. The Master Association may require the owners of the Regulated Vehicles to register such vehicles with the Master Association and to pay a reasonable registration fee to the Master Association. Low-Speed Vehicles and Small Motor Vehicles shall also be properly registered with the DMV prior to any use on the roads and Common Areas (including trails) within the Desert Color Community. The Master Association shall have the right to delegate its authority to any Local District which assumes the rights and obligations to operate and maintain private roads and Common Areas (including trails) within the Desert Color Community.

### 15.3 Use of Golf Carts

Golf Carts may be operated on private roads and trails within the Desert Color Community. They may not be operated on any public roads except to the extent permitted by applicable law. Golf Carts may not be operated on any regional trails located outside of the Desert Color Community. Golf Carts may only cross public roads at the location of a crossing easement or as otherwise may be allowed by law. All use of Golf Carts shall also comply with applicable law and the rules and regulations adopted by the Master Association (or the Local District if such authority is delegated to the Local District) with respect to Golf Carts from time to time.

**15.4 Use of Low-Speed Vehicles and Small Motor Vehicles**

Low-Speed Vehicles and Small Motor Vehicles, if registered with the DMV, may be operated on public roads at safe speeds where the posted speed limit is less than 30 miles per hour and may cross public roads as allowed by applicable law. Low-Speed and Small Motor Vehicles may be operated on private roads and trails within the Desert Color Community without being registered, unless otherwise prohibited by law. No Low-Speed Vehicles or Small Motor Vehicles, whether registered with the DMV or not, may be operated on any regional trails located outside of the Desert Color Community. All use of Low-Speed Vehicles and Small Motor Vehicles shall also comply with applicable law and the rules and regulations adopted by the Master Association (or the Local District if such authority is delegated to the Local District) with respect to Low-Speed Vehicles and Small Motor Vehicles from time to time.

**15.5 Assumption of Risk and Indemnification**

By using a Regulated Vehicle within the Community, the Owner thereof for himself and for any user thereof expressly assumes the risk of personal injury (including possible death) and property damage resulting from such use. Each Owner agrees that their Regulated Vehicle shall be used strictly in accordance with applicable law, easement requirements, and the rules and regulations of the Master Association, Local District and sub-owners' association.

Each Owner agrees that Declarant, the Master Association, the Local District, and any sub-owner's association and any of their respective affiliates, officers, directors, managers or agents (collectively, the "Released Parties") shall not be liable to any Owner or any other Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, death, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the use of such Regulated Vehicle, including, without limitation, any claim arising in whole or in part from the negligence of the Released Parties. The Owner agrees to indemnify and hold harmless the Released Parties from and against any and all such claims by Owner's visitors, tenants, and others involved in any way with the use of the Owner's Regulated Vehicle.

**Article XVI – Mortgage Provisions**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

**16.1 Notices of Action**

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Master Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of Desert Color Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of Assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any Master Association insurance policy; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

**16.2 No Priority**

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot, Parcel or Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.



**16.3 Notice to Master Association**

Upon request, each Owner shall be obligated to furnish to the Master Association the name and address of the holder of any Mortgage encumbering the Owner's Lot.

**16.4 Failure of Mortgagee to Respond**

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Master Association does not receive a written response from the Mortgagee within 30 days of the date of the Master Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

**Article XVII – Changes in the Community**

Communities such as Desert Color Community are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the resident's age and change over time, and as the surrounding community changes. Desert Color Community and its Governing Document must be able to adapt to these changes while protecting the things that make Desert Color Community unique.

**17.1 Changes in Ownership of Lots, Parcels or Units**

Any Owner, other than Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 14 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including Assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

**17.2 Changes in Common Area**

Whenever any part of the Common Area is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner is entitled to notice. During the Declarant Control Period, the Board may convey Common Area under threat of condemnation only if approved by Declarant.

The award made for such taking shall be payable to the Master Association as trustee for all Owners to be disbursed as follows:

- (a) If the taking involves a portion of the Common Area on which improvements have been constructed, the Master Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, as determined by Declarant during the Declarant Control Period or by the Master Association at any time thereafter. Any such construction shall be in accordance with plans approved by the Board and, if during the Declarant Control Period, also approved by Declarant.
- (b) If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Master Association and used for such purposes as the Board shall determine.

**17.3 Partition**

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

**17.4 Transfer, Dedication or Preservation of Common Area**

The Master Association may dedicate portions of the Common Area to St. George City or to a Local District or any other local, state, or federal governmental or quasi-governmental entity, or grant conservation easements over any such property.

**Article XVIII – Master Association Powers and Responsibilities**

**18.1 Acceptance and Control of Master Association Property**

- (a) The Master Association may acquire, hold, mortgage or pledge as security, lease (as landlord or tenant), operate, and dispose of tangible and intangible personal property and real property. The Master Association may enter into leases, licenses, or operating agreements, for payment or no payment, as the Board deems appropriate, permitting use of portions of the Common Area by Community organizations and by other third parties for the general benefit or convenience of Owners and other Community residents.
- (b) Declarant and its designees may transfer to the Master Association, and the Master Association shall accept, personal property and fee title or other property interests in any improved or unimproved real property described in Exhibit "A". Upon Declarant's written request, the Master Association shall transfer back to Declarant any unimproved real property originally conveyed to the Master Association for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.
- (c) The Master Association is responsible for management, operation, and control of the Common Area (except to the extent that Common Area is conveyed to a Local District or sub-owners' association), subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Master Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate. Further, the Board may lease, or borrow funds to acquire, operate or maintain equipment and facilities used in Common Areas or the performance of the Master Association's other duties under this Declaration or other agreements. Such equipment and facilities may be leased, or such funds may be borrowed from any source, including Declarant, on commercially reasonable terms and conditions.

**18.2 Maintenance of Common Areas**

The Master Association shall maintain the Common Maintenance Areas in accordance with the Community-Wide Standard. Except to the extent that Common Areas are conveyed to a Local District or sub-owners' association, the Common Areas shall include, but are not limited to:

- (a) all portions of the Common Area, including the entrance gates and other entrance features, perimeter fences, all private roads, any and all landscaping, structures, and other improvements on the Common Areas;
- (b) all landscaping, and other flora, sidewalks, streetlights, and signage within public rights-of-way within or abutting Desert Color Community, any landscaping and other flora within any public utility easement within Desert Color Community, and any landscaping and other flora abutting any area adjacent to the Community;
- (c) such portions of any additional property as may be dictated by Declarant, this Declaration, any Supplemental Declaration, any Plat, or any contract, covenant, or agreement for maintenance entered into by or for the benefit of, the Master Association; and
- (d) all ponds, streams, and/or wetlands located within Desert Color Community which serve as part of the Community's storm water drainage system, including associated improvements and equipment.

The Master Association may maintain other property which it does not own, including property dedicated to the public, conservation areas and wetlands dedicated to governmental agencies, and any and all trails and paths located on such parcel if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The

Master Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Master Association shall maintain the facilities and equipment within the Common Areas for which it has responsibility hereunder in continuous operation, except for any periods necessary, as determined by the Board, to perform required maintenance or repairs. Notwithstanding the above, during the Declarant Control Period, the Common Areas may not be reduced, nor shall operation of its facilities and equipment be discontinued, without Declarant's prior written approval.

The costs associated with maintenance, repair, and replacement of the Common Areas for which the Master Association has responsibility hereunder shall be a Common Expense. However, the Master Association may seek reimbursement from the owners of, or other Persons responsible for, certain portions of the Common Areas for which it has responsibility pursuant to this Declaration, a Supplemental Declaration, or other Recorded covenants or agreements. The maintenance, repair, and replacement of Limited Common Areas shall be a Neighborhood Expense assessed against the Lots within the benefited Neighborhood(s) or shall be an expense assessed against benefited Lots as a Specific Assessment where identified Limited Common Areas are outside of a Neighborhood.

### 18.3 Insurance

(a) **Required Coverages.** The Master Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not, the most nearly equivalent coverages as are reasonably available:

- (i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within other portions of the Common Areas to the extent that the Master Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All Master Association property insurance policies shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;
- (ii) Commercial general liability insurance on the Common Areas, insuring the Master Association and its members for damage or injury caused by the negligence of the Master Association or any of its members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$3,000,000 in 2017 U.S. dollars per occurrence and in the aggregate with respect to bodily injury, personal injury, and property damage;
- (iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;
- (iv) Directors and officers liability coverage; and
- (v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Master Association funds in an amount determined in the Board's business judgment, but not less than an amount equal to one-quarter of the annual Regular Assessments on all Lots, Parcels and Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits. Premiums for Common Area insurance shall be a Common Expense, except that (i) premiums for property insurance on Lots, Parcel or Units within a Neighborhood shall be a Neighborhood Expense; (ii) premiums for insurance on Limited Common Areas within a Neighborhood may be a Neighborhood Expense unless the Board reasonably determines that other treatment of the premiums is more appropriate; and (iii) premiums for insurance on Limited Common Areas outside of a Neighborhood may be allocated to benefited Lots, Parcels or Units as a Specific Assessment unless the Board reasonably determines that other treatment of the premises is more appropriate or the allocation of the expense is not material or cannot reasonably be accomplished.

