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**DECLARATION OF CONDOMINIUM
FOR
AUBURN HILLS AT DESERT COLOR
CONDOMINIUMS**

An Expandable Utah Condominium Project

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**DECLARATION OF CONDOMINIUM
FOR
AUBURN HILLS AT DESERT COLOR CONDOMINIUMS**

An Expandable Utah Condominium Project

This Declaration of Condominium for Auburn Hills at Desert Color Condominiums (the "Declaration") is made and executed by Visionary Homes 2022, LLC (the "Declarant") and Visionary Desert Color Condominiums, LLC, and shall be effective upon recording with the office of the Recorder for Washington County, Utah.

RECITALS

A. Declarant and/or Visionary Desert Color Condominiums, LLC, owns the real property located in Washington County, Utah, legally described in the attached Exhibit A (the "Property"). By signing this Declaration, Declarant and Visionary Desert Color Condominiums, LLC, consent to subjecting the Property to the terms, covenants and restrictions contained herein.

B. Declarant is in the process of developing the Property as an expandable residential condominium project as more fully described below.

C. Declarant has recorded the initial condominium plat for the Project with the Office of the Recorder for Washington County, Utah, on _____, 2021 as entry number _____.

D. Declarant and/or Visionary Desert Color Condominiums, LLC, intends to sell fee title to the individual condominium units constructed in the project, together with an appurtenant, undivided ownership interest in the common areas and facilities and a corresponding membership interest in the condominium owners association established for the Project, subject to the plat and the covenants, conditions, and restrictions in this Declaration.

E. Declarant desires, by executing and recording this Declaration, to: (i) submit the Project to the Utah Condominium Ownership Act and other Utah laws; (ii) establish the governance structure and procedures for the condominium owners association; (iii) define the respective rights and responsibilities of the condominium owners association and the owners; (d) establish covenants, conditions, and restrictions for the benefit of the condominium owners association, the owners, and the project.

F. The terms and conditions of the Declaration are established for the Declarant's benefit and for the mutual benefit and burden of the condominium owners association, the owners, occupants, lenders, and the Project, and any others that now or in the future have any legal, equitable, or beneficial interest in any portion of the Project.

G. This Declaration is intended to and shall run with the land and shall be binding upon the owners and their respective successors and assigns, and any others that now or in the future have any legal, equitable, or beneficial interest in any portion of the Project.

H. The Property is located within the Master Desert Color Community and is subject to the Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements, Terms and Reservations for Desert Color Community, recorded with the Washington County Recorder's Office on July 29, 2020 as Entry No. 20200039512 ("Master Declaration"), as may be amended from time to time

I. In the event there is any conflict between this Declaration and the terms of the Master Declaration, the terms of the Master Declaration shall control.

J. Capitalized terms in this Declaration are defined in Article I below and in other parts of this Declaration.

NOW, THEREFORE, the Declarant and/or Visionary Desert Color Condominiums, LLC, as owner of the Property and for the purposes set forth above, declares as follows:

**ARTICLE I
DEFINITIONS**

- 1.1 "**Act**" means the Utah Condominium Ownership Act, Utah Code §§ 57-8-1 to 60, as amended or supplemented.
- 1.2 "**Additional Land**" shall mean all or any portion of any adjacent real property legally added to the Project by Declarant in accordance with this Declaration. A description of the boundaries of the potential Additional Land which may be added to this Declaration thus expanding the Condominium Project, as permitted hereby, is set forth in Exhibit B.
- 1.3 "**Allocated Interest**" means the appurtenant undivided ownership interest (which may be expressed as a percentage or fraction in this Declaration) in the Common Areas and Facilities, the Common Expense liability, and votes in the Association allocated to each Unit as described in the attached Exhibit C, except that Unconstructed Units shall not be included in the Allocated Interest.
- 1.4 "**Articles**" means the Articles of Incorporation under which the Association is formed under the Utah Revised Nonprofit Corporation Act.
- 1.5 "**Assessment**" means any monetary charge imposed or levied on an Owner or a Unit by the Association, including, but not limited to, regular and special assessments, individual charges, fines, late fees, and interest as provided in this Declaration or authorized by law.
- 1.6 "**Association**" means Auburn Hills at Desert Color Condominiums, which has been or will be incorporated under the Utah Revised Nonprofit Corporation Act.
- 1.7 "**Board**" means the managing body for the Association, which is referred to in the Act as the "management committee" and referred to as the "board of directors" in the Utah Revised Nonprofit Corporation Act.
- 1.8 "**Building**" means any building depicted on the Plat that is or will be constructed in the Project, containing Units and comprising part of the Property.
- 1.9 "**Bylaws**" mean the Bylaws adopted by the Association in accordance with the Act for the purpose of regulating the affairs of the Association. The Bylaws are attached to this Declaration as Exhibit D.
- 1.10 "**Common Areas and Facilities**" means the entire Project, excluding the Units, as defined in this Declaration.

- 1.11 **"Common Expenses"** means the actual and estimated costs for: (a) maintenance, management, operation, repair, and replacement of the Common Areas and Facilities; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to the Manager or Managers, accountants, attorneys, consultants, and employees; (c) security, landscape maintenance, parking area maintenance, and other services; (d) insurance and bonds required or allowed by this Declaration or the Act; (e) the establishment of reserves; (f) the Association's obligation under any reciprocal use or shared maintenance agreement for any private roadway serving the Association and neighboring properties; (g) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (h) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.12 **"Community-Wide Standards"** means the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Project or at a minimum, the standards initially established by the Declarant in this Declaration, the Rules, and Board resolutions. The Community-Wide Standards may or may not be set forth in writing.
- 1.13 **"County"** means Washington County, a political subdivision of the State of Utah.
- 1.14 **"Declaration"** means this Declaration and all the attached exhibits, which are hereby incorporated by reference, all amendments to the Declaration, and all supplemental Declarations, including all written instruments by which the Additional Land is converted into one or more Units, Limited Common Areas and/or Common Areas and Facilities.
- 1.15 **"Declarant"** means Visionary Homes 2022, LLC, a Utah limited liability company, and the successors and assigns of the Declarant's rights under this Declaration.
- 1.16 **"Declarant Control Period"** means to the time period in Section 16.1 below.
- 1.17 **"Director"** means a member of the Board of Directors.
- 1.18 **"Governing Documents"** means the Declaration, the Plats, the Bylaws, the Articles, the Rules, and any other written instrument through which the Association may exercise power or manage, maintain, or otherwise affect the Project.
- 1.19 **"Lender"** means a holder of a first mortgage or first deed of trust on a Unit.
- 1.20 **"Limited Common Areas"** means the portions of the Common Areas and Facilities designated in this Declaration and the Plat for the exclusive use and benefit of a Unit to the exclusions of other Units.
- 1.21 **"Manager"** means the Person or Persons engaged by the Association to manage the Project.
- 1.22 **"Master Association"** means the Desert Color Community Master Association, Inc.
- 1.23 **"Master Common Area"** means those areas depicted on the plat(s) that are dedicated to and/or owned by the Master Association.

- 1.24 "**Occupant**" means the Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Unit within the Project, including family members, tenants, guests, and invitees of an Owner or an Occupant.
- 1.25 "**Owner**" means the Person or Persons who are vested with record title of the Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the County Recorder. "Owner" does not include a mortgagee or trustee or beneficiary, under a deed of trust unless and until such party acquires title to a Unit pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.
- 1.26 "**Person**" means a natural individual, corporation, estate, partnership, limited liability company, trustee, association, joint venture, government, governmental subdivision or agency, or other legal entity capable of holding title to real property.
- 1.27 "**Plat**" means the plat(s) of survey of land recorded with the County Recorder that pertains to the Project, all amendments to the Plat, and all supplemental plats, including all supplemental plats by which the Additional Land is converted into one or more Units, Limited Common Areas and/or Common Areas and Facilities.
- 1.28 "**Project**" means the real estate condominium project known as "Auburn Hills at Desert Color Condominiums," including, but not limited to, the Property, the Common Areas and Facilities, the Units, and any Additional Land added thereto and all other structures and improvements thereon.
- 1.29 "**Property**" means, except for those areas identified as Master Common Area on the plat(s), the land legally described in the attached Exhibit A, together with all buildings, improvements, and permanent fixtures located on that land, all easements and rights appurtenant to that land, and all articles of personal property intended for use in connection with that land. The term Property shall also include all Additional Land annexed into the Project.
- 1.30 "**Rules**" means the rules and regulations adopted by the Association in accordance with this Declaration, the Bylaws, and the Act.
- 1.31 "**Unconstructed Unit**" means a Unit that is intended, as depicted in the Plat, to be fully or partially contained in a building and is not constructed. A Unit is considered constructed when a certificate of occupancy or substantial completion is issued for the Unit.
- 1.32 "**Unit**" means a condominium unit, including one or more rooms situated in a Building within the Project depicted on the Plat, designed or intended for independent ownership and occupancy as a residential dwelling. Unless the context requires otherwise, reference to a Unit includes the appurtenant Allocated Interest.

**ARTICLE 2
CREATION OF THE CONDOMINIUM**

- 2.1 **Submission to the Act.** The Declarant and/or Visionary Desert Color Condominiums, LLC, hereby subjects the Project to the Act and declares and agrees that the Project, including the Property, shall be developed under a condominium form of ownership in accordance with the Act.

- 2.2 **Binding Effect of Governing Documents.** The Project, including all the Units, shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to this Declaration, which shall constitute covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including each Owner's heirs, executors, administrators, personal representatives, successors, and assigns. By acquiring any interest in a Unit, each Owner consents to, and agrees to be bound by, this Declaration and the other Governing Documents.
- 2.3 **Project Name.** The Project is named " Auburn Hills at Desert Color Condominiums." The name used by the Association for the Project may be different than the name identified in this Declaration and on the Plat.
- 2.4 **Modifying or Changing the Name of the Project.** The name of the Project may be changed by an amendment to this Declaration and in accordance with applicable land use development and management code provisions and County ordinance.
- 2.5 **Master Association.** The members of the Association shall also be members of the Master Association and shall be entitled to all benefits of such membership, and shall also be subject to the restrictions and covenants of the Master Declaration. The governance of the Master Association shall be separate and distinct from the governance and operation of the Association. The Association may enter into agreements or arrangements with the Master Association to provide for the management and operation of any Common Areas and Facilities or amenities for the benefit and/or use of the Association and/or Members.
- 2.6 **Registered Agent.** The Registered Agent, as listed with the Utah State Department of Commerce, Division of Corporation and Commercial Code, shall be the person to receive service of process for the Association pursuant to the Act, unless such time as the Board of Directors duly appoints a new agent. The Board of Directors may change the Registered Agent at any time and without the need for Owner consent.
- 2.7 **Expansion of Project.** The Project may be expanded by the Declarant by the recording of a Supplemental Declaration in accordance with the provisions of this Declaration.

ARTICLE 3 DESCRIPTION OF THE PROJECT

- 3.1 **Nature of the Project.** The Project is a residential condominium project. It is intended that the Project will be built in phases. The Project is hereby divided initially into ten (10) Units as set forth on the Plat, each such Unit consisting of a Unit and an equal appurtenant Allocated Interest in and to the Common Area and Facilities as set forth below and in Exhibit C. Other Units and improvements may be added in subsequent phases upon the Additional Land as reserved by the Declaration. If all of the Additional Land is added to the Project pursuant to this Declaration, the maximum number of Units in the Project will be eighty (80) Units constructed within eight (8) three (3) story Buildings – and each Owner will have a minimum 1/80th Allocated Interest in the Common Areas and Facilities. The Plat(s) shall supplement the information and descriptions in this Section. The total number of Units in the Project may vary based on government approvals, building conditions, or other factors outside the control of the Declarant.
- 3.2 **Description of the Unit.** Each Unit is described as follows:

- (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
- (b) The Unit consists of the space enclosed and bounded by the horizontal and vertical planes, as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries. The horizontal boundaries of each Unit are the underside of the finished, but unpainted or decorated, ceiling of the Unit, and the top of the finished, but undecorated, floor of the Unit. The vertical boundaries of each Unit are the interior of the finished, but undecorated, walls located on the boundary of the Units, as shown on the Plat. All structural components in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit are part of the Common Areas and Facilities. The windows and exterior doors are Limited Common Areas, and not part of the Unit. The Unit includes all pipes, wires, conduits, chutes, flues, ducts, shafts, and water, sewer, and other utility lines within the vertical and horizontal boundaries of the Unit, and any other similar fixtures lying inside the designated vertical or horizontal boundaries of such Unit or located beyond the vertical and horizontal boundaries of the Unit but designed to serve only that Unit, are part of the Unit.
- (c) Each Unit is capable of being independently owned, encumbered, and conveyed.
- (d) Each Unit shall be considered a parcel and shall be subject to separate taxation and assessment by each assessing authority and special district for all types of taxes and assessment as authorized by law. Each Owner is responsible to pay and discharge all taxes and assessments assessed against the Owner's Unit.
- (e) Except for approved modifications and alterations existing as of the effective date of this Declaration, the original construction is the controlling dimension for any Unit. The original construction is the first installation of foundations, framing, wallboard, and the like.

3.3 Description of the Limited Common Areas

- (a) Limited Common Areas and Facilities are the portions of Common Areas and Facilities designated as Limited Common Areas on the Plat and in this Declaration as reserved for use of a certain Unit or Units to the exclusion of other Units.
- (b) Any shutter, awning, window box, doorstep, stoop, porch, balcony, deck, patio, exterior door, exterior window, driveway and any other similar structure, improvement and/or fixture designated to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Areas allocated exclusively to the Unit.
- (c) The right to the exclusive use and benefit of any Limited Common Areas, if any, shall be appurtenant to the Unit and may not be severed from the ownership of the Unit.

3.4 Description of the Common Areas and Facilities. Except for those areas designated as Master Common Area on the plat(s), the Common Areas and Facilities consist of all of the property legally described in Exhibit A not specifically included as part of the Units or dedicated to the County. Such area includes but is not limited to all foundations columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, elevators, Building entrances and exits, Limited Common Areas, and all apparatuses, installations,

systems, and equipment connected with or in any way related to the furnishing of utilities for common use or servicing the common areas or which serve more than one Unit.

- 3.5 **Allocated Interests of Each Unit in the Common Areas and Facilities.** Each Unit shall have an equal Allocated Interest. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change the Allocated Interests. The Allocated Interest of each Unit shall be calculated by dividing the number 1 by the total number of Units in the Project. Thus, if the minimum number of Units in the Project is constructed, each Unit will, initially, have a 1/10th Allocated Interest. In the event all of the Additional Land is developed/added to the Project, each Unit will have a 1/80th Allocated Interest. If any Units are legally added to or withdrawn from the Project, the Allocated Interest shall be recalculated in accordance with the formula set forth above and recorded via Supplemental Declaration by the Declarant, or following the Declarant Control Period, by the Association, through the Board. Otherwise, the Allocated Interest shall have a permanent character and shall not be altered without the express consent of all Owners expressed in an amendment to this Declaration.
- 3.6 **Allocated Interest of Each Unit in the Votes of the Association.** Except as provided in this Declaration, the designation of the Allocated Interest which each Unit has in the votes of the Association is one vote for each Unit; thus, if the minimum number of Units in the Project is constructed, each Unit will have, initially, a 1/10th vote for all matters of the Association. The number of votes allocated to each Unit is set forth in Exhibit C attached hereto. In the event all of the Additional Land is developed/added to the Project, each Unit will have a minimum 1/80th vote for all matters of the Association.
- 3.7 **Allocated Interest of Each Unit in the Common Expenses of the Condominium Project.** The designation of the Allocated Interest which each Unit bears in the Common Expenses of the Project is deemed to be equally divided; thus, if the minimum number of Units in the Project is constructed, each Unit will, initially, have a 1/10th Allocated Interest in the Common Expenses. In the event all of the Additional Land is developed/added to the Project, each Unit will have a 1/80th Allocated Interest in the Common Expenses.
- 3.8 **The Plat.** The Plat and all dimensions, descriptions, and identification of boundaries in the Plat are binding on the Project and the Association. If there is a conflict between the Plat and this Declaration, the Declaration shall control.
- 3.9 **Access Easements.** There may be easements for access to the Project which will constitute part of the Common Areas and Facilities.

**ARTICLE 4
THE ASSOCIATION'S ORGANIZATION AND GOVERNANCE**

- 4.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all those documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration, the Bylaws, and any lawful amendments there to. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall adopt, to the extent possible and subject to any then-existing legal requirements, documents consistent with the terms of this Declaration and the Bylaws.

