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Amended Restrictive Covenants Page 1 of 86
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444 East Tabernacle, Building B, Suite 201
St. George, UT 84770

NOTE TO RECORDER:
RECORD ONLY AGAINST THE PROPERTY
DESCRIBED IN EXHIBIT "C"

**FIRST AMENDED AND COMPLETELY RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
DESERT SANDS**

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**FIRST AMENDED AND COMPLETELY RESTATED DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS
FOR DESERT SANDS**

This First Amended and Completely Restated Declaration Of Covenants, Conditions, Restrictions, And Reservation of Easements (“Declaration”) is made effective this 1st day of January, 2022 by the Hollows, LLC (“Declarant”) and consented to by Ivory Southern, LLC.

RECITALS

A. Declarant has a lease covering certain real property located in Washington County, Utah described in Exhibit A attached hereto and incorporated herein (collectively, the “PDO Lands”). Said land includes certain planning areas referred to herein as “Districts” according to the Planned Development Overlay Zone for Desert Sands (the “PDO”).

B. The Covered Property shall generally be known as “Desert Sands,” and Declarant desires that Desert Sands be developed as a master-planned community, with a variety of planned residential subdivisions, open-space, parks, trail systems, retail and certain commercial areas, if any, and other areas and facilities.

C. Notwithstanding the legal description, certain areas within the PDO Lands are zoned for Commercial property and will be bound by separate CCRs and bylaws and will be managed by a Commercial HOA and are therefore not encumbered by these covenants. Those areas include but may not be limited to the property described in Exhibit B.

D. Declarant desires and intends that the Covered Property shall be held, sold and conveyed subject to the provisions hereof, which are for the purpose of protecting the attractiveness and character of the Covered Property and which shall run with the land including the Covered Property. This Declaration shall be binding on all parties having any right, title or interest in the Covered Property, or any part thereof, and shall inure to the benefit of the aforementioned parties and their successors and assigns.

E. The Declaration of Covenants, Conditions, Restrictions, and Reservations of Easements for Desert Sands was recorded in the office of the County Recorder of Washington County, Utah on November 24, 2021 as Doc. No. 20210075237 (the “Original Declaration”), which will be superseded by this Declaration.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

ARTICLE I

DEFINITIONS

As used in this Declaration, the following terms shall have following meanings:

1.1 ***“Additional Covenants”*** Shall mean the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any District Declaration or other instrument approved by Declarant or by the Board, including those which may be adopted pursuant to Section 15.1 hereof.

1.2 ***“Annexable Property”*** Shall mean any or all real property other than the Covered Property within that certain real property located in Washington County, Utah described in Exhibit A hereto.

- 1.3 **“Annual Assessment Period”** Shall mean each period for which Assessments are to be levied against a Lot or Parcel pursuant to this Declaration, as more particularly described in Section 8.3 of this document.
- 1.4 **“Annual Assessments”** Shall mean the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.
- 1.5 **“Apartment Land Use”** Shall mean the Land Use Classification of Apartments.
- 1.6 **“Apartment Parcel”** Shall mean a Parcel designated in a Supplemental Declaration as being intended for apartment development.
- 1.7 **“Articles”** Shall mean the Articles of Incorporation of the Association, as amended or restated from time to time.
- 1.8 **“Assessments”** Shall mean any type of assessment including all Annual Assessments, District Assessments, Maintenance Assessments and Special Assessments, and shall include any charges or fines hereunder which are stated to be secured by the Assessment Lien.
- 1.9 **“Assessment Lien”** Shall mean the charge and continuing servitude and lien against a Lot or Parcel for payment of Assessments, late charges for delinquent or late payment of Assessments, and reasonable attorneys’ fees as further described in Section 8.1 of this Declaration.
- 1.10 **“Association”** Shall mean “Desert Sands Community Association,” a Utah nonprofit corporation, its successors and assigns.
- 1.11 **“Association Rules”** Shall mean the rules and regulations adopted by the Association pursuant to Section 6.4 of this Declaration.
- 1.12 **“Board”** Shall mean the Board of Directors of the Association.
- 1.13 **“Business Park Use”** Shall mean such uses as are contemplated by the Master Development Plan with respect to such areas, including warehouse, light manufacturing, wholesale, and retail uses approved by Declarant.
- 1.14 **“Bylaws”** Shall mean the Bylaws of the Association, as amended or restated from time to time. The Bylaws contain the operational procedures of the Association.
- 1.15 **“City”** Shall mean Hurricane City, Utah, a body politic.
- 1.16 **“City Design Guidelines”** Shall mean the Design Guidelines & Standards for Desert Sands.
- 1.17 **“Cluster Residential Use”** Shall mean those types of residential housing arrangements known as “townhouses”, “clustered housing”, “zero-lot line housing”, and similar arrangements. Such uses are Single Family uses.
- 1.18 **“Commercial Office”** Shall mean any business, professional, administrative or other office use, as may be designated by Declarant.
- 1.19 **“Community Center”** Shall mean social, recreational, civic or other such uses made of facilities available for use by Owners and Members, or any use made of facilities on Common Area designated as a

Community Center, if any. Nothing herein shall be deemed a representation that any portion of the Covered Property shall be developed as a Community Center.

1.20 **“Common Area”** Shall mean all real property and the improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled or operated by the Association within the Covered Property or Annexable Property (including, but not limited to, areas used for landscaping, including landscaped public rights of way that are accepted by the Declarant, or Association after the expiration of the Declarant Control Period, in writing to be controlled and maintained by the Association; provided however, that the Declarant, or Association after the expiration of the Declarant Control Period can abandon such areas by written notice, medians and median landscaping, private roadways, certain front yards of lots, flood control, drainage improvements and detention basins, ponds, lakes and other water features, bicycle or jogging paths, active and passive recreational areas, open space, parks, walkways, equestrian trails, if any, and pedestrian and vehicular ingress and egress), or with respect to which the Association has undertaken (or is required to undertake) administrative, maintenance or other similar responsibilities. Without limitation, Declarant may establish certain open spaces and other lands adjacent to the Covered Property, and as may be shown in the PDO as Common Area. Common Area may include any drainage improvements and/or detention basins agreed to be maintained by the City pursuant to the Development Agreement or the PDO, which areas may be the maintenance obligation and responsibility of the City. Notwithstanding anything to the contrary contained in this Declaration, Common Area may include areas owned, controlled or operated by the Association within the Annexable Property, such as landscaped rights of way, monument signs, lighting or other features, which may never be annexed into the Covered Property, and such areas shall be treated the same as portions of the Common Area within the Covered Property, Common Area may include areas controlled or operated by the Association within other property nearby the Covered Property or Annexable Property including all open space, and may include all property dedicated in plats to the Association if the dedication is accepted by the Association.

1.21 **“Common Expenses”** Shall mean the expenses incurred or to be incurred by the Association, as estimated by the Board, for the benefit of the Members and Owners within the Common Area or Covered Property, generally, including reasonable reserves, and which are, in the sole and absolute discretion of the Board, determined to be properly chargeable by Assessments to all Owners and Members, or allocated solely to certain Lots, Parcels or Districts.

1.22 **“Community Center Use”** Shall mean such uses, if any, as are contemplated by the Master Development Plan with respect to such areas so designated therein.

1.23 **“Condominium Land Use”** Shall mean the Land Use Classification of Condominiums.

1.24 **“Condominium Parcel”** Shall mean a Parcel designated by Supplemental Declaration as having a Residential Condominium Land Use Classification.

1.25 **“Condominium Unit”** Shall mean a Dwelling Unit constituting a “unit” in a “condominium”, together with any appurtenant interest in all “common elements”, as such terms are defined in Chapter 8a, Title 57, Utah Code Annotated, as amended.

1.26 **“Covered Property”** Shall mean those portions of the PDO Lands described in this Declaration in Exhibit C and all amendments and annexations hereto including but not limited to those portions set forth on Exhibit A, excluding the commercial area identified on Exhibit B, and which also includes associated “Open Space” in the residential areas, and later might include other portions of the PDO Lands which may be annexed hereunder by a Declaration of Annexation, Supplemental Declaration, or some other instrument, subject to the further provisions hereof, including those dealing with withdrawal of land.

1.27 "Declarant" Shall mean the Hollows, LLC and any Declarant Affiliate or assignee of the rights and duties granted or reserved to Declarant herein, which assignment may be in whole or in part. Upon expiration or early termination of the Development Lease Agreement (the "Lease") between the Declarant and the School and Institutional Trust Lands Administration ("SITLA"), SITLA or any successor developer designated by SITLA, shall be Declarant.

1.28 "Declarant Affiliate" Shall mean any Person owning any portion of the Covered Property or Annexable Property and directly or indirectly controlling, controlled by or under common control with Declarant, but a Declarant Affiliate shall not include a District Declarant or developer. A Declarant Affiliate shall include without limitation any general or limited partnership, limited liability company, corporation or trust in which Declarant is a general partner, managing member, controlling shareholder, or beneficiary.

1.29 "Declarant Control Period" or "Declarant Period of Control" Shall mean:

(a) That period commencing on the date this Declaration is recorded and continuing until such time as Declarant records an instrument in which Declarant voluntarily terminates the Declarant Control Period, in which case the Declarant Control Period will end on the date on which such amendment is recorded. This provision shall be interpreted as expressly providing an alternative to the duration of administrative control provided in U.C.A §57-8a-502.

The Declarant Control Period, if once expired, shall revive if subsequent annexations or other events should occur which indicates that Declarant is still involved.

1.30 "Declaration of Annexation"

Shall mean any declaration executed by Declarant and declaring that any portion of the Annexable Property is made subject to this Declaration and annexed under the purview hereof and made a portion of the Covered Property.

1.31 "Declaration"

Shall mean this Declaration of Covenants, Conditions, Restrictions and Easements, as amended, restated, or supplemented from time to time.

1.32 "Delinquent Amount"

Shall mean any Assessment, late charge, or installment thereof, or any other sum due hereunder and not paid when due.

1.33 "Design Review Committee" or "DRC"

Shall mean the committee(s) formed pursuant to Article IV of this Declaration.

1.34 "Design Guidelines" or "DRC Guidelines"

Shall mean the rules and regulations adopted, amended and supplemented by Declarant and Design Review Committee pursuant to Section 4.2 of this Declaration.

1.35 "Developer Owner"

Shall mean a Person in the business of developing, leasing and/or selling real property, who has acquired four or more Lots or one or more Parcels, or is otherwise under a Development Lease for four or more Lots, or one or more Parcels within the Covered Property in connection with, and in the course of, such business, for the purpose of developing, leasing or selling Lots or Parcels. A Developer Owner shall include a land trust, land banker, option or a similar entity or nominee developing, owning or selling land for ultimate construction of Dwelling Units or buildings.

1.36 "Development Agreement"

Shall mean that certain recorded "Development Agreement" by and between the City and Declarant, as the same may from time to time be amended. Nothing in the Development Agreement shall be deemed a representation or warranty by Declarant as to any Owner hereunder that any improvement or development requirement set forth in the Development Agreement shall be constructed or completed. No Owner hereunder shall be deemed a third party beneficiary under the Development Agreement.

1.37 "District"

Shall mean a group of Lots or Parcels designated as a District (whether or not governed by a District Association) by Declarant or by the Board as provided herein, which have common interests or characteristics such as shared common facilities or Limited Common Area not enjoyed by all other Members, and/or which may be receiving special services or benefits and which may be charged District Assessments as provided herein.

1.38 "District Assessment"

Shall mean Assessments levied by the Association against the Lots or Parcels in a particular District to pay the budgeted expenses, including reserves, insurance, administration and other costs associated with common area of a district, Limited Common Area of a District, or associated with other costs and expenses attributable and allocable to a District, as described in Section 8.8, including District Expenses.

1.39 "District Association"

Shall mean a Utah nonprofit corporation, its successors and assigns, if any, established for the purpose of administering and enforcing the provisions of any District Declaration establishing a District. The Board may approve of an unincorporated District Association if the interests of the Membership will be served and protected. Declarant may require a district declarant to organize an association corporation.

1.40 "District Declaration"

Shall mean any declaration of covenants, conditions and restrictions or like instrument recorded after the recording of this Declaration and pertaining to any District within the Covered Property, which shall in all cases, be consistent with and subordinate to this Declaration.

1.41 "District Expenses"

Shall mean the expenses incurred or estimated to be incurred by the Association with respect to a particular District, including expenses for the maintenance of common area, Limited Common Area, special facilities or services benefiting primarily the Owners within such District, reasonable reserves for repair and replacement of improvements and facilities, and other costs and expenses including costs of administration.

1.42 "Dwelling Unit"

Shall mean any building, or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

1.43 "Eligible Mortgage Holder"

Shall mean a First Mortgagee who has in writing requested notice of material amendments to this Declaration pursuant to Section 14.3 hereof.

1.44 "Event of Foreclosure"

Shall mean the foreclosure, judicially or non-judicially, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust or other encumbrance inferior in priority to an Assessment Lien.

1.45 "Exempt Property"

Shall mean portions of the Covered Property not burdened by this Declaration, which shall be the following areas now or hereafter located within the Covered Property:

All government property comprising public streets (except to the extent that any parking restrictions and regulations contained herein affect such public streets), utility stations, public parks, public trails, public schools and publicly owned open spaces;

All unmanned property owned by a public utility.

1.46 "First Mortgage"

Shall mean any mortgage or deed of trust on any Lot or Parcel, or portion thereof, with the first priority over any other mortgage or deed of trust encumbering such Lot or Parcel, or portion thereof.

1.47 "First Mortgagee"

Shall mean the holder of any First Mortgage.

1.48 "Governing Documents"

Shall mean this Declaration, the Lease, the Articles of Incorporation and Bylaws of the Association, the City Design Guidelines, the Design Guidelines or the DRC Guidelines and the Association Rules, as same may from time to time be amended.

1.49 "Improvement"

Shall mean any structure or improvement, including any Dwelling Unit or modification thereof, any patio, outbuilding, pool, wall, path, driveway, excavation, landscaping, fixture, antennae, satellite system, fence, coping, awning, sunshade, flagpole, or other structure or improvement or appurtenance, and including decorative or aesthetic changes, such as color changes or changes to materials.

1.50 "Hospital and Health Care Uses"

Shall mean hospital use, whether public or private, and medical, dental, and affiliated uses approved by Declarant, including eye care, eyeglass sales, radiology, ophthalmology, and other health care uses approved by Declarant, including medical offices, all as may be limited by a Supplemental Declaration.

1.51 “Industrial and Warehouse Use”

Shall mean industrial or warehouse uses approved by Declarant, as may be limited by a Supplemental Declaration.

1.52 “Interior Square Footage”

Shall mean the gross square footage (without deduction for interior stairwells, storage areas, mechanical rooms, interior hallways, etc.) of area within a building on a Parcel; inclusive of upper floors and mezzanine areas, and inclusive of basements and parking space within parking garages.

1.53 “Land Use Classification”

Shall mean a classification of a portion of the Covered Property, as set forth herein, restricting development to the applicable classification(s).

1.54 “Lease”

Shall mean Development Lease No. 1173 between the SITLA and The Hollows, LLC, dated December 4, 2019, giving The Hollows, LLC, the right to develop, market, and sell the PDO Lands. The Lease is on file and available for public review with SITLA.

1.55 “Limited Common Area”

Shall mean all areas designated by Declarant in any plat or declaration or in a District Declaration or on a recorded subdivision plat as an area to be used in common by the Owners or Occupants of some, but not all, of the Owners of Lots within the Covered Property, which areas shall be owned or controlled by the Association and maintained, repaired and managed at the expense of the Owners or Occupants of such Lots by imposition of Assessments, or which shall be owned by a District Association established and levying assessments against such Lots for ownership, maintenance, repair and management of such areas.

1.56 “Lot”

Shall mean:

(a) an area of real property designated as a “Lot” on any recorded subdivision plat and which has a designated Land Use Classification of Single Family Residential Use or Cluster Residential use; or

(b) a Condominium Unit.

1.57 “Maintenance Assessments”

Shall mean the Assessments, if any, levied by the Board pursuant to Section 8.7 of this Declaration.

1.58 “Master Development Plan”

Shall mean the master plan maintained in the offices of the Association and offices of Declarant depicting the plan for future development of portions of the Covered Property, and shall include the Master Plan for Desert Sands, or any portion thereof, and may from time to time be amended at the sole and absolute discretion of Declarant or with the approval by the City.

1.59 “Member”

Shall mean any Owner or Person entitled to Membership, including Declarant for so long as Declarant is a Class A or Class B Member and whether or not Declarant owns any Lot or Parcel.

1.60 "Membership"

Shall mean the rights and duties of Owners, including Declarant so long as Declarant is a Class A or Class B Member, with respect to the Association.

1.61 "Mixed Land Use"

Shall mean a use of a portion of the Covered Property restricted by a Supplemental Declaration permitting both Residential and Non-Residential Use, or a mix of both.

1.62 "Net Acre"

Shall mean an area of 43,560 square feet of land, with the acreage of any Parcel being rounded to nearest full acre in size.

1.63 "Non-Developer Owner"

Shall mean any Owner who is not a Developer Owner, excluding Declarant.

1.64 "Non-Residential Parcel"

Shall mean a Parcel designated in a Supplemental Declaration for use for commercial, medical, retail, office or other use, other than Residential Land Use.

1.65 "Occupant"

Shall mean any Person, other than an Owner, occupying a Lot, or any portion thereof or building or structure thereon, as a Resident, Tenant, and licensee or otherwise, other than on a merely transient basis.

1.66 "Owner"

Shall mean the record holder of legal title to the fee simple interest in any Lot or Parcel, but excluding others who hold such title merely as security, such as any trustee under a deed of trust. An Owner shall include any Person who holds record title to a Lot or Parcel in joint ownership or as an undivided fee interest. As used herein, the term "Owner" shall not include Declarant until the conclusion of the Declarant Period of Control. The term "Owner" does not include SITLA.

1.67 "Parcel"

Shall mean any parcel of land within the Covered Property, including a Parcel designated for Residential Apartment Use or Residential Condominium Use, other than Common Area to be owned in fee title by the Association, and including any portion, pad, or subparcel thereof, if such portion, pad, or subparcel shall have been created by a parcel split or subdivision approved or permitted in accordance with this Declaration. The term "Parcel" shall include a condominium unit within a Non-Residential Parcel. Notwithstanding the foregoing, a Parcel other than a Non-Residential Parcel (and other than a commercial condominium unit) shall cease being a Parcel upon recording of a subdivision plat or a declaration of condominium creating Lots or Condominium Units in regard thereto. In the case of the staged development of a Parcel having a Land Use Classification of Cluster Residential Use, Single Family Residential Use or Residential Condominium Use, those areas of such Parcel not yet covered by a recorded subdivision plat or declaration

of condominium creating Lots or Condominium Units shall continue to be a Parcel for purposes of this Declaration.

1.68 "Person"

Shall mean a corporation, partnership, limited liability company, joint venture, individual, trust or any other legal entity.

1.69 "Plat"

Shall mean a recorded plat for the Covered Property, and any amendment or resubdivision thereof, and in the event of successive plats of portions of the Covered Property, the term shall include all such plats unless the context clearly indicates otherwise.