- (b) **Policy Requirements.** The Master Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Washington County, Utah area. All policies shall name Declarant and its Affiliates as an additional insured. All Master Association policies shall provide for a certificate of insurance to be furnished to the Master Association and, upon request, to each Owner insured.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements as set forth herein. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owners and their Lots, Parcels or Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in Utah which satisfies the requirements of the Federal National Mortgage Corporation, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Master Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Master Association and its members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners within the Neighborhood and their Mortgagees, as their interests may appear;
- (iii) not be brought into contribution with insurance purchased by individual Owners, their Mortgagees, or any occupants of a Lot;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);
- (vii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Master Association to cure the defect or violation and allowance of a reasonable time to cure; and;
- (viii) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Master Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insured's and provide:

- (i) a waiver of subrogation as to any claims against the Master Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

- (iv) an endorsement requiring at least 30 days prior written notice to the Master Association of any cancellation, substantial modification, or non-renewal;
  - (v) a cross liability provision; and
  - (vi) a provision vesting in the Board exclusive authority to adjust losses, provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.
- (c) **Restoring Damaged Improvements.** In the event of damage to or destruction of Common Area or other property which the Master Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Owners together representing at least 75% of the total Master Association members decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, repairs shall be made unless at least 75% of the Owners to which such Limited Common Area is assigned vote not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Master Association within such 60-day period, then the period shall be extended for up to 60 additional days until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Master Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Master Association shall return any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement, for the benefit of the Owners of Lots, Parcel or Units to which a damaged Limited Common Area is assigned as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot, Parcel or Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the members of the Master Association, levy Special Assessments to cover the shortfall against those Owners responsible for the applicable insurance coverage premiums.

#### 18.4 Compliance and Enforcement

- (a) The Board may impose sanctions for Governing Document violations, which sanctions include those listed below and any others described elsewhere in the Governing Documents. The Board may establish a range of penalties for different violations, with violations of the Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws:
  - (i) imposing reasonable monetary fines, which shall constitute a lien upon the violator's Lot (fines may be imposed within a graduated range);
  - (ii) suspending an Owner's right to vote (except that suspension may be automatic if the Owner is more than 90 days delinquent in paying any Assessment or other charge owed to the Master Association);
  - (iii) suspending any Person's right to use Common Area amenities; provided nothing shall authorize the Board to prevent access to a Lot;

- (iv) suspending any services provided by the Master Association (except, that suspension may be automatic if the Owner is more than 30 days delinquent in paying any Assessment or other charge owed to the Master Association);
- (v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot, Parcel or Unit in a non-emergency situation (including removing personal property that violates the Governing Documents); and
- (vi) levying Specific Assessments to cover costs incurred by the Master Association to bring a Lot, Parcel or Unit into compliance with the Governing Documents.

In addition, the Board may take the following enforcement actions to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

- (i) exercising self-help or taking action to abate a violation on a Lot in an emergency situation (including towing vehicles that are in violation of parking rules and regulations);
- (ii) exercising self-help or taking action to abate a violation on the Common Area under any circumstances; or
- (iii) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility or otherwise fails to comply with any provision of this Declaration, the Master Association may Record a notice of violation or perform the required maintenance or other obligation or otherwise take steps to abate the violation and assess its costs against the Lot, Parcel or Unit and the Owner as a Specific Assessment. If the Lot, Parcel or Unit in violation is located within a Neighborhood, with a Neighborhood Organization, that Neighborhood Organization shall have the obligation to correct the violation and to enforce rights against the Owner in question. If a Neighborhood Organization fails to perform its maintenance responsibilities, the Master Association may perform the maintenance and assess the costs as a Specific Assessment against all Lots, Parcels or Units within the Neighborhood. Except in an emergency situation, the Master Association shall provide the Owner and any Neighborhood Organization reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All sanctions and remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. If the Master Association prevails in any action to enforce the Governing Documents it shall be entitled to recover all costs incurred in the action, including, without limitation, court fees and reasonable attorney's fees.

- (b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentences, the Board may determine that under the circumstances of a particular case:
  - (i) the Master Association's position is not strong enough to justify taking any further action;
  - (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
  - (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Master Association's resources; or
  - (iv) that it is not in the Master Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Master Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

By contract or other agreement, the Master Association may enforce applicable St. George City and Washington County ordinances and may enforce its ordinances within Desert Color Community.

#### **18.5 Implied Rights; Board Authority**

The Master Association may exercise any right or privilege given to it expressly or by reasonable implication by the Governing Documents, and may take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all of the Master Association's rights and powers may be exercised by the Board without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Master Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Master Association or its members.

In exercising the Master Association's rights and powers, making decisions on the Master Association's behalf, and conducting the Master Association's affairs, Board members are subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

#### **18.6 Indemnification of Officers, Directors, and Others**

The Master Association officers, directors, and committee members, acting in such capacity, shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Master Association's behalf (except to the extent that such officers or directors may also be members of the Master Association).

Subject to Utah law, the Master Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Master Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

#### **18.7 Safety and Security**

Owners and occupants of Lots, Parcel or Units and their respective guests and invitees, are responsible for their own personal safety and the security of their property in Desert Color Community. The Master Association may, but is not obligated to, maintain or support certain activities within the Community which are designed to enhance the level of safety or security which each person provides for himself and his property. However, the Master Association and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, if any, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Lot, Parcel or Unit that the Master Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Desert Color Community assumes all risks of personal injury and loss or damage to property, including Lots, Parcels and Units and the contents of Lots, Parcels or Units resulting from acts of third parties.

**18.8 Powers of the Master Association Relating to Neighborhoods**

A Neighborhood Committee is a committee of the Master Association, and the Board shall have all of the power and control over Neighborhood Committees that it has over other Master Association committees.

The Master Association shall have the power to require that specific action be taken by a Neighborhood Organization in connection with its obligations and responsibilities, such as requiring that specific maintenance or repairs or aesthetic changes be made and requiring that a proposed budget include certain items and that expenditures be made therefor. A Neighborhood Organization shall take such action within the reasonable time frame set by the Master Association. If the Neighborhood Organization fails to comply, the Master Association may take such action on behalf of the Neighborhood Organization and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

**18.9 Provision of Services**

The Master Association may provide, or provide for, services and facilities for all or any of its members and their Lots, Parcels and Units and may enter into contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Master Association's budget as a Common Expense and assess it as part of the Regular Assessments if provided to all Lots, Parcels or Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, internet access, security, caretaker, transportation, fire protection, utilities, trash collection and recycling, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Master Association as to what, if any, services shall be provided. In addition, the Board may modify or cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

**18.10 Relationships with Other Properties**

The Master Association may enter into contractual agreements or covenants to share costs with any neighboring properties or Private Amenity to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

**18.11 View Impairment**

Neither Declarant nor the Master Association guarantee or represent that any view over and across the Lots or any open space within the Community will be preserved without impairment by structures or landscaping and neither shall be obligated to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Master Association (with respect to the Common Area) and Private Amenity owners (with respect to Private Amenity property) have the right to construct improvements and add trees and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

**18.12 Relationship with Governmental and Tax-Exempt Organizations**

The Master Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Master Association, and its members. The Master Association may contribute money, real property (including Common Area), personal property, or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Master Association's annual budget. For purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.



**18.13 Right to Designate Sites for Governmental, Public Interests and Easement Rights**

During the Declarant Control Period, Declarant may designate sites within the Community for government, education, or religious activities and interests, including without limitation, fire, police, healthcare and for utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. Declarant may also retain for use by Declarant or, as approved solely by Declarant, for use by others, non-exclusive private easement rights for underground utilities, whether or not intended to serve the Community. The sites may include Common Area, in which case the Master Association shall take whatever action is required to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

**18.14 Use of Technology**

In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, the Master Association may, as a Common Expense, provide for or offer services which make use of computers and other technological opportunities. For example, to the extent Utah law permits, and unless otherwise specifically prohibited in the Governing Documents, the Master Association may send required notices by electronic means; hold Board or Master Association meetings and permit attendance and voting by electronic means; send and collect Assessment and other invoices over the computer; sponsor a Community cable television channel; create and maintain a Community intranet or Internet home page offering interactive participation opportunities for users, and maintain an "online" newsletter or bulletin board.

A computer information system (the "Desert Color Community Net") may be established to provide Owners, residents, tenants, occupants, and invitees (the "Desert Color Community Net Users") with access to advanced information technology in order to encourage interaction between and among the Desert Color Community Net Users to stimulate participation in Community life, disseminate information about activities and programs and foster a sense of community. Declarant shall have the exclusive right to establish the Desert Color Community Net. If the Desert Color Community Net is established, Declarant shall have the sole authority to select providers of services and components. Declarant is authorized to enter into use and cost sharing agreements with individuals outside the Community permitting access to the Desert Color Community Net.

Notwithstanding the amendment provisions set forth in herein, during the Declarant Control Period, Declarant shall have the right to amend this Declaration to implement the Desert Color Community Net. Such amendments may include, without limitation, establishing that funding of the Desert Color Community Net and the fees to be paid will be mandatory, establishing who may access the Desert Color Community, and establishing and limiting the number of connections entitled by each Desert Color Community Net User.

**18.15 Recycling Programs**

The Master Association may establish a recycling program and recycling center, and, in such event, all Owners and occupants of Lots, Parcels or Units shall support such program by recycling, to the extent reasonably practical, all materials which the recycling program or center is set up to accommodate. The Master Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received as a result of such recycling efforts shall be used to defray the costs of new programs.