- 4.2 **Membership.** Membership in the Association at all times shall be comprised exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit, and the Owner's membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to the ownership interest shall likewise succeed to membership in the Association. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 4.3 **Board of Directors.** The governing body of the Association shall be the Board of Directors. The Board may consist of three Directors during the Declarant Control Period and then five Directors after the Declarant Control Period. Subject to the Declarant's rights below, the Board shall be elected in accordance with the Bylaws.
- 4.4 **Board Acts for Association.** Except as otherwise provided in the Governing Documents, the Board, in all instances, acts on behalf of the Association.
- 4.5 **Directors.**
- (a) Qualifications: Except during the Declarant Control Period, to be a Director, an individual must be over the age of 18, an Owner (or the spouse of an Owner), and current on payment of Assessments. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principal, shareholder, partner, member, manager, trustee, or beneficiary of the Owner shall be eligible to serve as a Director. If a Director fails to meet the qualifications during his or her term as Director, he or she will cease to be a Director, and his or her seat place on the Board will be deemed vacant.
- (b) Restrictions: The Bylaws may place reasonable obligations and requirements on existing Directors to retain their membership on the Board, such as a requirement that a Director attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Director who fails to comply with the reasonable requirements. Any Bylaw requirements adopted under this Subsection shall not be applicable retroactively and shall not apply to any Director on the Board during the Director's term being served at the time such restrictions are adopted.
- 4.6 **Limitation on Authority of Owners, Directors, and Officers.** Except as otherwise provided in this Declaration or in the Bylaws, no individual Director, no individual officer of the Association, and no individual Owner has authority to or is authorized to act on behalf of the Association to:
- (a) amend or terminate any Governing Document;
- (b) elect or remove a Director; or
- (c) establish or change the qualifications, powers and duties, requirements, or terms of Directors.
- 4.7 **No Liability of Directors and Officers.** To the fullest extent permitted by applicable law, neither the Board nor any Director or officer of the Association shall be liable to any Owner or Occupant for any damage, loss, or prejudice suffered, or claimed because of any decision, approval or disapproval, course of action, act, omission, error, or negligence.

- 4.8 **Reliance Contrary to Governing Documents.** No Person may rely upon any authorization (from a Director or anyone else) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone asserting estoppel or waiver. It is the responsibility of every Person interacting with, visiting, occupying, or purchasing a Unit in the Project to verify that anything that such Person does, does not do, or authorizes related to the Project or the Association, complies with the Governing Documents.
- 4.9 **Registration with the State.** In compliance with the Act, the Association shall register with the Utah Department of Commerce and shall update its registration to keep any required information current as required under the Act.

**ARTICLE 5
THE ASSOCIATION'S RIGHTS AND RESPONSIBILITIES**

- 5.1 **General Rights and Responsibilities.** In addition to any rights set forth in the Governing Documents or provided by law, the Association has the rights and responsibilities set forth in this Article 5. This includes, but is not limited to, setting budgets and collecting assessments, enforcing use restrictions, adopting rules, obtaining insurance, giving notice, holding meetings, and any other right or obligation given to the Association or the Board in this Declaration.
- 5.2 **Maintenance of Common Areas and Facilities.** Except for the responsibility of each Owner for Limited Common Areas set forth in Section 8.2 below, the Association has authority and responsibility for maintenance, repair, and replacement of the Common Areas and Facilities including, but not limited to, maintenance of the Building exteriors, Building hallways and entries.. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Areas and Facilities. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Areas and Facilities and the Project, in accordance with the general purposes specified in this Declaration. The Association shall have no obligation to maintain or repair civic space or Master Association common areas within the perimeter boundaries of the Project that have been dedicated to, or owned by the Master Association.
- 5.3 **Paying Expenses.** The Association shall provide for the payment of the Common Expenses.
- 5.4 **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
- 5.5 **Hiring Managers and Delegating Responsibilities.** The Association may engage a Manager to assist the Board in the management and operation of the Project, and the Board may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; except that only the Board shall have the right to approve Association budgets and regular and special Assessments and to provide a hearing requested to dispute a fine. When reasonable, the Board shall use the same Manager as the Master Association. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause.
- 5.6 **Preventing Conflicts.** The Association may not, without prior written disclosure of the relationship to the Board and a written agreement executed by the parties, allow any paid services

or materials reasonably valued at more than \$2,500.00 to be performed or provided for the Association by (a) any Director; (b) any relative of any Director, officer, or Manager (except for responsibilities within the Manager's contract); or (c) any business or entity in which any Director, officer, Manager (including any employee, officer, or owner of any Manager) or any relative of any Director, officer, Manager is employed or has more than a 10% ownership or beneficial interest. For the purpose of this Section 5.6, a relative is any natural individual known to be related by blood, adoption, or marriage. Services covered under this Section 5.6 include, but are not limited to, services provided by managers, insurance brokers, investment or financial advisors, accountants, landscapers, and contractors.

- 5.7 **Adopting and Enforcing Rules.** The Board may adopt, change, repeal, and enforce Rules for the regulation and operation of the Project. Rules must be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Documents. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents so long as the Rules do not contradict the other Governing Documents. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule. Pursuant to Utah Code Section 57-8-8.1(7), the requirements of Utah Code Sections 57-8-8.1(1) through (5), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.
- 5.8 **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Board may: (a) impose fines; (b) collect rents directly from a non-Owner Occupant under a lease agreement if an Owner fails to pay Assessments; (c) suspend voting rights; (d) suspend common utility services; (e) suspend rights to the parking area, and other common amenities; and (f) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- 5.9 **Enforcement Discretion.**
- (a) Subject to the discretion afforded in this Section 5.9, the Board shall uniformly and consistently enforce and implement the Governing Documents.
 - (b) The Board shall use its business judgment to determine whether to exercise the Association's powers and authority granted in this Declaration and under the Act, including whether to: (i) impose sanctions; (ii) pursue legal action for a violation of the Governing Documents; (iii) compromise a claim made by or against the Board or the Association; and (iv) pursue a claim for an unpaid Assessment.
 - (c) Consistent with Subsection 5.9(b) above, the Association may not be required to take enforcement action if, after fair review and acting in good faith and without conflict of interest, the Board determines that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Association's resources; or (iv) it is otherwise not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

- (d) Subject to Subsection 5.9(e) below, if the Board decides under Subsection 5.9(c) above to forego enforcement, the Association is not prevented from later taking enforcement action.
- (e) The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

5.10 **Establishing Hearing Procedures.** The Board may create a reasonable hearing process applicable if the Association takes adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. However, the Board is not obligated to offer a hearing, except as required by law or by the Governing Documents, and in any such hearing, the Board may designate the procedure related to any such hearing and to make all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any hearing process shall provide, at a minimum for: (a) at least 14-days' notice of the hearing to the Owners, and (b) a reasonable time period under the circumstances for the Owner to present the Owner's own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

5.11 **Availability of Records**

- (a) The Association shall make available to the Owners copies of the Governing Documents and the corporate records, meeting minutes, books, and financial statements related to the operations of the Association consistent with Section 57-8-17 of the Act.
 - (i) The Association may require any Owner to strictly comply with any applicable statutory provisions prior to producing records.
 - (ii) The Association shall have no duty to keep, maintain, produce, or permit inspection of any documents, draft documents, electronic files, or other information not explicitly identified in Utah Code §§ 57-8a-227(1)(a)(ii) and 16-6a-1601. Association records shall specifically exclude emails, texts, phone calls, writings, and personal communications between Board Members or Owners. The Board shall have the power and discretion to determine what documents or information are considered Association Records if there is a dispute over the definitions or language provided in this Section. The Board shall have the sole discretion to determine the format in which records are kept.
 - (iii) The Association may make records available via a website, and if so provided, then the Association shall have met its record inspection obligations set forth in this Section or other applicable law for all such documents posted thereon.
 - (iv) If an Owner elects to have the Association produce hard copies or electronic copies of requested records, the Association may assess the Owner reasonable copying or scanning costs not to exceed 10 cents per page and \$15.00 per hour of the Manager's or other agent's time consistent with the Act.
 - (v) The Association shall make available to Lenders and insurers of any Lender, copies of the Governing Documents and copies of corporate records, meeting

minutes, books, and financial statements related to the operations of the Association within thirty 30 days of receipt of a written request.

- (vi) The Association may redact from any record produced for inspection or copying any information subject to attorney-client privilege and any other information that the Board, in good faith, determines would reveal sensitive, private, personal or financial information of an Owner or agent of the Association, including, but not limited to, bank account numbers, social security numbers, and email addresses.

- 5.12 **Annual Meeting.** The Association shall arrange for and conduct an annual meeting of the Owners as provided for in the Bylaws and shall arrange for and conduct other meetings of the Association that are properly requested in accordance with the Governing Documents. Annual Meetings shall not be required during the Declarant Control Period, but the Declarant may hold Annual Meetings at its discretion.

ARTICLE 6 BUDGETS & ASSESSMENTS

- 6.1 **Purpose of Assessments.** Money collected by the Association shall be used for the purposes of promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association. Declarant and/or Visionary Desert Color Condominiums, LLC, shall pay no assessment on any Unit owned by Declarant and/or Visionary Desert Color Condominiums, LLC, provided that Declarant shall have the obligation to subsidize the Association until the Declarant Control Period terminates. Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses and a reasonable contribution to reserves. In no event, however, shall the subsidy exceed the monthly assessments. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these.
- 6.2 **Budget.**
 - (a) The Board shall adopt an annual budget. The budget shall estimate the total Common Expenses to be incurred for the next year and be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The Board may revise that budget from time to time as it deems appropriate.
 - (b) The Association may use a calendar or fiscal year, or may choose a different year.
 - (c) If the annual budget adopted by the Board is not presented to the Owners at an annual or special meeting of the Association, the Board shall send a copy of the annual budget to each Owner. Posting or linking a copy of the annual budget on an Association website satisfies the requirements of this Subsection 6.2(c).
- 6.3 **Regular Assessments.** The Board shall determine the amount of the regular Assessments to be paid by each Owner by dividing the total budgeted amount for the Common Expenses by the Allocated Interest for each Unit, except Unconstructed Units and Declarant and/or Visionary

Desert Color Condominiums, LLC, owned Units shall have no allocation of the Common Expenses. The Association shall also have the authority to charge and collect any Master Association assessment allocated to an Owner pursuant to the Master Declaration on behalf of the Master Association and include such as part of an Owner's regular Assessments.

- 6.4 **Payment of Assessments.** Subject to the Declarant exemption below, unless otherwise established by the Board and communicated to each Owner, each Owner shall pay the Association the Owner's regular Assessment annually or on an installment basis, as the Board may determine.
- 6.5 **Adjustments to Regular Assessments.** If the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless Modified by the Board, each Owner shall pay the Association the Owner's adjusted regular Assessment.
- 6.6 **Special Assessments.** In addition to any other Assessments, the Association may set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 6.7 **Capital Improvements.** Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner determined by the Board.
- 6.8 **Individual Assessments.** Assessments may be levied by the Association against a particular Unit and its Owner for:
- (a) Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;
 - (b) Any other charge designated by the Board as pertaining to the individual Unit consistent with the Governing Documents;
 - (c) Fines, late fees, collection charges, and interest; and
 - (d) Attorney fees, costs, and other expenses relating to any of the above, regardless of whether a court action is commenced.
- 6.9 **Benefitted Assessments.** The Board may levy Benefitted Assessments against particular Units for expenses incurred or to be incurred by the Association to cover the costs, including overhead and administrative costs, or providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner or pursuant to a menu of special services which the Board may from time to time authorize which might include, without limitation, landscape maintenances, caretaker services, etc.) , which assessments 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.
- 6.10 **Government Assessment.** In addition to all other assessment, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other Common or Limited Common

Areas from the activities of the City of St. George in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications. The City of St. George reserves the right to require the Association to assess its members to repair parking lot, landscaping, etc. where needed to repair or replace public utilities or make repairs to the Project.

- 6.11 **Water Assessments.** For any Units on a common or shared water meter, the charges and fees for water to those Units shall be aggregated into a single monthly charge and then divided equally to each Unit. The Board may either (i) estimate the monthly water charges for each of these Units and then periodically reconcile the actual charges and fees with the estimates and either refund the difference or add to the assessment, as the case may require; or (ii) each month take the actual aggregated charges and fees for these Units and divide it equally to each Unit.
- 6.12 **Acceptance of Materials or Services.** If the Association undertakes to provide materials or services that are not otherwise required for the operation and maintenance of the Project that benefit an individual Unit, and which can be accepted or not by the Unit Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Unit, as may be determined by the Board, in its discretion.
- 6.13 **Personal Obligation for Assessments.** Subject to the Declarant exemption below, each Owner of a Unit, by acceptance of a deed or other instrument creating the ownership interest required to be an Owner, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents. All Assessments, together with such interest, collection charges, and attorney fees and costs authorized by the Governing Documents, shall be the personal obligation of the Owner of such Unit.
- 6.14 **Application of Excess Assessments.** If the amount budgeted to meet Common Expenses for a particular year proves to be excessive in light of the actual Common Expenses, the Board, in its discretion, may apply the excess to reserves, credit the excess against future Assessments, or refund the excess to the Owners in proportion to the Allocated Interest of each Unit in the Common Expenses of the Project, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. The Association need not reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 6.15 **No Offsets.** Subject to the Declarant exemption below, all Assessments are payable at the time and in the amount specified by the Association, and no offsets against Assessments shall be permitted for any reason, including, but not limited to, a claim that the Board is not properly exercising its duties or power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations under the Governing Documents.
- 6.16 **How Payments Are Applied.** Unless otherwise provided in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.
- 6.17 **Billing and Collection Procedures.** The Board may adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments. Such procedures and policies may include, but are not limited to, the date when

Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

- 6.18 **Certificate of Payment.** The Association, within ten business days after receipt of written demand, shall furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. Each such certificate shall be conclusive in favor of a Person who relies on the written statement in good faith. The Board may charge a \$25.00 fee for issuance of a certificate. The Board may increase or decrease this fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 6.19 **Payoff Information Fees.** Under Section 57-8-6.3 of the Act, the Association may charge a fee to provide pay off information related to the transfer, refinance, or closing of a Unit. The fee shall be \$50.00, unless the Board increases or decreases the fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 6.20 **Funds Collected by the Association.** All funds collected by the Association, including, but not limited to, Assessments paid by the Owners, shall be held by the Association in a fiduciary capacity to be used for nonprofit purposes of the Association and other permitted purposes as set forth in this Declaration. None of the funds collected by the Association shall inure to the benefit of any Owner, other than as a member of the Association or other than as a result of expenditures made for a permitted purpose as set forth in this Declaration.
- 6.21 **Reinvestment Fee Assessments.** The Association shall have the right to charge a reinvestment fee assessment upon transfer of a Unit in accordance with the rights granted to the Association by the Master Association, pursuant to the reinvestment fee covenant established in the Master Declaration. This Section is not intended, nor shall it be construed, to be an independent reinvestment fee covenant separate from the reinvestment fee covenant in the Master Declaration. If authorized by the Master Association, the Association shall have the right to record a Notice of Reinvestment Fee Covenant in the County records to notify owners of their obligation to pay a reinvestment fee to the Association at the time of transfer of title to any Lot. Reinvestment fee assessment amounts may be set forth by resolution of the Master Association or by the Board in the Rules. As set forth in the Master Declaration, a transfer means any change in the ownership of the Unit as reflected in the records of the County Recorder regardless of whether it is pursuant to the sale of the Unit or not.

ARTICLE 7 NONPAYMENT OF ASSESSMENTS

- 7.1 **Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board may, at its option, invoke any or all of the remedies granted in this Article 7. The Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Each Owner, by taking title to a Unit, vests in the Association, or its assigns, the right and authority to bring actions at law or lien foreclosures against such Owner for the collection of delinquent Assessments.