1.70 "Resident"

Shall mean:

each Owner who resides on the Covered Property and the members of the immediate family of each Owner who reside on the Covered Property;

each Tenant who resides on the Covered Property and the members of the immediate family of each Tenant who reside on the Covered property;

such persons as the Board, in its absolute discretion, may authorize, including without limitation, guests of an Owner or Tenant.

1.71 "Residential Land Use"

Shall mean a use of a portion of the Covered Property restricted by a Supplemental Declaration to Single Family Residential Land Use, Apartment Land Use, or Condominium Land Use. Cluster Residential Use shall be deemed a Residential Land Use unless the context clearly indicates otherwise.

1.72 "Reviewing Authority"

Shall mean Declarant unless and until Declarant has assigned its rights pursuant to ARTICLE IV to the DRC or another person or entity, which assignment may be in whole or in part.

1.73 "School Use"

Shall mean any public or private school use approved by Declarant, as limited by a Supplemental Declaration.

1.74 "Single Family"

Shall mean a group of persons related by blood, marriage or legal adoption, or a group of not more than three unrelated persons maintaining a common household. "Single Family" use shall not include any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, except that this prohibition shall not apply to group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.

1.75 "Single Family Parcel"

Shall mean a Parcel designated in a Supplemental Declaration as having a Single Family Residential Use or Cluster Residential Use Classification.

1.76 "Single Family Residential Use"

Shall mean Single Family attached or detached residential use. Depending upon the context, the term may include Cluster Residential Use.

1.77 "SITLA"

Means the School and Institutional Trust Lands Administration acting on behalf of the State of Utah as trustee for the trust land beneficiaries.

1.78 "Special Assessments"

Shall mean the assessments, if any, levied by the Board pursuant to Section 8.10 of this Declaration.

1.79 "Special Use Fees"

Shall mean any fees charged by the Association for use of the Common Area pursuant to this Declaration. Special Use Fees which are charged annually and billed by invoice may be treated the same as Assessments for all purposes hereof.

1.80 "Commercial Tracts"

Shall generally mean those tracts described by Declarant in any plat, instrument, or document as Commercial use.

1.81 "Tenant"

Shall mean a Person occupying any part of the Covered Property under any type of rental agreement.

1.82 "Supplemental Declaration"

Shall mean any declaration of covenants, conditions and restrictions or like declaration recorded after the recording of this Declaration and pertaining to any portion of the Covered Property, which shall in all cases, be consistent with and subordinate to this Declaration. Supplemental Declarations may establish the Land Use Classification of Property and, unless the context otherwise indicates, the term Supplemental Declaration may include District Declarations, Additional Covenants (including any condominium declaration), and any Declaration of Annexation establishing additional covenants.

1.83 "Visible From Neighboring Property"

Shall mean, with respect to any given object, that such object is or would be reasonably visible to a Person six feet tall, standing at ground level on neighboring property (either Lots, Limited Common Area or Common Area) six feet back from the property line of the neighboring property, provided, however, that the Design Review Committee shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the determination of the Design Review Committee shall be binding in that regard, subject to any appeal rights to the Board.

1.84 "Voting Group"

Shall mean one or more Voting Members who vote on a common slate for election of Board members, or if the context indicates, a group of Members whose Lots or Parcels are represented by Voting Members.

1.85 "Voting Member"

Shall mean each Class A Member, and shall include each Owner of a Lot within a District; provided, however, that Declarant or the Board, as provided herein, may in writing elect in connection with any District Declaration or Supplemental Declaration to establish representative voting and declare that a single person shall be the Voting Member, with such Voting Member to have the number of votes equal to the sum total of the votes of all Owners governed by the District Declaration, except as may be provided therein.

ARTICLE II

**PROPERTY AND PERSONS BOUND
BY THIS DECLARATION**

2.1 General Declaration

Declarant desires to facilitate development of the Covered Property in accordance with the Master Development Plan, as may be amended from time to time in the sole and absolute discretion of Declarant. Though the Master Development Plan has in good faith been created and adopted by Declarant as the initial plan for the Covered Property, such plans may change, and nothing herein or in any other instrument shall be deemed a representation or warranty that land shall be developed as shown in the Master Development Plan or that such plan may not materially be revised or changed at Declarant's discretion and in accordance with such applicable rules, regulations and zoning restrictions as may from time to time exist.

In accordance with the foregoing, as portions of the Covered Property are developed, Declarant, without obligation, may record one or more Supplemental Declarations or District Declarations creating Parcels, designating Land Use Classifications, designating Common Area and Limited Common Area, and may establish such additional covenants, conditions and restrictions as may be appropriate for the respective portions of the Covered Property. Nothing in this Declaration, in any Supplemental Declaration or in any District Declaration shall be construed to prevent or limit Declarant's right to modify any part of the Master Development Plan with respect to property, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot, a Parcel, or Common Area. This project is not a cooperative.

2.2 Right to Make Changes

Nothing in the PDO, herein or in any other instrument shall in any way be deemed a representation as to the manner in which the property shall be developed. The PDO may at any time be changed, the land shown therein may be resubdivided, and the planning areas and Neighborhoods shown therein, and the boundaries thereof, may be altered and changed at any time at Declarant's discretion. In no manner whatsoever shall designation of open space in the PDO be deemed a representation that such areas shall, in fact, be open space. Such designations shall have meaning only if provided in a Supplemental Declaration or Additional Covenants pertaining thereto, and even such Supplemental Declarations or Additional Covenants may later be changed or amended.

2.3 Owners and Occupants Bound

Upon the recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants, including Developer Owners, of the Covered Property and their successors and assigns, and anyone owning any portion of the Covered Property, whether or not stated in any document or deed transferring any interest in any Parcel or Lot to or from such Owners or Occupants.

Declarant hereby declares that the Covered Property shall be held, sold and conveyed subject to the provisions hereof, which are for the purpose of protecting the attractiveness and character of the Covered Property and which shall run with the land including the Covered Property. This Declaration shall be binding on all parties having any right, title or interest in the Covered Property, or any part thereof, and shall inure to the benefit of the aforementioned parties and their successors and assigns.

Each Owner, and all Members of the Association, shall at all times be deemed to be fully aware and cognizant of the terms and provisions of the Master Development Plan, the Development Agreement, and all other pertinent instruments applicable to the Covered Property, including without limitation the location and nature of planned public and private improvements, park areas, drainageways, and other facilities, all as such may from time to time change or be altered.

ARTICLE III

EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREA

3.1 Blanket Drainage Easements

Declarant does hereby reserve and establish over and across each Parcel and Lot a perpetual easement for the establishment and maintenance by the Association of such drainage patterns, drainageways, drainage facilities, canals and laterals as may be necessary in Declarant's sole judgment to permit the Covered Property, Common Areas, Limited Common Area and Annexable Property to be improved, developed and protected in a manner best determined by Declarant. Such easements may be defined and limited by Declarant in subsequent Plats and Supplemental Declarations.

The protections of this Section may not be amended without Declarant's written approval.

3.2 Easements and Rights of Enjoyment

Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Area, which nonexclusive easement shall be appurtenant to and shall pass with the title to each owner's Lot or Parcel, subject to the Association Rules and other restrictions of the Association. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Area so long as they remain Occupants. The foregoing grants and rights are subject to the following limitations, in addition to all other limitations and reserved powers set forth in this Declaration:

3.2.1 *Right to Modify and Change* The rights, duties and obligations of the Association, and the reserved right of Declarant, and of the Association, to modify the use of Common Area, or to convey same free of claims or rights of the Owners or Members;

3.2.2 *Special Use Fees* The right of the Association pursuant to this Declaration to charge reasonable Special Use Fees for the use of the Common Area. Any such Special Use Fees shall be set by the Board from time to time, in its sole discretion. Special Use Fees shall be charged only for actual entry upon or utilization of that portion of the Common Area selected by the Board to be subject to a Special Use Fee, and shall be intended to collect revenue from the actual users of such selected Common

Area so that all of the costs of operating such selected Common Area are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other persons utilizing such selected Common Area;

3.2.3 *Suspension of Rights* The right of the Association, after such notice and hearing as may be required by law (including Utah Code Annotated, Title 16, Chapter 6a, Section 609), to suspend the voting rights and the rights to use and enjoyment of the recreational or open space components of the Common Area of any Owner or occupant, as the case may be, for any period during which an Assessment remains delinquent, or for a period not to exceed 60 days for any single infraction of this Declaration, a recorded Supplemental Declaration, District Declaration, the Association Rules, or the DRC Guidelines (provided such suspension shall not be limited if the infraction remains uncured);

3.2.4 *Limitation of Guests* The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Area; and

3.2.5 *Regulation, Mortgages and Conveyances; Power of Association* The right of the Association to regulate use of the Common Area in accordance with this Declaration, and to mortgage or convey portions of Common Area with the affirmative vote or written consent, with or without a meeting, of Declarant during the Declarant Control Period and after the Declarant Control Period with the affirmative vote or written consent of the Declarant and Voting Members representing at least two-thirds (2/3) of the total votes allocable to Lots and Parcels.

3.2.6 *Broad Reserved Powers of Declarant* Notwithstanding the foregoing, the Association may at any time convey, and Declarant may cause the Association to convey, minor, insignificant, or immaterial portions of Common Area (such as those caused by encroachment areas, boundary line discrepancies, survey errors and other such matters), and portions of Common Area determined by Declarant to be more burdensome or costly to own than the accompanying benefit to the Association would warrant, and such conveyance may be made without the consent or vote of any other Person or Member, should Declarant or the Board determine that such conveyance or transfer is in the best interests of the Association or Covered Property. Furthermore, Declarant may at any time resubdivide Common Area into Lots, Parcels or other Common Area or dedicated land, and may cause the Board or Association to execute such instruments as may be necessary to cause such resubdivision or dedication, and no consent or approval shall be required of any other Members nor shall a meeting of Members be required.

Any sale, disposition or resubdivision of the Common Area shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof.

In addition, Declarant and the Association shall in all cases have the right to convey and dedicate the lands and interests such as public roads, streets, drainageways, culverts, parks, sewer facilities and other Common Area, and such action shall not require the approval of any Owners or Members of the Association.

3.3 *Delegation of Use*

Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his or her rights of use and enjoyment in the Common Area to the members of his or her family or his or her occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules, and in the event of such delegation, including any lease of a Lot, the Owner shall be deemed to have relinquished his or her right of use and enjoyment for the period of such lease or delegation.

Without limitation, the Rules may limit the number of guests, prescribe restrictions on certain types of gatherings or events, and impose Special Use Fees for certain gatherings or events.

3.4 Waiver of Use

No Owner shall be exempt from personal liability for Assessments, nor shall any Owner have any right to release a Lot or Parcel from the liens or charges arising under this Declaration, any District Declaration or Supplemental Declaration by waiver of the right of use and enjoyment of Common Area or for any other reason, and no Owner shall in any fashion or by any means have a right of set-off of claims against any sum owed to the Association.

3.5 Acceptance of Certain Common Area and Other Areas

In the course of development and sale of land within the Covered Property, or within portions of the Annexable Property, fee title to land which in the future is to become Common Area may be held by, or transferred to, Persons acquiring fee title to portions of the Covered Property. Notwithstanding that fee title to such land may be held by Persons other than the Association (or Declarant); such land may, upon acceptance by the Association, become Common Area. If such areas become Common Area of the Association, whether by Supplemental Declaration, plat or otherwise, all Owners and Occupants shall have the easements, licenses and rights to the use and enjoyment of such Common Area as with respect to the other Common Area generally, unless such lands are Limited Common Areas. Such rights shall be subject in all cases to the provisions of this Declaration and the Association Rules. In the event such areas are to become Common Area, the Association shall accept same only if such land is free of monetary liens or encumbrances.

Notwithstanding the foregoing, Declarant shall have the absolute right to require that the Association accept title to future Common Area and open spaces shown upon any Plat or other instrument pertaining to the Covered Property, whether the Plat or other instrument was recorded prior to or after annexation of the land under the purview hereof as a portion of the Covered Property, and such right of Declarant shall, without limitation, extend to all areas of the Annexable Property that Declarant determines are appropriate for Common Area designation or otherwise appropriate for Association control and maintenance.

Future Common Area to be accepted may include, but shall not be limited to, recreational features, one or more swimming pools, open spaces, trails, and other areas or facilities, but no representation or warranty is made as to any such facilities or which shall be offered or included in the Covered Property. It is acknowledged that should a future feature, such as a recreational amenity, be included within the Common Area, the Association shall have the right to increase Assessments by the maximum permitted by law to assure adequate funds, and shall further have the right to impose a Special Assessment during such initial fiscal years as may be necessary or appropriate, subject to limitations as may exist at law.

3.6 Exclusive Use and Benefit Easements

On certain Common Area, particularly where perimeter or similar walls are to be built (including yard walls, landscape walls, subdivision boundary walls and the like), such walls may be constructed within the Common Area at varying distances from the adjacent Lot line in order to avoid monotony of design. Portions of the Common Area may be located on the Lot or Parcel side of any such dividing wall (each, an "Easement Area"). Each Easement Area will adjoin and be contiguous to a Lot or Parcel (each, a "Dominant Lot or Parcel"). The Association may, in its sole discretion, at any time and from time to time, grant to the Owner of a Dominant Lot or Parcel and record a perpetual exclusive use and benefit easement over the Easement Area abutting that Dominant Lot or Parcel for the use, benefit and enjoyment

of that Owner (each, an "Easement"). Such Easement shall run with the land and be appurtenant to the abutting Dominant Lot or Parcel and may not be sold, transferred or otherwise conveyed apart therefrom.

The Easements shall be limited to the extent that no structure or improvement of any nature may be placed, maintained or permitted to remain in any Easement Area without the express written approval of the Reviewing Authority, as provided herein. The Association shall have no possession or control of the Easement Areas, except that the Association shall have the right of ingress and egress for the sole purpose of any maintenance and repair obligations the Association may have with respect to such dividing wall.

3.7 Easements Benefiting Individual Owners

Each Easement Area shall be possessed, controlled, maintained and insured by the Owner of the abutting Dominant Lot and not by the Association. Any separate insurance maintained by the Association is excess and non-contributory. Each Owner of a Dominant Lot or Parcel shall indemnify, protect, defend and hold harmless the Association for, from and against any and all losses, costs, claims, actions, damages, expenses and liabilities of any kind whatsoever arising from or in connection with the Easement Area abutting that Owner's Dominant Lot or Parcel.

3.8 Easements Benefiting the Association

In addition to the Easement Areas set forth above, to permit a varying or undulating design of perimeter or yard walls visible from certain of the main spine roads within Desert Sands, there shall exist, and there is hereby granted and reserved, a valid, perpetual easement in favor of the Association for the maintenance and repair of landscaping and other improvements which may be installed or built on the street or Common Area side of any such wall built or to be built partly into the area of any adjacent Lot or Parcel, as determined by the Design Review Committee at the time of original construction of improvements. The Association shall be solely responsible for maintaining any such Lot or Parcel area upon which such easement exists. The limit and extent of any such easement shall be determined by the Design Review Committee upon approval of designs and plans submitted by Owners or Developer Owners, as the case may be.

ARTICLE IV

ARCHITECTURAL AND LANDSCAPING RESTRICTIONS AND CONTROL

4.1 Control By Declarant of All Architectural and Landscaping Matters

4.1.1 Reserved Rights of Declarant. Broad Reserved Rights of Declarant. Each and every Owner, and all other Persons, by accepting a deed or otherwise having ownership, possession or control over any Lot or Parcel, agrees that Declarant, as the initial entity planning for the development of the Covered Property and Annexable Property, and as an initial Owner of all or portions of the Covered Property and Annexable Property, has a vital and legitimate interest in seeing the Covered Property developed in a manner consistent with Declarant's wishes and plans, as those plans may from time to time change. Declarant reserves the right to approve or reject all aspects of improvements.

4.1.2 Approval Required. All Development to be Approved. In accordance with the foregoing, and as more specifically set forth below, no development, construction, grading, improvement, landscaping or other work or alteration of any land shall be commenced unless and until Declarant has given its prior written approval of same, which approval may be granted or denied in the sole and absolute discretion of Declarant. Declarant intends to and may in writing delegate certain or all of its rights of review

and approval to a Design Review Committee, which shall be an agent or committee of the Board, though Declarant may retain certain rights of review and approval and may also delegate certain of its rights of review and approval to others.

Declarant, or the DRC to the extent Declarant has assigned its rights for review and approval, shall be deemed a "Reviewing Authority" for purposes of this Article IV, and Declarant or the Reviewing Authority, as applicable, shall in all cases be deemed to be acting for and on behalf of the Association and shall be deemed an agent and Committee of the Association.

4.1.3 Reviewing Authority. In exercising its right of assignment or delegation, Declarant may elect to establish more than one Reviewing Authority and may retain unto itself, or assign to a Reviewing Authority, or to more than one Reviewing Authority, all rights of approval and review with respect to commercial, industrial, or other non-residential use, and may further establish a Reviewing Authority, or more than one Reviewing Authority, for residential development, which committee or committees shall each be considered a residential design review committee. Reference herein to the Reviewing Authority shall be considered a reference to each such assignee, all as the context may dictate.

Upon any delegation to the DRC or other Reviewing Authority, Declarant shall be fully released of all obligation, right and responsibility with respect to the functions of the Reviewing Authority so delegated or assigned. In any case in which Declarant has retained rights as the Reviewing Authority, the Association shall nevertheless, with Declarant's approval, have full rights of enforcement of the provisions hereof, and may take legal and other action against any Owner, Person or entity, or their agents, contractors and subcontractors, who may be in violation of the provisions hereof or of the DRC Guidelines, or who may have acted without approval of the Reviewing Authority.

Declarant shall have full rights and authority to cause the Association to take such enforcement action and to expend Association funds and resources in pursuit thereof, it being acknowledged that the Association and Members are or shall be benefited by such enforcement or other action.

4.1.4 Developer Owner Site Plans. In addition to the foregoing, each Developer Owner must, prior to beginning any grading, clearing, construction, or other activity upon the Covered Property submit to the Reviewing Authority for the Reviewing Authority's review and approval a development site plan, meeting standards established by the Reviewing Authority, and shall at the time of submittal to the Reviewing Authority certify that such Developer Owner has met with the City and reviewed the requirements of the City with respect thereto.

4.1.5 DRC, DRC Guidelines and City Design Guidelines. The Reviewing Authority shall be guided in its functions by the Design Guidelines (the "DRC Guidelines"), if any, and by the City Design Guidelines or City Ordinance.

4.1.6 Protection of Declarant. Declarant's Interests Protected. In exercising its rights hereunder, including in the review, approval or denial of any application or request, and during the Declarant Control Period, or for so long as Declarant owns any portion of the Covered Property or Annexable Property, whichever period shall last expire, Declarant may act, or cause the DRC to act, in Declarant's interest and as Declarant determines based upon its desires for the Covered Property. Declarant's rights reserved hereunder may in writing be waived, terminated or assigned.

4.1.7 Delegation of Review Rights. Declarant may, from time to time, delegate all or a portion of its reserved rights hereunder to either or both of: (i) the DRC; or (ii) a committee comprised of

architects, engineers, or other persons who may or may not be Members of the Association, it being acknowledged that certain portions of the Covered Property, including non-residential portions, may be treated differently, and may at Declarant's discretion, be under the control solely of Declarant or, for example, and without limitation, a committee separate from that which reviews Residential Lots and Parcels.