**Article XIX – Master Association Finances**

**19.1 Budgeting and Allocating Common Expenses**

The Master Association is authorized to levy Regular Assessments against all Lots, Parcels or Units subject to assessment to fund the Common Expenses; provided, however, that the Assessments on Lots, Parcels or Units owned by Declarant shall be governed by Section 19.5. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 19.3. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, including any prior years' surplus, any non-assessment income, and anticipated assessment income.

Master Association Funds  
General Operating Fund

Reserve Fund for Repair and Replacement of Capital Items  
Primary Sources of Income  
Regular Assessments  
Specific Assessments (including Neighborhood Assessments)  
Special Assessments  
Declarant Subsidy (if any)  
One-time Contributions to Working Capital  
Secondary Sources of Income  
Facilities Rental  
Monetary Penalties  
Interest on Reserves and Delinquent Assessments  
Late Charges  
Reinvestment Fees

In determining the Regular Assessment, the Board may consider any assessment income expected to be generated from any property reasonably anticipated to become subject to assessment during the fiscal year. Declarant may, but shall not be obligated to, reduce the Regular Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 19.5(b)) which may be either a contribution, an advance against future assessments which may become payable by Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years, unless otherwise provided in a written agreement between the Master Association and Declarant.

The Board shall send a copy of the final budget and notice of the amount of the Regular Assessment to each Owner at least 30 days before the fiscal year begins. The budget shall automatically be deemed approved and there shall be no obligation to call a meeting for the purpose of considering the budget.

If the Board fails for any reason to determine a budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Regular Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

#### **19.2 Budgeting and Allocating Neighborhood Expenses**

The Master Association is authorized to levy Neighborhood Assessments equally against all Lots, Parcels or Units subject to assessment in a Neighborhood to fund Neighborhood Expenses; provided, if specified in a Supplemental Declaration or if a majority of the Owners within the Neighborhood requests in writing, any portion of the assessment intended for the exterior maintenance of structures, insurance on structures, or replacement reserves pertaining to particular structures shall be levied on each of the benefited Lots in proportion to the benefit received.

At least 60 days before the beginning of each fiscal year, the Board shall prepare the Master Association's annual budget, including therein any separate Neighborhood budgets covering the estimated Neighborhood Expenses, if any, for each Neighborhood during the coming year. Each such budget shall include any costs for additional services or a higher level of services approved and any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, including any prior years' surplus, any anticipated non-assessment income, and assessment income anticipated from the Lots, Parcels or Units in any Neighborhood.

The Board shall send a copy of the Master Association's annual budget and any Neighborhood budget and notice of the amount of the Master Association Regular Assessment and any Neighborhood Assessment for the coming year to each Owner at least 30 days before the fiscal year begins. The Neighborhood budget shall become effective automatically.

If the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the year before shall continue for the current year.

The Board may revise the budget for the Master Association or any Neighborhood and the amount of the Master Association Regular Assessment or any Neighborhood Assessment from time to time during the year, subject to the notice requirements for each affected Lot, Parcel or Unit Owners.

All amounts the Master Association collects as Neighborhood Assessments shall be held in trust for and expended solely for the benefit of the Neighborhood for which they were collected. Such amounts shall be accounted for separately from the Master Association's general funds.

### 19.3 Budgeting for Reserves

The Board shall prepare and review periodically a reserve budget for the Common Areas and for any Neighborhood for which the Master Association maintains capital items as a Neighborhood Expense. Reserve budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget or the Neighborhood Expense budgets, as appropriate, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period. So long as the Board exercises business judgment in determining the amount of the reserve fund, the amount shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. These policies may differ for general Master Association purposes and for each Neighborhood. During the Declarant Control Period, neither the Master Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent. The Board may enter into agreements with Declarant, on negotiated terms, under which Declarant may obligate itself to provide reserve funds as needed on a "cash basis" in lieu of the Master Association funding reserves on an accrual basis. Further, the Board may enter into lease or financing arrangements with Declarant to cover initial capital equipment and facilities requirements and ongoing capital requirements not met by funded reserves. The initial capital equipment to be acquired by the Master Association and that may be financed by Declarant includes equipment for road maintenance, Common Area maintenance, transit vehicles, and furniture, fixtures, vehicles and equipment necessary for the operation of the Master Association and other similar items.

### 19.4 Commencement of Assessment Obligation; Time of Payment

The obligation to pay Assessments commences on the date set forth in Section 6.11. Owners shall pay Assessments in the manner and on the dates the Board establishes. The Board may require advance payment of Assessments at closing of the transfer of title to a Lot, Parcel or Unit and may impose special requirements for Owners with a history of delinquent payment. Unless the Board otherwise provides, the Regular Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on his Lot, Parcel or Unit, the Board may require that the outstanding balance on all Assessments be paid in full immediately.

### 19.5 Obligation for Assessments

- (a) **Personal Obligation.** Each Owner, by accepting a deed or entering into a Recorded contract of sale for any Lot, Parcel or Unit, covenants and agrees to pay all Assessments authorized in the Governing Documents. All Assessments, together with interest (computed from the Assessment's due date at a rate of 18% per annum or such higher rate as the Board may establish, subject to Utah law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot, Parcel or Unit until paid in full. Upon a transfer of title to a Lot, Parcel or Unit the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance.

The Board's failure to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or release of any Owner from the obligations to pay Assessments. In such event, each Owner shall continue to pay Regular Assessments and any applicable Neighborhood Assessments on the same basis as during the last year for which an assessment is made, if any, until a new assessment is levied, at which time the Master Association may retroactively assess any shortfalls in collections.

No Owner is exempt from liability for Assessments by non-use of Common Area, abandonment of his or her Lot, Parcel or Unit or any other means. The obligation to pay Assessments is a separate and independent covenant by each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Master Association or Board to take some action or perform some required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

Upon written request, the Master Association shall furnish to any Owner liable for any type of Assessment a certificate in writing signed by a Master Association officer setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Master Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

- (b) **Declarant's Limited Assessment Obligation.** During the Declarant Control Period and so long as there is a budget deficit calculated as provided in this subparagraph, Declarant may elect either to pay assessments on fully-improved Lots, Parcels and/or Units which it owns at a rate established by Declarant from time to time, or by funding the budget deficit for the year in question. For purposes of this paragraph, the budget deficit is the difference between the amount of assessments levied on Lots, Parcels or Units (not including Declarant owned Lots, Parcels and Units) and the amount of the Master Association's actual expenditures during the fiscal year, including debt service and reserve contributions. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of a fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year if there continues to be a budget deficit during the subsequent year. Following the termination of Declarant Control Period, Declarant shall not be required to pay Assessments on fully-improved Lots which it owns or to fund the activities of the Master Association if there is no budget deficit. If there is a budget deficit after the termination of the Declarant Control Period, Declarant shall pay assessments on its unsold Lots at 33 1/3% of the rate of the assessment applicable to fully improved Lots, Parcels or Units owned by other Owners.

Regardless of Declarant's election, Declarant's assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

#### 19.6 Lien for Assessments

The Master Association shall have a lien against each Lot, Parcel or Unit to secure payment of delinquent Assessments by the Owner of such Lot, Parcel or Unit, as well as interest, late charges (subject to Utah law), and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Master Association's lien, when Assessments become delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

At a foreclosure sale, the Master Association may bid for the Lot, Parcel or Unit and acquire, hold, lease, mortgage, and convey the Lot, Parcel or Unit. The Master Association may sue for unpaid Assessments and other charges without foreclosing or waiving its assessment lien.

Sale or transfer of any Lot, Parcel or Unit shall not affect the assessment lien or relieve such Lot, Parcel or Unit from the lien for any subsequent Assessments. However, the sale or transfer of any Lot, Parcel or Unit pursuant to foreclosure by the first Mortgagee extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure. The purchaser of a foreclosed Lot, Parcel or Condominium shall not be personally liable for Assessments on such Lot, Parcel or Unit due prior to the foreclosure sale. Such unpaid Assessments shall be a Common Expense collectible from Owners of all Lots, Parcels and Units subject to assessment, including such purchaser, its successors and assigns.

Notwithstanding the above, while the Master Association owns a Lot, Parcel or Unit: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot, Parcel or Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot, Parcel of Unit had it not been acquired by the Master Association.

**19.7 Exempt Property**

The following property shall be exempt from payment of Regular Assessments, Neighborhood Assessments, Reinvestment Fees and Special Assessments:

- (a) All Common Area and other portions of the Community which are not Lots or Parcels;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by any Neighborhood Organization for the common use and enjoyment of its members, or owned by the members of a Neighborhood Organization as tenants-in-common.

In addition, both Declarant and the Master Association shall have the right, but not the obligation, to grant exemptions to schools, houses of worship, or Lots or Parcels owned by and used by Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code.

**19.8 Use and Consumption Fees**

The Board may charge use and consumption fees to any Person using Master Association services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users.

**Article XX – Amendment of Declaration**

**20.1 By Declarant**

In addition to specific amendment rights granted elsewhere in this Declaration, until a Lot, Parcel or Unit is conveyed to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Corporation or the Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot, Parcel or Unit unless the Owner shall consent in writing.

During the Declarant Control Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 15% of the Members.