- 7.2 **Collection Charges and Interest.** Unless the Association adopts billing and collection procedures in the Rules, the following procedures apply: The Assessments shall be due within 30 days of invoicing. Thereafter, a late fee of \$35.00 per month may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances which remain unpaid after 60 days at the rate of 2% per month or such other amount as may be set forth by the Association in the Rules and allowed by law. Delinquent accounts may be turned over to attorneys or a collection company and additional collection charges and attorney fees and costs may be added to the amounts owed.
- 7.3 **Joint and Several Liability.** The Owner and any future Owners of a Unit are jointly and severally liable for all Assessments related to that Unit accruing before and during the time that an Owner has any ownership interest in the Unit. An Owner is not liable for any Assessments accruing after the Owner has lawfully transferred title to the Unit to another Owner; except that the recording of a deed to a Person that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation imposed by this Section 7.3 is separate and distinct from any lien rights associated with the Unit.
- 7.4 **Lien.**
- (a) The Association has a lien on each Unit for all Assessments, including late fees, interest, collection charges, attorney fees, court costs, and other costs of collection (which includes all costs and is not limited by those costs that may be awarded under the Utah Rules of Civil Procedure). If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment.
 - (b) The Association also has a lien on each Unit for all fines that the Association imposes against the Owner of the Unit when: (i) the time for appeal described in the Act has expired and the Owner did not file an appeal, or (ii) the Owner timely filed an appeal under the Act and the district court issued a final order upholding the fine. The Association's lien for fines includes interest, collection charges, attorney fees, court costs, and other costs of collection (which includes all costs and is not limited by those costs that may be awarded under the Utah Rules of Civil Procedure).
 - (c) This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law.
- 7.5 **Lien Perfection and Priority.** The recording of the Declaration constitutes record notice and perfection of a lien described in Section 7.4 above. An Association lien has priority over each other lien and encumbrance on a Unit except for: (i) a lien or encumbrance recorded before this Declaration was recorded; (ii) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; or (iii) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.
- 7.6 **Action at Law.** The Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay the Assessment. All attorney fees and costs incurred in the action shall be assessed against the delinquent Owner and the Owner's Unit and added to the amount of the delinquency (plus judgment interest and collection charges, if appropriate).

- 7.7 **Foreclosure.** The Association has all rights of foreclosure granted by the Act, both judicially and non-judicially. The Association may appoint a trustee, who qualifies under Utah Code 57-1-21(1)(a)(i). The Association hereby conveys and warrants pursuant to Utah Code 57-1-20 and 57-8-45 to the trustee (as appointed by the Association), with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 7.8 **Homestead Waiver.** Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created under this Declaration (whether those liens are now in existence or are created at any time in the future), the benefit of any homestead or exemption laws of Utah in effect now or in the future.
- 7.9 **Termination of Delinquent Owner's Rights.** The Association has all rights provided for in the Act to terminate a delinquent Owner's right to vote and right to utilize the common amenities. Before the Association may terminate a delinquent Owner's rights, the charges Association must give the delinquent Owner at least 15-days' notice of:
- (a) The impending termination of rights if payment is not received;
 - (b) The amount past due, including any interest and late charges; and
 - (c) The right to request a hearing before the Board.
- 7.10 **Association Responsibility after Foreclosure.** If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to, obligations to pay Assessments or maintain the Unit.
- 7.11 **Attorney Fees.** In addition to any other attorney fees and costs provided for in this Declaration, the Association is entitled to recover all reasonable attorney fees and costs incurred because of an Owner's failure to timely pay Assessments, including, but not limited to, attorney fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including, but not limited to, regular monitoring of an Owner's progress in a Chapter 13 plan for the duration of the plan ;(g) participate in bankruptcy proceedings (including, but not limited to, seeking and responding to discovery; taking depositions or examinations; introducing evidence; hiring and paying expert witnesses; filing motions and other pleadings; attending trials, hearings, or other court proceedings; asserting claims against the bankruptcy estate or co-debtors; challenging exemptions; pursuing any appropriate adversary proceedings; or taking any other action related to the ultimate attempt to collect unpaid Assessments); and (h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.
- 7.12 **Requiring Tenant to Pay Rent to Association.**

- (a) In accordance with Section 57-8-53 of the Act, the Association may demand and collect lease payments from any tenant occupying any Unit for which an Assessment is more than 60 days late. Before requiring a tenant to pay lease payments to the Association, the Association must give the delinquent Owner at least 15-days' notice:
 - (i) Of the Association's intent to demand the delinquent Owner's tenant pay lease payments to the Association if payment is not received within 15 days;
 - (ii) of the amount past due, including any interest, late charges, collection costs and attorney fees; and
 - (iii) that any costs of collection, including, but not limited to, attorney fees and other Assessments that become due, may be added to the total amount due and be paid through collection of the tenant's lease payments.
- (b) If the delinquent Owner fails to pay the amount owing within 15 days, the Association may exercise its rights to collect the lease payments from the delinquent Owner's tenant by delivering written notice to the tenant that:
 - (i) due to the delinquent Owner's failure to timely pay Assessments, the Association has notified the delinquent Owner of the Association's intent to collect all lease payments until the amount owing is paid in full;
 - (ii) Utah law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid in full; and
 - (iii) the tenant's payment of the lease payments to the Association does not constitute a default under the terms of the tenant's lease agreement with the Owner.
- (c) The Association shall mail the delinquent Owner a copy of the notice given to the tenant.
- (d) The tenant to whom a notice under Subsection 7.12(b) above is given shall pay the Association all future lease payments as they become due and owing to the delinquent Owner beginning with the next monthly or other period payment until the Association notifies the tenant that the amount owed by the delinquent Owner has been paid.
- (e) The delinquent Owner shall credit each payment that the Owner's tenant makes to the Association under this Section 7.12 against any obligation that the tenant owes to the Owner as though the tenant made the payment to the Owner, and Owner may not initiate suit or other action against the tenant for failure to make any lease payment that the tenant pays to the Association as required under Subsection 7.12(d) above.
- (f) Within five business days after the amount owing is paid, in full, the Association shall notify the tenant in writing that the tenant is no longer required to pay future Lease payments to the Association and a copy of the notice shall be mailed to the Owner.

**ARTICLE 8
RESPONSIBILITIES OF OWNER**

- 8.1 **Maintenance of the Unit.** Each Owner shall be responsible to maintain, repair, replace and keep the Owner's Unit in good order and in safe and sanitary condition. A maintenance, repair and replacement allocation chart has been attached hereto as Exhibit E, which further defines and clarifies Association and Owner maintenance, repair, and replacement responsibilities. If there is a conflict between Exhibit E and this Article, the allocations in Exhibit E shall control. Except as provided below, regarding the Association's insurance obligations, each Owner shall be responsible to repair any damage to the Unit, the Unit interior, the Building, and the Unit furnishings, furniture, and appliances caused by any action, negligence, or carelessness of the Unit's Owner or the Unit's Occupants. Any such repairs, painting, and redecorating shall conform to the Community-Wide Standards.
- 8.2 **Maintenance of Limited Common Areas.** In addition to the maintenance, repair and replacement responsibilities set forth in Exhibit E, each Owner shall be responsible to keep the Limited Common Areas appurtenant to the Owner's Unit neat and tidy. Owners are prohibited from storing anything on Limited Common Areas except outdoor furnishings as may be authorized by the Board in the Rules. Except as provided below, regarding the Association's insurance obligations, each Owner shall be responsible for the cost of repair for any damage to the decks, driveways and balconies caused by any action, negligence, or carelessness of the Unit's Owner or the Unit's Occupants. Any such repair work shall be approved and overseen by the Board. Without liability for trespass or otherwise, the Association may inspect the decks, driveways and balconies and their components even if required to enter a Unit to access the decks, driveways and balconies, and to perform maintenance, repair, or replacement work as provided above.
- 8.3 **Board Approval Required to Modify Unit.** Any alteration or modification of a Unit shall require prior written approval of the Board. No alteration or modification shall be approved which impairs or interferes with the structural integrity or appearance of the Building or other Common Areas and Facilities. Owners are prohibited from making any alterations or modifications to the Building exterior. All work shall be scheduled with the Manager.
- 8.4 **Damage to Common Areas and Facilities.** An Owner shall be responsible for any damage to the Common Areas and Facilities or to another Unit sustained as a result of or arising out of the Owner's alteration or modification of the Owner's Unit or arising out of the Unit Owners or Unit Occupant's actions, negligence or carelessness.
- 8.5 **Insurance.** Each Owners is required to obtain and maintain a renter's policy in fully force and effect at all times, and further agrees to indemnify and hold the Association harmless from any and all damage, loss or claim that arises that may have otherwise been covered by such policy being in place. Owner agrees that by failing to maintain such policy, it forfeits and waives its right to file any action, claim or demand against the Association or its carrier for any damage suffered by its failure to maintain said policy.

**ARTICLE 9
EASEMENTS**

- 9.1 **Nonexclusive Right to the Common Areas and Facilities.** Each Owner has the nonexclusive right to use and enjoy the Common Areas and Facilities. This nonexclusive right to use and enjoy shall be appurtenant to and shall pass with title to the Unit and shall not be separated from title to

the Unit. Occupants have the same nonexclusive right to the use and enjoy the Common Areas and Facilities as the Owner whose Unit the Occupant is occupying. Each Owner's nonexclusive right to use and enjoy the Common Areas and Facilities is subject to any other limitation in the Governing Documents and the following:

- (a) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Areas and Facilities;
- (b) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or other area within the Project for purposes of providing police and fire protection and providing other governmental or municipal services; and
- (c) The right and authority of the Board to adopt further Rules governing use of the Common Areas and Facilities.

9.2 **Easements Reserved to the Association.** There is reserved to the Association nonexclusive easements with the right of access over, across, and through each Unit and the Common Areas and Facilities and a right of entry to each Unit to make inspections, to prevent or mitigate damage to Common Areas and Facilities and any other property or improvements for which the Association is responsible for maintaining that are accessible from such Unit. Owners shall provide a key to the Unit to the Manager. The Association may grant permission, licenses, and easements upon, across, over, under, and through the Common Areas and Facilities for purposes necessary for the proper operation of the Project.

9.3 **Utilities.** Easements and rights-of-way over, under, and through the Project and all Buildings for the installation and maintenance of utility lines, including, but not limited to, power, telephone, cable television, internet, fiber optics, water, gas, sewer, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Board to be helpful in serving the Project, the Units, or the Owners are hereby granted to the Association, together with the right to grant, alter, and transfer the easements and rights-of-way; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Areas and Facilities and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over, or under the Common Areas and Facilities and Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm-water drains and pipes, water systems, irrigation systems, water heating and gas lines or pipe sand any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Unit, expressly consents to such easements and rights-of-way and authorizes and appoints the Association and the Declarant (as long as the Declarant owns any portion of the Project) as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Each Owner and those claiming by, through, or under an Owner agree to promptly execute, at the request of the Association, all such documents and instruments and to do such other things as may be necessary or convenient to conveying or creating such easements and rights-of-way. No easement or right-of-way may be granted under this Section 9.3 if it would unreasonably permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of the Owner's Unit.

- 9.4 **Easements for Encroachments.** If any portion of the Common Areas and Facilities encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Areas and Facilities because of the way the Unit was constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, an easement for encroachment and maintenance of the encroachment, shall exist for the life of the improvement or structure.
- 9.5 **No View Easements.** Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project, and each Owner and Occupant acknowledges and agrees that there are no view easements or view-rights appurtenant to the Unit or the Project.
- 9.6 **Development Easements for Declarant.** Until the Declarant and/or Visionary Desert Color Condominiums, LLC, has sold all the Units, there are hereby reserved to the Declarant, together with the right to grant and transfer the same to others, including the Declarant's sales agents, representative and assigns, easements and right upon, across, over, under and through the Project for construction, display (including the use of the Units as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the erection, remodeling and sale or lease of Units within the Condominium; provided, however, that no such use by the Declarant or its agents shall otherwise restrict Owners or Occupants in the reasonable use and enjoyment of their Units.
- 9.7 **Reservation for Declarant.**
- (a) Declarant reserves unto itself or its assigns the right to convey to others the right of ingress and egress through the road of the Project and the right to connect to all utilities which are or will be placed in the Project. Specifically, if Declarant were to develop other projects adjacent or nearby to the Project, Declarant reserves the right unto itself or its assigns to coordinate the future development of other portions of nearby or adjacent property.
 - (b) The rights of Declarant under this section are permanent and assignable by Declarant. They may not be amended without the written approval of Declarant.
- 9.8 **Governmental Easements.** An easement to access and rights of ingress and egress over, across, through or under the Common Area and Limited Common Area for the purpose of providing police and fire protection, transporting school children and providing other governmental, municipal or utility service to the Project is hereby granted in favor of the City of St. George, State of Utah.

**ARTICLE 10
USE RESTRICTIONS**

- 10.1 **Signs.** The Association may regulate and restrict signs in the Project, to the extent permitted by law in the Rules.
- 10.2 **Nuisance.** No noxious or offensive activity shall be carried on within the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of use and quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project that violates any applicable law, statute, regulation, or ordinance. It shall be a

nuisance under this Declaration for any Owner to permit or create an unreasonable level of sound to come from the Owner's Unit. Unless and until the Association changes this standard by adoption of a Rule, it shall be a nuisance to allow excessive noise to come from a Unit after 10:00 p.m. and before 8:00 a.m.

- 10.3 **Responsibility for Damage.** Any Person who causes damage to Common Areas and Facilities shall be personally responsible for those damages and for repair or restoration.
- 10.4 **Parking.** The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project including, but not limited to: (a) the right to remove or immobilize or cause to be removed or immobilized any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles allowed within the Project; (c) restrictions on the time period and duration of parking; and (d) the levying of fines to Owners who violate the Rules or Owners associated with people who violate such Rules. Vehicle repair or service is not permitted within the Project. Parking within the Project is limited to garages, driveways, and/or designated parking areas. In no instance shall a vehicle be parked in a manner that blocks driveways or sidewalks.
- 10.5 **Garbage.** All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate in or around the Units. Trash and garbage shall be properly and promptly disposed of.
- 10.6 **Animals.** Subject to the restrictions in this Section 10.6 and any other restrictions in the Governing Documents, Owners and Occupants are allowed to have cats and/or dogs within the Project. Owners are allowed a maximum of two (2) animals. Said animals shall not exceed twenty (20) pounds each. No other types of animals (other than cats or dogs) are allowed within the Project. No dog may be kept within a Unit that: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) in the Board's good-faith judgment, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Board may exercise its judgment for specific dogs even though others of the same breed or type are permitted to remain. Owners and Occupants shall be responsible to clean up after their dogs. The Board may adopt Rules adding further restrictions related to dogs or other animals within the Project including, but not limited to, requirements for registration, specific fees or deposits for Owners or Occupants that have dogs in the Project, the use of leashes, and restrictions on noise. Incessantly barking dogs will not be permitted. An Owner who keeps an animal within the Project shall be liable for all damage caused by such animal and shall indemnify and hold harmless the Association and any other Owner from any loss, claim, or liability arising from, or related to, such animal.
- 10.7 **Window Covers.** The Board may adopt Rules requiring window covers, regulation the type, color, and design of window covers, or requiring prior approval of window coverings before installation. Absent Rules permitting otherwise, only white and off-white curtains, drapes, shades, shutters, or blinds may be installed as window covers. No window shall be covered by paint, foil, sheets, or similar materials not intended for use as a window covering.
- 10.8 **External Items.** No Unit Owner shall cause or permit anything (including, but limited to, external material, personal items, awnings, canopies, or shutters) to hang, be displayed, or otherwise be affixed to or placed on the exterior walls or roof, or on the outside of windows or doors, without prior written consent of the Association.

- 10.9 **Exterior Antennas & Satellite Dishes.** No antenna or satellite dish shall be erected, constructed, or maintained within the Property except for: (a) those erected, constructed, or maintained by the Association; (b) those expressly approved in writing by the Association; or (c) those, which by law, the Association cannot prohibit. The Association may remove any antenna or satellite dish violating this Section 10.9. Any amounts incurred by the Association due to an Owner's violation may be assessed to the Owner and the Owner's Unit.
- 10.10 **Solar Energy.** No system, or any component of a system, that is used to produce electric energy from sunlight may be installed or maintained within the Property by any Unit Owner without the Association's prior written approval. The Association may remove any system or component violating this Section. Any amounts incurred by the Association due to an Owner's violation may be assessed to the Owner and the Owner's Unit.
- 10.11 **Residential Occupancy**
- (a) No trade or business may be conducted in or from any Unit unless:
 - (i) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Unit or the Common Areas and Facilities;
 - (ii) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
 - (iii) the business activity does not involve solicitation of Owners or Occupants;
 - (iv) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers, or other individuals coming into the Project who do not live in the Project, as determined by the Board, in its sole discretion;
 - (v) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use and does not threaten the security or safety of other Owners and Occupants;
 - (vi) the business activity is disclosed to the Board before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project;
 - (vii) the business activity will not result in the increase of the cost of any of the Association's insurance;
 - (viii) the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted; and
 - (ix) the Board's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully.
 - (b) Except as allowed in this Declaration, no Unit may be used for any purpose other than a residential purpose.

10.12 **No Subdivision or Timeshare of Unit.** No Unit shall be split, subdivided, separated, or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part of the Owner's Unit. No subdivision plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project unless approved in accordance with this Declaration.