Any delegation by Declarant to the DRC or to any other committee shall be in writing specifying the scope of responsibilities delegated and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason.

So long as Declarant has any rights under this Article or so long as Declarant is within the Declarant Control Period, whichever last expires, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically so delegates. It is understood that Declarant shall have full authority to assign enforcement powers and duties in relation to both the DRC Guidelines and the City Design Guidelines, or Declarant may elect to retain certain enforcement powers while assigning others.

4.2 Design Guidelines

4.2.1 Content of DRC Guidelines. The initial DRC Guidelines may be adopted by the Reviewing Authority with the approval of Declarant.

Subject to the written approval of the contents thereof by Declarant for so long as Declarant owns any portion of the Covered Property or Annexable Property, and thereafter subject to the written approval of the Board, the Reviewing Authority may adopt, amend, and supplement the DRC Guidelines. Such DRC Guidelines shall not be materially inconsistent with the City Design Guidelines. Amendments by Declarant or by the Board may consist of non-material amendments to the City Design Guidelines, or may consist of material amendments to the City Design Guidelines if such amendments have been approved by the City. No request shall be made to the City to amend the City Design Guidelines, or to permit a material deviation therefrom unless Declarant has in writing consented to such request.

The right of Declarant to approve the DRC Guidelines is paramount to the right of the Board or any Reviewing Authority other than Declarant, and no amendment may be made without Declarant's consent as long as Declarant owns any portion of the Covered Property or Annexable Property.

The DRC Guidelines may be different for various portions of the Covered Property. The DRC Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for review and the standards for development within all or various portions of the Covered Property. The DRC Guidelines may include, without limitation, provisions regarding:

- (a) the size or maximum Lot coverage for Single Family Dwelling Units;
- (b) architectural design of Improvements, including Dwelling Units, with particular regard to the harmony of the design with surrounding structures and topography;
- (c) placement of buildings;
- (d) landscaping design, content and conformity with the natural desert character of Desert Sands;
- (e) requirements concerning exterior color schemes, exterior finishes, and materials, and requirements concerning yard and building ornaments (Visible from Neighboring Property), recreational equipment, exterior lighting and exterior furniture (Visible from Neighboring Property), and other items or improvements Visible From Neighboring Property;
- (f) signage and mailboxes; and
- (g) perimeter and screen wall design and appearance.

4.2.2 Adoption and Force and Effect of Rules and DRC Guidelines. The DRC Guidelines and City Design Guidelines shall have the same force and effect as the Association Rules.

4.3 Power and Duties Upon Assignment to Design Review Committee

After such time as Declarant shall have assigned its right of review and approval to the DRC or other assignee, it shall be the duty of the such assignee, as the Reviewing Authority, to consider and act upon all proposals or plans submitted to it pursuant to the provisions hereof, to adopt the DRC Guidelines, with the approval of Declarant or the Board, as applicable, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration. The DRC shall have the right from time to time to assign certain of its powers, authority and duties hereunder to one or more District Associations.

4.4 Obligation to Obtain Approval

4.4.1 Mandatory Submittal of Plans and Specifications. Without the prior written approval by the Reviewing Authority of plans and specifications prepared and submitted to the Reviewing Authority in accordance with the provisions of this Declaration and the DRC Guidelines:

- (a) No Improvements, alterations, repairs, excavation, grading, landscaping or other work shall be done which in any way alters the exterior appearance of any property or improvements thereon from their natural or improved state; and
- (b) No building, fence, exterior wall, pool, roadway, driveway or other structure, improvement or grading shall at any time be commenced, erected, maintained, altered, changed or made on any Lot or Parcel.

4.4.2 Landscaping. No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Reviewing Authority in accordance with the DRC

Guidelines, and except for replacements of plants previously approved and which remain acceptable in accordance with the then current DRC Guidelines.

4.4.3 *Changes or Deviations.* No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the Reviewing Authority, shall be permitted without approval of the change or deviation by the Reviewing Authority.

4.4.4 *Verbal Statements.* In no event shall the Reviewing Authority be bound by any verbal statements, no single member thereof having the right to bind the committee.

4.5 *Organization of Design Review Committee*

The Reviewing Authority, whether Declarant, the DRC, or other assignee, shall be deemed an agent and committee of the Board. All members of the DRC, and all persons acting on behalf of the Reviewing Authority shall be appointed and removed solely by Declarant so long as Declarant is a Member of the Association, unless such right is in writing waived by Declarant. Thereafter, the right of appointment shall rest with the Board. A member shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent or employee of Declarant.

4.6 *Waiver and Variance*

The Reviewing Authority may grant variances and waivers from the requirements of the DRC Guidelines if it believes it is in the best interests of the Covered Property to do so, or if hardship justifies the variance. In addition, Declarant may at any time grant a variance or waiver. The approval by the Reviewing Authority of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

No application or approval shall be required for any Improvement to be made within the Covered Property by Declarant or its authorized agents, affiliates or representatives.

4.7 *Liability*

Neither the Reviewing Authority, Declarant nor the DRC (nor any member thereof) shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

- (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective;
- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- (c) the development of any Lot or Parcel; or
- (d) the execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct, provided, however, that with respect to the liability of a member of the

DRC, such member has acted in good faith on the basis of such information as may be possessed by him.

Without in any way limiting the generality of any of the foregoing provisions of this Section, the Reviewing Authority, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner (other than the Owner applying for consent or approval, whose views the Reviewing Authority shall be required to hear) with respect to any plans, drawings, specifications, or any other proposal submitted for review.

4.8 Appeal to Board

Any Owner who initially made application to the Reviewing Authority, and who is aggrieved by a decision of the Reviewing Authority, may appeal the decision to the Board in accordance with procedures to be established in the DRC Guidelines. In the event the decision of the Reviewing Authority is overruled by the Board on any issue or question, the prior decision of the Reviewing Authority shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, there shall be no appeal from a decision of the Reviewing Authority, and no appeal from a decision of the Reviewing Authority may be taken, so long as Declarant has the right to appoint the members of the Reviewing Authority or the DRC.

4.9 Fees

4.9.1 Power to Assess Fees. The Reviewing Authority, whether Declarant, the Board or whomsoever may be vested with authority to review plans, applications and submittals in accordance herewith, may establish a reasonable processing fee to defer the costs of the Reviewing Authority in considering any requests for approvals submitted to the Reviewing Authority or for appeals to the Board, which fee shall be paid at the time the request for approval or review is properly submitted.

4.9.2 Refundable and Non-Refundable Fees and Deposits. In addition, the Reviewing Authority may implement: a) refundable and non-refundable fees and deposits for revegetation and restoration of any site, with a portion of a fee being non-refundable should an Owner default in its obligations to restore or revegetate a site when required hereunder or by the Reviewing Authority, or should the Association or Reviewing Authority incur cost as a result thereof; b) refundable and non-refundable fees to assure that all damage or degradation to Common Area, streets and roads caused or to be caused by construction traffic is promptly repaired or otherwise addressed by the Owner responsible therefor, or to enable the Association to accomplish such work, itself, or to establish a fund for future restoration of such areas; and c) such deposits as may be appropriate to assure completion of components of any work that may interrupt or interfere with the use of Common Area or operations of the Association.

4.10 Inspection

Declarant and any member or authorized consultant of the Reviewing Authority, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Parcel, after reasonable notice to the Owner of such Lot or Parcel, in order to inspect the improvements constructed or being constructed on such Lot or Parcel to ascertain that such improvements have been, or are being, built in compliance with the DRC Guidelines, this Declaration, and any applicable Supplemental Declaration or District Declaration.

4.11 City Design Guidelines

Notwithstanding anything to the contrary in this Article IV, all development, construction, grading, improvement, landscaping or other work or alteration of any land, structure or Improvement shall

be in compliance with the City Design Guidelines and no such work shall commence unless and until Declarant or the Reviewing Authority, if other than Declarant, has given its prior written approval of same. Plans, specifications and submittals are required to the fullest extent, and in the manner set forth herein for all other submittals.

In the event there are any material inconsistencies between the DRC Guidelines and the City Design Guidelines, the City Design Guidelines shall control, except that should the DRC Guidelines be more restrictive, they shall apply to the extent that the intent of the City Design Guidelines can still be achieved and any deviation from the City Design Guidelines is immaterial. The City Design Guidelines may from time to time be amended at the sole and absolute discretion of Declarant to conform to the restrictions contained in this Declaration or in the DRC Guidelines, provided that such amendments are not "material" (as such term is defined in the City Design Guidelines). Material amendments to the City Design Guidelines shall require the approval of the City through a public hearing.

Declarant may, in its sole and absolute discretion, grant variances from the restrictions set forth in the City Design Guidelines in accordance with the requirements set forth in the City Design Guidelines.

ARTICLE V

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

5.1 Land Use Classifications

As portions of the Covered Property are readied for development, Land Use Classifications may be fixed by Declarant in a Supplemental Declaration which may be recorded at such time as the applicable portion of the Covered Property is conveyed by deed or, if retained by Declarant, at such time as Declarant begins development thereof. If any provision of a Supplemental Declaration is inconsistent with any provision of this Declaration, the provisions of this Declaration shall control.

Except with respect to Covered Property owned by Declarant, no Supplemental Declaration, or further covenants, conditions, restrictions, or easements, or any amendments or modifications thereto, shall be recorded against any Lot or Parcel without the written approval of Declarant or, if Declarant has waived and relinquished such right, of the Board, and without such approval, such Supplemental Declaration or further covenants, conditions, restrictions, and easements, or any amendments or modifications thereto, shall at Declarant's option be deemed null and void. All Supplemental Declarations or other recorded covenants, conditions, or restrictions, or any amendments or modifications thereto, shall be consistent with and subordinate to this Declaration and shall contain such provisions as Declarant shall reasonably require. After expiration of the Class B Membership, the right to approve of any Supplemental Declaration shall rest with the Board, except that so long as Declarant owns any portion of the Covered Property or Annexable Property it may approve any Supplemental Declaration relating to land annexed hereunder. A Supplemental Declaration shall not be amended except as specifically permitted by this Declaration or by such Supplemental Declaration. Approval of Supplemental Declarations shall not unreasonably be withheld, and denial may not be made for purposes of attempting to disapprove an otherwise allowable use of the land which Declarant approves or has approved.

Listing of Land Uses; Not Exclusive

The Land Use Classifications contemplated as of the date of this Declaration are:

- 5.1.1 “Single Family Residential Use”;
- 5.1.2 “Cluster Residential Use”;
- 5.1.3 “Residential Apartment Use”, which shall include congregate care or similar facilities;
- 5.1.4 “Residential Condominium Use”;
- 5.1.5 “Community Center Use”;
- 5.1.6 “Hospital and Health Care Use”;
- 5.1.7 “General Commercial and Retail Use”;
- 5.1.8 “Common Area”;
- 5.1.9 “Park Use”;
- 5.1.10 “School Use”; and
- 5.1.11 “Church Use”.

Determination of Use in Supplemental Declaration

The characteristics of land within a Land Use Classification, and the specific permitted and prohibited uses of the real property within a particular Land Use Classification may be set forth in the respective Supplemental Declaration. Such uses may at any time be amended to permit other uses, provided the provisions of the Supplemental Declaration dealing with amendment have been met; provided, however, that any Land Use Classification may be changed if both Declarant and the Owner of the land or any portion thereof burdened by a Supplemental Declaration consent to such change.

Notwithstanding the foregoing listing, Declarant shall not be obligated to establish within the Covered Property each of the uses listed above, nor shall such listing prohibit the establishment by Declarant of other Land Use Classifications. Without limitation, certain commercial or other uses may be established near or adjacent to the Covered Property, without being annexed hereunder, and the Covered Property may or may not actually contain commercial uses. In addition, Declarant may, in its sole discretion, record a Supplemental Declaration requiring, or otherwise require that the Owner of the Annexable Property, or any portion thereof, obtain the initial approval of Declarant that all plans and specifications, architectural design or covenants binding on such land are in compliance with the DRC Guidelines, but not require that such land be annexed or require further approval.

Additional Restrictions by Supplemental Declaration

A Lot or Parcel shall, prior to being used or improved in any manner or fashion whatsoever, be defined and limited to a specific development type or Land Use Classification by a Supplemental

Declaration approved by Declarant in accordance with the provisions hereof. Declarant may require imposition of special conditions in a Supplemental Declaration in any case where deemed appropriate in the sole and absolute discretion of Declarant, and may require adequate provision for assessments and maintenance of the property and improvements and such other provisions as are deemed proper. Should for any reason a Parcel be subdivided and developed or partially developed prior to Declarant's recordation of a Supplemental Declaration establishing the Land Use Classification therefor, then Declarant may later record the appropriate Supplemental Declaration with the consent of the Owner of the property in question, and until such time the Land Use Classification shall be deemed to be Single Family Residential Use. The initial Covered Property, District Lakeside, is hereby declared to be Single Family Residential Use for detached housing, and no separate Supplemental Declaration shall be required therefor.

No Condominium Parcel or subdivision containing common area may be developed, nor shall a Supplemental Declaration therefor be approved, unless an incorporated owners association is established for the maintenance and repair of common elements or common area thereof, except in cases where the Association may elect to accept ownership of same.

5.2 Covenants, Conditions, Restrictions, and Easements Applicable to All Land Use Classifications

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels in the Covered Property included within all Land Use Classifications, and to the Owners and Occupants thereof:

5.2.1 Prohibited Uses. The following uses are prohibited:

(a) any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a clear public nuisance, or which is hazardous by reason of risk of fire or explosion, or which is otherwise materially injurious to the perceived value of any Lot or Parcel; provided that for Parcels used for commercial or industrial uses, Declarant shall have broad discretion in determining the propriety and acceptability of any such use; and,

(b) any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Utah, Washington City, County of Washington or any other governmental entity having jurisdiction over the Covered Property.

5.2.2 Plat Notes. In addition to the restrictions contained herein, the Covered Property shall be subject to all applicable restrictions and limitations set forth on recorded plats and set forth in the Master Development Plan, and such limitations as may be provided in the any other instrument prepared by Declarant.

5.2.3 Duty of Maintenance. Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot or Parcel, including buildings, Improvements, grounds, private drives, and easement areas in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements. Each Owner shall be responsible for the maintenance and repair of all utility lines, including sewer, located within such Owner's Lot or Parcel, and such maintenance obligation shall include maintenance and repair beyond the Lot or Parcel boundary to the point of service line connection or junction in the adjacent street, Common Area or easement area.

No Improvement on any Lot or Parcel shall be permitted to fall into disrepair and each such building and improvement shall at all times be kept in good condition and repair and adequately

painted or otherwise finished to maintain a first class appearance of the Improvement. In the event any building or Improvement is damaged or destroyed, then, subject to approval in accordance with Article 4, such building or Improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs within the time limits established by the Board, the Board and its agents and representatives are empowered to enter on the Lot or Parcel and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments. Any such entry shall be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

5.2.4 Building Exteriors. All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved in accordance with Article 4.

5.2.5 On Site Grading and Drainage. No water shall be drained or discharged from any Lot or Parcel, or building thereon, except in accordance with approvals of the Reviewing Authority and applicable City ordinances, as well as the Master Development Plan.

5.2.6 Utility Lines and Connections. Unless Declarant expressly approves otherwise, all utility wires, lines, pipes, conduits, facilities, connections and installations (including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer) shall be installed and maintained underground or concealed in, under, or on structures approved in writing in advance by the Reviewing Authority. All transformers shall be placed on or below the surface of the Lot or Parcel. Temporary above-ground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of the Reviewing Authority.

Notwithstanding the above, the following permitted uses may be installed and maintained above ground:

- (a) Existing utility installations, for so long as Declarant shall approve;
- (b) Any future relocation of existing utility installations, for so long as Declarant shall approve;
- (c) Any fiber optic or related facility or improvement approved by Declarant; and
- (d) Other facilities which the Reviewing Authority determines are appropriate for above-ground placement and which comply with law.

No other utility or service equipment or lines may be installed or relocated on any Lot, Parcel the Common Area or the Limited Common Area except as approved by the Reviewing Authority.

5.2.7 Overhead Encroachments. No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of eight (8) feet, without the prior written approval of the Reviewing Authority. The Reviewing Authority shall have the right to cause the Association to trim any offending tree, shrub or planting.

5.2.8 Permissible Encroachments. Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by a Developer Owner may from time to time encroach in minor degree upon the Common Area or other Lots or Parcels in the Covered Property. Such encroachments caused incidentally and which are minor in scope and degree, such as those caused by good faith survey error, and where removal of improvements would cause gross economic waste, shall be deemed acceptable. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments shall be burdened with a perpetual easement in favor of the Owner of the Lot or Parcel upon which the majority of the encroaching structure is built.

5.2.9 Restriction on Further Subdivision, Property Restrictions and Rezoning.

(a) So long as Declarant is a Member of the Association, all subdivision plats, Supplemental Declarations, District Declarations and Additional Covenants must be submitted to and approved by Declarant before being recorded or approved by the City, as applicable. Except for property owned by Declarant, after a subdivision plat has been approved, no Lot or Parcel, or any portion of a Lot or Parcel, shall be further subdivided and no portion less than all of the Lot or Parcel shall be conveyed or transferred by any Owner without the prior written approval of Declarant. The combining of a Lot or Common Area with an adjacent Lot or Common Area, where no additional Lot is created, and which is approved by the Reviewing Authority shall not be deemed a resubdivision in accordance with the foregoing requirements.

(b) No proposed application for rezoning, variance or use permit for any portion of the Covered Property shall be made, filed, submitted to, or recorded with City or any other governmental authority or agency unless it has first been approved by Declarant so long as Declarant is a Member of the Association.

(c) Neither subsection (a) nor (b) shall apply to portions of the Covered Property owned by Declarant or to subdivision plats, Supplemental Declarations, District Declarations or Additional Covenants submitted or proposed by Declarant and pertaining to portions of the Covered Property owned by Declarant. Further, Declarant reserves the absolute right, without any other consent or approval, to resubdivide and change the use of any portion of the Covered Property, including any Common Area, Lots or Parcels, and may cause the Board or the Association to execute such instruments as may be necessary to accomplish same.

(d) Declarant may at any time in writing relinquish all or a portion of its approval rights under this Section. After Declarant no longer is a Member of the Association, or after Declarant may have relinquished its rights under this Section, the Board shall succeed to the right to approve of subdivision plats, District Declarations, Supplemental Declarations or Additional Covenants, unless Declarant has assigned such right to one or more Developer Owners, in which case the Board shall succeed to such rights

only after such Developer Owners no longer own any portion of the Covered Property or Annexable Property.

5.2.10 Maintenance of Landscaping and Driveways. Unless otherwise provided in a Supplemental Declaration, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

(a) on the Owner's Lot or Parcel (including set back areas), except that in the event the maintenance of any portions of such Owner's Lot or Parcel is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility;

(b) portions of the Common Area adjacent to an Owner's Lot or Parcel and which are on the Lot's or Parcel's side of any wall erected on the Common Area; and,

(c) public right-of-way area; between sidewalks and the street curb on the Owner's Lot or Parcel, or other public or easement areas adjacent to the Owner's Lot or Parcel, except that in the event the maintenance of such areas is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

As used herein, maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly materials. All lawn areas shall be timely mowed needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds.