**20.2 By Master Association**

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent of at least 67% of the votes of the Members. In addition, during the Declarant Control Period, Declarant's consent is also required to amend the Declaration on a vote of the Members.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**20.3 Validity and Effective Date**

No amendment may remove, revoke, or modify any right or privilege of Declarant or Master Association without the written consent of Declarant or the Master Association, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

**20.4 Exhibits**

Exhibits "A," "B," "C," "D" and "E" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

**ARTICLE XXI – Miscellaneous**

**21.1 Severability**

Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

**21.2 Construction of this Declaration**

This Declaration and the provisions contained herein shall be construed in accordance with the laws of the State of Utah. Except for Special Declarant Rights reserved to Declarant, the Board of Directors of the Master Association shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret the provisions hereof, and its good faith determination, construction or interpretation shall be final and binding.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF Declarant, has caused these presents to be signed this 20<sup>th</sup> day of December, 2018.

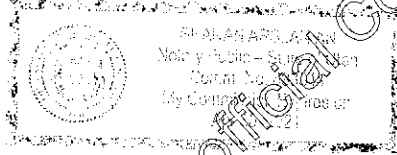
DESERT COLOR ST. GEORGE, LLC  
By: Desert Color Manager LLC, its Manager

By: [Signature]  
Name: BROOK COLE  
Its: Manager

STATE OF UTAH

COUNTY OF WASHINGTON

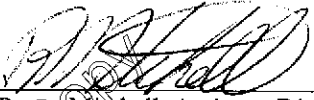
On this 20<sup>th</sup> day of December, 2018, personally appeared before me Brook Cole, the Manager of Desert Color Manager LLC, the Manager of Desert Color St. George, LLC, who acknowledged that he, being duly authorized, did execute the foregoing instrument on behalf of Desert Color St. George, LLC.



[Signature]  
Notary Public

**Approved for recording:**

SCHOOL AND INSTITUTIONAL  
TRUST LANDS ADMINISTRATION

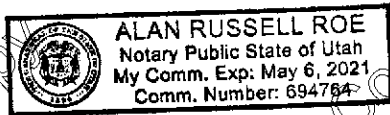
By:   
Roger Mitchell, Assistant Director

APPROVED AS TO FORM:  
SEAN D. REYES  
ATTORNEY GENERAL

By:   
Chris Shiraldi  
Special Assistant Attorney General

STATE OF UTAH  
COUNTY OF SALT LAKE )  
ss.

On this 12<sup>th</sup> day of December 2018, personally appeared before me Roger Mitchell, Assistant Director of the School and Institutional Trust Lands Administration, who acknowledged that he, being duly authorized, did execute the foregoing instrument on behalf of the School and Institutional Trust Lands Administration.

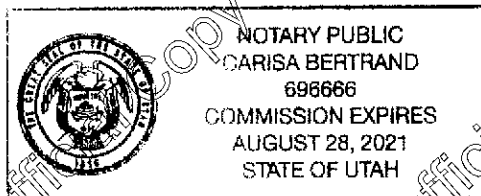


  
Notary Public



The undersigned consents to the recording of the above Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for Desert Color Community.

Jamison Smith  
By: Big Shots Golf Real Estate LLC  
Name: Jamison Smith  
Its: Manager  
Date: 9-21-, 2018.



STATE OF Utah )  
COUNTY OF Washington ) ss.

The foregoing instrument was acknowledged before me this 21 day of September, 2018, by Jamison Smith, of Big Shots Golf Real Estate LLC.

Carisa Bertrand  
NOTARY PUBLIC  
Address: 13 Main St Saint George UT 84770  
My Commission Expires: August 28 2021

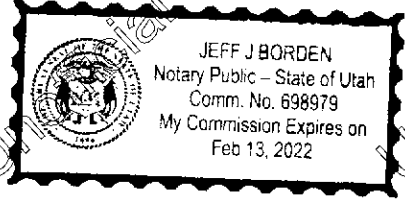
The undersigned consents to the recording of the above Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for Desert Color Community.

[Signature]  
By: Ryan Reeve  
Name: \_\_\_\_\_  
As: Owner  
Date: 10/12, 2018

STATE OF Utah  
COUNTY OF Washington ss.

The foregoing instrument was acknowledged before me this 12 day of October, 2018, by Ryan Reeve of \_\_\_\_\_.

[Signature]  
NOTARY PUBLIC  
Address: 36 N 1000 W  
My Commission Expires: Feb 13, 2022



**EXHIBIT "A"**

**PROPERTY**

The real property is located in Washington County, State of Utah, more particularly described as follows:

**DESERT-COLOR SOUTHERN PARCEL**

Beginning at a point which is North  $88^{\circ}46'19''$  West 1879.38 feet along the North section line and South  $00^{\circ}00'00''$  East 3148.23 feet from the North 1/4 corner of Section 35, Township 43 South, Range 16 West of the Salt Lake Base and Meridian said point also being a point on the state line between the State of Utah and the State of Arizona said point also being the Southeasterly corner of the Nature Conservancy parcel with Parcel ID No. SG-6-3-35-112 and running thence along the Easterly boundary of said Nature Conservancy parcel North  $01^{\circ}04'41''$  East 470.84 feet to the Southeasterly corner of the Nature Conservancy parcel with Parcel ID No. SG-6-3-35-430; thence along the Easterly boundary of said Nature Conservancy parcel North  $01^{\circ}04'40''$  East 976.74 feet to the Northeasterly corner of said Nature Conservancy parcel said corner also being on the Easterly Right of Way of Interstate 15; thence along said Easterly Right of Way through the following six (6) courses: North  $28^{\circ}34'00''$  East 114.56 feet; thence North  $55^{\circ}35'40''$  East 223.87 feet; thence North  $28^{\circ}34'22''$  East 2200.00 feet; thence South  $61^{\circ}25'38''$  East 250.00 feet; thence South  $75^{\circ}27'48''$  East 206.16 feet; thence North  $30^{\circ}16'12''$  East 1350.34 feet; thence leaving said Easterly Right of Way North  $81^{\circ}19'41''$  East 249.88 feet; thence North  $08^{\circ}40'19''$  West 400.00 feet; thence South  $81^{\circ}19'41''$  West 249.65 feet to a point on said Easterly Right of Way; thence along said Easterly Right of Way through the following five (5) courses: North  $08^{\circ}39'43''$  West 228.21 feet; thence North  $28^{\circ}41'53''$  East 299.57 feet; thence North  $16^{\circ}45'54''$  East 200.61 feet; thence North  $14^{\circ}54'48''$  East 728.00 feet; thence North  $28^{\circ}34'00''$  East 2864.00 feet to a point on the Southwesterly Right of Way of the Atkinville Interchange; thence along said Southwesterly Right of Way through the following twenty five (25) courses: North  $33^{\circ}39'43''$  East 676.43 feet; thence North  $42^{\circ}22'04''$  East 238.09 feet to the point of curvature of a 57.00 foot radius curve to the right; thence Northeasterly along the arc of said curve 88.59 feet through a central angle of  $89^{\circ}02'52''$  the chord of said curve bears North  $86^{\circ}53'30''$  East for a distance of 79.94 feet to the point of tangency; thence South  $48^{\circ}35'04''$  East 153.04 feet; thence South  $51^{\circ}52'44''$  East 37.25 feet; thence South  $51^{\circ}38'00''$  East 46.28 feet to the point of curvature of a 500.00 foot radius curve to the right; thence Southeasterly along the arc of said curve 105.87 feet through a central angle of  $12^{\circ}07'55''$  the chord of said curve bears South  $45^{\circ}34'02''$  East for a distance of 105.67 feet to the point of tangency; thence South  $39^{\circ}30'04''$  East 150.78 feet to the point of curvature of an 800.00 foot radius curve to the right; thence Southeasterly along the arc of said curve 130.28 feet through a central angle of  $09^{\circ}19'49''$  the chord of said curve bears South  $35^{\circ}09'03''$  East for a distance of 130.13 feet to the point of tangency; thence South  $30^{\circ}18'38''$  East 78.99 feet; thence South  $34^{\circ}28'13''$  East 88.02 feet; thence South  $27^{\circ}49'54''$  East 97.89 feet; thence South  $27^{\circ}49'54''$  East 107.28 feet; thence South  $27^{\circ}49'54''$  East 7.76 feet; thence South  $24^{\circ}58'12''$  East 480.75 feet to the point of curvature of a 180.40 foot radius curve to the right; thence Southwesterly along the arc of a said curve 300.00 feet through the central angle of  $95^{\circ}16'49''$  the chord of said curve bears South  $22^{\circ}43'10''$  West for a distance of 266.60 feet to the point of a 600.00 foot radius compound curve to the right; thence Southwesterly along the arc of said curve 225.56 feet through a central angle of  $21^{\circ}32'22''$  the chord of said curve bears South  $81^{\circ}34'15''$  West for a distance of 224.23 feet to the point of tangency; thence North  $88^{\circ}11'29''$  West 104.94 feet to the point on the arc of a 1955.00 foot radius curve to the left; thence Southwesterly along the arc of said curve 136.99 feet through a central angle of  $04^{\circ}00'53''$  the chord of said curve bears South  $04^{\circ}09'41''$  West for a distance of 136.96 feet to the point of tangency; thence South  $02^{\circ}09'14''$  West 17.91 feet; thence North  $85^{\circ}45'20''$  East 53.53 feet; thence South  $86^{\circ}14'05''$  East 139.05 feet; thence South  $88^{\circ}01'08''$  East 141.37 feet; thence North  $89^{\circ}44'45''$  East 157.82 feet to the point of curvature of a 196.00 foot radius curve to the right; thence Southeasterly along the arc of said curve 139.11 feet through a central angle of  $40^{\circ}39'59''$  the chord of said curve bears South  $69^{\circ}55'16''$  East a distance of 136.21 feet to a point on the arc of a 196.00 foot radius curve to the right said point being common to said Southwesterly Right of Way of Atkinville Interchange and the Southerly Right of Way of the Southern Parkway; thence leaving said Southwesterly Right of Way of Atkinville Interchange