10.13 **Hazardous Substances**

- (a) The Owners shall comply with all applicable federal, state and local laws that relate to health, safety or environmental protection ("Environmental Laws"). The Owners and shall not cause or permit the presence, use, disposal, storage, or release of any toxic or hazardous substances, including any substance defined as toxic or hazardous by Environmental Law ("Hazardous Substance"), on or within the Project that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, or allow anyone else to do, anything affecting the Project that violates any Environmental Law. Notwithstanding, the presence, use, or storage in the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project does not violate this Section.
- (b) Each Owner shall indemnify, defend, and hold the Association and each other Owner harmless from and against all claims or proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from, or through the Project, which the Association or the other Owners may incur because of the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply:(i) when the release of the toxic or hazardous substances was caused by an indemnifying Owner; and (ii)whether or not the alleged liability is attributable to the handling, storage, generation, transportation, or disposal of Hazardous Substances in the Project. The obligations of each Owner under this Section 10.15 shall survive any subsequent sale of the Unit by an indemnifying Owner.

10.14 **Floor Load.** There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is approved in writing by the Board. This includes, but is not limited to, the use of waterbeds, or jacuzzi hot tubs.

**ARTICLE 11
INSURANCE**

NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.

11.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law and shall include the cost of insurance as part of the Common Expense. The Association may obtain insurance that provides more coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers, and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

- 11.2 **Property Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Project to include the Buildings and other structures and the improvements, fixtures, betterments, and equipment. The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or otherwise permanently part of or affixed to Common Areas and Facilities. At a minimum, the blanket policy shall afford protection against loss or damage by: (a) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (b) all other perils normally covered by "special form" or "all risks" property coverage. The blanket or guaranteed replacement-cost policy shall be in an amount not less than one 100% of the current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
- (a) If a loss occurs that is covered by a property-insurance policy in the name of the Association and another property-insurance policy in the name of an Owner:
 - (i) The Association's policy provides primary insurance coverage.
 - (ii) Notwithstanding Subsection 11.2(a)(i) above and subject to Subsection 11.2(a)(iii) below the Owner is responsible for the Association's insurance deductible; and the property-insurance portion of the Owner's insurance policy applies to that portion of the loss attributable to the Association's insurance policy deductible.
 - (iii) As used in this Subsection 11.2(a), an Owner who owns a Unit that has suffered Unit Damage (as defined in the Act) as part of a Covered Loss (defined in the Act) is responsible for an amount calculated by applying the Unit Damage Percentage (defined in the Act) for that Unit to the amount of the deductible under the Association's property insurance policy.
 - (iv) If an Owner does not pay the amount required under Subsection 11.2(a)(iii) above within 30 days after substantial completion of the repairs to the Unit, the Association may levy an Assessment against the Owner for that amount.
 - (b) If, in the exercise of its business judgment, the Board determines that a covered loss is likely not to exceed the Association's property-insurance-policy deductible, and until it becomes apparent the covered loss exceeds the Association's property-insurance deductible and a claim is submitted to the Association's property insurance insurer: (i) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the Association's policy deductible; (ii) the Association is responsible for any loss to any Common Areas and Facilities; (iii) an Owner who does not have a policy to cover the damage to that Owner's Unit is responsible for that damage and the Association may recover any payments the Association makes to remediate that Unit; and (iv) the Association need not tender the claim to the Association's insurer.
 - (c) The Association shall provide notice to each Owner of the Owner's obligation under this Article 11 for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it may be

responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

- 11.3 **Comprehensive General Liability("CGL") Insurance.** The Association shall obtain CGL insurance insuring the Association, the Declarant, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Areas and Facilities and the Owner's membership in the Association. The coverage limits under such policy shall be at least \$1,000,000 covering all claims for death of or injury to any one individual or property damage in any single occurrence. CGL insurance shall contain a severability-of-interest endorsement or equivalent coverage, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 11.4 **Directors and Officers Insurance.** The Association shall obtain directors and officers Liability insurance protecting the Board, the Declarant, the officers of the Association, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims;(c) provide for the coverage of claims made under any fair-housing law or similar state or federal statute or that are based on any form of discrimination or civil-rights claims; and (d) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 11.5 **Fidelity Insurance.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for a minimum of the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by the Directors; officers of the Association; employees and volunteers of the Association; any Manager; and officers, directors, and employees of any Manager.
- 11.6 **Workers' Compensation Insurance.** The Board shall purchase and maintain workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law.
- 11.7 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.
- 11.8 **Named Insured.** The named insured under any insurance policy shall be the Association. Subject to Subsection 11.2(a) above, each Owner shall also be an insured under all property and CGL insurance policies.
- 11.9 **Association's Right to Negotiate.** Insurance proceeds from loss under the Association's property-insurance policy shall be payable to an "Insurance Trustee" (defined below) if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association, shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as

provided for in this Declaration. After any repair or restoration is complete, and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for shall be distributed to the Owners and lienholders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner. In the Board's discretion or upon written request executed by Owners owning 50% of the total Allocated Interests, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this Section 11.9 as the Owners or Board (as the case may be) shall require.

- 11.10 **Waiver of Subrogation.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any individuals residing with a Unit Owner if an Owner resides in the Unit, and the Association's agents and employees.
- 11.11 **Right of Action.** Nothing in this Declaration prevents an Owner suffering a loss because of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 11.12 **Applicable Law.** This Declaration subjects the Association to the applicable insurance requirements and provisions of Act and any amendments to the Act. Any future changes to the insurance law applicable to Utah condominiums shall be applicable to the Association.

ARTICLE 12 EMINENT DOMAIN

- 12.1 **Total Taking of a Unit.** If a Unit is taken by eminent domain, or sold under threat of eminent domain, or if part of a Unit is taken by eminent domain, or sold under threat of eminent domain, leaving the Owner with a remnant that may not be practically or lawfully used of any purposes permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Allocated Interest in the Common Areas and Facilities, regardless of whether any portion of the Common Area and Facilities is taken. Upon such taking, unless a decree provides eminent domain, the Unit's Allocated Interest in the Common Areas and Facilities shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such taking, the Association shall prepare, execute, and record an amendment to this Declaration in compliance with the Act. Any remnant of a Unit remaining after a part of the Unit is taken shall become part of the Common Areas and Facilities.
- 12.2 **Partial Taking of a Unit.** Except as provided above, if part of a Unit is taken by eminent domain, or sold under the threat of eminent domain, so that the Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner of the Unit for the reduction in value of the Unit and Allocated Interest in the Common Area and Facilities, regardless of whether any portion of the Common Areas and Facilities is taken. Upon such

taking, unless a decree provides otherwise, that Unit's Allocated Interest in the Common Areas and Facilities shall remain the same.

- 12.3 **Taking of Common Areas and Facilities.** If any portion of the Common Facilities is taken by eminent domain, or sold under threat of eminent domain, the Board shall, as soon as practicable, use the award to repair or restore that area in the Project adjacent to the taking, and the portion of the award not used for repair or restoration shall be added to the general funds of the Association.
- 12.4 **Taking of Entire Project.** If the entire Project is taken by eminent domain, or sold under threat of eminent domain, the Project shall be terminated, and the Board shall wind down the Association in accordance with applicable law.
- 12.5 **Priority and Power of Attorney.** Nothing contained in this Article shall entitle an Owner to priority over any Lender under alien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of Common Areas and Facilities.

ARTICLE 13 RESERVE

- 13.1 **Definitions.** As used in this Article: (a) "reserve analysis" means an analysis to determine the need for a reserve fund to accumulate reserve funds and the appropriate amount of any reserve fund; (b) "reserve fund line item" means the line item in an Association's annual budget that identifies the amount to be placed into a reserve fund; and (c) "reserve funds" means money to cover the cost of repairing, replacing, or restoring Common Area and Facilities that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the Association.
- 13.2 **Reserve Analysis.** The Association shall cause a reserve analysis to be conducted at least once every six years. The Association shall also review and, if necessary, update a previously conducted reserve analysis at least once every three years.
- 13.3 **Content of Reserve Analysis.** The reserve analysis shall include, at a minimum: (a) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (d) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (e) a reserve funding plan that recommends how the Association may fund the total annual contribution.
- 13.4 **Qualifications for Person Preparing Reserve Analysis.** The reserve analysis shall be prepared by a Person with: (a) experience in current building technologies; (b) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (c) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the Reserve Specialist (RS) designation available through the Community Association Institute (CAI), the Professional Reserve Analyst (PRA) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar professional associations establishing that the Person has some formal training related to preparing a reserve analysis.

- 13.5 **Summaries and Copies to Owners.** The Association shall annually provide Owners a summary of the most recent reserve analysis or update and provide a copy of the complete reserve analysis or update to an Owner who requests a copy.
- 13.6 **Budget.** In formulating its budget each year, the Association shall include a reserve fund line item in an amount the Board determines, based on the reserve analysis, to be prudent.
- 13.7 **Owner Veto.** Within 45 days after the day on which the Association adopts its annual budget, the Owners may veto the reserve fund line item by a vote of at least 51% of the total Allocated Interests at a special meeting called by the Unit Owners for the purpose of voting whether to veto a reserve fund line item. If the Unit Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
- 13.8 **Use of Reserve Fund.** Unless at least 51% of the total Allocated Interests vote to approve the use of reserve fund money for that purpose, the Association may not use money in a reserve fund:(a) for daily maintenance expenses, or (b) for any purpose other than the purpose for which the reserve fund was established. This Section 14.8 does not limit the Association from prudently investing money in the reserve fund.
- 13.9 **Segregation of Reserves.** The Association shall maintain the reserve fund separate from other funds of the Association.
- 13.10 **Surplus.** The Association may retain surplus Association money as additional reserve rather than refund it to the Owners or credit it to future Assessments.
- 13.11 **Exception During Declarant Control Period.** This Article does not apply to the Association during the Declarant Control Period. Pursuant to Utah Code § 57-8-7.5(10), Utah Code § 57-8-7.5(2) through (9), shall not apply or have any effect during the Declarant Control Period, and the Declarant shall have no duty whatsoever to obtain a reserve analysis, or to fund any reserve fund during the Declarant Control Period.

**ARTICLE 14
LEASING AND NON-OWNER OCCUPANCY**

- 14.1 **Non-Owner Occupancy.** Subject to the Declarant rights below, the leasing and non-Owner occupancy of Units shall be governed by this Article 14. No Owner shall have the obligation to rent their Unit, however, if an Owner rents their Unit the Owner shall comply with this Article.
- 14.2 **Long -Term Leasing.** Leasing a Unit for a term of thirty days or more is permitted subject to the following restrictions:
- (a) The lease agreement for any lease term of thirty days or more shall be in writing and shall require that the Occupant comply with the Governing Documents and specify that any failure to comply shall be a default under the lease agreement. If a lease agreement does not include these provisions, the provisions shall nonetheless be deemed to be part of the lease agreement and binding on the Owner and the Occupant.
 - (b) A copy of the lease agreement shall be delivered to the Board or the Manager.

- (c) The Owner shall be responsible for the Unit's Occupants and for all guests and invitees of the Occupant and shall ensure their compliance with the Governing Documents. In addition to any other remedy for non-compliance under the Declaration, the Association shall have the right (but not the obligation) to initiate an eviction action, or similar action, with the purpose of removing the offending Occupant. Neither the Association nor the Board or the Manager shall be liable for any action taken under this Subsection the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith under this Subsection.

- 14.3 **Authority to Impose Additional Requirements.** The Board may require Owners and Occupants to fill out information forms identifying Occupant vehicles and contact information. The Board may also establish other reasonable Rules, resolutions, and procedures to enforce the requirements of this Article.

ARTICLE 15 NOTICE

- 15.1 **Notice to an Owner.** Subject to Section 15.2 below, any notice to be given under the Governing Documents to an Owner by the Association shall be deemed effective if given in writing by any of the following methods:

- (a) Delivered personally to the Owner, which shall be effective upon delivery.
- (b) Mailed by U.S. first-class mail, postage prepaid, to the most recent address provided by the Owner in writing to the Association for the purpose of giving notice, or if no such address has been provided, to the street address of the Owner's Unit. Any notice sent by mail shall be deemed delivered 72 hours after it is placed in the mail.
- (c) Email or text message to an Owner: (i) sent to an email address or phone number provided by the Owner for the purpose of Association communications, or (ii) emailed or texted to an email address or phone number that the Owner has used related to Association matters. Any notice sent by email or text shall be deemed delivered immediately upon being sent.
- (d) Fax (whether to a machine or to an electronic receiving unit) to an Owner sent to a fax number provided by the Owner for the purpose of Association communications. Any notice sent by fax shall be deemed delivered 72 hours after it is sent.
- (e) Any other method that is fair and reasonable given the circumstances and the subject matter of the notice or otherwise allowed by law.

- 15.2 **Demand for Notice by Mail.** If the Owner demands notice in writing from the Association by mail, the Association must send notices to an Owner by U.S. first-class mail, postage prepaid. If a Unit has multiple Owners and co-Owners send the Association conflicting demands for notice by mail, notice shall be proper if mailed to the street address of the Owners' Unit. Owners shall be charged for the costs incurred pursuant to mailed notices as Individual Assessments.

- 15.3 **Multiple Owners.** If a Unit has multiple Owners, notice to one of the co-Owners is effective as

notice to all the co-Owners. The Association need not give more than one notice per Unit.

- 15.4 **Posting.** If posting of a notice on the Unit is permitted by law, posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Association the sooner of either (a) two days after the event or action for which notice was given or (b) ten days after the posting.
- 15.5 **Notice to a Lender.** Notice to a Lender by the Association shall be given by U.S. first-class mail, postage prepaid, addressed to the most recent address provided by the Lender in writing to the Association for the purpose of notice or, if no such address has been provided, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice sent by mail shall be deemed delivered 72 hours after it is placed in the mail.
- 15.6 **Notice to the Association by an Owner.** Any notice to be given under the Governing Documents to the Association by an Owner shall be deemed effective if given in writing by any of the following methods:
- (a) Delivered personally to the Manager or president of the Association, which shall be effective upon delivery.
 - (b) Mailed by U.S. first-class mail, postage prepaid, addressed to the current registered business address of the Association. Any notice sent by mail shall be deemed delivered 72 hours after it is placed in the mail.
 - (c) Email to the Association's email address provided by the Association within the previous six months for the purpose of Association communications or to an email address from which the Manager or the president of the Association has sent emails about Association matters. Any notice sent by email shall be deemed delivered 72 hours after it is sent.
 - (d) Fax (whether to a machine or by other means) to the Association sent to a fax number provided by the Association for the purpose of Association communications. Any notice sent by fax shall be deemed delivered 72 hours after it is sent.

ARTICLE 16 DECLARANT RIGHTS

- 16.1 **Declarant Control Period.** The Declarant Control Period ends when the first of the following occurs:
- (a) When, in its discretion, the Declarant determines and declares in a written instrument; or
 - (b) Six years after the recording of this Declaration; or
 - (c) After Units to which three-fourths of the Allocated Interest in the Common Areas and Facilities appertain have been conveyed, or after all Additional Land has been added to the Project, whichever last occurs.
- 16.2 **Appointment and Removal Rights.** During the Declarant Control Period, the Declarant may appoint and remove some or all of the Directors or the officers of the Association. In appointing Directors or officers, the Declarant is not bound by any qualifications for Directors or officers in the Governing Documents. The Declarant may appoint the Declarant's officers, employees, or agents as Directors or officers of the Association.