All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately.

All bed areas shall be kept free of weeds and cultivated periodically as needed. No area shall be over watered so as to create a risk of damage to nearby structures or Improvements. Landscaping may be required to be placed on a Lot or Parcel within certain time frames established by the Reviewing Authority. Each Owner shall maintain (including, without limitation, snow and ice removal as necessary) in good condition and repair all paved and concrete areas, including driveways, roadways and parking areas, located on the Owner's Lot or Parcel.

Any Owner who fails to properly maintain the landscaping upon the Lot or Parcel, shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot or Parcel, after receiving notice from the Board to do so, and after such hearing and notice as may be required by law, the Association is empowered to enter upon the Lot or Parcel, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as Maintenance Assessments.

In addition to the foregoing, each Owner acknowledges that the DRC Guidelines may require that each Owner, or Owners of portions of the Covered Property, install landscaping on such Owner's Lots or Parcel, within a specified period of time after acquiring title thereto, if landscaping was not installed by the builder or Developer Owner at the time of such acquisition. Such obligation may include trees, plants or other landscaping Improvements (together with an irrigation system sufficient to adequately

water the trees, plants or other landscaping Improvements). All landscaping and irrigation facilities must have the written approval of the DRC before installation.

5.2.11 Nuisances, Dust Control and Construction Activities. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot or Parcel so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Each Lot and Parcel shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots and Parcels must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot or Parcel, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or Parcel, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Association may, but is not required, to take action to abate what any Owner may consider a nuisance.

Nothing herein shall purport to require that Declarant or any other Owner take action to abate any existing condition on land graded or developed prior to the date of recordation hereof, nor to abate any condition naturally existing upon the land.

5.2.12 Temporary Occupancy and Temporary Buildings; Outside Storage. No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the construction process, a temporary building or structure may be erected, installed or maintained on a Lot or Parcel with the prior written approval of the Reviewing Authority, including the approval of the structure's location and appearance. Such temporary structures shall be removed immediately after completion of such construction, and that portion of the Lot or Parcel from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article 4. Any permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of improvements on any Lot or Parcel, necessary construction materials and supplies may be stored on the Lot or Parcel without the need for a solid visual barrier providing such materials and supplies are kept in neat order considering the construction activities. The Reviewing Authority is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

5.2.13 Health and Welfare. In the event uses of, activities on, or facilities upon or within a Parcel or Lot are deemed by the Board to be a nuisance or to adversely affect the health or welfare of Owners or Occupants, the Board or the Reviewing Authority may make rules restricting or regulating their presence.

5.2.14 Incidental Uses. Subject to the provisions of any applicable Supplemental Declaration, the Board may approve, regulate and restrict incidental uses of property within a Land Use Classification. By way of example and not of limitation, the Board may adopt Rules governing tennis and/or swimming clubs and facilities, and other recreational facilities.

5.2.15 Mineral Exploration; Prohibition of Wells. No Lot or Parcel shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, by well, derrick or otherwise, except in each case as Declarant shall specifically approve.

5.2.16 Diseases and Insects. No Owner or Occupant shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

5.2.17 Parcel Coverage. The percentage of each Lot or Parcel which may be covered by buildings (as well as the location of such buildings and other improvements on each Lot or Parcel) shall be subject to the review and approval of the Reviewing Authority (or the duly constituted review committee of any District Association established pursuant to the provisions hereof), as part of the Reviewing Authority's review of plans for proposed improvements on such Lot or Parcel pursuant to this Declaration, but shall in no event violate City or local ordinances and regulations in effect from time to time. This Section shall not permit restrictions which impede the use and enjoyment of a Lot or Parcel in accordance with the provisions of the Master Development Plan, nor shall it apply to Declarant's Lots or Parcels nor to Lots or Parcels owned by a Developer Owner whose plans and specifications have been approved by the Reviewing Authority.

5.2.18 Party Walls. Except as hereinafter provided, the rights and duties of Owners of contiguous Lots or Parcels which have shared walls or fences ("Party Walls") shall be as follows:

- (a) Each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof.
- (b) If a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests or family, the Owner or Occupant as the case may be, shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided below.
- (a) In the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots or Parcels adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots or Parcels on the damaged or destroyed Party Wall.

- (b) In the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Reviewing Authority; whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final.
- (c) Notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (a) between Common Area and Lots or Parcels; or, (b) situated on Common Area within or adjacent to a Lot or Parcel, the Owners and Occupants of such Lots or Parcels shall be responsible, at their expense, for all maintenance, repair, painting and replacement thereof.
- (d) This Section does not and is not intended to control or relate to Party Walls between Residential Condominium Developments or Condominium Units, or between non-residential condominium units, if any, which shall be governed, to the extent applicable, by Utah Code Annotated, Title 57, Chapter 8, and by any condominium declaration recorded pursuant thereto.

5.3 Covenants, Conditions, Restrictions and Easements Applicable to Single Family Residential Use, Residential Apartment Use, Residential Condominium Use, and Cluster Residential Use

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels included within the Land Use Classifications of Single Family Residential, Residential Apartment Development, Residential Condominium Development or Cluster Residential, and to the Owners and Occupants thereof:

5.5.1 Single Family Residential Use. No structure whatsoever, other than one private, Single Family residence per Lot, together with such private garage, guest facilities, recreational and storage facilities which may be approved in advance by the Reviewing Authority in accordance with this Declaration, shall be erected, placed or permitted on any Lot designated in a Supplemental Declaration as having Single Family Residential Use Land Use Classification, and no use of any such Lot may be made other than Single Family Residential Use.

5.3.2 Residential Apartment Use, Residential Condominium Use, and Cluster Residential Use. No structure whatsoever, other than one or more buildings each containing one or more private Dwelling Units, together with parking garages or structures, storage facilities, recreational facilities, including but not limited to tennis courts and swimming pools, and property management sales or rental offices incidental or appurtenant thereto, shall be erected, placed or permitted on any portion of the Covered Property designated in a Supplemental Declaration as having Land Use Classifications of Residential Apartment Development, Residential Condominium Development or Cluster Residential. No use of any apartment, Lot or Dwelling Unit may be made other than by a Single Family.

5.3.3 No Commercial Use. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on or in any Lot or Parcel except as set forth in this subparagraph. Declarant and a Developer Owner may maintain sales offices, construction offices and sales models on the Covered Property and an Owner or Occupant may carry on a "Home Occupation" as provided below. A "Home Occupation" as permitted hereby means work within the Dwelling Unit (such as the performance of accounting work, creation of art work, etc.) provided that:

- (a) the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;
- (b) the business activity conforms to all zoning requirements for the Lot; and
- (c) the business activity does not involve traffic by persons who do not reside therein, nor regular arrival of employees of the Owner; and
- (d) the business activity is lawful and consistent with the residential character of the neighborhood and does not constitute a nuisance or hazard or offensive use within the Covered Property as determined in the discretion of the Board.

If the Board determines that the Home Occupation violates the provisions hereof, then the Board shall have the authority to require that the Home Occupation in question cease immediately. In no event shall any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, be permitted within the Covered Property, except that this prohibition shall not apply to group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.

Notwithstanding the foregoing, nothing herein shall limit the placement of antennae, microwave reception or communication equipment, fiber optic facilities, or other such equipment which Declarant may approve.

5.3.4 Front Yard Landscaping. The Association may elect to maintain front yard landscaping, or a Supplemental Declaration approved by Declarant may require such maintenance. Such landscaping shall generally be limited to:

- (a) landscaping located in front yards outside the courtyards, limited to such landscaping initially installed by a Developer Owner; and
- (b) if the Board elects, lighting fixtures, if any, and/or light bulbs appurtenant to front courtyard walls.

The maintenance obligation for front yards shall not include repair of any damage which is not regular maintenance. Repair, and any expense therefor, of any damage to landscaping shall be the responsibility of each Owner.

The Association shall have the right, but not the obligation, to maintain other front yard features if necessary to create a uniform and pleasing appearance of the Covered Property, and such right shall include the painting or maintenance of the front face of any garage door (excluding the mechanical or operating components thereof). The Association shall have an easement onto each Lot for purposes of the foregoing matters of maintenance and repair.

With respect to such front yard landscape maintenance, the Association's responsibility shall be limited to plants and irrigation equipment relating thereto installed by the Developer Owner, and with respect to the irrigation of vegetation, only for so long as such irrigation is necessary. Water for such vegetation, and any damage from irrigation systems serving the same, and electricity required therefor or for any lighting, shall be the sole responsibility of the Owner whose Lot or Parcel is affected or benefited thereby as determined in the sole discretion of the Board, unless the Board determines to make such expense a Common Expense. An easement on, in and over such portions of each Lot or Parcel, and rights to connect

to water and electric sources, and to place any fixtures and equipment, for such purposes is hereby granted and conveyed to the Association by this Declaration. No Owner shall disconnect or otherwise preclude or interfere with electric connections or the delivery of water to their Lot or Parcel or to any adjacent Lot, Parcel or Common Area.

Each of such Lot or Parcel Owners, for themselves and for and on behalf of their family members and tenants, licensees and invitees, do hereby waive and release the Association, the Developer Owner and Declarant from any and all claims, demands and liabilities which are, or may be, asserted relating in any way to such landscaping, improvements or equipment, or the maintenance, repair or replacement thereof, or the use of water or electricity in connection therewith, including, without limitation, any claims for personal injury or property damage, or for expense for water or electric charges.

Where the Association has undertaken front yard landscaping or related maintenance activity within a District, District Assessments may be levied against the Lots or Parcels benefited.

5.3.5 Leasing. The entire (but not less than all) of a Dwelling Unit or Apartment Unit may be leased to a Single Family Tenant from time to time by the Owner, subject to the provisions of this Declaration, any applicable Supplemental Declaration and the Association Rules. Each Owner shall provide to the Association a copy of any written lease agreement for any Lot, and Tenants shall be required in each form of lease to abide by all provisions of this Declaration. Should a tenant fail to so abide, the Association shall have the right to cause the Owner to declare a default under the lease and to take appropriate action, including eviction of the tenant. All Leasing shall meet all City codes, requirements, and obligations.

5.3.6 Animals. No animal, livestock, poultry or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot or Parcel and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any permitted pet shall be Visible From Neighboring Property. The Board shall have the right by Rule or otherwise to determine what shall constitute a generally recognized house pet, and what a reasonable number of such pets shall, in any instance, constitute.

Notwithstanding the foregoing, no permitted pets may be kept on or in any Lot or Parcel which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is a Tenant, guest or invitee. The Board has the right, after notice and the opportunity for a hearing, to require the removal of any pet which the Board, in its sole discretion, has determined is a nuisance. Persons walking pets shall carry a "pooper scooper" (a hand held shovel or other instrument designed for removing animal excrement from the ground) with them at all times and shall remove the pet's excrement from the Covered Property.

5.3.7 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot or Parcel without the prior written consent of the Reviewing Authority unless they are not Visible from Neighboring Property.

5.3.8 Window Coverings. No visible window covering or reflective covering may be placed, or permitted to remain, on or adjacent to the exterior of any window of any building, structure or other improvement without the prior written approval of the Reviewing Authority.

5.3.9 Garbage and Trash Regulation. No garbage or trash shall be allowed, stored or placed on a Lot or Parcel except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and Parcel and shall not be allowed to accumulate thereon. The Board may also determine to require that the Association or individual Owners shall employ one or more of a limited number of waste management or pick-up companies to retrieve waste and refuse from the Covered Property or portions thereof. The Board may establish regulations as to the times and duration that waste containers may be visible from Neighboring Property for pick-up, and may determine and regulate the type and appearance of waste containers.

5.3.10 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot or Parcel, except:

- (a) during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a building, appurtenant structures or improvements thereon; or
- (b) that which Declarant or the Association may require for the development, operation and maintenance of the Covered Property or other portions of the Covered Property.

5.3.11 Antennas, Dishes and Solar Devices. The following devices for the reception or transmission of radio or television broadcasts or other means of communication shall be permitted on a Lot or an Improvement thereon: (a) a satellite dish designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; (b) a satellite dish designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter; (c) an antenna that is designed to receive television broadcast signals; or (d) any antennas not described herein that are specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time (collectively, the antennas and dishes described herein will be referred to as the "Permitted Antennas"). No other television, radio, or other electronic towers, aerials, antennas, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any Improvements thereon.

To the extent such requirements would not unreasonably delay installation, would not unreasonably add to the cost of installation, maintenance or use, and would not impair the reception of an acceptable quality signal: (a) the Permitted Antennas shall be installed in a side or rear yard location, not Visible From Neighboring Property, or will be integrated with the Residence and surrounding landscaping to prevent or limit visibility; (b) any exterior wiring shall be hidden from view as much as is reasonably possible, shall be black or shall be painted to blend into the surrounding materials; (c) and any satellite mounting brackets or arms shall not exceed three feet in length. Permitted Antennas shall be installed per applicable FCC regulations.

The Association shall be empowered to establish reasonable, non-discriminatory restrictions relating to location and safety of the Permitted Antennas, provided those rules do not conflict with the requirements in this Declaration, Section 207 of the Telecommunications Act of 1996, FCC regulations, or other applicable law.

Notwithstanding the foregoing, nothing herein shall limit the placement of antennas, microwave reception or communication equipment, fiber optic facilities, or other such equipment which Declarant may approve.

No solar heating or cooling equipment or other visible solar device may be installed or erected without approval of the Reviewing Authority, which shall give due regard to state law restricting the limitation of such devices. To the extent permitted by law, any such equipment installed on a Dwelling Unit or on a Lot shall be designed to integrate into the architecture of the Improvements upon the Lot, or into the Dwelling Unit, and shall not detract from the aesthetics of the Improvements.

5.3.12 Signs. No signs of whatever nature may be erected or placed within the Covered Property, except such signs as are permitted by the DRC Guidelines, and further except for those signs approved by the Board or by Declarant. Declarant may approve signs without any other consent or approval, and may approve signs of Developer Owners. Except as stated, no sign shall be placed on any Lot or Parcel other than:

- (a) signs required by legal proceedings;
- (b) a maximum of 2 identification signs for Dwelling Units, each with a maximum face area of 72 square inches or less;
- (c) such other signs as the DRC Guidelines shall permit, including signs necessary for marketing and sales by Developer Owners; and
- (d) such signs approved by Declarant.

The foregoing restrictions shall be subject to such limitations and privileges as are established at law, including for the placement of political signs and signs pertaining to candidates for political office or to other such protected matters.

After providing notice to any Owner that a sign is in violation of the Governing Documents, the Association has the right to remove such signs from the Common Areas, the Lot or Parcel, or any other place in the Covered Property and to dispose of such signs. The Association has an easement over any Lot for that express purpose and in exercising its easement rights is not guilty of trespassing.

In addition to the foregoing, Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon and across all Common Area for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Covered Property and Annexable Property, but in no event later than twenty (20) years after the date this Declaration is recorded.

5.3.13 Vehicles and Parking. As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (b) "Streets" means the streets shown on any Plat of the Covered Property.

No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property, except with the written approval and limiting stipulations of the DRC which shall include provision for mandatory screening and placement of any such equipment or vehicle, but in no event may any such equipment or vehicle be placed in any front yard, driveway, or driveway-apron area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Streets, except that the Board may adopt rules and regulations governing the subject matter and further restricting such parking or establishing limited exceptions thereto, such as for loading and unloading, emergencies, and the like.

Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area. No Motor Vehicles designed or used for carrying merchandise, supplies or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents.

It is also the intent of this Section to require that Motor Vehicles owned or leased by an Owner, Lessee or Resident of the Lot be parked only in the garage, carport, driveway or approved driveway expansion areas situated on the Lot, as constructed by Developer Owners in the course of original construction approved by the Reviewing Authority. Accordingly, Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage or carport situated on the Lot to the extent space is available in the garage or carport for the parking of such Motor Vehicles. If space is not available in the garage or carport, then Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot. Parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may only be parked on an approved driveway expansion area if space for the parking of such Motor Vehicles is not available either in the garage or carport or in the driveway constructed as part of the initial construction or Improvements on the Lot. The parking of a Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot on a driveway expansion area is also subject to such rules and regulations as may be adopted by the Board.

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or, in the case of visits, parties, or special events, on the Streets or in designated parking spaces on the Common Area.

Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident may be parked in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board.

No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property, and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property, nor stored or parked on the Streets or any other part of the Common Area. Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or repaired on the Streets or any other part of the Common Area.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of

this Section, and establishing certain exceptions that may in certain cases be warranted. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board, the provisions of this Section shall control.

5.3.14 Use of Garages. Vehicles shall be kept in garages where adequate space exists, or in other designated parking areas or as otherwise required in a District Declaration or Supplemental Declaration. No garage doors shall be permitted to remain open except for a temporary purpose (such as during ingress or egress, or when the garage is physically occupied by an Owner or Occupant therein) and no less than two stalls in all garages shall be kept free of obstruction and available for parking of vehicles.

The Association may adopt additional parking restrictions including the establishment of fines and assessments for their violation, enforceable as all other Assessments and in the same manner as other provisions of this Declaration. The Association may also delegate its authority to enforce such parking restrictions to the appropriate District Association.

5.3.15 Commercial Vehicles. Commercial Vehicles. Other than for service vehicles requested by a Resident for temporary work within the Covered Property, no vehicle shall be permitted to park anywhere on a Lot if such vehicle has ladders, tools, lights and/or other commercial equipment attached to or hanging from such vehicle so as to be visible from the exterior of such vehicle. If such a vehicle is owned or operated by a Resident within the Covered Property, said vehicle shall not be parked anywhere other than an enclosed garage.

Residents living within the Covered Property who own or otherwise operate vehicles containing exhibits or signage relating to commercial activities shall also be parked in an enclosed garage. For purposes of this section, signs or exhibits soliciting or advertising for commercial activities include any activity that generates revenue. Examples include construction vehicles (electrical, plumbing, painting, HVAC, etc.) and service vehicles (communications, delivery, parts, etc.).

If a commercial vehicle as described in the preceding two paragraphs cannot fit in the garage, the Resident(s) can seek for a variance from the Board. The Board, at its sole discretion, may work with the Resident in coming up with alternative ways to screen the signage and or commercial equipment of said vehicle – such as placing an approved cover over the vehicle, or approving a concrete RV pad on the side yard, etc.

Signage or exhibits that advertise or solicit incidental business, such as ads for independent distributors, Realtors, sports clubs, etc., may receive approval from the Board waiving the requirement of screening of said signage or exhibits.

5.3.16 Model Homes. Nothing contained herein or in any applicable District Declaration or Supplemental Declaration shall prohibit the construction and maintenance of model homes, sales offices, property management offices and parking incidental thereto by persons engaged in the construction, servicing, marketing, rental or management of Dwelling Units within the Covered Property, provided, however, that the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and ordinances of the City. Except as otherwise approved in writing by the Board:

- (a) all model homes and sales offices shall cease to be used as such at any time the owner (or lessee thereof as the case may be) is not actively engaged in the construction or sale of Dwelling Units within the Covered Property (provided that the foregoing portion of this sentence shall not apply to property management offices or other offices or stations

permitted under zoning which serve the Covered Property, including utility offices and offices related to communications facilities and services); and

- (b) no model home, sales office, or property management office shall be used for the sale or rental of residences not located within the Covered Property.