and along said Southerly Right of Way of the Southern Parkway through the following twenty two (22) courses: Southeasterly along the arc of said 196.00 foot radius curve 78.64 feet through a central angle of 22°59'15" the chord of said curve bears South 38°05'39" East 78.11 feet to the point of tangency; thence South 26°36'08" East 844.17 feet; thence South 28°11'38" East 237.59 feet to the point of curvature of a 2710.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 465.78 feet through a central angle of 09°50'52" the chord of said curve bears South 33°13'16" East for a distance of 465.21 feet to the point of tangency; thence South 37°58'14" East 344.81 feet; thence South 38°35'35" East 702.55 feet; thence South 37°08'17" East 128.76 feet; thence South 40°21'00" East 74.61 feet; thence South 35°26'19" East 257.64 feet to the point of curvature of a 3835.00 foot radius curve to the right; thence Southeasterly along the arc of said curve 347.55 feet through a central angle of 05°11'33" the chord of said curve bears South 35°57'58" East a distance of 347.43 feet to the point of tangency; thence South 32°42'47" East 193.47 feet; thence South 30°52'15" East 685.71 feet; thence South 30°24'56" East 824.93 feet; thence South 30°55'10" East 21.77 feet; thence South 30°55'10" East 100.00 feet; thence South 30°55'10" East 389.26 feet; thence South 32°11'25" East 274.63 feet; thence South 34°43'57" East 606.70 feet to the point of curvature of a 7350.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 789.48 feet through a central angle of 06°09'15" the chord of said curve bears South 42°32'12" East a distance of 789.10 feet to the point on the arc of a 7350.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 2555.47 feet through a central angle of 19°55'15" the chord of said curve bears South 55°34'27" East a distance of 2542.62 feet to a point on the arc of a 7350.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 100.00 feet through a central angle of 00°46'46" the chord of said curve bears South 65°55'28" East a distance of 100.00 feet to a point on the arc of a 7350.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 2751.51 feet through a central angle of 21°26'56" the chord of said curve bears South 77°02'19" East 2735.47 feet to a point of non-tangency; thence South 02°14'12" West 73.75 feet to a point on the state line between the State of Utah and the State of Arizona; thence along said state line through the following four (4) courses: North 88°43'10" West 2641.36 feet to state line marker No. 26; thence North 88°43'10" West 5287.61 feet to state line marker No. 25; thence North 88°43'26" West 5277.59 feet to state line marker No. 24; thence North 88°43'03" West 1429.48 feet to the point of beginning.

Less and excepting that portion of property lying within the dedicated Right of Way of Black Mountain Drive as shown on the Roadway Dedication plat thereof recorded as Document No. 20090041241 in the office of the Washington County Recorder in said County in the State of Utah also less and excepting that portion of property lying within the dedicated Right of Way of Astragalus Drive as shown on the Roadway Dedication plat thereof recorded as Document No. 20090026781 in the office of said Washington County Recorder.

Parcel Nos. SG-5-3-39-SLL, SG-6-3-23-221, SG-3-23-222

**DESERT COLOR NORTHERN PARCEL (A PORTION THEREOF)**

Beginning at the South 1/4 Corner of Section 24, Township 43 South, Range 16 West, Salt Lake Base and Meridian. Running thence along the Center Section line of Section 25 South 01°15'53" West 642.36 feet; thence South 06°41'39" East 1100.21 feet; thence South 52°24'35" West 400.00 feet to a point on the arc of a curve to the left having a radius of 15150.00 feet, said point also being on the Northerly Right-of-Way of State Route 7; thence along said Right-of-Way the following five (5) courses: Northwesterly 301.11 feet along the arc of said curve through a central angle of 01°08'20", the radial direction bears South 52°24'35" West, to the point of non-tangency; thence North 38°43'44" West 58.48 feet to a point on the arc of a curve to the right having a radius of 4770.00 feet; thence Northwesterly 1262.98 feet along the arc of said curve through a central angle of 15°10'14", the radial direction bears North 51°16'16" East; thence North 23°33'44" West 456.30 feet; thence North 23°33'30" West 410.00 feet to Northeasterly Right of Way of Atkinville Interchange and thence along said Northeasterly Right of Way through the following six (6) courses: North 42°00'27" East 249.93 feet to the point of curvature of a 337.00 foot radius curve to the left; thence Northeasterly along the arc of said curve 382.41 feet through a central angle of 65°00'59" the chord of said curve bears North 09°30'27" East for a distance of 362.22 feet to the point of tangency.

thence North 23°00'02" West 287.12 feet to the point of curvature of a 456.00 foot radius curve to the left; thence Northwesterly along the arc of said curve 295.96 feet through a central angle of 37°11'14" the chord of said curve bears North 41°35'39" West for a distance of 290.79 feet to the point of tangency; thence North 60°11'16" West 56.89 feet; thence North 49°12'22" West 46.69 feet to a point on the Easterly Right of Way of Astragalus Drive said point also being a point on the arc of a 2045.00 foot radius curve to the left; thence along said Easterly Right of Way through the following four (4) courses: Northeasterly along the arc of said curve 599.23 feet through a central angle of 16°47'20" the chord of said curve bears North 17°01'25" East for a distance of 597.09 feet to the point of reverse curvature of a 1955.00 foot radius curve to the right; thence Northeasterly along the arc of said curve 489.38 feet through a central angle of 14°20'33" the chord of said curve bears North 15°48'01" East for a distance of 488.11 feet to the point tangency; thence North 20°57'24" East 144.88 feet; thence North 89°20'58" West 47.35 feet to a point on the Easterly boundary of the Kenworth Sales Company Inc. parcel recorded as Entry No. RS006903-16 in the office of the Washington County Recorder, in said County, in the State of Utah said point also being a point on the arc of a 2015.00 foot radius curve to the left and running thence along said Easterly boundary through the following four (4) courses: Northeasterly along the arc of said curve 594.10 feet through a central angle of 16°53'35" the chord of said curve bears North 10°54'16" East for a distance of 591.95 feet to the point of tangency; thence North 02°27'28" East 805.89 feet; thence North 15°03'11" West 307.76 feet; thence North 06°45'25" East 185.68 feet to a point on the Easterly Right of Way of Interstate 15; thence along said Easterly Right of Way North 28°34'00" East 38.33 feet; thence leaving said Easterly Right of Way South 72°53'53" East 1313.40 feet to the Center Section line of Section 24 of said Township 43 South Range 16 West; thence along the Center Section line South 01°16'53" West 3951.70 feet to the South ¼ Corner of Section 24, Township 43 South, Range 16 West Salt Lake Base and Meridian, said point also being the point of beginning.

Containing 7,208,826 sq. ft. or 165.49 acres.

Parcel Nos. SG-6-3-24-345, SG-6-3-24-344, SG-6-3-25-412, SG-5-3-31-433-5LL  
+ SG-6-3-26-110

**EXHIBIT "B"**

**ADDITIONAL PROPERTY  
(North and East Areas)**

Any real property located in the North Option Parcel, East Option Parcel, or within ten (10) miles of the perimeter boundary of the real property to be added hereto by Supplement to this Declaration as defined in and pursuant to the terms of that certain Development Lease Number 1100 between the State of Utah, acting through the School and Institutional Trust Lands Administration, as "Lessor," and Desert Color St. George, LLC, a Utah limited liability company, as "Lessee," dated September 11, 2017, and recorded on September 12, 2017, as Document No. 20170036996 in the official records of the Washington County Recorder, State of Utah, as the same may be amended from time to time.

**EXHIBIT "C"**

**REGULAR ASSESSMENT CALCULATION FORMULA**

**Residential/Resort**

Subject to Section 6.9 of the Declaration, Regular Assessments for each residential/resort Lot, Parcel or Unit shall be calculated as follows:

The total annual Common Expenses (after taking into account any of the considerations described in Section 6.6 of the Declaration deemed appropriate by the Board of Directors) (i) multiplied by a fraction, the numerator of which equals the total developable acreage contained in the Community zoned for residential or resort use and the denominator of which equals the total developable acreage contained in the Community, (ii) divided by the total number of residential/resort Lots, Parcels and Units under all then existing Plats

**Commercial**

Subject to Section 6.9 of the Declaration, Regular Assessments for each commercial Lot, Parcel or Unit shall be calculated as follows:

The total annual Common Expenses (after taking into account any of the considerations described in Section 6.6 of the Declaration deemed appropriate by the Board of Directors) (i) multiplied by a fraction, the numerator of which equals the total developable acreage contained in the Community zoned for commercial use and the denominator of which equals the total developable acreage contained in the Community, (ii) multiplied by a fraction, the numerator of which equals the total acreage of the subject commercial Lot, Parcel or Unit and the denominator of which equals the total acreage of all commercial Lots, Parcels and Units in the Community.