- 16.3 **Right to Amend the Plat.** During the Declarant Control Period, the Declarant may unilaterally amend the Plat without the approval of the Association or the Owners, subject only to the requirement that the Declarant obtain approval from any Owner of a Unit that has any boundary modified by the amended Plat.
- 16.4 **Right to Amend Declaration, Bylaws, Articles, and Rules.** During the Declarant Control Period, the Declarant may unilaterally amend this Declaration, any supplemental Declaration, the Bylaws, the Articles, or the Rules. This right to amend includes, but is not limited to, removing or changing substantive and material provisions without the approval of the Association or the Owners. Any amendment to this Declaration, to any supplemental Declaration, or to the Bylaws must be signed by an authorized agent of the Declarant and shall be binding upon the Project and all Persons having an interest in the Project when the amendment is recorded with the County Recorder. The Declarant may also unilaterally terminate this Declaration before the closing of a sale or transfer of any Unit
- 16.5 **Exemption from Conflicts-of-Interest.** During the Declarant Control Period, the restrictions regarding conflicts of interest do not apply to service providers or vendors engaged by the Association.
- 16.6 **Exemption from Assessments.** During the Declarant Control Period, the Declarant and/or Visionary Desert Color Condominiums, LLC, are exempt from any Assessments, including regular and special Assessments, for all Units owned by Declarant and/or Visionary Desert Color Condominiums, LLC.
- 16.7 **Exemption from Use Restrictions.** Until all Additional Land has been added, and all the Declarant's Units and/or Visionary Desert Color Condominiums, LLC's Units have been sold, and as except as expressly prohibited by the Act, the Declarant is not bound by any use restriction in the Declaration as it relates to the Units owned by the Declarant and/or Visionary Desert Color Condominiums, LLC.
- 16.8 **Sales Activities.** Until all Additional Land has been added, and all the Declarant's Units and/or Visionary Desert Color Condominiums, LLC's Units, have been sold, the Declarant shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Units owned or to be owned by Declarant and/or Visionary Desert Color Condominiums, LLC:
- (a) The Declarant may maintain one or more sales offices in the Project, which may be located in any Unit, with the permission of the Owner of that Unit (who may be the Declarant) or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts.
 - (b) The Declarant may locate or relocate any number of promotional, advertising, or directional signs, banners, and similar or devices at any place or places in the Project.
 - (c) Designate by signs or otherwise any parking as parking for sales only or to otherwise restrict and use any parking in the Common Areas and Facilities
- 16.9 **Declarant Construction Easement.** The Declarant hereby reserves for itself, its employees, other agents and its independent contractors, a construction easement over, under, across, and through the Project including, but not limited to, the Units and the Common Areas and Facilities

for the purpose of doing all things that are reasonably necessary as a part of constructing any Project improvements including all physical improvements. This construction easement further includes the right to hook-up, tie-in, connect to, or utilize the water, power, gas, or other utility lines, valves, pipes, equipment, meters, and systems servicing a Unit for the purpose of providing water, power, gas, or other utilities to the Common Areas and Facilities or other parts of the Project or necessary or convenient for the construction, completion, maintenance, operation, or management, of the Common Areas and Facilities; provided, however, that the Declarant shall pay the actual cost of the utility service utilized. The Declarant's construction activities under the easements granted in this Section do not violate any Governing Document. This construction easement shall expire when all Additional Land has been added, and all the Declarant's Units and/or Visionary Desert Color Condominiums, LLC's Units have been sold.

- 16.10 **Acknowledgment of Construction Activities.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant agrees that in conjunction with development of the Project and completion of the Buildings, Units and Common Areas and Facilities, there will be construction activities, traffic, noises, odors, and vibrations that may temporarily disrupt the Owner's or Occupant's quiet enjoyment of the Unit until all improvements are complete. Each Owner and Occupant waives any right to object to such construction activity. Nonetheless, the Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners.
- 16.11 **No Modification of Declarant Rights.** None of the Declarant's rights under this Declaration may be modified or diminished without the written consent of the Declarant. Any document attempting to alter the Declarant's rights shall be void to the extent it attempts to alter Declarant's rights without the consent of the Declarant. Any consent to waive or alter any of the Declarant's rights under this Declaration by any future Declarant (as a result of any voluntary or involuntary assignment of Declarant rights) shall apply to any previous Declarant without that prior Declarant's written consent.
- 16.12 **No Obligations Imposed.** The Declarant's rights under this Declaration do not impose any obligation, legal or equitable, on the Declarant. If Declarant exercises any of its rights under this Declaration with respect to any portion of the Project, the Declarant may, but is not obligated to, exercise that its rights with respect to any other portion of the Project.
- 16.13 **Transfer of Declarant Rights.** The Declarant may transfer all or some its rights under this Declaration to the Association or any other Person. Such transfer of rights may, but shall not be required to be, recorded in the office of the Washington County Recorder.
- 16.14 **Right to Deny.** During the Declarant Control Period, the Declarant has the right to deny any matter or action voted upon by the Owners. Any Owner action during the Declarant Control Period shall not become effective unless the matter or action is approved in writing by the Declarant.
- 16.15 **Right to Change.** During the Declarant Control Period, nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method or construction, grade, elevation, or any other part or feature of a Unit prior to the contracting for the conveyance of the Unit to a purchaser.
- 16.17 **Exempt.** During the Declarant Control Period, unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the

Governing Documents.

**ARTICLE 17
EXPANDABLE CONDOMINIUM**

- 17.1 **Declarant's Conversion Right/Option to Expand.** It is anticipated that additions to the Project will be developed in a series of phases. Accordingly, the Declarant hereby reserves the unilateral right to convert and/or add Additional Land to the Project, legally described in the attached Exhibit B, into one of more Units, Limited Common Areas, and/or Common Areas and Facilities without the consent of any Owner, Lender, or the Association. The maximum number of residential Units that may be created within the Additional Land is 70. Any structure or Units erected on the Additional Land will be substantially identical, of similar quality of construction, similar materials used and similar architectural style to the other portions of land within the Project. Except as otherwise set forth herein, there are no limitations as to what portions of the Additional Land identified in Exhibit B may be added or when said land may be added to the Project. There are no assurances made with regard to any improvements that may be made on any portions of the Additional Land added to the Project. The maximum number of Units per every acre that may be developed on any portion of the Additional Land is 30.
- 17.2 **Time Limit.** Notwithstanding anything to the contrary here in, Declarant may convert and/or add Additional Land to the Project any time before seven years from the date this Declaration is recorded, unless the Owners owning at least 75% of the total Allocated Interests vote to extend that time after the seven-year period has expired.
- 17.3 **Documentation to Convert/Add.** To convert and/or add all or any portion of the Additional Land into one or more Units, Limited Common Areas, and/or Common Areas and Facilities the Declarant must:
- (a) Record with the County Recorder a supplemental Plat consistent with Section 57-8-13 of the Act (the plat shall show the location and dimensions of each Unit upon such land and the Unit designation of each Unit so created); and
 - (b) Simultaneously record a supplemental or amended Declaration with the County Recorder, assigning an identifying number to each Unit formed out of the Additional Land and reallocating the Allocating Interests in the Common Areas and Facilities formed out of the Additional Land, showing or designating the Unit or Units to which each is assigned.
- 17.4 **Effectiveness of Conversion/Addition.** A conversion and/or expansion of any Additional Land shall be deemed to have occurred at the time of the recording of the supplemental Plat and the supplemental Declaration converting and/or adding all or any portion of the Additional Land.
- 17.5 **Other Improvements.** All other improvements within the Additional Land will include roads, utility services, recreation areas, landscaping, and like improvements which are incidental to the residential use in the Project.
- 17.6 **Right to Create Limited Common Areas.** The Declarant hereby reserves the right to create Common Areas and Facilities within the Additional Land. The types of Limited Common Area that the Declarant intends to create within the Additional Land may include, but are not limited to, patios, decks, balconies, roof terraces, roof gardens, attics, electrical and mechanical rooms and systems (including heating and cooling apparatuses), recreational facilities, garage/storage

buildings, and all other elements that can appropriately be designed as limited common areas and facilities under the Act in proportion to the number of Units added.

- 17.7 **Easement to Facilitate Conversion.** The Declarant hereby reserves a transferable easement over and on the Common Area and Facilities for itself, its employees, other agents and its independent contractors for the purpose of doing all things reasonably necessary and proper to convert and/or add and develop the Additional Land, including the commencement and completion of improvements in accordance with this Declaration.
- 17.18 **Owners Monthly Assessment or Due.** Until such time as a conversion or expansion occurs, the land upon which a future Unit may be built is under no such obligation to pay any monthly assessment.

ARTICLE 18 CONTRACTION OF PROJECT

- 18.1 **Option to Contract.** Pursuant to the Act, the Declarant hereby reserves the unilateral option to withdraw any portion of land from the Project and/or Property ("Option to Contract") without the consent of any Owner, Lender, or the Association. The Option to Contract expires seven years from the date this Declaration is recorded.
- 18.2 **Exercise of Option to Withdraw.** A withdrawal of land from the Project shall be deemed to have occurred when an amendment to this Declaration, executed by Declarant, containing the legal description of the land being withdrawn, is recorded with the County Recorder. After a withdrawal amendment has been recorded, title to the withdrawal land shall be vested in and held by the Declarant, and none of the Owners, Lender, or the Association shall have any interest in the withdrawable land.
- 18.3 **Reservation of Easements over Project.** If the withdrawable land is withdrawn from the Project, the Declarant shall have an easement over and across the Project for vehicular, pedestrian, and construction access to and from such withdrawable land, for utilities, and for such other purposes as Declarant may deem necessary or desirable to develop and use the withdrawable land. Declarant shall have the right to execute and record separate easement agreements to evidence this easement. Recordation by the Declarant of an easement under this Section shall conclusively determine the existence, location, and extent of the reciprocal easements that are necessary or desirable.

ARTICLE 19 AMENDMENTS

- 19.1 **Amendment Requirements.** Except as otherwise provided in this Declaration, this Declaration may be amended only by the vote or approval of Owners with at least 67% of the voting interests in the Association. During the Declarant Control Period, the Declaration may unilaterally be amended by the Declarant and may not be amended by the Owners without Declarant's prior written consent. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety and to remove or add any provision the Declarant determines.
- 19.2 **Protection of Declarant Rights.** An amendment may not terminate or decrease any unexpired right of the Declarant or the Declarant Control Period unless the Declarant approves or consents in writing.

- 19.3 **Scope of Amendments.** This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations or to modify the Allocated Interests. The right to amend shall be broadly construed to permit any change to the rights, restriction, obligations, and other terms in this Declaration
- 19.4 **Execution of Amendments.** An Amendment that has been adopted as provided above shall be executed by the president of the Association and the secretary of the Association both of whom shall certify that the amendment has been approved and adopted in accordance with the procedures and requirements necessary to amend the Declaration
- 19.5 **Effective Date of Amendments.** An amendment to the Declaration is effective when it is recorded with the County Recorder.
- 19.6 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit or Units, upon the approval of Owners owning at least 67% of the total Allocated Interests, in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Areas and Facilities. If the 67% approval is obtained, every other Owner: (a) shall consent to and execute any further documents required for the finalization, recording, or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; and (b) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction. If any an amendment, supplement, or correction affects any boundary of a Unit, the consent of the Owner of that Unit is required.
- 19.7 **Amendment to Conform to Law.** The Board may, without the approval of the Owners, amend this Declaration to conform the Declaration to any legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. The following procedures and requirements must be followed for any such amendment:
- (a) The Association must obtain from an attorney who has a significant experience and a regular practice in area of community-association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this Section;
 - (b) The Directors must unanimously agree to the Amendment at the time it is recorded;
 - (c) The Board must provide to the Owners: (i) the proposed amendment; (ii) the language of this Section; (iii) the law that conflicts with the existing Declaration language; (iv) the attorney-opinion letter required for the amendment; and (v) a notice in which the Association: (1) notifies the Owner that it intends to amend the Declaration pursuant to this Section; (2) provides the Owner a right to object to the amendment within 30 days; and (3) provides instructions on how, when, and where to properly return the objection. The Board may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.

- (d) Within 45 days of providing the information to the Owners, as required by this Section, no more than 30% of the Allocated Interest holders have objected in writing to the amendment.
- (e) Having otherwise complied with all of the requirements of this, each Director must sign the amendment verifying that his Section has been complied with to the best of his or her knowledge and that no more than 30% of the Allocated Interest holders have objected after having received proper notice.

**ARTICLE 20
DESTRUCTION OF IMPROVEMENTS**

- 20.1 **Reconstruction.** In the event of partial or total destruction of a Building or Buildings or any portion of the Common Areas and Facilities within the Project, the Board of Directors shall promptly take the following actions:
- (a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from reputable contractors, including the obligation to obtain performance and lien payment bonds.
 - (b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Project.
 - (c) Pursuant to the Act, if the insurance proceeds are sufficient to reconstruct the Building, such proceeds shall be applied to reconstruction.
 - (d) If the Board determines: (i) the insurance proceeds with cover eighty-five (85%) or more, but no all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a special Assessment equal to twenty-five (25%) or less of the then aggregate Annual Assessments for all Units will completely cover the estimated costs of reconstruction, then the Board shall cause notice to be sent to all Owners and to all Lenders encumbering Units within the Project setting forth such findings and informing the Owners and Lenders that the Board of Directs intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests object in writing to such reconstruction as indicated in such notice, the Board shall call a Special Meeting of the Owners. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction the Board of Directors shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.
 - (e) If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board may abate Assessments against the Owner thereof until the Board determines that habitability has been restored.
- 20.2 **Reconstruction by Vote.** If reconstruction is not to take place pursuant to sections above, as soon as practicable after the same has been determined, the Board shall call a Special Meeting of the Owners. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written

consent of not less than seventy-five percent (75%) of the Allocated Interests (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Board of Directors shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

- 20.3 **Procedure for Reconstruction.** If the Association elects to reconstruct, then the Board shall contract with a licenses contractor or contractors to rebuild or repair such damaged or destroyed portions of the Project in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements. The Board may employ a licensed architect to supervise the repair and rebuilding to ensure that all work, services and supplies are in conformity with the requirements of the construction contract.
- 20.4 **Determination not to Reconstruct without Termination.** If Owners of seventy-five (75%) or more of the Allocated Interests vote not to rebuild, and the entire Project is not repaired or replaced, and the Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.
- 20.5 **Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed Building or any other portion of the Common Area and Facilities, and to make settlements with the insurer for less than full insurance coverage on the damage to such Building or any other portion of the Common Area and Facilities. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.
- 20.6 **Repair of Units.** Unless covered by the Association's insurance policy, the installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.
- 20.7 **Priority.** Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

ARTICLE 21 GENERAL PROVISIONS

- 21.1 **Enforcement.** The Association and any Owner shall have the right to enforce the Declaration by proceedings at law or in equity, including the right to prevent the violation of any provision of the Declaration, and the right to recover damages and other sums for such violation, including attorney fees and costs incurred in conjunction with enforcement.

- 21.2 **Injunctive Relief.** Each Owner, by taking title to a Unit, acknowledges and agrees that a breach of the Governing Documents will result in immediate and irreparable injury to the Association and the other Owners and that the Association shall be entitled to an order of specific performance and to a temporary and permanent injunction enjoining any breach of the Governing Documents, without posting bond or furnishing other security and without proving irreparable injury.
- 21.3 **Cumulative Remedies.** All rights and remedies of the Association and the Owners in the Governing Documents are cumulative, and no right or remedy shall be exclusive of any other. The Declarant, Association, and the Owners have the right to pursue any one or all of such rights and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.
- 21.4 **No Waiver.** Failure by the Association or any Owner to enforce any provision in this Declaration or the other Governing Documents, in any certain instance or on any particular occasion shall not be deemed a waiver of the right to enforce as to any such future breach of the same or any other provisions.
- 21.5 **Severability.** Invalidation of any provision of the Declaration by judgment or court order shall not affect any other provision of the Declaration, all of which shall remain in full force and effect.
- 21.6 **Conflicting Provisions.** Except as otherwise provided in this Declaration, if there is any conflict between Utah statute and any of the Governing Documents, the order of priority from the highest to the lowest is Utah statute, this Declaration, the Plat, the Articles, the Bylaws, and then the Rules.
- 21.7 **Number.** Whenever the context requires, the singular shall include the plural, and vice versa.
- 21.8 **Construction.** This Declaration shall be liberally construed to effectuate the purpose of creating a plan for the development of a condominium community and for the maintenance of the Project. References in this Declaration to article, section, and subsection numbers, unless otherwise expressly provided, are to the articles, sections, and subsections in this Declaration. Article and section headings are used for convenience only and do not affect the interpretation of this Declaration. To the extent permitted by law, the Governing Documents shall not be construed for or against the Declarant, the Association, any Owner, or any other Person subject to the Governing Documents.
- 21.9 **Applicability of the Act.** The Association intends for the Act to govern the Project except where (incompliance with the Act) the Association has included specific provisions in this Declaration that vary, supersede, or supplement the Act. Any provision contradicting the Act shall govern the Project to the extent allowed by the Act. If there is any conflict between this Declaration and the Act, to the extent the Act does not allow this Declaration to contradict the Act, the Act shall control, and this Declaration shall be deemed modified accordingly, but only to the extent necessary to comply with the Act.
- 21.10 **Amendments to the Act.** Amendments to the Act after the Declaration is recorded shall not apply to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.
- 21.11 **Effect of the Declaration and Service.** This Declaration is made for the purposes set forth in the Recitals. The Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, or regulations. The Declarant shall not be liable if any provision in this Declaration is determined to be unenforceable in whole or in part for any reason. The name and address of the person to receive service of process on behalf of the project is set forth in Article II above.