5.4 Covenants, Conditions and Restrictions Applicable to Non-Residential Use and Mixed Use

Should any portion of the Covered Property be permitted by Declarant to be used for a Non-Residential Use or Mixed Use, Declarant may record Additional Covenants as a part of a Supplemental Declaration therefor, and may establish in such Supplemental Declaration special provisions for voting rights, assessment obligations, and other pertinent restrictions under the purview of the Association.

5.5 Variances

Declarant may, at its sole discretion, grant variances from the restrictions set forth in Article 5 hereof or in any Supplemental Declaration if Declarant determines:

5.5.1 Either that (a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; (b) a change of circumstances has rendered the particular restriction obsolete; or (c) other circumstances warrant a variance in Declarant's sole and absolute discretion; and

5.5.2 The activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants.

Declarant may assign to the Reviewing Authority its right to grant and approve variances. Such assignment may be subject to terms, conditions, and limitations. Any request made to Declarant or to the Reviewing Authority, shall be made in writing and be accompanied by supporting documentation. Declarant or the Reviewing Authority, if other than Declarant, shall approve or disapprove of requests, in writing, and promptly, as the particular circumstances may warrant. All decisions of Declarant or the Reviewing Authority shall be final and non-appealable. No variance granted by the Reviewing Authority, if other than Declarant, may be given that reverses or alters a decision made by Declarant unless Declarant shall consent thereto.

ARTICLE VI

ORGANIZATION OF ASSOCIATION

6.1 General Purpose and Charge

The Association is a nonprofit Utah corporation charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration. In the event that Declarant elects not to organize the Association, all rights, powers and privileges of the Association set forth herein will remain with and be reserved by the Declarant.

6.2 Board of Directors and Officers

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During the Class B Membership, the Board

shall consist of at least three (3) directors who shall be Members or individuals designated by a corporate, partnership or other non-individual Member, and all of the directors may be appointed by Declarant and the Class B Member during the Declarant Control Period. After the Declarant Control Period has expired, or at such earlier time as Declarant relinquishes its rights to appoint the Board, the Board shall be elected by the Class A Members as more fully set forth in the Bylaws of the Association. Reference is made to the Bylaws for the manner in which the Class A Members shall elect, and Class B Member(s) shall appoint, directors of the Association.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by the Class B Members to the Class A Members. The Board may appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area. The Board shall determine the compensation to be paid to the manager.

6.3 Managing Agent

All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a professional management company as managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management shall not exceed a term of one year, which term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon ninety (90) days' written notice; provided, however, that the Association may terminate the agreement for cause upon thirty (30) days' written notice.

6.4 Association Rules

By a majority vote of the Board, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property, the Common Area and the Limited Common Area. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein, and may be enforced in the same manner as the provisions of this Declaration. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association. During the period while the Class B Membership continues to exist, the Class B Member may disapprove of actions of the Board to adopt, amend or repeal the Rules. Pursuant to UCA 57-8a-217, the Declarant reserves the right to exempt the Declarant from the association rules and the rulemaking procedures contained in the governing documents and in UCA 57-8a, and the Declarant is exempt from said rules and procedures.

6.5 Personal Liability

No Reviewing Authority, Board member, officer, committee member, employee or representative of the Association, or the Association itself, nor Declarant, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.6 District Associations

In the event any homeowners or similar District Association is formed by a Developer Owner (other than Declarant or a Declarant Affiliate) of a group of Lots or Parcels, such District Association's governing documents shall not be effective unless they have been approved in advance by Declarant during the period that Declarant is a Class A or Class B Member of the Association or, thereafter, by the Board, and they specify that such governing documents, such group of Lots or Parcels, the District Association, and the District Association's members are subject and subordinate to this Declaration and the Articles, Bylaws, and Association Rules. Neither Declarant nor the Board shall disapprove any such governing documents unless, in the Board's sole discretion, either:

- (a) they are inconsistent or in conflict with this Declaration, the Articles, the Bylaws, the Association Rules, the DRC Guidelines, any applicable Supplemental Declaration, or are legally or practicably ineffective to accomplish their intended purposes; or
- (b) they fail to contain the recitation required by the provisions above.

District Associations shall have the right to own, operate and maintain Limited Common Area and shall not be required to dedicate same as Common Area hereunder.

Notwithstanding any other provision of this Declaration, no District Association may be created without the written approval of Declarant.

6.7 Mergers or Consolidations

The Association shall have the right, power and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association.

6.8 Contracts with Others

Adjacent to or in the vicinity of the Covered Property are properties that have been or, in the future, may be developed as independent commercial and/or residential areas. Declarant or the Association may enter into a covenant to share costs with all or any of the owners of such adjacent or nearby commercial and/or residential areas which allocates access, use of Common Area, maintenance responsibilities, expenses, and other matters between the Association and such property owners. Unless annexed in accordance with the provisions hereof, the owners of adjacent or nearby properties shall not be entitled to vote on Association matters, shall not be Members of the Association, and shall not be subject to Assessments or other conditions or restrictions set forth in this Declaration.

ARTICLE VII

MEMBERSHIPS AND VOTING

7.1 Votes of Owners

Every Owner of a Lot or Parcel (but not an Owner who owns solely Exempt Property), and Declarant so long as it is a Class B or Class A Member, shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Class A Member shall have the following applicable number of votes in regard to votes of the Members of the Association:

7.1.1 *Lots.* In the case of Lots, one (1) vote for each Lot owned;

7.1.2 *Single Family Residential Parcel.* In the case of a Single Family Residential Parcel which has not been divided into Lots by a subdivision plat or other recorded instrument, five (5) votes for each Net Acre owned within such Parcel (with each such Owner to have at least one whole vote).

7.1.3 *Residential Condominium Parcel.* In the case of a Residential Condominium Development Parcel for which a condominium declaration has not been recorded, eight (8) votes for each Net Acre owned within such Parcel (with each such Owner to have at least one whole vote).

7.1.4 *Apartment Parcel.* In the case of an Apartment Parcel upon which construction has not yet been completed, eight (8) votes for each Net Acre owned within such Parcel (with each such Owner to have at least one whole vote); provided, however, that upon completion of construction upon an Apartment Parcel, the Class A owner thereof shall have the greater of eight (8) votes for each Net Acre or one-half (1/2) of a vote for each Apartment Unit built upon the Parcel.

Number of Lots

7.1.5 *Determination of Lots.* If a subdivision plat, condominium declaration or other instrument creating Lots is recorded which covers all or part of a Parcel, then the votes attributable to the Lots shall be determined as set forth above. If a subdivision plat, condominium declaration or other instrument creating Lots for such Parcel is later recorded showing a different number of Lots, the number of votes shall be adjusted to reflect the actual number of Lots as set forth in the recorded subdivision plat, condominium declaration or other instrument creating Lots. All votes attributed to an undivided Parcel as a "Parcel" shall cease and be made applicable to Lots when all of the area is platted or otherwise divided into Lots.

7.1.6 *Non-Residential Parcels and Mixed Use Parcels.* The Owner of a Non-Residential Parcel or Mixed Use Parcel within the Covered Property shall have the greater of six (6) votes per Net Acre of the Parcel or one (1) vote for each five hundred (500) square feet of Interior Floor Area of buildings constructed upon the Parcel.

7.2 Membership is Appurtenant to Ownership

Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable, except that Declarant shall be a Member of the Association for so long as Declarant possesses either a Class B or Class A Membership, unless Declarant shall earlier relinquish its Membership. There shall be only the Memberships for each Lot and Parcel as are described herein. Joint ownership or ownership of undivided interests in any property as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot or Parcel. Rather, the votes must be cast together in one unit.

7.3 Declarant

Declarant shall be a member of the Association for so long as it holds a Class A or Class B Membership.

7.4 SITLA's Rights on Breach, Expiration, or Early Termination of the Lease

If The Hollows, LLC or any subsequent lessee under the Lease materially breaches the Lease, SITLA may step into the place of Declarant by giving the Association notice of the same. On receipt of such notice from

SITLA, SITLA will be deemed "Declarant" under these Covenants and the Association shall treat SITLA as Declarant for all purposes. Upon expiration or early termination of the Lease between the Declarant and SITLA, SITLA or any successor developer designated by SITLA, shall be Declarant.

7.5 Voting Classes

The Association shall have two classes of Members:

7.5.1 Class A Members. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1.

7.5.2 Class B Members. The Class B Member shall be Declarant. The Class B Membership shall terminate and be converted to a Class A Membership upon

- (a) the date on which the Class B Member relinquishes its Class B Membership by notifying the Class A Members in writing.

Subject to the prior written approval of SITLA, which approval may not be unreasonably withheld, Declarant shall have the right to assign its rights and privileges as Declarant and as the Class B Member in whole or in part. Such assignment may include all special voting and other provisions set forth herein.

Upon termination of the Class B Membership, Declarant shall be a Class A Member entitled to Class A votes for all Lots and Parcels which it owns. Should the Class B Membership not have expired, Declarant shall retain its Class B Membership, even if Declarant owns no Lot or Parcel.

The Class B Membership, if once expired, shall revive if subsequent annexations or other events should occur which cause the Declarant Control Period to revive pursuant to Section 1.30 above.

7.6 Right to Vote

Class A votes shall only be cast by the Voting Member, except as stated otherwise in the Governing Documents. The Voting Member shall cast the votes attributable to a District as required by the applicable District Declaration. No change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof, for example, the recorded deed showing the name of the Owner of such Lot or Parcel. The vote for each Member must be cast as a single unit, and solely by the Voting Member as and when applicable. Fractional votes shall not be allowed, except as provided in Section 7.1 relating to Apartments.

In the event that a Lot or Parcel is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast (such as when voting for the representative of a District), they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot or Parcel, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot or Parcel unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot or Parcel all such votes shall be deemed void.

7.7 Members' Rights

Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the DRC Guidelines.

7.8 Voting by District; Special Services

7.8.1 Designation of Districts. During the Declarant Control Period, Declarant shall have the right, by Recordation of a Supplemental Declaration or otherwise, to designate groups of Lots or Parcels having common interests, goals, facilities, etc. as a District. Following the Declarant Control Period, or upon Declarant's delegation of its right to designate Districts, the Board shall have the right to create and designate Districts.

7.8.2 Voting Member If all of the Owners of Lots within a District are members of a District Association, and if Declarant in a District Declaration has required representative voting whereby all votes attributable to Owners within the District are to be cast as a block, then the Voting Member for such District shall be the president of the District Association. If a District does not have a District Association, and if Declarant has in a District Declaration required representative voting, then the Class A Members within such District shall elect a representative to serve as the Voting Member.

Notwithstanding the foregoing, Declarant may at any time, and from time to time, determine that votes cast at certain meetings, including advisory votes, shall be cast not by the Voting Member, but by each Member whose vote otherwise would be cast by the Voting Members. Such determination may be made at Declarant's sole and absolute discretion.

7.8.3 Election of Voting Member. In those Districts where, by District Declaration or otherwise, representative voting is required, but no District Association exists, a meeting may at any time be called for the purpose of electing a Voting Member as the representative of all Owners, or for replacing such Member, and the presence or concurrence, by ballot, proxy, email or otherwise of twenty-five percent (25%) of the Class A Members within such District shall constitute a quorum for the conduct of the election. The candidate who receives the greatest number of votes shall be elected as Voting Member and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Member. The Voting Member and the alternate Voting Member shall serve a term of one year and until their successors are elected.

7.8.4 Initial Election. The first election of a Voting Member and alternate Voting Member from each District, if applicable, shall occur within one year after the sale of the first Lot in the District to a Person other than a Developer Owner, unless Declarant shall in its discretion determine that such election may be delayed or postponed. Thereafter, the Board shall call for an election of Voting Members and alternates on an annual basis, either by written ballots cast by mail, computer, or at a meeting of the Class A Members within such District, as the Board determines. Upon the written request of Class A Members representing at least ten percent (10%) of Class A Members within a District, a meeting shall be required for election of the Voting Member.

7.8.5 Special Services to a District. Any District, acting either through a District Committee elected as provided in the Bylaws or through a District Association, if any, may request that the Association provide a higher level of service than that which the Association generally provides to all Districts or may request that the Association provide special services for the benefit of Lots in such District. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Lots within a District, a request may be made to the Association to provide additional requested services.

The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform

rate per Lot to all Districts receiving the same service), shall be assessed against the Lots within such District as a District Assessment.

The Owner of a Parcel may similarly request special services which may be assessed specially to the Parcel or Parcels in question, without such Parcels being a part of a District.

7.9 Control by Declarant, and Rights of the Class B Member

Declarant, as the Class B Member, has the right to control the Association. Such control shall exist by virtue of the right, at all times during the Declarant Control Period, to appoint the Directors of the Association, as well as their replacements in the event of death, removal, resignation or otherwise. Additionally, during and continuing even after expiration of the Declarant Control Period, the Declarant may unilaterally amend this Declaration, may amend the Articles and Bylaws of the Association, may appoint the DRC, and may veto amendments proposed to be made by the Class A Members. The Class B Member and Declarant shall have such additional and other rights and powers as are set forth herein or in other Governing Documents, including the right to disapprove of actions of the Board.

In cases where by law a vote or approval of Members of an association is required before certain action may be taken, and where such action may not be taken without such vote or approval, then in addition to all of its rights of appointment or direct action granted hereunder, the Class B Member shall be deemed to have five (5) times the number of votes for each Lot or Parcel owned that a Class A Member would have for such Lot or Parcel.

7.10 Voting Groups

Declarant may at any time during the period of the Class B Membership designate one or more Districts within the Covered Property as a Voting Group. The purpose of such designation shall be to enable each such Voting Group designated to elect at least one member of the Board at the option or election of the Members of such Districts and as set forth in the Bylaws. During such time as Declarant has the right to appoint any director, Declarant may reserve the right of appointment with respect to any particular District. It is acknowledged by all Owners, Members and Occupants that Declarant may determine to establish no separate Voting Groups, and such determination may be made at Declarant's sole and absolute discretion.

After such time as the Declarant Control Period has expired, the number of Voting Groups shall be not greater than the number of directors that the Class A Members are entitled to elect pursuant to the Bylaws. As more specifically set forth in the Bylaws, should there be fewer Voting Groups than directors to be elected, then the remaining directors shall, unless appointed by Declarant, be elected at large.

Declarant may at any time during the period of the Class B Membership change, amend or revoke the establishment of a Voting Group. After such time as any Voting Group has been established, the remainder of the Membership within the Covered Property not within a Voting Group shall be deemed a single Voting Group. This provision shall in no way limit or restrict Declarant's right to appoint the majority of the Board.

The votes of Class A Members within Voting Groups shall, unless determined otherwise by Declarant as provided herein, be cast solely by the Voting Members representing Districts within such groups if so required by a Supplemental Declaration approved by Declarant.

7.11 Transfer of Membership

The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Parcel, and then only to the transferee thereof. Such transfer may be affected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Utah law. Any attempt to make a non-approved form of transfer shall be void. Any transfer of ownership in a Lot or Parcel shall operate to transfer the Membership appurtenant to ownership to the new Owner.

7.12 Compliance with Law

All notices or other express requirements shall comply with Utah Code Annotated, Title 16, Chapter 6a (Utah Non-Profit Corporation Act), but only to the extent applicable, and only to the extent permitted provisions of the Governing Documents do not otherwise control.

ARTICLE VIII

ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Assessment Lien; Personal Obligation of Lot Owner

Each Owner by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument) is deemed to covenant and agree, to pay to the Association the Assessments and Special Use Fees when due. The amount and time for payment of the Special Use Fees and the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Special Use Fees and the Assessments, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate.

Assessments, together with interest thereon and late charges and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time when such Assessments become due and payable. This provision shall be subject to such limitations as are imposed by law, including Utah Code Annotated Title 57, Chapter 8a (the Utah Community Association Act), and such limitations and exemptions as are set forth in Section 8.15 hereof.

8.2 Annual Assessments

The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth hereinbelow. The Annual Assessments levied by the Association shall be used to accomplish the duties and purposes of the Association within the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Area, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. The Annual Assessments shall take into account the Common Expenses of the Association benefiting all Lots and Parcels, and distinguish such expenses from District Expenses.

Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the provisions hereof.

8.3 Annual Assessment Period

Except as otherwise provided herein below, the Annual Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Annual Assessment Period.

The initial Assessment for a Developer Owner shall commence upon City approval of a proposed final plat. If portions of the Developer Owner's property have not been platted within 12 months after a Developer Owner purchases Covered Property from the Declarant, or otherwise enters into a Development Lease with the Declarant, Declarant may choose to initiate the initial Assessment on the unplatted property.

The initial Assessment for a Non-Developer Owner shall commence on the date in which the Non-Developer Owner takes legal ownership of a Lot or Lots. Whether a Developer Owner or Non-Developer Owner, the initial assessments will be prorated based on actual calendar days within the month that Dues begin being assessed.

If any installment permitted for the payment of Assessments is not paid when due, the Board may accelerate the entire Annual Assessment or other Assessment. Late fees and interest may be added to the Delinquent Amount of any Assessment, as provided herein, and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law. Delinquent payments shall, to the extent permitted by law, apply first to the principal amount of any delinquent Assessments, then to accrued interest, and then to late fees and other sums due. The Owner shall also be liable for attorneys fees and legal costs, including litigation related expenses and expert witness fees, if any. Attorneys fees and costs incurred shall to the extent permitted by law, be deemed a part of the delinquent Assessment, and shall be secured by the lien therefor. Southern Utah Title Company is appointed as trustee. The Declarant hereby conveys and warrants pursuant to UCA Sections 57-1-20 and 57-8a-302 to Southern Utah Title Company, with power of sale, the lot and all improvements to the lot for the purpose of securing payment of assessments under the terms of the declaration. The trustee may be substituted by written instrument.

8.4 Association's Rights in Spending Funds from Year to Year

The Association shall not be obligated to spend in any year all monies received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year. The Association shall be under no obligation to refund any surplus balance, and may transfer surpluses to the reserve account or other account at the Board's discretion.

8.5 Rate of Assessment

The amount of the Annual Assessments, Maintenance Assessments, District Assessments, and Special Assessments shall be established by the Board, in its sole discretion.

8.5.1 Base Assessment. In establishing its budget and creating its plan for Assessments each year, the Board shall first establish an Annual Assessment per Lot payable for each Lot (the "Base Assessment").

8.5.2 Single Family Residential Parcels. In the case of a Single Family Residential Parcels that have not been subdivided into Lots, the Annual Assessment shall be the Base Assessment times the total possible units as shown in the most current PDO land use legend.

8.5.3 Residential Apartment and Condominium Parcels. In the case of a Residential Apartment Use Parcel, the Annual Assessment shall be 30% of the Base Assessment times the total platted

units (if not yet platted, the total possible units as shown in the most current PDO land use legend). For example, if an Apartment Parcel had 200 platted units, and the Annual Base Assessment was \$180, then the Annual Base Assessment would be $\$180 * 30\% * 200 = \$10,800$.