**EXHIBIT "D"**

**EXCLUSIVITY RESTRICTION – MAP**

[see attached]

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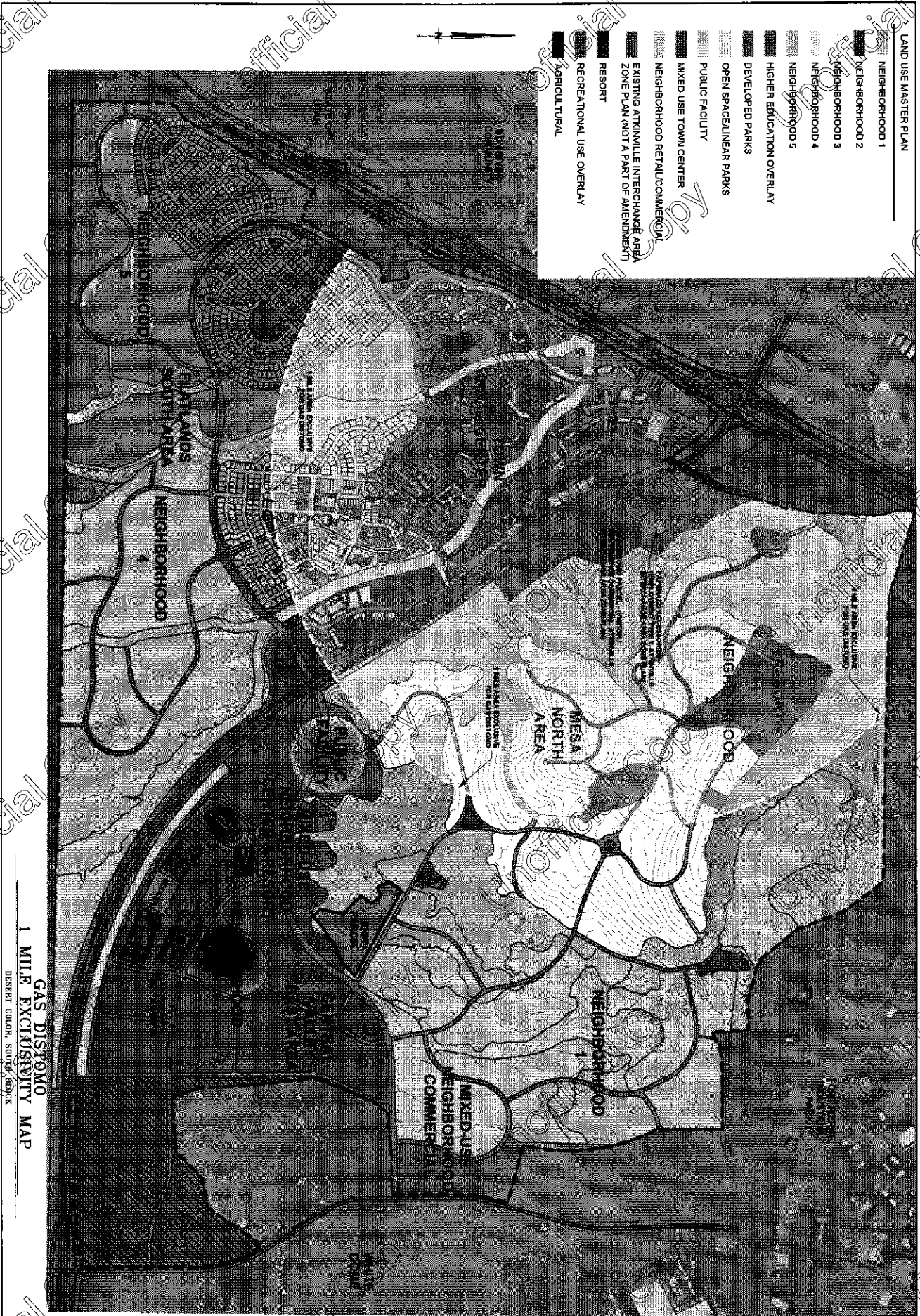
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LAND USE MASTER PLAN

- NEIGHBORHOOD 1
- NEIGHBORHOOD 2
- NEIGHBORHOOD 3
- NEIGHBORHOOD 4
- NEIGHBORHOOD 5
- HIGHER EDUCATION OVERLAY
- DEVELOPED PARKS
- OPEN SPACE/LINEAR PARKS
- PUBLIC FACILITY
- MIXED-USE TOWN CENTER
- NEIGHBORHOOD RETAIL/COMMERCIAL
- EXISTING ATKINVILLE INTERCHANGE AREA ZONE PLAN (NOT A PART OF AMENDMENT)
- RESORT
- RECREATIONAL USE OVERLAY
- AGRICULTURAL

**1 MILE EXCLUSIVITY MAP**  
GAS DISTOMO  
DESERT COLOR, SOUTH BLOCK

<p><b>BUSH &amp; GUGGELL, INC.</b> Engineers - Planners - Surveyors</p> <p>1111 North Central Avenue Suite 100 Phoenix, AZ 85004 Phone: (602) 973-2000 / Fax: (602) 973-2001 www.bushandguggell.com</p>	<p>Sheet: 1 of 1</p> <p>Date: 12/20/18</p> <p>Drawn: J. Aul</p> <p>Approved: J. Aul</p> <p>Scale: 1" = 200'-0" (30'-0" LONG, 15'-0" WIDE, 20'-0" DEEP)</p>	<p>Project: GAS DISTOMO 1 MILE EXCLUSIVITY MAP</p> <p>Location: DESERT COLOR, SOUTH BLOCK</p>
	<p>DATE PLOTTED: 12/20/18 3:05:59 PM</p>	<p>DATE PRINTED: 12/20/18 3:05:59 PM</p>

**EXHIBIT "E"**

**BYLAWS**

[see attached]

**BYLAWS**  
**OF**  
**DESERT COLOR COMMUNITY MASTER ASSOCIATION, INC.**

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**BYLAWS**

**OF**

**DESERT COLOR COMMUNITY MASTER ASSOCIATION, INC.**

**ARTICLE 1**

**LOCATION AND REGISTERED AGENT**

1.1 Principal Office. The principal office of DESERT COLOR COMMUNITY MASTER ASSOCIATION, INC., hereinafter referred to as the "*Master Association*" or "*Association*" shall be located in Utah County, Utah, at such place as the Board of Directors of the Master Association (the "*Board*") shall designate. The location of the principal office may be changed by resolution of the Board.

1.2 Registered Office and Agent. The registered office and agent of the Master Association, as required by Section 501 of the Utah Revised Nonprofit Corporation Act, Utah Code § 16-16a-101 et seq. (1953, as amended), may be changed from time to time as provided in the Act.

**ARTICLE 2**  
**DEFINITIONS**

Except as otherwise provided herein, the definitions set forth in the Utah Revised Nonprofit Corporation Act (hereinafter the "*Act*"), the Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for Desert Color Community ("*Master Declaration*"), and the Articles of Incorporation of Desert Color Community Master Association, Inc. ("*Articles*"), and any applicable amendments and supplements thereto or restatements thereof shall control in these Bylaws ("*Bylaws*").

**ARTICLE 3**  
**MEMBERSHIP AND VOTING RIGHTS**

3.1 Membership. The Members of the Master Association include every Owner of a Lot, Parcel or Unit within the Properties and the Declarant.

3.2 Voting Rights; Classes. The Master Association has two classes of voting membership, Class "A" and Class "B".

(a) Class A. Every Owner is a Class A Member with the exception of the Declarant, until Declarant's membership converts to Class A membership as provided for herein. Class A Members are entitled to one vote for each Lot, Parcel or Unit owned. When more than one person holds an interest in any Lot, Parcel or Unit, the group of such persons shall be a Member. The vote for such Lot, Parcel or Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot, Parcel or Unit. A vote cast at any Association meeting by any of such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot, Parcel, or Unit 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, Parcel or Unit. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

(b) Class B. The Class B Member is the Declarant. The Class B member is entitled to five (5) votes for each Lot, Parcel, Unit or acre of undeveloped property within the Property owned or controlled by Declarant. When there are multiple parties with Declarant rights, the group of such parties shall collectively be a single Declarant for purposes of allocating the Class B Member's votes. The Declarant's votes shall be exercised as the collective parties that are Declarants among themselves determine, but in no event shall more than the allotted votes be cast with respect to any vote given to Declarant. Declarant's Class B membership shall continue until the expiration or earlier termination of the Declarant Control Period. If any Declarant (including any developer, builder or other person who was assigned a portion of Declarant's rights or privileges) surrenders its Class B membership status while owning a Lot, Parcel or Unit within the Property, then that surrendering Declarant's membership status in such Lot, Parcel or Unit shall be converted to Class A.

3.3 Declarant's Voting Rights in Expansion Area. In the case of expansion (as provided in the Master Declaration), the class of voting membership appurtenant to Lots, Parcels or Units owned by Declarant in the expansion area shall be Class B during the Declarant Control Period.