- 21.12 **Owner Liability and Indemnification.** Each Owner shall be liable to every other Owner and to the Association for any damages or losses to the Common Areas and Facilities caused by the negligent or intentional acts or omissions of the Owner and the Occupants of that Owner's Unit, to the extent such damages or losses are either under the insurance deductible of the Association or not covered by the Association's insurance. Each Owner, by taking title to a Unit, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage was caused by the intentional act of the Association.
- 21.13 **Consent, Power of Attorney.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant consents to the rights reserved to the Declarant and the Association in this Declaration, including, but not limited to, the right to prepare, execute, and record documents to establish and grant easements and to amend this Declaration, the Plat, and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient for the Declarant or the Association to exercise their respective rights under this Declaration. And such acceptance shall be deemed an appointment of the Declarant, during the Declarant Control Period, and the Association after that, with full right of substitution, as the attorney-in-fact of each Owner and Occupant to execute such documents and to do such things on each Owner's and Occupant's behalf. This appointment, being coupled with an interest, shall be irrevocable for the specific period of Declarant's and the Association's reserved rights as set forth in this Declaration. This appointment shall not be affected by the disability of any such Owner or Occupant.
- 21.14 **Reasonable Accommodations.** The Association may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Areas and Facilities, or deviations from provision of the Governing Documents. An accommodation or modification made under shall not act as a waiver of the provisions of the Governing Documents.
- 21.15 **Security.** The Association shall not be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. The Association shall not be liable for any loss or damage resulting from criminal conduct arising from any failure to provide security or any ineffectiveness of security measures undertaken. The Association has no duty to any Owner or Occupant related to security or to prevent criminal conduct. By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant agrees that the Association is not responsible for the safety or well-being of Owners and Occupants or any of their personal property as it relates to criminal conduct, and each Owner and Occupant specifically waives any claims against the Association and assumes all risks for loss or damage to Persons or property resulting from criminal conduct within or relating to the Project.
- 21.16 **Dispute Resolution.** Declarant, Association, its officers and directors, and all Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, or sale of any part of the Project or any improvements thereon ("Claims") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

- (a) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), 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 proposed remedy;
 - iv. The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
 - v. That the person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the claim.
- (b) Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.
- (c) In the event that the Claim is not resolved within one hundred eighty (180) days, the Parties agree to submit the Claim to mandatory mediation. All costs and expenses related to mediation shall be split equally between the Parties. The Parties agree that failure to participate in mediation will result in a waiver of the Claim. Only after participating in mediation may a party initiate legal proceedings with regard to a Claim.
- (d) Before initiating any legal proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:
 - i. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
 - ii. Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting;
 - iii. Receive approval from at least fifty-one (51%) vote of the entire voting interest of the Association, who must be present in person or by proxy at the special meeting, to initiate any legal proceeding of the Claim against the Declarant and/or its affiliate, if applicable; and
 - iv. Allow the one hundred and eighty (180) day right to cure period to expire.
- (e) Any post-turnover Claims involving the Bound Parties shall strictly comply with each of the provisions of this Section. The parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant

party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

- (f) This Section may not be amended or deleted at any time without the express prior written approval of: (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, (b) not less than seventy-five percent (75%) of the total voting power of the Board, and (c) the Declarant during the Declarant Control Period. Any purported amendment or deletion of this Section or any portion hereof, without all of these express prior written approvals shall be void.
- (g) The dispute resolution procedures in this Section are in addition to and are not superseded by those protections provided to the Declarant by the Act.
- (h) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

21.17 **No Representations or Warranties.** Each Owner and Occupant agrees, by taking title to a Unit or residing in a Unit, that then either the Declarant nor the Association have made any representations or warranties related to the Project and that each Owner and Occupant has not relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to the Project.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Declarant has executed and adopted this Declaration on behalf of the Association pursuant to its authority this 29 day of OCTOBER 2021.

DECLARANT
VISIONARY HOMES 2022, LLC
a Utah Limited Liability Company

By: *Jeff Jackson*

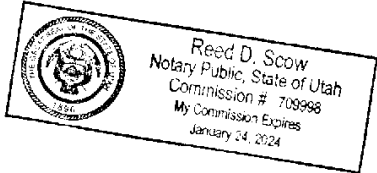
Name: JEFF JACKSON

Its: Manager/Authorized Representative

STATE OF UTAH)
) ss
COUNTY OF WASHINGTON)

On the 29 day of October, 2021 personally appeared before me Jeff Jackson who by me begin duly sworn, did say that he/she is an authorized representative of Visionary Homes 2022, LLC, and/or in the capacity as the Manager of Visionary Homes 2022, LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public: *Reed D. Scow*



IN WITNESS WHEREOF, the undersigned consents to subjecting the subject Property to the terms of the Declaration this 29 day of OCTOBER, 2021.

OWNER
VISIONARY DESERT COLOR CONDOMINIUMS, LLC
a Utah Limited Liability Company

By: [Signature]

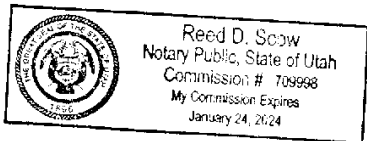
Name: JEFF JACKSON

Its: Manager/Authorized Representative

STATE OF UTAH)
) ss
COUNTY OF WASHINGTON)

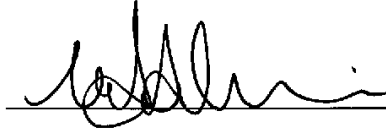
On the 29 day of October, 2021 personally appeared before me Jeff Jackson who by me begin duly sworn, did say that he/she is an authorized representative of Visionary Desert Color Condominiums, LLC, and/or in the capacity as the Manager of Visionary Desert Color Condominiums, LLC and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public: Reed D. Scow



APPROVED AS TO FORM AND CONTENT by DESERT COLOR ST. GEORGE, LLC

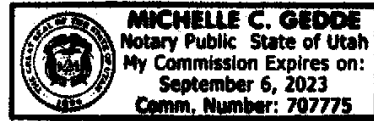
DESERT COLOR ST. GEORGE, LLC
a Utah Limited Liability Company



Name: MITCHELL DARNIE

Its: Manager/Authorized Representative

STATE OF UTAH)
) ss
COUNTY OF WASHINGTON)



On the 8th day of November, 2021 personally appeared before me
Mitchell Darnie who by me begin duly sworn, did say that he/she is an authorized
representative of Desert Color St. George, LLC, and/or in the capacity as its Manager, and that the
foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public: Michelle C. Gedde

EXHIBIT A
(Legal Description of Property)

All of **AUBURN HILLS PHASE 18A CONDOMINIUMS**, according to the official plat recorded in the office of the Washington County Recorder.

Including Units: 2101 through 2304

More particularly described as:

BEGINNING AT A POINT THAT LIES NORTH 88°50'55" WEST ALONG THE SECTION LINE 832.75 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 25, TOWNSHIP 43 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 22°46'27" EAST 0.99 FEET; THENCE SOUTH 67°14'26" WEST 85.08 FEET; THENCE NORTH 24°21'17" WEST 185.92 FEET; THENCE NORTH 86°10'36" WEST 19.52 FEET; THENCE NORTHWESTERLY ALONG A 20.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, (LONG CHORD BEARS NORTH 47°41'13" WEST A DISTANCE OF 24.90 FEET), CENTER POINT LIES SOUTH 80°48'11" WEST THROUGH A CENTRAL ANGLE OF 76°58'47", A DISTANCE OF 26.87 FEET; THENCE NORTH 86°10'36" WEST 59.08 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF GARNET DRIVE; THENCE NORTH 03°49'24" EAST ALONG SAID LINE 25.00 FEET; THENCE SOUTH 86°10'36" EAST 59.08 FEET; THENCE NORTHEASTERLY ALONG A 20.00 FOOT RADIUS CURVE TO THE LEFT, (LONG CHORD BEARS NORTH 48°49'24" EAST A DISTANCE OF 28.28 FEET), CENTER POINT LIES NORTH 03°49'24" EAST THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 31.42 FEET; THENCE NORTH 03°49'24" EAST 311.48 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF SCARLET HILL DRIVE; THENCE ALONG SAID LINE THE FOLLOWING TWO (2) COURSES: 1) SOUTH 86°10'36" EAST 107.92 FEET AND 2) NORTH 03°49'24" EAST 11.00 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF CARNELIAN PARKWAY; THENCE ALONG SAID LINE THE FOLLOWING TWO COURSES: 1) SOUTHEASTERLY ALONG A 28.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 41°10'36" EAST A DISTANCE OF 36.77 FEET), CENTER POINT LIES SOUTH 03°49'24" WEST THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 40.84 FEET AND 2) SOUTH 03°49'24" WEST 147.25 FEET; THENCE NORTH 86°10'37" WEST 108.92 FEET; THENCE SOUTH 03°49'24" WEST 155.42 FEET; THENCE SOUTHERLY ALONG A 50.00 FOOT RADIUS CURVE TO THE LEFT, (LONG CHORD BEARS SOUTH 10°15'56" EAST A DISTANCE OF 24.34 FEET), CENTER POINT LIES SOUTH 86°10'36" EAST THROUGH A CENTRAL ANGLE OF 28°10'40", A DISTANCE OF 24.59 FEET; THENCE SOUTH 24°21'17" EAST 173.28 FEET; THENCE EASTERLY ALONG A 10.00 FOOT RADIUS CURVE TO THE LEFT, (LONG CHORD BEARS SOUTH 68°33'52" EAST A DISTANCE OF 13.95 FEET), CENTER POINT LIES NORTH 65°38'43" EAST THROUGH A CENTRAL ANGLE OF 88°25'11", A DISTANCE OF 15.43 FEET; THENCE NORTH 67°13'33" EAST 51.04 FEET; THENCE SOUTH 22°46'27" EAST 24.05 FEET, TO THE POINT OF BEGINNING.

CONTAINING 35,761 SQUARE FEET OR 0.82 ACRES.

EXHIBIT B
(Additional Land)

EXHIBIT C
(Allocated Interest)

Upon the recording of this Declaration, the Project will consist of 10 Units.

Each Unit shall have an equal Allocated Interest equivalent to a 1/10th fractional amount.

EXHIBIT D
(Bylaws)

BYLAWS

OF

**AUBURN HILLS AT DESERT COLOR
CONDOMINIUMS**

(A Condominium Project)

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OF
AUBURN HILLS AT DESERT COLOR CONDOMINIUMS

ARTICLE I - GENERAL

1.1. Purpose of Bylaws.

These Bylaws ("Bylaws") are for the regulation and management of the affairs of Auburn Hills At Desert Color Condominiums.

1.2. Terms Defined in Declaration.

Unless otherwise specifically provided herein, capitalized terms in these Bylaws shall have the same meaning as given to such terms in the Declaration.

1.3. Controlling Laws and Instruments.

These Bylaws are controlled by and shall always be consistent with the provisions of the Utah Revised Nonprofit Corporation Act (Utah Code 16-6a-101, et seq.) ("Nonprofit Act") and the Utah Condominium Act (Utah Code 57-8-1, et seq.) ("Condominium Act") (collectively the "Acts"), the Declaration, and the Articles of Incorporation of the Association ("Articles") filed with the Division of Corporations and Commercial Code of the Utah Department of Commerce (the "Division"), as any of the foregoing may be amended from time to time.

ARTICLE II - OFFICERS

2.1. Principal Office.

The principal office of the Association shall be at the address identified in the Association's latest annual report filed with the Division. The Board of Directors in its discretion, may change from time to time the location of the principal office. (A member of the Board of Directors shall hereinafter be referred to as a "Director.")

2.2. Registered Office and Agent.

The Acts require that the Association have and continuously maintain in the State of Utah a registered office and a registered agent. The registered agent must be an individual who resides in the State of Utah and whose business office is identical with the registered office. The initial registered office and the initial registered agent are specified in the Articles of Incorporation and may be changed by the Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law with the Division.

ARTICLE III - MEMBERS

3.1. Members

A "Member" is the person or, if more than one, all persons collectively, who constitute the Owner of a Unit within the Property.

3.2. Memberships Appurtenant.

Each membership shall be appurtenant to the fee simple title to a Unit. The person or persons who constitute the owner of fee simple title to a Unit shall automatically be the holder of the membership appurtenant to that Unit and the membership shall automatically pass with fee simple title to the Unit.

3.3. Members' Voting Rights.

Members shall be entitled to the number of votes accorded to such Member as provided in the Declaration.

3.4. Voting by Joint Owners and Designated Representatives.

In the event there is more than one (1) Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. In the event the Owner of a particular Unit is a partnership, corporation, or limited liability company, the vote relating to such Unit shall be exercised by a designated representative of such partnership, corporation, or limited liability company. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy or through ballot, shall be conclusively presumed to be the vote attributable to the Unit concerned, unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

3.5. Resolution of Voting Disputes.

In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members at a meeting, the Board of Directors of the Association shall act as arbitrators and the decision of a disinterested majority of the Board of Directors shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with Utah law.

3.6. Transfer of Memberships on Association Books.

Transfer of membership shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Unit to which the membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the membership as the owner of the membership entitled to all rights in connection therewith, including the right to vote and to receive notice.

3.7. Assignment of Voting Rights to Tenants and Mortgagees.

A Member may assign his right to vote to a tenant or to a mortgagee of his Unit for the term of the lease or the mortgage and any sale, transfer or conveyance of the Unit shall, unless otherwise provided in the document of sale, transfer or conveyance, be subject to any such assignment of voting rights to any tenant or mortgagee. Any such assignment of voting rights and

any revocation or termination of any assignment of voting rights shall be in writing and shall be filed with the secretary of the Association.

3.8. Delinquent Owner.

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

3.8.1 The Board of Directors may terminate a Delinquent Owner's right:

- (a) to receive a utility service for which the Member pays as a common expense; or
- (b) of access to and use of recreational facilities.

3.8.2 (a) Before terminating a utility service or right of access to and use of recreational facilities under Subsection 3.8.1 the Manager or Board of Directors shall give the Delinquent Owner notice. Such notice shall state:

(i) that the Association will terminate the Owner's utility service or right of access to and use of recreational facilities, or both, if the association does not receive payment of the assessment within fourteen (14) calendar days;

(ii) the amount of the assessment due, including any interest or late payment fee; and

(iii) the Owner's right to request a hearing.

(b) A notice under Subsection 3.8.2(a) may include the estimated cost to reinstate a utility service if service is terminated.

3.8.3 (a) The Delinquent Owner may submit a written request to the Board of Directors for an informal hearing to dispute the assessment.

(b) A request under Subsection 3.8.3(a) shall be submitted within fourteen (14) days after the date the Delinquent Owner receives the notice under Subsection 3.8.2(a).

3.8.4 The Board of Directors shall conduct an informal hearing requested under Subsection 3.8.3 in accordance with the standards provided in these Bylaws.

3.8.5 If the Delinquent Owner requests a hearing, the Association may not terminate a utility service or right of access to and use of recreational facilities until after the Board of Directors:

(a) conducts the hearing; and

(b) enters a final decision.

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

3.8.7 The Association may:

- (a) levy an assessment against the Delinquent Owner for the cost associated with reinstating a utility service that the Association terminates as provided in this section; and
- (b) demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in a notice under Subsection 3.8.2(b).

ARTICLE IV - MEETING OF MEMBERS

4.1. Place of Members' Meetings.

Meetings of Members shall be held at the principal office of the Association or at such other place, within or convenient to the Property, as may be fixed by the Board of Directors and specified in the notice of the meeting. Meetings of the Members may also be held via video conferencing and/or through a conference call.

4.2. Annual Meetings of Members.

Annual Meetings of the Members shall be held at such time of day as is fixed by the Board of Directors and specified in the notice of meeting. The Annual Meetings shall be held to elect Directors of the Association and to transact such other business as may properly come before the meeting. Annual Meetings shall not be required during the period of Declarant Control.

4.3. Special Meetings of Members.

Special meetings of the Members may be called by the president or the Board of Directors or by Members holding not less than twenty-five percent (25%) of the total votes of all Members, excluding votes of Declarant, or by Declarant if it holds at least ten percent (10%) of the total votes of all Members. No business shall be transacted at a special meeting of Members except as indicated in the notice thereof.

4.4. Record Date/Members List.

4.4.1. The record date for the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose for the taking of any other lawful action shall be as set forth in Subsection

4.4.2 below, unless the Board of Directors, in advance of sending notice, set a date by resolution as the record date for any such determination of Members. Such record date shall not

be more than sixty (60) days prior to the meeting of Members or the event requiring a determination of Members.