In the case of Residential Apartment Use Parcels, and not Condominium Use Parcels, Apartment Owners may choose to “buy out” of the Base Assessment by paying a lump sum amount equal to the Annual Base Assessment as described above times eighteen (18) years. Under this buy out option, the HOA will provide all landscaping maintenance for the life of the HOA at no additional fees to the Apartment Owner.

Condominium Use Parcels. In the case of Condominium and Townhome Residential Use Parcels, the Annual Assessment shall be the Base Assessment times the total platted units (if not yet platted, the total possible units as shown in the most current PDO land use legend). For example, if a Condominium Parcel had 50 platted units, and the Annual Base Assessment was \$180, then the Annual Base Assessment would be $\$180 * 50 = \$9,000$.

8.5.4 *Non-Residential and Mixed Use Parcels.* In the case of Non-Residential or Mixed Use Parcels, the Annual Assessment shall be the Residential Annual Base Assessment times the gross acreage of the Parcel times six (6). For example, if the Residential Annual Base Assessment was \$180 and the non-residential parcel was 5 acres, the annual Base Assessment would be: $\$180 * 5 * 6 = \$5,400$.

Non-Residential Parcel Owners may choose to “buy out” of the Base Assessment by selecting one of the following two options:

1). Paying a lump sum amount equal to the Annual Base Assessment as described above times eighteen (18) years. Under this buy out option, the HOA will provide all landscaping maintenance for the life of the HOA at no additional fees to the subject Owner.

2). Paying a lump sum amount equal to \$7,500 times the gross acreage. Under this buy out option, the Owner will be responsible for all landscaping maintenance that the HOA would otherwise be providing. In addition, the Owner shall provide its own water meter for the landscaping strips. The HOA reserves all rights to levy liens, back charge for inadequate maintenance, or do anything else reasonably within its power to make sure that the Owner provides a minimum level of maintenance that the HOA would otherwise provide.

8.6 Obligation of Developer Owner

8.6.1 Developer Owners to benefit from delayed dues. Developer Owners are not required to pay any Base Assessments from initial conveyance (or executed development agreement) until the time a final plat is approved by the City, or at 12 months from the initial conveyance or execution of the development agreement, whichever is earlier, and as more specifically described in Section 8.3 above. Once any Developer Owner is subject to pay Base Assessments, the Developer Owner will be required to pay full Assessments on all platted land, and in the case of un-platted land, the Developer Owner shall be required to pay the full dues as described in Section 8.5.2, 8.5.3, or 8.5.4, as the case may be.

8.6.2 *Partial Development of Parcels.* In the case of a site plan approved by the Reviewing Authority for a Parcel on which it is contemplated that more than one building will be

constructed, the Parcel will, for the purposes of this Article only, be deemed subdivided into the number of sub-parcels equal to the number of approved buildings set forth on the approved site plan.

8.6.3 *Duty to Notify.* Once a Developer Owner becomes subject to Assessments, as described in Sections 8.3 and 8.6.1, such Developer Owner shall immediately notify the Board, in writing, of its change in status. If a Developer Owner of a Lot or Parcel fails to notify the Board as described herein, that Owner will still be liable for the full amount of the Assessment as of the date it was required to pay the Assessment and such Owner's failure to notify the Board will not relieve the Owner of liability for the full amount of the Assessment.

8.7 Maintenance Assessments

The Association may assess Maintenance Assessments against a Lot or Parcel in the event the need for maintenance or repair of areas maintained by the Association is caused through:

8.7.1 The willful or negligent act or omission of any Owner (or of any other person for whom such Owner is legally responsible under applicable state law); or

8.7.2 the maintenance of a Lot or Parcel by an Owner, or failure to maintain, so as to present a nuisance, or to substantially detract from or negatively affect the appearance or quality of any neighboring Lot or Parcel or other area; or

8.7.3 the maintenance of a Lot or Parcel by an Owner, or failure to maintain, so as to violate this Declaration or any applicable Supplemental Declaration; or

8.7.4 any use of, or activity on, any Lot or Parcel that causes maintenance or repair costs incurred or to be incurred by the Association with respect to Common Area to be substantially greater than those costs which would typically be incurred in relation to such Common Area, whether such use or activity is of a continuing nature or an isolated event.

In any such case, the Board may, depending upon the circumstances, give notice to the Owner of such Lot or Parcel that unless specified corrective action is taken within a specified time period, the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action.

If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, at the Owner's sole cost, the Board is authorized and empowered, subject to such notice and hearing as may be required by law, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys' fees, shall be charged to the Owner as a Maintenance Assessment.

The Maintenance Assessment shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot or Parcel is subject, shall be secured by the Assessment Lien, and shall be due fifteen (15) days after written demand or notice by the Board.

In no case may any form of Maintenance Assessment be levied or charged with respect to Lots or Parcels owned by Declarant.

This Section shall be subject to such equitable and other limitations as may be imposed by law, including by the Utah Community Association Act.

8.8 District Assessments

Where the Association has undertaken, by virtue of its obligations hereunder, or pursuant to a Supplemental Declaration or District Declaration approved by Declarant, or by the Board as provided herein, or pursuant to any special contract executed by the Association, the responsibility to maintain, repair, replace, repave, resurface or operate private streets or private roadways or any open space, recreational or other common facilities or any guard gates, or any Limited Common Area, the Board, if in its discretion determines that such private streets or private roadways (or appurtenant equipment and facilities) or open space, recreational or other common facilities or guard gates, exclusively or disproportionately benefit the Owners of certain groups of Lots or Parcels, may assess all (or such appropriate portion as the Board shall determine in its discretion) of the cost of such maintenance, repair, replacement, repaving, resurfacing, operation, and, if applicable, ownership, solely against the Lots or Parcels within such subdivision or area within the Covered Property (and the respective Owners thereof) as a District Assessment.

A District Assessment may also include the cost of any special or extra services provided by the Association to a District pursuant to an approved request under Section 7.7 hereof.

A District Assessment shall be assessed uniformly against each of the Lots or Parcels within such area and shall be secured by the lien for Assessments as described herein. Such additional District Assessment may also include amounts to establish and fund reserves as the Board may deem reasonable and appropriate. In any case where a District Association exists, the Board may require that the District Association collect and transmit District Assessments to the Association.

One of the purposes of this Section is to establish a mechanism whereby various facilities intended and designed solely or primarily for use by the Owners of Lots and Parcels within a particular area or subdivision may be owned and maintained by the Association at the sole and primary expense of such Owners, rather than to require formation of a District Association to undertake such ownership and maintenance.

A District Assessment pursuant to this Section shall be secured by the Assessment Lien on each Owner's Lot or Lots affected, and shall be due and payable by such Owners to the Association fifteen (15) days after such dates or times as are determined by the Board.

8.9 Fines and Penalties

If any Owner, his or her family, or any licensee, invitee, tenant or lessee violates the provisions hereof, or any provision of any of the DRC Guidelines or other rules of the Association, the Board after providing the Owner with notice of the violation and an opportunity for a hearing as required by law, may levy a fine upon the Owner, may suspend the violator's right to use the Common Area and may charge such Owner all costs incurred by the Association in connection with enforcement or other action taken by the Association, including attorneys fees and costs incurred. Such violation shall also be grounds for the Association, should it wish, to suspend the said rights of the Owner and its family members, guests and invitees.

The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within fifteen (15) days of notice of the due date, may be charged to the Owner of the Lot or Parcel in question, may be collected in the same manner as delinquent Assessments, and shall be deemed a part of the Assessments for which such Owner is liable, with a lien on the Lot or Parcel to secure same, all as provided by law for the collection of Assessments, penalties and other charges.

In no event shall any fine be imposed for a default or violation of the Governing Documents, other than a failure to pay Assessments, without first affording the Owner notice and an opportunity for hearing.

This Section shall be subject to such limitations as exist at law, including by the Utah Community Association Act.

8.10 Special Assessments

In addition to the Annual Assessments, the Board may levy a special Assessment a) for the purpose of constructing improvements to Common Area; b) correcting an inadequacy in the Association's accounts; c) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owned by the Association; or d) defraying other extraordinary expenses or paying other expenses the Board may deem appropriate, including increased expenses encountered by the Association in connection with new or expanded Common Area amenities or features, including such amenities or features within annexed land. The Board may also levy a Special Assessment against the Lots within any District if such Special Assessment is for District Expenses. The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments shall be approved by the Class B Member and either the written consent of, or vote at any annual or special meeting of, Voting Members (or Members, if determined by Declarant, representing a majority of all votes allocable to Lots and Parcels. In the case of District Expenses, a Special Assessment may be approved by the vote or written consent of Owners representing a majority of the total votes allocated to Lots which will be subject to such Special Assessment. The Board may in any case, however, impose and assess a Special Assessment as to all Lots or Parcels, or Lots within a District, without any vote or consent of Members whatsoever if the purpose is to pay the increased costs and expenses of the Association in connection with annexed land or new Common Areas, amenities or features, or increased expenses due to insurance premiums, taxes or governmental charges, or increased utilities charges, and the Class B Member shall have the right to cause the Board to make and levy such Special Assessments.

8.11 Billing and Collection Procedures

The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments and Special Use Fees, which procedures may include delegating to the applicable District Association the authority and obligation of billing and collecting some or all of the Assessments and Special Use Fees. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Parcel changes during an Assessment Period. Any successor Owner shall be given credit for any non-refunded prepayments made by a prior Owner.

8.12 Collection Costs and Interest on Delinquent Amounts

Any Delinquent Amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within fifteen (15) days after the due date. Any Delinquent Amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, the then prevailing interest rate on loans insured by FHA or VA, or such rate as is determined from time to time by the Board. The Owner shall be liable for all costs, including but not limited to attorneys, fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount, and such amounts, to the extent permitted by law, shall be deemed a part of the Assessment Lien. This Section shall be subject to such equitable and other limitations as may be imposed by law including by the Utah Community Association Act.

8.13 Working Capital Fund/Reinvestment Assessment

Reinvestment Fee. Unless prohibited by statute, the District Association may charge a Reinvestment Assessment to benefit the Covered Property obligating a future buyer and seller of a Lot or Parcel to pay to the Association upon and as a result of a transfer of a Lot or Parcel, dedicated to benefitting the burdened property, including, but not limited to, for common planning, facilities, and infrastructure, obligations arising from an environmental covenant, community programming, resort facilities, open space, recreation amenities, charitable purposes or association expenses. Notwithstanding the foregoing, the Reinvestment Assessment will not apply to the conveyance of any Lot or Parcel to or from the Declarant or to any conveyance of any Lot or Parcel from Declarant to a Developer Owner. The Reinvestment Assessment will not exceed .5% of the value of the burdened property.

Exempt Transfers. Notwithstanding the above, no Community Enhancement Fee shall be levied upon transfer of title to a Lot

- (a) By or to Declarant;
- (b) by or to a Developer Owner in the course of or pursuant to development or resale;
- (c) by and among joint owners or co-owners pursuant to tax planning, estate planning, or merely to change ownership for convenience, liability avoidance or similar transactions where a bona fide sale to a third person is not involved;
- (d) to an entity wholly owned by the grantor, provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due; or
- (e) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

Immediately upon becoming the Owner of a Lot or Parcel a sum equal to twenty-five percent (25%) of the then-current Annual Assessment applicable to such Lot or Parcel (the "Reinvestment Assessment" or "Working Capital Contribution Fund ") shall be paid by Owner to the Association.

Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

8.14 Exempt Property

Exempt Property shall be exempt from Assessments and the Assessment Lien, and the Owner thereof, if other than Declarant, shall have no voting rights in the Association on account thereof.

8.15 Exemption from Assessment Lien

Notwithstanding any other provision of this Declaration, no Assessment Lien created hereunder may ever attach to land: a) owned by Declarant; or b) owned by the Association.

8.16 Declarant's Exemption

Anything in this Declaration to the contrary notwithstanding, neither SITLA, Declarant nor any Declarant Affiliate shall be liable for, nor shall they be required to pay, Assessments of any nature or a Reinvestment Fee for Lots or Parcels owned by them.

8.17 Limited Obligation of Declarant and Developer Owners to Pay Deficiencies

Declarant and Declarant Affiliates. Each Declarant and each Declarant Affiliate shall, however, pay for any given Assessment Period in which Declarant and a Declarant Affiliate has paid or contributed to the Association less than the full ratable Annual Assessment for each Lot or Parcel owned by Declarant or by a Declarant Affiliate, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Area (i.e., only for actual budget deficits), but only up to the full Annual Assessment for each such Lot or Parcel actually owned by Declarant or Declarant Affiliate in the Covered Property, pro-rated for the relevant portion of the Assessment Period in question. A shortfall or deficiency shall exist if current ordinary and budgeted expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that neither Declarant nor a Declarant Affiliate shall be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year.

Should Declarant assign its rights to the exemption from Assessments as provided herein, whether such assignment be in whole or in part, then the assignee shall, in the case of any deficiency as described above (and meeting the conditions set forth above), be liable for its ratable share of same, up to the full amount of the Annual Assessment for each Lot or Parcel owned by them, and not more. In addition, such assignee's exemption, if any, shall expire with respect to any Lot or Parcel upon which construction of improvements has been completed.

Declarant and any Declarant Affiliate or Developer Owner may at any time at their sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay instead up to the full Annual Assessment for each Lot or Parcel owned by them.

In no event shall Declarant or any Declarant Affiliate be required to contribute to any deficiency or shortfall after termination of the Declarant Control Period, and in no event shall property of Declarant be deemed encumbered by any Assessment Lien.

Developer Owners. Should a deficiency continue to exist after Declarant and each Declarant Affiliate has paid up to the full Annual Assessment for each such Lot or Parcel they own within the Covered Property, whether or not the expense therefor is advanced by Declarant or a Declarant Affiliate, then each Developer Owner who has paid or contributed to the Association less than the full Annual Assessment for

each Lot or Parcel owned shall pay its share of the remaining deficiency, if any, but only up to the full Annual Assessment for each such Lot or Parcel actually owned by them in the Covered Property.

The ratable share of such deficiency shall be based upon the number of full Annual Assessments that would be payable for each Lot or Parcel owned, disregarding any reduced assessments otherwise applicable to any Developer Owners.

For example, should a single Developer Owner own four hundred (400) Lots, and should all Developer Owners, together, own five hundred (500) Lots and two (2) Single Family Residential Use Parcels each fifty (50) Net Acres in size for which Parcels an Owner would otherwise pay three hundred (300) Annual Assessments, and should such Lots and Parcels be held during the entire Assessment Period, then the Developer Owner owning four hundred (400) Lots would pay one-half of the remaining deficiency (i.e., $400/800=1/2$; where the denominator is determined by adding 500 Annual Assessments for all Developer Owner Lots plus 300 Annual Assessments for Developer Owner Parcels, and where the numerator is the number of Annual Assessments assumed for the Developer Owner in question).

The Board in its reasonable discretion shall adjust the calculations above to account for Lots or Parcels owned for less than a full Assessment Period, with the number of assumed Annual Assessments pro-rated accordingly.

8.18 City Development and Impact Fees

8.18.1

8.19 "Development Agreement"

The Covered Property is burdened and governed by that certain Development Agreement by and between Declarant and Hurricane City. All Owners must comply with the applicable provisions of such Development Agreement. The Common Expenses of the Association shall include all cost and expense of complying with such agreement, and the provisions hereof shall be notice to all Owners of Lots and Parcels of the Association's obligations hereby confirmed to assume and be responsible for the maintenance, repair and replacement of certain open spaces to be acquired by the Association at the discretion and direction of Declarant, and the maintenance, repair and replacement of certain landscaping within public right of way, and to comply with all other applicable provisions of the said Development Agreement. Among other things, the Association shall accept drainageways and basins, including detention and retention basins, and shall be responsible to maintain and repair such drainage facilities and improvements except to the extent the City may be responsible therefor pursuant to the terms of the Development Agreement, but the Association shall have no right to object to any determination by the City as to which improvements shall be maintained by the Association.

Without limitation, each Owner is deemed to acknowledge that easements for drainage, utilities, fiber optic and other communications networks and other facilities may be reserved over and across Common Area and the Association shall be required to maintain and protect the easement areas, and that whatever responsibility the Association may have had with respect thereto, including with respect to landscaped rights of way, shall cease to be the responsibility of Declarant and shall become the responsibility of the Association immediately upon recordation hereof.

The provisions of this Section may not be amended without the written consent of Declarant.

ARTICLE IX

ENFORCEMENT OF THE ASSESSMENT LIEN

9.1 Association Remedies to Enforce Assessments

If any Owner fails to pay any Assessment when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking any and all action available at law or in equity, including:

9.1.1 Bringing an action against the Owner to recover judgment against the Owner who is personally liable for the Assessments or Special Use Fees; and,

9.1.2 Foreclosing the Assessment Lien against the appropriate Lot or Parcel in accordance with then prevailing Utah law. Though not required, the Association may record notice of its lien, and all costs of preparation of such notice, recording and releasing same, including attorneys fees and costs, shall be paid by the delinquent Owner, with all expense thereof being a part of the lien of the Assessment.

9.2 Subordination of Assessment Lien

The Assessment Lien shall have priority from the date of recording of this Declaration, and shall be superior to all charges, liens or encumbrances which hereafter are or may be imposed on any Lot or Parcel, except as provided by law. Without limitation, the Assessment lien is junior to:

9.2.1 the lien of any First Mortgage encumbering a Lot or Parcel; and

9.2.2 the lien for taxes or other governmental assessments which are deemed superior hereto by applicable law.

Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, the sale or transfer of any Lot or Parcel pursuant to any First Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Parcel, or the Owner thereof, for liability from any Assessment theretofore becoming due nor from the Assessment Lien arising in regard thereto. No Event of Foreclosure shall relieve the Owner whose interest was foreclosed from liability for Assessments payable through the date of such Event of Foreclosure.

In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a First Mortgagee obtaining an interest in a Lot through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

ARTICLE X

MAINTENANCE

10.1 Common Area and Public Rights-of-Way

Association Duty

10.1.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage Common Area, including landscape maintenance in public rights of way shown on the Master Development Plan, depicted in the PDO, or which are the subject of the Development Agreement. Common Area to be maintained by the Association may be identified on recorded subdivision plats approved by Declarant, in the Master Development Plan, in the PDO, or in a Supplemental Declaration, District Declaration or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto. A Supplemental Declaration or District Declaration, or a separate instrument approved by Declarant may limit the Association's responsibilities with respect to certain Common Area. Notwithstanding anything contained herein to the contrary, for all common area, planter strips, trails, etc., (regardless of whether they are owned by the Declarant, Association, District, or District Association or located in the public rights of way), adjacent to the boundaries of a District, the responsibility for maintenance, including landscape maintenance, shall be the Developer Owner or the District Association.

The Association shall further have the right, to the fullest extent permitted by law, to regulate and restrict use of trail systems established within Common Area or within the Covered Property, and may adopt Rules pertaining to such matters. Such Rules may, without limitation, contain provisions necessary to protect nearby or surrounding landowners from trespass or nuisance, and no right of use associated with any trail within the Covered Property shall carry with it any right of occupancy or use, except for direct ingress and egress, and then only in accordance with the terms of a separate instrument establishing such right of ingress and egress.