3.4 Evidence of Membership. No person, persons, entity or entities shall exercise the rights of membership until satisfactory proof has been furnished to the Secretary of the Master Association of qualification as a Member, or nominee of a Member, pursuant to the terms of the Articles and the Bylaws. Such proof may consist of a copy of a duly executed and acknowledged warranty deed or title insurance policy showing said person, persons, entity or entities, or the person nominating him or her qualified in accordance therewith, in which event said deed or title insurance policy shall be deemed conclusive evidence in the absence of a conflicting claim based upon a later deed or title insurance policy.

3.5 Suspension of Membership. The rights of membership are subject to the payment of assessments and other charges levied by the Master Association. If a Member fails to make payment of any assessment or other charges levied by the Master Association within 30 days after the same shall become due and payable, the Master Association, in addition to any other rights or remedies available under the Master Declaration or at law or in equity, has the right to suspend the voting rights of such Member until such assessment or charge has been paid. Rights of a Member may also be suspended for violation of any of the use restrictions, and for infraction of any rules and regulations established by the Board. Except for suspension of voting rights for failure to pay assessments or other charges, any suspension of the rights of Membership shall be pursuant to notice and hearing. The Board shall establish a procedure for notice and hearing that is fair and reasonable taking into consideration all of the relevant facts and circumstances.



**ARTICLE 4  
MEETINGS OF MEMBERS**

4.1 Annual Meetings. The first annual meeting of the Master Association shall be held within one year after the date of the incorporation of the Master Association. Subsequent annual meetings shall be set by the Board. If the day of the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour of the first day following which is not a legal holiday.

4.2 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board, or upon written request of the Members who are entitled to vote 33% of the votes of the Entire Membership.

4.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 14 days before such meeting to each Member entitled to vote on the matter for which the meeting was called, addressed to the Member's address last appearing on the books of the Master Association. Such notice shall specify the place, date and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

4.4 Waiver of Notice. The notice provided for hereinabove is not indispensable and any meeting of the Members shall be deemed validly called for all purposes if all Members are represented thereat in person or by proxy, or if a quorum is present and waivers of notice of time, place, and purpose of such meeting are duly executed in writing either before or after said meeting by those Members not so represented or not given such notice. The attendance of any Member at a meeting in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by that Member.

4.5 Quorum. Except as hereafter provided, and as otherwise provided in the Articles or Master Declaration, the presence at the meeting of Members entitled to cast, or of proxies entitled to cast, fifty percent (50%) of all the votes of each class of membership shall constitute a quorum for any action. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, at such adjourned meeting a quorum will be present with the participation of any number of owners present in person or by proxy. Where the Master Declaration requires a percentage vote of all Members, the quorum required for such vote be the same as the minimum percentage vote required to approve the action which is the subject of the vote; provided however, that in calculating any such percentage, Members whose voting rights have been suspended shall not be included.

4.6 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary prior to the vote being taken at the meeting for which the proxy is valid. Every proxy shall be revocable and shall automatically cease when the membership of the Member voting by proxy has ceased.

4.7 Voting. If a quorum is present, the affirmative vote of the majority of the votes present at the meeting shall be the act of all the Members, unless the act of a greater number is expressly required by law, by the Master Declaration, by the Articles, or elsewhere in these Bylaws. Upon direction of the presiding officer, the vote upon any business at a meeting shall be by ballot, but otherwise any such vote need not be by ballot.

4.8 Action by Written Ballot in Lieu of Meeting. Any action authorized to be taken at any annual, regular, or special meeting may be taken by written ballot in lieu of such meeting if the ballot is delivered by or at the direction of the Secretary to each Member entitled to vote on the matter, which ballot shall (a) set forth in detail the proposed action; (b) provide an opportunity to vote for or against the proposed action; (c) state the date when such ballot must be returned in order to be counted, which date shall not be less than thirty (30) days after delivery of the ballot; (d) state by what means it shall be returned and where; and (e) shall be accompanied by any written information, which has been approved by a majority of the Board, sufficient to permit each Member casting the ballot to reach an informed decision on the matter. Each ballot shall contain a means of identification for each Member entitled to vote, which shall identify such Member by Unit number. The number of votes cast by written ballot pursuant to this section shall constitute a quorum for action on the matter. Where any matter in the Governing Documents calls for the consent of Members but does not specify that such consent must be obtained at a meeting, then no meeting of the Members shall be required or is necessary to obtain such consents.

4.9 Acceptance of Votes. If the name signed on any consent, written ballot, vote, waiver, proxy appointment, or proxy appointment revocation, corresponds to the name of a Member, the Master Association, acting in good faith, may accept and give effect to the same as the act of the Member, notwithstanding that the signature may not be technically correct. For example, if a Lot is owned by a trust, thereby making the trust the Member, and the individual fails to sign as "trustee," it shall not invalidate the signature or vote of the Member.

4.10 Procedure; Parliamentary Rules. The order of business and all other matters of procedure at every meeting of Members shall be determined by the presiding officer. Except as may be modified by resolution of the Board, *Robert's Rules of Order* (current edition) will govern the conduct of Master Association proceedings when not in conflict with Utah law or the Governing Documents.

4.11 Place of Meetings. The Board may designate the place of any annual or special meeting of the Members by stating or fixing such place pursuant to resolution, provided, however, that such place must be within the State of Utah. If the Board makes no designation, annual and regular meetings shall be held at the Master Association's principal office.

## ARTICLE 5 BOARD OF DIRECTORS

5.1 Qualifications. A Director must be a natural person of at least 18 years of age or older and, except with respect to Directors appointed by the Declarant, a Member of the Master Association. In the event that a Member is not a natural person, a natural person who holds an

ownership interest in the entity which is the Member may serve as a member of the Board if duly appointed or elected.

5.2 Number. The affairs of this Master Association shall be managed by a Board consisting of a minimum of three and a maximum of nine Directors. The number of persons constituting the whole Board of Directors may be fixed from time to time within this range by resolution of the Board.

5.3 Term of Office. At the first annual meeting at which Members elect the Directors, the two persons obtaining the highest number of votes shall serve for two years and all others shall serve for one year. Thereafter, upon the expiration of the initial term of each Director, his or her successor shall be elected for two-year terms. Nothing shall prevent any person from serving as a Director for successive terms or more than one term if duly elected by the Members.

5.4 Removal. Any Director may be removed from the Board with cause, by a majority vote of the Members of the Master Association. Any Director who is absent from three consecutive Board meetings shall automatically be removed from the Board unless otherwise determined by the Board. In the event of death, resignation, or removal of a Director, a temporary successor shall be selected by the remaining Directors and shall serve for the unexpired term of his or her predecessor or until special election of a successor.

5.5 Compensation; Reimbursement. No Director shall receive compensation for any service he or she may render to the Master Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his or duties as a Director.

5.6 Declarant Control Period. Notwithstanding anything herein to the contrary, during the Declarant Control Period the Master Association shall be managed by a Board consisting of between three and nine Directors appointed by Declarant.

## **ARTICLE 6 NOMINATION AND ELECTION OF DIRECTORS**

6.1 Nomination. Nominations for election to the Board may be made from the floor at the annual meeting of Members. In addition, the Board may establish a nominating committee to nominate qualified Members for election to the Board. If established, the Nominating Committee shall consist of a chairman, who shall be a member of the Board, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board at least sixty (60) days prior to each annual meeting of the Members, to serve through such annual meeting. The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

6.2 Election; Voting. Election to the Board shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation and these Bylaws. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

6.3 Voting by Mail. Election of Directors may be handled by mail voting in the following manner, which may be, at the determination of the Board, the sole method of voting or used in conjunction with in-person voting. Ballots shall be sent to each Member by the Secretary not more than sixty (60) days and not fewer than thirty (30) days before the date set for election. Ballots shall instruct Members to seal their ballot in a ballot envelope and then place the sealed envelope into a larger envelope along with a signed paper, provided by the Secretary, identifying the Member whose vote is contained in the inner envelope. Ballots may be delivered to the Secretary in person or by mail; provided, however, that ballots must be received by the Secretary prior the election. Upon receiving the ballots, the corporate secretary shall open the outer envelope, remove the identification paper, and record which Members have voted. The identification paper and outer envelope shall then be separated from the ballot envelope. The ballot envelope shall be retained by the Secretary until opened on the election date.

6.4 Electronic Voting. The Board, by written resolution, may establish a policy for Members to vote electronically. In order to ensure the integrity of the voting, the policy shall require that Members register and use passwords provided by the Master Association to get access for voting purposes. Any such policy shall be in writing and notice of the policy shall be given to Members at least 60 days prior to any proposed electronic voting, in order to allow Members time to register to vote.

## ARTICLE 7 MEETINGS OF DIRECTORS

7.1 Regular Meetings. The first meeting of the Board will follow the annual meeting of the Members at which a Board is first elected by the Members. Thereafter, regular meetings of the Board shall be held at such date, time and place as may be determined from time to time by resolution of the Board. Written notification of each regular Board meeting shall be delivered or mailed to all Directors at least seven days prior to any regular Board meeting. Delivery or mailing under this section may be accomplished by email by using the current email address on file for each member of the Board. All meetings of the Board shall comply with the provisions of Section 57-8a-226 of the Community Association Act.

7.2 Special Meetings. Special meetings of the Board shall be held when called by the President of the Master Association or by any two Directors, after not less than two days' notice to each Director.

7.3 Quorum. A majority of the number of Directors shall constitutes a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law, the Articles, or these Bylaws.