4.4.2. Members entitled to notice of a meeting of the Members are the Members of the Association at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held. Members entitled to vote at a meeting of the Members are the Members of the Association on the date of the meeting, and who are otherwise eligible to vote. The record date for the purpose of determining the Members entitled to exercise any rights in respect of any other lawful action are Members of the Association at the later of (a) the close of business on the day on which the Board of Directors adopts the resolution relating to the exercise of the right; or (b) the close of business on the sixtieth (60th) day before the date of the exercise of the right. A record date fixed under this Section may not be more than sixty (60) days before the meeting or action requiring a determination of Members occurs. A determination of members entitled to notice of or to vote at a meeting of Members is effective for any adjournment of the meeting unless the Board of Directors fixes a new date for determining the right to notice or the right to vote.

4.4.3. The Association shall only be required to prepare a list of the names of the Members as provided for in Section 9.3.3.

4.5. Notice of Members' Meetings.

Written notice stating the place, day and hour of any meeting shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice of an annual, regular or special meeting shall include: (a) the names of any known candidate for Director and shall identify any other matter which it is known may come before the meeting; (b) potential conflicting interest transactions of a Director, party related to a Director, or an entity in which the Director is a director or has a financial interest, if any; (c) notice of any indemnification or advance of expenses to a Director in connection with a legal "proceeding" as defined in the Acts; (d) notice of any amendment to these Bylaws proposed by the Members and a copy, summary or general statement of the proposed amendment; (e) notice of a proposed plan of merger; (f) notice of a proposed sale of the properties by the Association other than in the regular course of activities; (g) notice of a proposed dissolution of the Association; and (h) any matter a Member intends to raise at the meeting if requested in writing to do so by a person entitled to call a special meeting and the request is received by the secretary or president at least ten (10) days before the Association gives notice of the meeting. The notice of a special meeting shall state the purpose or purposes for which the meeting is called.

4.6. Proxies at Meetings.

A Member entitled to vote at a meeting may vote in person or by proxy executed in writing by the Member or his duly authorized attorney-in-fact and filed with the secretary of the meeting prior to the time the proxy is exercised.

4.7. Ballots at Meetings.

A written ballot, if delivered by the Association to every Member entitled to vote on the matter or matters therein as described in Section 4.8 below, may be used in connection with any annual, regular, or special meeting of Members, thereby allowing Members the choice of either voting in person or by written ballot delivered by a Member to the Association in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Sections 4.8 and

4.8.1 and shall be counted equally with the votes of Members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

4.8. Ballots without a Meeting.

The Association may utilize ballots without a meeting to take any action that may be taken at any annual, regular or special meeting of the Members provided the Association delivers a written ballot to every member entitled to vote. Any ballot utilized without a meeting shall be valid only when (a) the time by which all ballots must be received has passed so that a quorum can be determined and (b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4.8.1 All solicitations for votes by written ballot shall: (a) set forth each proposed action, (b) provide for an opportunity to vote for or against each proposed action, (c) indicate the number of responses needed to meet the quorum requirements; (d) state the percentage of approvals necessary to approve each matter other than election of Directors; (e) specify the time by which a ballot must be received by the Association in order to be counted; and (f) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

4.8.2 Any written ballot shall comply with the requirements in this Section and shall be counted equally with the votes of Members in attendance (by person or proxy) at any meeting for every purpose, including satisfaction of a quorum requirement.

4.8.3 Members shall be provided a fair and reasonable amount of time before the day on which the Association must receive ballots. An amount of time is considered to be fair and reasonable if (a) Members are given at least fifteen (15) days from the day on which the notice is mailed, if the notice is mailed by first-class or registered mail; (b) Members are given at least thirty

(30) days from the day on which the notice is mailed, if the notice is mailed by other than first-class or registered mail; or (c) considering all the circumstances, the amount of time is otherwise reasonable.

4.9. Revocation of Proxy or Ballot.

A proxy or ballot may be revoked, prior to the time the proxy is exercised or the ballot counted, by (a) the Member attending the meeting and voting in person, or (b) the Member signing and delivering to the secretary or other person authorized to tabulate proxy or ballot votes (i) a

writing stating that the appointment of proxy or ballot is revoked, or (ii) a subsequent proxy form or ballot. A proxy or ballot shall automatically cease upon the conveyance by a Member of the Lot of the Member and the transfer of the membership on the books of the Association. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. The death or incapacity of the Member appointing a proxy or issuing a ballot does not affect the right of the Association to accept the proxy's authority or count the ballot unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority or the ballot is counted.

4.10. Written Consents Without a Meeting.

Unless prohibited by the Articles of Incorporation, any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted. Directors may not be elected by written consent, except by unanimous written consent of all Members entitled to vote for the election of Directors. Any action taken under this Section is not effective unless all written consents are received within a sixty (60) day period and have not been revoked. A written consent may be given by electronically transmitted facsimile or other form of communication providing the Association with a complete copy of the written consent, including a copy of the signature to the written consent.

4.11. Telecommunications.

Any or all of the Members may participate in an annual, regular or special meeting of the Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting by a means permitted under this Section is considered to be present in person at the meeting.

4.12. Quorum at Members' Meetings.

Except as may be otherwise provided in the Declaration, the Articles of Incorporation, or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the representation, in person, by proxy or by ballot, of Members entitled to cast at least one percent (1%) of the votes of all Members shall constitute a quorum at any meeting of such Members. Members present in person or by proxy or represented by ballot at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum.

4.13. Adjournment of Members' Meetings.

Members present in person or by proxy at any meeting, whether or not there is a quorum may adjourn the meeting from time to time. If the meeting is adjourned, the Board of Directors shall issue a new Notice of Members Meeting at which meeting the members that are present in person or by proxy or represented by ballot shall constitute a quorum, except as otherwise provided in the Declaration, the Articles of Incorporation, or these Bylaws. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

4.14. Vote Required at Members' Meetings.

At any meeting where a quorum is present, a majority of the votes present in person, ballot or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation, or these Bylaws, except that, in the case of elections in which there are more than two (2) candidates, the persons receiving the highest number of votes shall be elected.

4.15. Cumulative Voting Not Permitted.

Cumulative voting by Members in the election of Directors shall not be permitted.

4.16. Order of Business.

The order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) election of Directors, if applicable; (d) report of finances; and (e) any other Association business.

4.17. Expenses of Meetings.

The Association shall bear the expenses of all regular and annual meetings of Members and of special meetings of Members.

4.18. Waiver of Notice.

A Member may waive any notice required by the Acts or by these Bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. A waiver shall be in writing, signed by the Member entitled to the notice, and delivered to the Association for inclusion in the minutes; or filing with the corporate records. The delivery and filing required above may not be conditions of the effectiveness of the waiver. A Member's attendance at a meeting (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

4.19. Signature of Members.

Except as otherwise provided in the Acts, all votes, consents, written ballots, waivers, proxy appointments, and proxy or ballot revocations shall be in the name of the Member and signed by the Member with a designation of the Member's capacity; i.e., owner, partner, president, director, member, trustee, conservator, guardian, etc.

ARTICLE V - BOARD OF DIRECTORS

5.1. General Powers and Duties of the Board of Directors.

The term "Board of Directors" or "Board" shall be synonymous with the term "Management Committee" as defined in the Condominium Act and the Declaration. The Board of Directors shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board of Directors shall have the power to exercise or cause to be exercised for the Association all of the powers, rights and authority of the Association not reserved to Members in the Declaration, the Articles of Incorporation, these Bylaws, or the Acts.

5.2. Special Powers and Duties of the Board of Directors.

Without limiting the foregoing statement of general powers and duties of the Board of Directors or the powers and duties of the Board of Directors as set forth in the Declaration, the Board of Directors shall be vested with the following specific powers and duties:

5.2.1 Assessments. The duty to fix and levy from time-to-time assessments, special assessments, and all other assessments upon the Members of the Association as provided in the Declaration; and to enforce the payment of such delinquent assessments as provided in the Declaration.

5.2.2 Insurance. The duty to contract and pay premiums for fire and casualty and liability and other insurance in accordance with the provisions of the Declaration.

5.2.3 Common Areas. The duty to manage and care for the Common Areas, and to employ personnel necessary for the care and operation of the Common Areas, and to contract and pay for necessary or desirable improvements on property acquired by the Association in accordance with the Declaration.

5.2.4 Agents and Employees. The power to select, appoint, and remove all officers, agents, and employees of the Association and to prescribe such powers and duties for them as may be consistent with law, with the Declaration, the Articles of Incorporation, and these Bylaws.

5.2.5 Borrowing. The power, with the approval of the Members representing at least two-thirds (2/3) of the voting power of the Association, to borrow money and to incur indebtedness for the purpose of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt, and securities therefor.

5.2.6 Enforcement. The power to enforce the provisions of the Declaration, the rules and regulations of the Association, these Bylaws, or other agreements of the Association.

5.2.7 Delegation of Powers. The power to delegate its powers according to law.

5.2.8 Rules and Regulations. The power to adopt such rules and regulations with respect to the interpretation and implementation of the Declaration, use of Common Areas, and use of any property within the Property, including Living Units, and to levy fines and penalties for infractions and violations thereof; provided, however, that such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation, and these Bylaws.

5.2.9 Emergency Powers. The right to exercise such emergency powers as provided for in the Acts.

5.3. Qualifications of Directors.

A Director must be a natural person eighteen (18) years of age or over and an Owner of a Unit within the Property or, if the Owner of any such Unit is a partnership, corporation, or limited liability company, must be a designated representative of such partnership, corporation, or limited liability company. If a Director conveys or transfers title to his Unit, or if a Director who is a designated representative of a partnership, corporation, or limited liability company ceases to be such designated representative, or if the partnership, corporation, or limited liability company of which a Director is a designated representative transfers title to its Unit, such Director's term as Director shall immediately terminate and a new Director shall be selected as promptly as possible to take such Director's place. Notwithstanding anything in this Section to the contrary, none of the initial Directors, as designated in the Articles of Incorporation, shall be required to have any ownership interest in any Unit in order to qualify to serve as a Director until the first election of Directors by the Members. Any Director no longer qualified to serve under the standards provided for in this Section 5.3 may be removed by a majority vote of the Directors then in office. None of the foregoing qualifications apply during the Declarant Control Period.

5.4. Number of Directors.

The number of Directors of the Association shall be not less than three (3) and not more than five (5). Subject to such limitations, the number of Directors shall be three (3) until changed pursuant to this Section 5.4. The number of Directors can be increased beyond three (3) Directors to five (5) by the majority vote of the Board of Directors.

5.5. Term of Office of Directors and Elections.

The affairs of the Association shall be managed by a Board of Directors composed of three (3) individuals, unless changed pursuant to Section 5.4. After the Declarant Control Period, the Board of Directors shall be elected by secret ballot at a meeting of the Members to serve as follows:

At each annual meeting of the Members, the Members shall elect Directors for terms of two (2) years, with an odd number of Directors (at least two (2) less than the entire Board) elected in odd-numbered years and an even number of Directors elected in even-numbered years. In the initial election of Directors, the method of election shall provide that the term of an odd number of Directors (at least two (2) less than the entire Board) shall expire in the next odd numbered year, and the term of an even number of trustees shall expire in the next even numbered year.

Directors newly elected at the annual meeting of the Members shall take office immediately. Newly elected Directors are invited to attend Board of Directors meetings to familiarize them with the Association procedures prior to taking office. Only Members who are not in violation of the Declaration, these Bylaws or Association rules and regulations shall be eligible to run for a position on the Board of Directors. In an election of multiple Directors, that number of candidates equaling the number of Directors to be elected, having the highest number of votes cast in favor of their election, are elected to the Board of Directors. When only one (1) Director is being voted upon, the candidate having the highest number of votes cast in his or her favor is elected to the Board of Directors.

5.6. Nominating Committee.

Nominations for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting of the Members. The nominating committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The nominating committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Except for the initial Board of Directors appointed by the Declarant, such nominations shall be made from among the Members.

5.7. Removal of Directors by the Members.

Except during the Declarant Control Period, at any meeting of the Members, the notice of which indicates such purpose, any or all of the Directors may be removed, with or without cause, by the affirmative vote of Members holding a majority of the voting interests of all Members; and a successor may be then and there elected to fill the vacancy thus created.

5.8. Resignation of Directors.

Any Director may resign at any time by giving written notice to the president, to the secretary, or to the Board of Directors stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective, unless the resignation provides otherwise. A Director who resigns may deliver to the Division a statement setting forth (a) that person's name; (b) the name of this Association; (c) information sufficient to identify the report or other document in which the person is named as a Director or officer; and (d) the date on

which the person ceased to be a Director or officer or a statement that the person did not hold the position for which the person was named in the corporate report or other document.

5.9. Vacancies in the Board of Directors.

Any vacancy occurring in the Board of Directors shall be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members. A Director elected by the Board of Directors to fill the vacancy of a Director elected by the voting Members may be removed without cause by the voting Members, but not the Board of Directors. Should any vacancy of the Board of Directors remain unfilled for a period of two (2) months, the Members may, at a special meeting of the Members called for that purpose, elect a Director to fill such vacancy by a majority of the votes which Members present at such meeting, or represented by proxy or ballot, are entitled to cast.

5.10. Appointment of Committees.

The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint one or more committees which shall consist of two or more Directors and which, unless otherwise provided in such resolution, shall have and may exercise the authority to make recommendations (but not final decisions) to the Board of Directors in the management of the Association, except authority with respect to those matters specified in the Acts as matters which such committee may not have and exercise the authority of the Board of Directors.

5.11. General Provisions Applicable to Committees.

The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him by law. The provision of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of the Board of Directors shall be applicable to meetings of committees of the Board of Directors.

ARTICLE VI - MEETING OF DIRECTORS

6.1. Place of Directors' Meetings.

Meetings of the Board of Directors shall be held at the principal office of the Association or at such other place, within or convenient to the Property, as may be fixed by the Board of Directors and specified in the notice of the meeting.

6.2. Annual Meeting of Directors.

The annual meeting of the Board of Directors shall be held on the same date as, or within ten (10) days following, the annual meeting of Members. The Business to be conducted at the annual meeting of the Board of Directors shall consist of the appointment of officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board of Directors shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of Members at which the Board of Directors is elected or if the time and place of the annual meeting of the Board of Directors is announced at the annual meeting of Members.

6.3. Other Regular Meetings of Directors.

The Board of Directors may hold other regular meetings and may, by resolution, establish in advance the times and places for such regular meetings. The resolution of meeting schedule shall be given to all Members of the Association at least forty-eight (48) hours before the first meeting scheduled. No prior notice of any regular meeting need be given after establishment of the time and place thereof by such resolution.

6.4. Special Meetings of Directors.

Special Meetings of the Board of Directors may be called by the president or any two (2) members of the Board of Directors other than the president.

6.5. Open Meetings/Member Right to Participate.

Except as provided in Subsection 6.6 and 6.8, a Board meeting, whether in person or by means of electronic communication, at which the Board can take binding action shall be open to each Member or the Member's representative if the representative is designated in writing. At each meeting, the Board shall provide each Member a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the meeting. A Director may not avoid or obstruct the requirements of this Section. However, nothing in this section shall affect the validity or enforceability of an action of a Board. This Section 6.5 does not apply to Board meetings so long as the Declarant's period of administrative control exists.

6.6. Closed Meetings.

The Board may close a meeting to: (a) consult with an attorney for the purpose of obtaining legal advice; (b) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (c) discuss a personnel matter; (d) discuss a matter relating to contract negotiations, including review of a bid or proposal; (e) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (f) discuss a delinquent assessment or fine.

6.7. Notice to Directors of Board Meetings.

In the case of all meetings of the Board of Directors for which notice is required by these Bylaws, notice stating the place, day and hour of the meeting shall be delivered not less than three (3) nor more than thirty (30) days before the date of the meeting, by mail, fax, electronic means, telephone or personally, by or at the direction of the persons calling the meeting, to each member of the Board of Directors. If by telephone such notice shall be deemed to be delivered when given by telephone to the Director. If given personally, such notice shall be deemed to be delivered upon delivery of a copy of a written notice to, or upon verbally advising, the Director or some person who appears competent and mature at his home or business address as either appears on the records of the Association.

Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice to the Director or waiver of such meeting.

6.8. Notice to Members of Board Meetings.

At least forty-eight (48) hours before an open Board meeting, the Association shall give written notice of the meeting via email to each Member who requests notice of a meeting, unless: (a) notice of the meeting is included in a meeting schedule that was previously provided to the Member; or (b) the meeting is to address an emergency and each Director receives notice of the meeting less than forty-eight (48) hours before the meeting. The notice to the Members shall: (a) be delivered to the Member by email, to the email address that the Member provides to the Board or the Association (or via mail if requested in writing by the Member); (b) state the time and date of the meeting; (c) state the location of the meeting; and (d) if a Director may participate by means of electronic communication, provide the information necessary to allow the member to participate by the available means of electronic communication.

6.9. Proxies.

For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Director may be considered to be present at a meeting and to vote if the Director has granted a signed written proxy: (a) to another Director who is present at the meeting; and (b) authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this Section 6.9 as permitted by Section 6.16, Directors may not vote or otherwise act by proxy.

6.10. Telecommunications.

The Board of Directors may permit any Director to participate in a regular or special meeting of the Board by, or conduct the meeting through the use of, any means of communication by which all Directors participating may hear each other during the meeting. A Director so participating in such a meeting is considered to be present in person at the meeting. If a Director is to participate in a meeting of the Board of Directors by electronic communication, the Board of Directors shall provide the information necessary to allow the Owners entitled to notice of the meeting of the Board of Directors under Section 6.8 to participate by the available electronic means.

6.11. Quorum of Directors.

A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business. For the purpose of determining the presence of a quorum, Directors will be counted if represented in person or by proxy, if applicable.

6.12. Adjournment of Directors' Meeting.

Directors present at any meeting of the Board of Directors may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than announcement at the meeting, for a total period or periods of not to exceed thirty (30) days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

6.13. Vote Required at Directors' Meeting.

At any meeting of the Board of Directors, if a quorum is present, a majority of the votes present in person or by proxy, if applicable, and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation, or these Bylaws.

6.14. Officers at Meetings.

The president shall act as chairman and the Board of Directors shall appoint a secretary to act at all meetings of the Board of Directors.

6.15. Waiver of Notice.

A waiver of notice of any meeting of the Board of Directors, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting unless (a) at the beginning of the meeting or promptly upon the Director's later arrival the Director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and, after objecting, the Director does not vote for or assent to action taken at the meeting, or (b) the Director contemporaneously requests that the Director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or (c) the Director causes written notice of the Director's dissent or abstention as to any specific action to be received by (i) the presiding officer of the meeting before adjournment of the meeting; or (ii) the Association promptly after adjournment of the meeting.

6.16. Dissent or Abstention.

The right of dissent or abstention pursuant to Section 6.15 is not available to a Director who votes in favor of the action taken.

6.17. Action of Directors Without a Meeting.

6.17.1 By Written Consent. Any action required or permitted by the Nonprofit Act, Declaration, the Articles, or these Bylaws that may be taken at a Board of Directors meeting, may be taken without a meeting if all Directors consent to the action in writing. Action is taken under Subsection 6.17.1 at the time the last Director signs a writing describing the action taken, unless, before that time, any Director revokes a consent by a writing signed by the Director and received by the secretary or any other person authorized by these Bylaws or the Board of Directors to receive the revocation. Action under this Subsection 6.17.1 is effective at the time it is taken, unless the Board of Directors establishes a different effective date.

6.17.2 With Advance Notice. Any action required or permitted by the Nonprofit Act, Declaration, Articles or these Bylaws that may be taken at a Board of Directors meeting may be taken without a meeting if notice is transmitted in writing to each Director and each Director, by the time stated in the notice: (a) (i) signs a writing for such action; or (ii) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and (b) fails to demand in writing that action not be taken without a meeting.

The notice required by Subsection 6.17.2 shall state: (a) the action to be taken; (b) the time by which a Director must respond to the notice; (c) that failure to respond by the time stated in the notice will have the same effect as: (i) abstaining in writing by the time stated in the notice; and (ii) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and (d) any other matters the Association determines to include.

Action is taken under this Subsection 6.17.2 only if at the end of the time stated in the notice: (a) the affirmative votes in writing for the action received by the Association and not revoked pursuant to this Subsection equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Directors then in office were present and voted; and (b) the Association has not received a written demand by a Director that the action not be taken without a meeting other than a demand that has been revoked pursuant to this Subsection.

A Director's right to demand that action not be taken without a meeting shall be considered to have been waived unless the Association receives such demand from the Director in writing by the time stated in the notice transmitted pursuant to this Subsection and the demand has not been revoked.

A Director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this Subsection 6.17.2 may revoke the vote, abstention, or demand in writing received by the Association by the time stated in the notice transmitted.

Unless the notice transmitted pursuant to Subsection 6.17.2 states a different effective date, action taken pursuant to this Subsection is effective at the end of the time stated in the notice.

6.17.3 General Provisions. A communication under this Section 6 may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation under Subsection 6.17.2 is considered to be Mitten, signed, and dated for purposes of this section if the electronic transmission is delivered with information from which the Association

can determine: (a) that the electronic transmission is transmitted by the Director; and (b) the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed. For purposes of this Section 6, communications to the Association are not effective until received. Action taken pursuant to this Section 6 has the same effect as action taken at a meeting of Directors and may be described as an action taken at a meeting of Directors in any document.

ARTICLE VII - OFFICERS

7.1. Officers, Employees and Agents.

The officers of the Association shall be natural persons 18 years of age or over and shall consist of a president, a secretary, a treasurer, and such other officers, assistant officers, employees, and agents as may be deemed necessary by the Board of Directors. Officers other than the secretary and the treasurer must be Directors. The same person may simultaneously hold more than one office.

7.2. Appointment and Term of Office of Officers.

The officers shall be appointed by the Board of Directors at the annual meeting of the Board of Directors and shall hold office, subject to the pleasure of the Board of Directors, until the next annual meeting of the Board of Directors or until their successors are appointed, whichever is later, unless the officer resigns, or is removed earlier.

7.3. Resignation and Removal of Officers.

An officer may resign at any time by giving written notice of resignation to the Association. A resignation of an officer is effective when the notice is received by the Association unless the notice specifies a later effective date. If a resignation is made effective at a later date, the Board of Directors may: (a) (i) permit the officer to remain in office until the effective date; and (ii) fill the pending vacancy before the effective date if the successor does not take office until the effective date; or (b) (i) remove the officer at any time before the effective date; and (ii) fill the vacancy created by the removal. The Board of Directors may remove any officer at any time with or without cause. An officer who resigns, is removed, or whose appointment has expired may file a statement in the same form as provided in Section 5.8.

7.4. Vacancies in Officers.

Any vacancy occurring in any position as an officer may be filled by the Board of Directors. An officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

7.5. President.

The president shall be member of the Board of Directors and shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall direct, supervise, coordinate and have general control over the affairs of the Association, and shall

have the powers generally attributable to the chief executive officer of a corporation. The president shall preside at all meetings of the Board of Directors and of the Members of the Association.

7.6. Vice President.

The vice president, if any, may act in place of the president in case of his death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board of Directors or by the president.

7.7. Secretary.

The secretary shall be the custodian of the records and the seal, if any, of the Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association set forth in Section 9.3 are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Members, of the Board of Directors, and of committees of the Board of Directors; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of secretary and such other duties as may, from time to time, be assigned to him by the Board of Directors or by the president. The Board of Directors may appoint one or more assistant secretaries who may act in place of the secretary in case of his death, absence or inability to act. The duties of the secretary may be delegated to a property management company.

7.8. Treasurer.

The treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; shall deposit all such funds in the name of the Association in such depositories as shall be designated by the Board of Directors; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board of Directors may, from time to time, require; shall arrange for the annual report required under Section 9.6 of these Bylaws; and, in general, shall perform all the duties incident to the office of treasurer and such other duties as may from time to time be assigned to him by the Board of Directors or by the president. The Board of Directors may appoint one or more assistant treasurers who may act in place of the treasurer in case of his death, absence or inability to act. The duties of the treasurer may be delegated to a property management company.

7.9. Bonds.

The Association may pay for fidelity bonds covering officers or other persons handling funds of the Association as provided for in the Declaration. The Association shall pay the premiums for any such bonds acquired.

ARTICLE VIII - INDEMNIFICATION OF OFFICIALS AND AGENTS

8.1. Right of Indemnification.

The Association shall indemnify any Director, officer, employee, fiduciary and agent (including without limitation the property manager) to the fullest extent allowed the Acts, or any replacement Sections thereof.

8.2. Authority to Insure.

The Association may purchase and maintain liability insurance on behalf of any Director, officer, employee, fiduciary and agent against any liability asserted against him and incurred by him in such capacity or arising out of his status as such, including liabilities for which he might not be entitled to indemnification hereunder.

ARTICLE IX - MISCELLANEOUS

9.1. Amendment/Conflict.

These Bylaws may be amended by a fifty-one percent (51%) vote of the total Members and any amendment shall be made in accordance with the Acts. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration will control. During the Period of Declarant Control, any amendment to these Bylaws shall require the consent of the Declarant. During the Period of Declarant Control, the Declarant shall have the unilateral right to amend these Bylaws without a vote of the Members.

9.2. Compensation of Officers, Directors and Members.

No Director shall have the right to receive any compensation from the Association for serving as a Director except for reimbursement of expenses as may be approved by resolution of disinterested members of the Board of Directors and except as may otherwise be approved by the Members. Officers, agents and employees shall receive such reasonable compensation as may be approved by the Board of Directors. Appointment of a person as an officer, agent or employee shall not, of itself, create any right to compensation.

9.3. Annual Report.

The Board of Directors shall cause to be prepared and distributed to each Member, and any first mortgagee of a Member who has filed a written request therefor, not later than ninety (90) days after the close of each fiscal year of the Association, an annual report containing (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year, (c) a statement of changes in financial position for such fiscal year, and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses of current Members, may be found. The Board shall also annually distribute to the Members a summary of the latest reserve analysis or update and a full copy to any Member making such request.

9.4. Statement of Account.

Upon payment of a reasonable fee to be determined by the Association and upon written request of an Owner of a Unit or any person with any right, title or interest in a Unit or intending to acquire any right, title or interest in a Unit, the Association shall furnish, within ten (10) days after the receipt of such request, a written statement of account setting forth the amount of unpaid assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Unit and the Living Unit thereon, and the amount of the assessments for the current fiscal period of the Association payable with respect to the Unit and the Living Unit thereon. Such statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other assessments have been levied.

9.5. Annual Corporation Reports.

The Association shall file with the Division, within the time prescribed by law, annual corporate reports in such form and containing the information required by law and shall pay the fee for such filing as prescribed by law.

9.6. Fiscal Year.

The fiscal year of the Association shall be the calendar year, and shall begin on January 1 and end the succeeding December 31. The fiscal year may be changed by the Board of Directors without amending these Bylaws.

9.7. Seal.

The Board of Directors may, but need not, adopt a seal which shall have inscribed thereon the name of the Association and the words "SEAL" and "UTAH".

9.8. Shares of Stock and Dividends Prohibited.

The Association shall not have or issue shares of stock and no dividends shall be paid and no part of the income or profit of the Association shall be distributed to its Members, Directors or officers. Notwithstanding the foregoing, the Association may issue certificates evidencing membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

9.9. Loans to Directors, Officers and Members Prohibited.

No loan shall be made by the Association to its Members, Directors or officers, and any Director, officer or Member who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

9.10. Limited Liability.

The Association, the Board of Directors, the Architectural Control Committee, and Declarant during the Period of Administrative Control, and any agent or employee of any of the

same shall not be liable to any person for any actions or for any failure to act in connection with the affairs of the Association if the action taken or failure to act was in good faith and without malice.

9.11. Minutes and Presumptions Thereunder.

Minutes or any similar record of the meetings of Members or of the Board of Directors, when signed by the secretary or acting secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

9.12. Checks, Drafts and Documents.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

9.13. Execution of Documents.

The Board of Directors, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

9.14. Right to Inspect.

Notwithstanding the other provisions of this Article, unless otherwise provided in these Bylaws, a right of a Member to inspect or receive information from the Association applies only to a voting Member of the Association.

CERTIFICATE OF PRESIDENT

I, the undersigned, do hereby certify that:

- 1. I am the duly elected and acting President of Auburn Hills at Desert Color Condominiums, a Utah nonprofit corporation ("Association"); and
- 2. The foregoing Bylaws constitute the Bylaws of the Association duly adopted at the meeting of the Board of Directors of the Association duly held on 11/5/2021 2021.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 5 day of November, 2021.

Auburn Hills at Desert Color Condominiums, a
Utah nonprofit corporation
Reed Scan
By: Reed Scan
Its: President

STATE OF UTAH)
 :ss
County of Washington)

On this 5 day of Nov., 2021, personally appeared before me Quincy May Frazier whose identity is personally know to me or proved to me on the basis of satisfactory evidence, and who, being duly sworn (or affirmed), did say that he/she is the President of Auburn Hills at Desert Color Condominiums a Utah non-profit corporation, and that the foregoing document was signed by him/her on behalf of the Association by authority of its Bylaws, Declaration, or resolution of the Board, and he/she acknowledged before me that he/she executed the document on behalf of the Association and for its stated purpose.

Quincy May Frazier
Notary Public

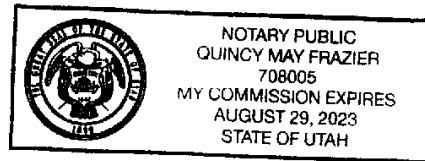


Exhibit E
(Maintenance Allocation Chart)

Auburn Hills at Desert Color Condominiums			
Maintenance Allocation Chart			
Item	HOA	OWNER	Explanation
General Note			Shared items are to be resolved between the Owners involved in use of the item
A/C Unit (for Units)		X	
Address Numbers		X	
Cable/Satellite TV		X	
Ceiling		X	
Circuit Breakers for Unit		X	
Common Area Amenities	X		
Door and Door Frames- Exterior	X	X	HOA Paints, Owners Replace
Door and Door Frames- Interior		X	
Door Hardware/Doorbell		X	
Drains-Unit & Limited Common Patio/Porch		X	
Electrical Wiring/Panel (for Unit)		X	
Exterior Wall Finishes (Rock/Stucco/Siding, etc.)	X		
Fences (Project boundary)	X		
Fireplace, Flue, & Vent Pipes - Cleaning & Repair		X	Included in Association Assessment
Floor Coverings		X	
Foundation - Structural	X		
Furnace (for Units)		X	
Garage Doors (all components)	X	X	HOA Paints, Owners Replace
Gas Pipes (from meter to inside Unit)		X	

Hose Bib/Faucet/Spigot — exterior		X	
Hot Water Heater		X	
Insurance Coverage — Property (attached buildings)	X		
Insurance Coverage - HO6 Policy		X	
Insurance Coverage - loss assessment		X	
Insurance Deductible - Property Ins.	X	X	Assessed to Owners pro-rata according to losses, HO6 deducible is Owners responsibility
Irrigation Lines / Heads - Common Area landscape	X		
Landscape - Common Area	X		
Landscape - Owner maintained yard areas		X	
Lights - exterior eaves & porches (fixtures & bulbs)	X		Unless shared exteriors with more than 1 unit
Limited Common Area - balconies, patios, porches, & decks repair and replacement		X	Unless shared exteriors with more than 1 unit
Limited Common Area - balconies, patios, porches, & decks clean and snow removal	X	X	
Mailbox & Stand/Structure		X	
Mailbox Lock & Key		X	
Paint - exterior wall surfaces and trim finishes	X		
Paint - exterior doors, garage doors, windows	X		
Paint - Interior		X	
Patio Slab		X	
Phone Lines		X	
Playgrounds & Open Space			
Plumbing Valves, Pressure Regulator		X	Point of connection/meter to the unit-Owner before point of connection/meter-HOA
Plumbing Main Line		X	Point of connection/meter to the unit-Owner before point of connection/meter-HOA

Plumbing Leak		X	Point of connection/meter to the unit-Owner before point of connection/meter-HOA
Plumbing clogging/stoppage		X	Point of connection/meter to the unit-Owner before point of connection/meter-HOA
Plumbing Pipes Inside Unit		X	
Rain Gutters - clean-out, repair, replacement	X		
Rain Gutters - drains away from building	X		
Root - repair & replacement	X		
Sewer pipes & utilities - serving a single Unit		X	
Sewer pipes & utilities - to more than one Unit		X	Unless handled by Municipality or others
Sidewalks and paths on Common Areas	X		
Snow Removal — private roads & Common sidewalks	X		
Storm Drains	X		
Street Lights	X		Unless handled by Municipality or others
Streets - private	X		
Termites, pests, rodents, insects, etc.	X	X	Interior=Owner, Exterior=HOA
Trash	X		
Utility Doors (exterior of units)		X	
Vent Covers - exterior	X		
Wall - bearing interior wall		X	
Wall - partition interior wall		X	
Water - culinary	X		
Water - Common Area landscape	X		Unless metered to the individual Unit Owner
Weather Stripping		X	
Windows - glass, screens, frames, boxes		X	