7.4 Action Without a Meeting. Whenever the Directors are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by all Directors.

7.5 Place of Meetings. Regular or special meetings of the Board during the Declarant Control Period may be held in or out of the State of Utah. Regular or special meetings of the Board who are elected by Members shall be held in Washington County, Utah.

7.6 Presence of Directors at Meetings. The Board may allow any Director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating in the meeting may hear each other during the meeting. A Director participating in a meeting through means permitted under this section shall be considered to be present in person at the meeting.

## **ARTICLE 8 POWERS AND DUTIES OF THE BOARD**

8.1 Powers. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Master Association managed under the direction of, the Board, subject to any powers or limitations set forth in the Master Declaration, the Act, or the Articles. This includes the authority to prepare, execute, certify and record amendments to the Master Declaration on behalf of the Master Association for any amendments made pursuant to the amendment procedures provided in the Master Declaration.

8.2 Duties. The Board has the duty to manage the affairs of the Master Association in accordance with the terms of the Act, the Articles, the Master Declaration, and these Bylaws, and other Governing Documents.

## **ARTICLE 9 OFFICERS AND THEIR DUTIES**

9.1 Enumeration of Offices. The officers of the Master Association shall be a President and one or more Vice-Presidents, who shall at all times be Members of the Board, a Secretary and a Treasurer, who need not be Members of the Board nor of the Master Association, and such other officers as the Board may from time to time create by resolution.

9.2 Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

9.3 Term. The Board shall elect the officers of the Master Association annually and each shall hold office for one (1) year unless the officer shall sooner resign, or be removed, or otherwise be disqualified to serve.

9.4 Special Appointments. The Board may elect such other officers as the affairs of the Master Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

9.5 Resignation and Removal. The Board may remove any officer from office with or without cause. Any officer may resign at any time by giving notice to the Board, or any officer of the Board. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise necessary to make it effective.

9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer being replaced.

9.7 Multiple Offices. The same person may hold the offices of secretary and treasurer. No person shall simultaneously hold more than one of any of the other offices except in the case of special office created pursuant to Section 9.4.

9.8 Duties. The officers and their duties are as follows:

(a) President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments, and shall co-sign all checks and promissory notes that have duly authorized and approved by the Board.

(b) Vice President. The Vice-President shall act in the place and stead of the President in the event of absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and the Master Association, and shall perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Master Association and disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Master Association that have been duly authorized and approved by the Board; shall maintain a roster of all Members, assessments and payments; shall keep proper books of account; shall issue certificates of payment of assessments; shall notify the Directors of Members who are delinquent in paying assessments; and shall prepare an annual budget and statement of income and expenditures to be delivered and presented to the Members at The Master Association regular annual meeting.

9.9 Compensation. No salary or other compensation for services shall be paid to any officer of the Master Association for services rendered by such officer, but this shall not preclude an officer of the Master Association from performing any other service for the Master Association as an employee or on a contract basis and receiving compensation therefor.

#### ARTICLE 10 INDEMNIFICATION OF DIRECTORS AND OFFICERS

Each Director and officer of the Master Association now or hereafter serving as such shall be indemnified by the Master Association against any and all claims and liabilities to which any Director or officer has or becomes subject by reason of serving as a Director or officer, or by reason of any action alleged to have been taken, omitted, or neglected by him or her as such Director or officer. The Master Association shall reimburse each such person for all legal expenses reasonably incurred in connection with any such claim or liability; provided, however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with any claim or liability arising out of his or her own willful misconduct or gross

negligence. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Director or officer of the Master Association may otherwise be entitled by law.

#### **ARTICLE 11 COMMITTEES**

In addition to any committees the Board is authorized to create under the Master Declaration, the Board may, by resolution, create such committees as it deems necessary and appropriate to perform such tasks as the Board may designate. The Board shall have the authority to appoint members to each committee it creates. Each committee shall operate in accordance with the terms of such resolution. A committee created by the Board may not (a) authorize distributions; (b) approve or propose to Members any action required to be approved by Members; (c) elect, appoint, or remove a Director; (d) amend the Articles; (e) adopt amend, or repeal these Bylaws; (f) approve a plan of conversion or a plan or merger not requiring Member approval; or (g) approve a sale, lease or exchange of Association property.

#### **ARTICLE 12 FINANCIAL MATTERS**

12.1 Depositories. The Board shall select such depositories as it considers proper for the funds of the Master Association. All checks and drafts against such deposited funds shall be signed and countersigned by persons authorized by these Bylaws or by a Board resolution to sign such checks and drafts.

12.2 Contracts; Management Contract. The Board may authorize any officer or officers, agent or agents, in addition to those specified in these Bylaws, to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Master Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board or by these Bylaws, no single officer and no agent or employee shall have any power or authority to bind the Master Association by any contract or engagement or to pledge its credit or render it liable for any purpose or for any amount.

12.3 Fiscal Year. The fiscal year of the Master Association shall be determined by the Board.

12.4 Annual Report. The Board shall present at the annual meeting of the Members the report of the Treasurer, giving the annual budget and a statement of income and expenses, and a report of other affairs of the Master Association during the preceding year. The Board shall provide all Members, at the expense of the Master Association, copies of said annual budget and statement of income and expense.

#### **ARTICLE 13 BOOKS AND RECORDS**

13.1 Master Association Records. The Master Association shall keep and maintain those records required by the Master Declaration, the Act and these Bylaws. Such records shall

be maintained in written form or in another form capable of conversion into written form within a reasonable time.

13.2 Inspection of Books and Records. The books, records, and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member pursuant to Section 57-8a-227 of the Community Association Act. The Articles and these Bylaws shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

#### **ARTICLE 14 RULES AND REGULATIONS**

The Board shall have the power to adopt and establish by resolution rules and regulations as it may deem necessary for the maintenance, operation, management and control of the Property, equipment, facilities and utility systems of the Master Association. The Board may alter the rules and regulations from time to time. The Members shall at all times obey such regulations and use their best efforts to see that they are faithfully observed by the persons with whom they reside, their family, guests, tenants, invitees and others over whom they may exercise control or supervision.

#### **ARTICLE 15 AMENDMENT**

15.1 By the Board. These Bylaws may be altered, amended or repealed in whole or in part, by a majority vote of the Board at any regular meeting of said Board or at a special meeting called for that purpose unless it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class, or unless otherwise prohibited by the Act or the Utah Community Association Act.

15.2 By the Class A Members. These Bylaws and any amendments thereto may be altered, amended or repealed, in whole or in part, by least 67% of the total votes entitled to vote on such action at any annual meeting of the Members or at any special meeting of the Members called for that purpose.

15.3 By Declarant. Declarant has the right to unilaterally alter, amend, or repeal these Bylaws in whole or in part for any purpose during the Declarant Control Period, with or without notice to the Class A Members. Thereafter, Declarant may unilaterally amend these Bylaws if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Lot; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) to correct any typographical or scrivener's error.

15.4 Validity. No amendment made by the Class A Members during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. No



amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant. Any procedural challenge to an amendment must be made within six months of the effective date of the amendment or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

15.6 Effective Date. Any amendment to these Bylaws shall be effective upon the date such amendment is duly adopted as provided for herein, and recorded as required by § 57-8a-216(3) of the Community Association Act, which date the Secretary shall certify on the amendment and file with the Master Association's records. The Board shall provide notice to Members of any amendment to these Bylaws, however, the receipt of such notice shall not be a prerequisite to the validity of the amendment.

## ARTICLE 16 GENERAL PROVISIONS

16.1 Notices. Any notice required to be sent under the provisions of these Bylaws shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it. Members are required to maintain a current mailing address with the Master Association. In the absence of specific instruction from the Member, the Member's current mailing address will be deemed to be the mailing address for the Lot, Parcel or Unit owned by the Member.

16.2 Electronic Notice. The Board may, by resolution, adopt a policy for notification via electronic communication or transmission (such as e-mail) in lieu of notice by mail. In addition, the Board may require that Members and Directors maintain a current e-mail address with the Board for such purpose.

16.3 Dates and Times. In computing any period of time prescribed or allowed by these Bylaws, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday (either federal or Utah state), in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. The deadline of the last day of the period so computed shall be 5:00 p.m., Mountain Time.

16.4 Waivers. No provision contained in these Bylaws shall be deemed to have been waived by reason of any failure to enforce or follow it, irrespective of the number of violations which may occur.

16.5 Construction and Interpretation. These Bylaws shall be construed wherever possible as consistent with the Master Declaration and the Act. Conflicts between documents shall be resolved as set forth in the Master Declaration.

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

16.7 Titles and Headings. The titles and headings contained in these Bylaws are for convenience only and do not define, limit, or construe the contents of these Bylaws.

\* \* \*

CERTIFICATION

The undersigned hereby certifies that he is the duly elected/appointed President of Desert Color Community Master Association, Inc., a Utah non-profit corporation, and the foregoing Bylaws constitute the Bylaws of said Master Association as duly adopted by the incorporator on February 15, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand this 15<sup>th</sup> day of February, 2018.

  
\_\_\_\_\_  
President

STATE OF UTAH )

COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of February, 2018, by Brook Cole, as President of Desert Color Community Master Association, Inc., a Utah non-profit corporation, on behalf of the corporation.



  
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Notary Public