10.1.2 Rights of Way. The Association may also in its discretion elect to maintain landscaping and similar improvements within public rights of way located within the Covered Property, other than those already the subject of Supplemental Declarations, the PDO, the Development Agreement or a District Declaration, to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity with respect to such public rights of way.

10.2 Standard of Care

The Association shall use a reasonable standard of care in providing for the repair, management and maintenance of the Common Area so that the Covered Property will reflect a high degree of pride of ownership. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Area.

ARTICLE XI

RIGHTS AND POWERS OF ASSOCIATION

11.1 Rights, Powers and Duties of the Association

In addition to the rights and powers of the Association set forth in the Governing Documents, the Association shall have such rights and powers and duties as may be reasonably necessary in order to affect all the objectives and purposes of the Association as set forth herein. A copy of the Governing Documents shall be available for inspection at the office of the Association during reasonable business hours. To the extent development may be governed by the Planned Development Overlay for Desert Sands regulations, the Association shall in performing its duties and functions comply with the specific terms thereof that pertain to the Association.

11.2 Provisions of the Planned Community Development Regulations

Notwithstanding anything contained in this Declaration to the contrary, development of the Covered Property is intended to conform to the requirements of the PDO for Desert Sands, as such PDO may be amended or changed from time to time. All Owners, by acceptance of a deed to any portion of the Covered Property, are deemed to be fully advised as to the content of the PDO. Should this Declaration be more restrictive than the PDO, this Declaration shall control.

11.3 Rules and Regulations

In addition to the right to adopt, amend and repeal rules and regulations (the “Rules”) on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations, as a part of the Rules, with respect to all other aspects of the Association’s rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of the Governing Documents. Upon adoption, the Association’s Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

11.4 Association’s Rights of Enforcement

The Association and SITLA shall have the right, but not the obligation, to enforce the provisions of this Declaration and all Additional Covenants that shall have been executed pursuant to or subject to the provisions of this Declaration.

11.5 Enforcement Methods and Means

The Association, after affording such notice and opportunity for a hearing, or to be heard, as may be required by law (including by the Utah Non-Profit Corporation Act and the Utah Community Association Act), may enforce the provisions hereof at law or in equity, including, but not limited to:

11.5.1 Imposing reasonable monetary penalties, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her guests, invitees and Tenants or residents.

11.5.2 Suspending an Owner’s right to vote after notice and opportunity to be heard, as required hereby.

11.5.3 Suspending any services provided by the Association to an Owner or the Owner's property if the Owner is more than 15 days delinquent in paying any Assessment or other charge owed to the Association.

11.5.4 Exercising self-help or taking action to abate any violation of the provisions hereof.

11.5.5 Requiring an Owner at the Owner's expense to remove any offending condition, structure or improvement on the Owner's property, and further requiring the said Owner to restore his or her property to the condition in which it previously existed, without such action being a trespass.

11.5.6 Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration from continuing to perform and further activities on the Covered Property.

11.5.7 Towing vehicles which are parked in violation of the provisions hereof.

11.5.8 Filing suit at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate.

The Board may weigh financial and other factors, such as possible defenses, legal merit and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to take legal action shall not limit or waive the right of any Owner to pursue proper action, nor the right of the Association to pursue action at a future time should it so desire.

11.6 Contracts with Others; Bulk Service Agreements

Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and the laws of the State of Utah, the Association may enter into contracts with others, including Declarant and Declarant Affiliates, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant Affiliates, provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association shall be for a term not exceeding the maximum term permitted by law.

The Association may, without limitation, provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or may be funded as otherwise determined by the Board in accordance with this Declaration. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, internet and other communications services, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. If all Lots within the Covered Property are to be served by a particular bulk service agreement, the Board shall have the option either to (a) include the Association's costs under such bulk service agreement in the budget for each applicable fiscal year and thereby include

such costs in the Assessments for each such applicable year, or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly). If not all Lots within the Covered Property will be served by a particular bulk service agreement, the Board shall include the Association's costs under such bulk service agreement in a District Assessment assessed solely against the Lots or Parcels served for each applicable fiscal year.

11.7 Limited Common Area

11.7.1 Purpose. Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular District or Districts. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs and other portions of the Common Area within a particular District or Districts. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a District Expense allocated among the Owners in the District(s) to which the Limited Common Areas are assigned.

Designation. Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots and/or Districts, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 13.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Voting Members representing a majority of the total Class A votes in the Association, including a majority of the Class A votes within the District(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 13.1, any such assignment or reassignment shall also require Declarant's written consent. Declarant may also unilaterally reassign Limited Common Area and Common Area without further approval from Members.

11.7.2 Use by Others. Upon approval of a majority of Owners of Lots within the District to which any Limited Common Area is assigned, the Association may permit Owners of Lots in other Districts to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the District Expenses attributable to such Limited Common Area.

ARTICLE XII

**EMINENT DOMAIN AND INSURANCE INVOLVING
THE COMMON AREA**

12.1 Eminent Domain

In the event of a threatened taking of all or any portion of the Common Area, the owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Any awards received on account of the taking shall be paid to the Association. In the event of a total taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, (taking into account a reduction in the distribution to those Owners paying reduced amounts for Assessments pursuant thereto), and all holders of liens and encumbrances, as their interest may appear of record.

The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation.

12.2 Authority to Purchase Insurance

The Association shall as a Common Expense purchase and maintain such property damage and liability insurance upon the Common Area and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Utah at a reasonable cost and on other reasonable terms and conditions.

Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers, liability insurance covering all officers and directors of the Association as well as all regular and alternate members of the DRC, Declarant, and, to the extent such insurance is reasonably available, any property manager under contract with the Association, all in amounts and on terms adequate to permit the Association to indemnify such persons pursuant to the provisions hereof and pursuant to the provisions of the Articles and Bylaws. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

12.3 Individual Responsibility

It shall be the responsibility of each Owner or Occupant to provide insurance for real or personal property or interests owned or held by such Owners within the Covered Property, including, but not limited to, homeowners insurance, hazard, fire and casualty insurance, liability insurance, and property damage insurance covering all additions and improvements to Lots or Parcels, furnishings and personal property therein, and personal liability.

Each Owner and Occupant shall also provide such other insurance which is not carried by the Association as such Person desires. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Area. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

12.4 Insurance Claims

The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association covering Common Area and improvements thereon, property or interests of the Association, liability of the Association, and other such insurance.

Each Owner shall execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing.

The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

Any Owner who causes any damage or destruction of any areas for which the Association maintains insurance, is responsible for the payment of any deductible portion of the insurance, which will become a Maintenance Assessment against the Owner and the Lot or Parcel

ARTICLE XIII

ANNEXATION, DECLARATION OF ANNEXATION AND DE-ANNEXATION

13.1 Annexation of Annexable Property

Declarant may, in its sole discretion, at any time and from time to time up to the date which is twenty-five (25) years after the date this Declaration is recorded, annex to the Covered Property any Annexable Property and any land adjacent or near to the Covered Property. To effect such annexation, a Declaration of Annexation covering the Annexable Property (or the applicable portion or portions thereof) shall be executed and recorded by Declarant.

The recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the Annexable Property (or the applicable portion or portions thereof) described therein as of the date of recordation or such later date, if any, as may be set forth in such Declaration of Annexation, making such Annexable Property (or the applicable portion or portions thereof) and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association as of the date of recordation or such later date, if any, as may be set forth in such Declaration of Annexation. In addition to the foregoing, and notwithstanding any decision not to annex the Additional Property or any portion thereof, Declarant may grant easements for ingress, egress, utilities, and other purposes for the benefit of such Annexable Property, all on terms deemed by Declarant to be reasonable, and easements shall be deemed reserved over and across all streets and roads in favor of any land not annexed.

13.2 Declarations of Annexation

The annexations authorized under Section 13.1 shall be made by recording a Declaration of Annexation, which instrument may contain additional covenants, conditions, restrictions, easements or other terms. The portions of Annexable Property annexed in accordance with Section 13.1 hereof shall thereupon become fully a part of the Covered Property subject to all provisions of this Declaration (including, but not limited to, provisions hereof regarding Assessments, except with respect to Parcels as provided herein).

A Declaration of Annexation may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof). In no event, however, shall any such Declaration of Annexation revoke or conflict with this Declaration or any Supplemental Declaration except to the extent specifically permitted hereby.

13.3 Annexation by Owners

The Association may, from time to time, annex to the Covered Property additional Annexable Property provided that such annexation has been approved by the Voting Members representing at least seventy-five percent (75%) of the total votes then entitled to be cast by Class A Members, with or without a meeting, subject to the right of the Class B Member to disapprove the action.

To effect such annexation, a Declaration of Annexation covering the Annexable Property shall be executed by the President or Vice-President of the Association and attested to by the Secretary of the Association, and executed by the owner of the Annexable Property. The recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the Annexable Property described therein, making such Annexable Property and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association.

Any annexation during the period of the Class B Membership shall have the written approval of the Class B Member. Absent such approval, any such annexation shall be deemed void.

13.4 De-Annexation of Covered Property

Declarant may, in its sole discretion, at any time and from time to time up to the date which is twenty-five (25) years after the date this Declaration is recorded, de-annex or withdraw from the Covered Property any portion or portions thereof (subject to the written consent of the owner of the portion or portions to be de-annexed or withdrawn, if other than Declarant).

To effect such de-annexation or withdrawal, Declarant shall execute and record a Declaration of De-Annexation setting forth the legal description of the portion or portions of the Covered Property to be de-annexed or withdrawn, and such Declaration shall be executed by Declarant and the Owner of the land to be withdrawn. The land to be withdrawn may include any portion of the Covered Property, including Lots, Parcels and Common Area. Recording such Declaration of De-Annexation shall constitute and effectuate the de-annexation and withdrawal of the applicable portion or portions of the Covered Property described therein, and such property and the Owners and Occupants thereof shall no longer be subject to this Declaration or the jurisdiction of the Association. Notwithstanding the preceding sentence, except as otherwise provided in the applicable Declaration of De-Annexation, de-annexation or withdrawal of any portion or portions of the Covered Property will not be effective until the owner of the property to be de-annexed or withdrawn has paid all unpaid Assessments applicable to such property (unless exempt), prorated to the date of de-annexation or withdrawal.

It is specifically understood that this right of de-annexation or withdrawal may be exercised in Declarant's sole and absolute discretion, and that once de-annexed or withdrawn, none of the provisions hereof shall apply to or encumber the land. Further, the Class B Member may cause the Association to grant and convey such easements as may be necessary to benefit such land de-annexed or withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

13.5 Protection of Declarant

The provisions of this Article may not be amended without the written approval of Declarant.

ARTICLE XIV

TERM; AMENDMENTS; TERMINATION

14.1 Term; Method of Termination

This Declaration shall be effective upon its recordation and, as amended from time to time, shall continue in full force and effect unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%) of the total votes entitled to be cast by the entire Membership. Upon the recording of a Certificate of Termination executed by the President and Secretary of the Association confirming such vote, this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Utah. During the Declarant Control Period, no such termination shall be effective unless approved in writing by Declarant. In addition, should any Development Agreement then in effect with the City prohibit or otherwise limit termination of this Declaration, then any termination shall meet the requirements set forth in such Development Agreement and shall require the written approval of the City.

14.2 Amendments

14.2.1 *By Declarant.* In addition to specific amendment rights granted elsewhere in this Declaration, and notwithstanding anything contained in this Declaration to the contrary, until termination of the Declarant Control Period, Declarant may amend this Declaration for any purpose whatsoever, and without the consent or approval of any Owners or Members, or any other Person, regardless of whether any such amendment is uniform in nature, which shall be signed by Declarant.

In addition to the foregoing, even after termination of the Declarant Control Period, and for so long as Declarant owns any portion of the Covered Property or Annexable Property, Declarant may of its own volition, and without the consent or approval of any Owners or Members, or any other Person, amend this Declaration for the following purposes: (a) to bring any provision hereof into compliance with applicable law; (b) to satisfy the requirements of any Agencies pertaining to lending criteria, or established as conditions for the acceptability or approval of mortgages, mortgage insurance, loan guarantees or other factors; or (c) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof.

Any amendment during the Declarant Control Period shall require the written approval of Declarant. Further, so long as Declarant owns any land from within the Covered Property or the Annexable Property, Declarant may, without any other consent or approval, amend this Declaration to clarify the application of the provisions hereof to any land which may be annexed, or for any other reasonable purpose in connection with any land which may be annexed. Amendment by the Association requires any officer signature and certification.

14.2.2 *By the Association.* Except as otherwise specifically provided above and elsewhere in this Declaration, during the Declarant Control Period, this Declaration may be amended by the Association only by the affirmative vote or written consent, or any combination thereof, of Voting Members which in the aggregate represent at least two-thirds (2/3) of the total Class A votes allocable to Lots and Parcels, so long as Declarant has voted in favor of the amendment; and where the Declarant does not vote in favor of the amendment, this Declaration may be amended by the Association only by the affirmative vote or written consent, or any combination thereof, of Voting Members which in the aggregate represent at least ninety percent (90%) of the total Class A votes allocable to Lots and Parcels.

14.2.3 *Amendment of Supplemental Declarations.* A Supplemental Declaration may be amended as provided in such Supplemental Declaration, but only with the consent of Declarant so long as Declarant owns a single Lot or Parcel in the Covered Property, is within the Declarant Control Period, or so long as Declarant owns any portion of the Annexable Property. Thereafter, a Supplemental Declaration may be amended as provided therein, and with the approval of the Board.

14.3 Termination of Association; Condemnation Proceeds etc.

14.3.1 Termination of Association. Any actions to terminate this Declaration for reasons other than substantial destruction or condemnation of the Covered Property shall require, in addition to the approval of Declarant so long as Declarant owns any portion of the Covered Property or Annexable Property, and in addition to such approval as is required by law, the approval of Eligible Mortgage Holders whose First Mortgages encumber Lots whose Owners represent at least sixty-seven percent (67%) of the total Class A votes in the Association allocable to Single Family Residential Use, Cluster Residential Use, or Condominium Use properties which are encumbered by First Mortgages held by such Eligible Mortgage Holders.

14.3.2 Condemnation or Insurance Proceeds. No Owner, or any other party, shall have priority over any rights of any First Mortgagee pursuant to its mortgage or deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area.

14.3.3 Payment of Charges by First Mortgagees. First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Area, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Area in the case of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Association.

14.3.4 Right of Inspection of Records. Any Owner, First Mortgagee, or Eligible Mortgage Holder shall be entitled to: (a) inspect current copies of the Governing Documents, and the books, records, and financial statements of the Association during normal business hours; and (b) receive, upon written request therefor, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party.

ARTICLE XV

MISCELLANEOUS

15.1 Additional Covenants

In furtherance of the orderly sale and development of the Covered Property, and of the protection and enhancement of the value of the Covered Property, Declarant shall have the right, power and authority (but not the obligation), where in Declarant's discretion the circumstances so warrant, to execute prior to, with or after the sale of any portion of the Covered Property by any purchaser, a supplement to this Declaration adding additional covenants or restrictions, qualifying or limiting the application of this Declaration to such land, or entirely excepting such land from the coverage hereof any from all of the restrictions, limitations or other provisions included herein.

Such additional covenants or restrictions may be referred to herein as the "Additional Covenants." No such Additional Covenants shall exempt any such land or the respective owners thereof from the obligations to pay Assessments hereunder or from the Assessment Lien in regard thereto or deprive such land or its Owner of membership and voting rights otherwise established by this Declaration, except that Declarant at all times shall have the right to record a Declaration of De-Annexation with respect to any land.

Such Additional Covenants shall be recorded and shall be binding upon Declarant, the Association, the DRC and each Owner and Occupant. Declarant shall deliver a true and complete copy of any such Additional Covenants to the Association within a reasonable time after recordation thereof. After conveyance of a Lot or Parcel to an Owner thereof, de-annexation of such land or the imposition of Additional Covenants thereon shall require the consent of such Owner.

15.2 Enforcement Rights

Declarant, SITLA, the Association, and each Owner (including Declarant, so long as Declarant is an owner of a Lot) shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

15.3 Interpretation of the Covenants

Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions in Article V hereof and in any Supplemental Declaration or District Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

15.4 View Impairment

Neither Declarant, nor the Association nor any Developer Owner guarantees or represents that any view or passage of light and air over and across any portion of the Covered Property, including any Lot, from adjacent Lots or Common Area will be preserved without impairment. Neither Declarant, nor the Association nor any Developer Owner shall have the obligation to prune or thin trees or other landscaping except as required by the DRC or DRC Guidelines. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any view which exists at any point in time for a Lot may be impaired or obstructed by further construction, including, without limitation, by construction of improvements (including without limitation, landscaping) by Declarant, any Developer Owner or by any third person (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant, the Association or any Developer Owner with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

15.5 Assumption of Risk

Neither the Association, the members of the Board, the officers of the Association, the management company of the Association, nor Declarant nor any Developer Owner, shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or Occupant of any Lot or any tenant, guest or invitee of any Owner or Occupant or for any property of any such persons. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or Occupant shall assume all risks associated with the use and enjoyment of the Covered Property, including all Common Area.

Neither the Association, the members of the Board, the officers of the Association, the Association's management company nor Declarant nor any Developer Owner shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Covered Property. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or Occupant shall assume all risk of personal

injury, illness, or other loss or damage arising from the presence or malfunction of utility lines or utility sub-stations and further acknowledges that neither the Association, the members of the Board, the officers of the Association, the Association's management company nor Declarant nor any Developer Owner have made any representations or warranties, nor has any Owner or Occupant, or any tenant, guest, or invitee of any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

No provision hereof, or of the articles of incorporation or bylaws of the Association, or of the DRC Guidelines, shall be interpreted as creating a duty of the Association, the members of the Board, the officers of the Association, the management company of the Association or Declarant or any Developer Owner to protect or further the health, safety, or welfare of any Person, even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Covered Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the Board, the Association's management company, and Declarant and all Developer Owners, their directors, officers, committee and board members, employees, agents, contractors, subcontractors, successors, and assigns arising from or connected with any matter for which the liability has been disclaimed.

15.6 Severability

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

15.7 Change of Circumstances

Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

15.8 Declarant's Disclaimer of Representations

Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Desert Sands can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect.

No provision or content of the Master Development Plan shall be deemed a representation that any facility, land or feature not already included in the Covered Property shall be included either in the Covered Property or the Common Area.

While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Parcel agrees to hold Declarant harmless therefrom.

15.9 Successors and Assigns

Any reference in this Declaration to Declarant shall include any successors or assignees of all or a specified portion of Declarant's rights and powers hereunder. Any such assignment shall be evidenced by a recorded instrument executed by Declarant and its successor or assignee whereby such rights and powers (or any specified portion thereof) are specifically assigned.

15.10 Application

Although land which is owned by Declarant is exempt from any Assessment Lien pursuant to the provisions hereof, this Declaration shall be a valid restriction binding on the Covered Property.

[Remainder of Page Intentionally Left Blank. Signature Page to Follow.]


Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

DECLARANT:
THE HOLLOWES, LLC

By: 
Brett Burgess, Manager

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 1st day January, 2022 by Brett Burgess as Authorized Representative of The Hollowes, LLC, a Utah limited liability company, and said Brett Burgess duly acknowledged to me that said The Hollowes, LLC executed the same.


NOTARY PUBLIC
My Commission Expires: April 9, 2025

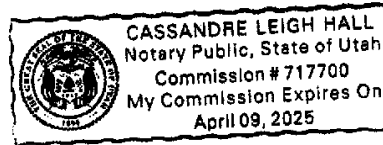


EXHIBIT "A"

**Legal Description of "Desert Sands"
(Annexable Property)**

DESERT SANDS OVERALL BOUNDARY DESCRIPTION

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 14, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN, (BASIS OF BEARING BEING SOUTH 00°00'07" EAST ALONG THE QUARTER SECTION LINE BETWEEN THE NORTH QUARTER CORNER (MARKED BY A 1973 WASHINGTON COUNTY BRASS CAP) AND THE SOUTH QUARTER CORNER (MARKED BY A 1978 BLM BRASS CAP), OF SAID SECTION 14 AND RUNNING THENCE NORTH 00°03'36" WEST ALONG THE QUARTER SECTION LINE OF SECTION 11, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN, A DISTANCE OF 1285.401 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF TURF SOD ROAD, DEDICATED AS PART OF THE TURF SOD ROAD, 5140 WEST, & BERNIE LANE (1930 SOUTH) ROAD DEDICATION PLAT, AS RECORDED AND ON FILE WITH THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE NORTH 89°48'49" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1327.360 FEET TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 11; THENCE SOUTH 00°03'58" EAST ALONG THE SIXTEENTH LINE, A DISTANCE OF 1286.158 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 11 AND A POINT ON THE NORTH LINE OF SAID SECTION 14, (SAID POINT BEING MARKED WITH A 1978 BLM BRASS CAP STAMPED 16 COR 11/14); THENCE SOUTH 89°50'47" WEST ALONG THE SECTION LINE, A DISTANCE OF 10.000 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SAND HOLLOW ROAD, DEDICATED BY QUIT CLAIM DEED AND DEDICATION RECORDED AS DOC NO. 20090004967 IN THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING (10) TEN COURSES: (1) SOUTH 00°04'21" EAST 84.562 FEET TO A POINT OF CURVATURE; (2) RUNNING SOUTHWESTERLY ALONG THE ARC OF A 740.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 16°16'33", A DISTANCE OF 210.209 FEET; (3) SOUTH 16°12'12" WEST 202.610 FEET TO A POINT OF CURVATURE; (4) RUNNING SOUTHERLY ALONG THE ARC OF A 860.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 16°12'16", A DISTANCE OF 243.226 FEET; (5) SOUTH 00°00'04" EAST 381.860 FEET TO A POINT OF CURVATURE; (6) RUNNING SOUTHWESTERLY ALONG THE ARC OF A 740.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 33°10'03", A DISTANCE OF 428.373 FEET; (7) SOUTH 56°50'01" EAST 10.000 FEET; (8) SOUTH 33°09'59" WEST 845.890 FEET TO A POINT OF CURVATURE; (9) RUNNING SOUTHERLY ALONG THE ARC OF A 1050.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 33°09'04", A DISTANCE OF 607.526 FEET; AND (10) SOUTH 00°00'55" WEST 3717.140 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 45°30'07" WEST), SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF THE 3150 SOUTH ROADWAY DEDICATION, AS RECORDED AND ON FILE WITH THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THE FOLLOWING (3) THREE COURSES: (1) RUNNING SOUTHWESTERLY ALONG THE ARC OF A 35.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 45°15'53", A DISTANCE OF 27.651 FEET; (2) SOUTH 89°45'46" WEST 427.130 FEET; AND (3) SOUTH 89°45'53" WEST 1329.412 FEET TO THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH

00°05'26" EAST ALONG THE SIXTEENTH LINE, A DISTANCE OF 1240.885 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 23, AND A POINT ON THE SOUTH LINE OF SAID SECTION 14; THENCE SOUTH 89°44'37" WEST ALONG THE SECTION LINE, A DISTANCE OF 1329.085 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 14 (MARKED BY A 1978 BLM BRASS CAP); THENCE NORTH 00°03'39" EAST ALONG THE SECTION LINE, A DISTANCE OF 2646.757 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 14 (MARKED BY A 1978 BLM BRASS CAP); THENCE NORTH 00°00'34" EAST ALONG THE SECTION LINE, A DISTANCE OF 1310.157 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 14 (MARKED BY A 1978 BLM BRASS CAP); THENCE NORTH 89°35'09" EAST ALONG THE SIXTEENTH LINE, A DISTANCE OF 1327.431 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 14; THENCE NORTH 00°00'01" WEST ALONG THE SIXTEENTH LINE, A DISTANCE OF 1315.701 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 14 (MARKED BY A 1978 BLM BRASS CAP); THENCE NORTH 89°20'51" EAST ALONG THE SECTION LINE, A DISTANCE OF 1327.620 FEET TO THE POINT OF BEGINNING.
CONTAINS 20,051,866 SQ. FT., (460.328 ACRES)

EXHIBIT "B"

Legal Description of Commercial Area

DESERT SANDS COMMERCIAL AREA BOUNDARY DESCRIPTION

BEGINNING AT A POINT SOUTH 89°44'37" WEST ALONG THE SECTION LINE, A DISTANCE OF 67.987 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 14, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN, (BASIS OF BEARING BEING NORTH 00°00'07" WEST ALONG THE QUARTER SECTION LINE, A DISTANCE OF 5285.430 FEET BETWEEN THE SOUTH QUARTER CORNER (MARKED BY A 1978 BLM BRASS CAP AND THE NORTH QUARTER CORNER) (MARKED BY A 1973 WASHINGTON COUNTY BRASS CAP), OF SAID SECTION 14 AND RUNNING THENCE NORTH 00°03'38" WEST 2062.224 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 20.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 90°04'33", A DISTANCE OF 31.442 FEET; THENCE SOUTH 89°59'05" EAST 50.085 FEET; THENCE SOUTH 89°59'05" EAST 234.595 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 39.500 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 05°42'38", A DISTANCE OF 3.937 FEET; THENCE SOUTH 84°16'27" EAST 75.411 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 60.500 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°42'38", A DISTANCE OF 6.030 FEET; THENCE SOUTH 89°59'05" EAST 103.693 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 25.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 39.270 FEET; THENCE SOUTH 89°59'05" EAST 3.000 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SAND HOLLOW ROAD, DEDICATED BY QUIT CLAIM DEED AND DEDICATION RECORDED AS DOC NO. 20090004967 IN THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE SOUTH 00°00'55" WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 3277.939 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 45°30'07" WEST), SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF THE 3150 SOUTH ROADWAY DEDICATION, AS RECORDED AND ON FILE WITH THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THE FOLLOWING (3) THREE COURSES: THENCE ALONG THE ARC OF A 35.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 45°15'53", A DISTANCE OF 27.651 FEET; THENCE SOUTH 89°45'46" WEST 427.130 FEET; THENCE SOUTH 89°45'53" WEST 65.045 FEET; THENCE NORTH 00°03'38" WEST 1241.333 FEET TO THE POINT OF BEGINNING.
CONTAINS 1,723,200 SQ. FT., (39.559 ACRES)

DRAINAGE AND PUBLIC UTILITY EASEMENTS DEDICATED WITH THIS PLAT

BEGINNING AT A POINT ON THE QUARTER SECTION LINE, SAID POINT BEING NORTH 00°00'07" WEST 2151.926 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 14, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN, (BASIS OF BEARING BEING NORTH 00°00'07" WEST ALONG THE QUARTER SECTION LINE BETWEEN THE SOUTH QUARTER CORNER AND THE NORTH QUARTER CORNER OF SAID SECTION 14) AND RUNNING THENCE NORTH 89°59'05" WEST 170.135 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 3035.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 17°40'41", A DISTANCE OF 936.416 FEET; THENCE NORTH 17°39'46" WEST 10.000 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS SOUTH 17°39'46" EAST); THENCE ALONG THE ARC OF A 3045.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 17°40'41", A DISTANCE OF 939.502 FEET; THENCE SOUTH 89°59'05" EAST 593.431 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 15.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 23.562 FEET; THENCE SOUTH 89°59'05" EAST 10.000 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 89°59'05" WEST); THENCE ALONG THE ARC OF A 25.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 39.270 FEET; THENCE NORTH 89°59'05" WEST 423.296 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH

BEGINNING AT A POINT ON THE QUARTER SECTION LINE, SAID POINT BEING NORTH 00°00'07" WEST 2081.925 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 14, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN, (BASIS OF BEARING BEING NORTH 00°00'07" WEST ALONG THE QUARTER SECTION LINE BETWEEN THE SOUTH QUARTER CORNER AND THE NORTH QUARTER CORNER OF SAID SECTION 14) AND RUNNING THENCE SOUTH 89°59'05" EAST 234.595 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 39.500 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 05°42'38", A DISTANCE OF 3.937 FEET; THENCE SOUTH 84°16'27" EAST 75.411 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 60.500 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°42'38", A DISTANCE OF 6.030 FEET; THENCE SOUTH 89°59'05" EAST 103.693 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 25.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 39.270 FEET; THENCE NORTH 89°59'05" WEST 10.000 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 89°59'05" WEST); THENCE ALONG THE ARC OF A 15.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 23.562 FEET; THENCE NORTH 89°59'05" WEST 103.693 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 70.500 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 05°42'38", A DISTANCE OF 7.027 FEET; THENCE NORTH 84°16'27" WEST 75.411 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 29.500 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°42'38", A DISTANCE OF 2.940 FEET; THENCE NORTH 89°59'05" WEST 284.680 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 10.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 90°04'33", A DISTANCE OF 15.721 FEET; THENCE SOUTH 00°03'38" EAST 245.302 FEET; THENCE SOUTH 89°56'22" WEST 10.000 FEET; THENCE NORTH 00°03'38" WEST 245.302 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 20.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 90°04'33", A DISTANCE OF 31.442 FEET; THENCE SOUTH 89°59'05" EAST 50.085 FEET TO THE POINT OF BEGINNING.

**BYLAWS OF THE
THE DESERT SANDS COMMUNITY ASSOCIATION**

**ARTICLE I
NAME AND LOCATION**

Section 1.01 Name and Location. The name of the Association is The Desert Sands Community Association (the "Association"). The principal office of the corporation shall be located at 113 East 200 North Suite 2, St. George, Utah 84770. Meetings of Members and Board of Directors may be held at such places within the State of Utah, as may be designated by Board of Directors.

**ARTICLE II
DEFINITIONS**

Section 2.01 Definitions. Except as otherwise provided herein or as may be required by context, all terms defined in Article I of the Declaration shall have such defined meanings when used in these Bylaws.

**ARTICLE III
MEETINGS OF MEMBERS OF THE ASSOCIATION**

Section 3.01 Annual Meeting. The Board of Directors shall meet as often as it deems reasonably necessary but not less than annually at a convenient time and place.

Section 3.02 Special Meetings. Special meetings of the Association may be called at any time by the President or by a majority of the Directors.

Section 3.03 Notice of Meetings. Written notice of each meeting of the Association shall be given to each Owner by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, no more than thirty (30) and at least ten (10) days before such meeting to said Owner addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.04 Quorum. Twenty-five percent (25%) of the Owners present in person or by proxy shall constitute a quorum for any action except as otherwise expressly provided in Governing Documents.

Section 3.05 Proxies. At all Association meetings, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and

shall expire, if not previously revoked, eleven (11) months after the date it is given by the Owner. Proxies delivered prior to the commencement of the meeting shall be considered valid.

**ARTICLE IV
BOARD OF DIRECTORS AND TERM OF OFFICE**

Section 4.01 Number. The affairs of the Association shall be managed by a Board of Directors comprised of a variable number of Directors from three (3) to five (5) as the majority of the members may from time to time determine. Each Member must be duly qualified and appointed or elected.

Section 4.02 Replacement. If a Member resigns or is otherwise unable or unwilling to serve, then the remaining Members shall appoint a replacement to complete his term of office.

Section 4.03 Term of Office. Each Member on the Board of Directors shall serve a term of at least one (1) year.

Section 4.04 Compensation. No Member shall receive compensation for any service he may render to the Association as a member of the Board of Directors, although he may be reimbursed for his actual expenses incurred in the performance of his duties and may enter into an independent contract to provide other services. A Member may enter into a separate and independent contract with the Association to provide additional services for a fee.

Section 4.05 Action Taken Without a Meeting. The Board of Directors shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Members. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

Section 4.06 Voting. The Association shall have two (2) classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. A Class A Member shall have the number of votes provided in Article 7 of the Declaration of Covenants Conditions and Restrictions and Reservation of Easements For Desert Sands recorder at the Washington County Recorder as summarized below. Each Class A Member shall have the following applicable number of votes in regard to votes of the Members of the Association:

Lots. In the case of Lots, one (1) vote for each Lot owned;

Single Family Residential Parcel. In the case of a Single Family Residential Parcel which has not been divided into Lots by a subdivision plat or other recorded instrument, five (5) votes for each Net Acre owned within such Parcel (with each such Owner to have at least one whole vote).

Residential Condominium Parcel. In the case of a Residential Condominium Development Parcel for which a condominium declaration has not been recorded, eight (8) votes for each Net Acre owned within such Parcel (with each such Owner to have at least one whole vote).

Apartment Parcel. In the case of an Apartment Parcel upon which construction has not yet been completed, eight (8) votes for each Net Acre owned within such Parcel (with each such Owner to have at least one whole vote); provided, however, that upon completion of construction upon an Apartment Parcel, the Class A owner thereof shall have the greater of eight (8) votes for each Net Acre or one-half (1/2) of a vote for each Apartment Unit built upon the Parcel.

Number of Lots

Determination of Lots. If a subdivision plat, condominium declaration or other instrument creating Lots is recorded which covers all or part of a Parcel, then the votes attributable to the Lots shall be determined as set forth above. If a subdivision plat, condominium declaration or other instrument creating Lots for such Parcel is later recorded showing a different number of Lots, the number of votes shall be adjusted to reflect the actual number of Lots as set forth in the recorded subdivision plat, condominium declaration or other instrument creating Lots. All votes attributed to an unsubdivided Parcel as a "Parcel" shall cease and be made applicable to Lots when all of the area is platted or otherwise divided into Lots.

Non-Residential Parcels and Mixed Use Parcels. The Owner of a Non-Residential Parcel or Mixed Use Parcel within the Covered Property shall have the greater of six (6) votes per Net Acre of the Parcel or one (1) vote for each five hundred (500) square feet of Interior Floor Area of buildings constructed upon the Parcel.

When more than one person or entity owns an interest in any Lot, the membership for such Lot shall be shared among the Owners of that particular Lot and the one vote appurtenant to such Lot shall be exercised as they jointly determine, but in no event shall more than one vote be cast with respect to any such Lot.

(b) Class B. The Class B Member shall be Declarant and shall be entitled to five (5) votes for each Lot owned including the multiplier set forth above for *Single Family Residential Parcels, Residential Condominium Parcels, and Apartment Parcels*, that have not been subdivided or for which a plat has not been recorded. Class B membership shall cease and be converted to Class A membership at the conclusion of the Declarant Period of Control. Notwithstanding anything contained herein to the contrary, during the Declarant Period of Control, the Class B Member shall be entitled to appoint the Board of Directors and Officers and all decisions will be made by the Board or by the Class B Member.

**ARTICLE V
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 5.03 Powers. The Association shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and the Declaration. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing, the Association may act through its Board of Directors and shall specifically have the powers and duties set out in this Article V, including:

Section 5.03.1 Assessments. The power, authority and right to charge Assessments and to collect payment in accordance with the Declaration.

Section 5.03.2 Association Property. The power, authority and right to own and/or lease property owned by the Association. The duty to maintain and manage the Common Areas and Facilities and improvements thereon. In particular the Association shall:

- a. Maintain and repair in an attractive, safe and functional condition the Common Areas and Facilities;
- b. Pay all taxes and Assessments levied upon the Common Areas and Facilities and all taxes and Assessments payable by the Association;
- c. Obtain any water, sewer, gas and electric services needed for the Common Areas and Facilities; and
- d. Do each and every other thing reasonable and necessary to protect and preserve the Common Areas and Facilities, and to manage the Association.

Section 5.03.3 Fair and Reasonable Notice. Notice given in accordance with the provisions of the Revised Utah Nonprofit Corporations Act shall be considered fair and reasonable notice. Unless prohibited by statute, the Association may give notice by text message, e-mail, the Association website, or other electronic notice; provided, however an Owner may by making a written demand to the Association require written notice.

Section 5.03.4 Online Voting. If allowed by statute, secure and verifiable online voting is permitted.

Section 5.03.5 Rules and Regulations. The Board of Directors may adopt, amend, modify, create, expand, or enforce rules and regulations as well as architecture and landscape design criteria. The rules, however, are subject to:

- (a) Any express provisions, restrictions and limitations in the Declaration;
- (b) The Business judgment rule¹; and
- (c) The right of Lot Owners to notice and to disapprove.

Before it adopts or changes a rule or regulation, the Board of Directors must provide the Lot Owners within fifteen (15) days of its meeting advance notice of its intention. Notice is not required in an emergency.² The governing Board must provide an open forum at a Board meeting and provide Lot Owners with a chance to be heard. The Lot Owners may, within sixty (60) days,

¹ The business judgment rule is a presumption of the law that the governing board is acting in best interest of the association and, as a result, the decisions it makes are protected from judicial review in the event there is a loss or the decision turns out to be wrong, so long as the board did not violate its fiduciary duty to act in good faith and not commit a fraud, self-deal or have a conflict of interest, essentially, not to be guilty of intentional misconduct.

² Imminent risk of immediate and substantial harm to person or property.

and by a vote of at least a majority of the total Lot Ownership at a special meeting called for this purpose disapprove the proposed rule or regulation.³

(d) Equal Treatment; Rule Limitations.

(1) The rules must treat similarly situated people the same, although the rules may vary according to the type of service provided.

(2) The rules may not violate the right of Lot Owners to display religious and holiday signs inside their dwelling, although the rules may define the time, place, and manner of displays visible from outside the Dwelling Unit or Lot.

(3) The rules may not regulate the content of political signs, although the Rules may define the time, place, and manner of displays visible from outside the Dwelling Unit or Lot.

(4) The rules may not interfere with a Lot Owner's determination of the composition of his or her household, although they may legally require the occupants to be members of a single housekeeping unit and may limit the total number of occupants permitted in a Dwelling Unit based its size, configuration and a fair use of the Common Areas.

(5) The rules may not interfere with activities within a Lot or Dwelling Unit if the activity is legal. Limits may be made if the activities are not considered typical for a residential neighborhood, or if the activities create an additional expense for the Association, or if the activities are dangerous or pose a health concern, or if the activities constitute a nuisance, create unreasonable noise or traffic, or are unsightly or annoying, or create secondary smoke issues.

(6) If federal, state or local law permits, rules may be adopted regulating use or behavior inside a Dwelling Unit or Lot, including by way of illustration but not limitation smoking, rentals, noise, traffic and nuisance.

(7) The rules may address a variety of matters such as user fees, the availability of the Common Area and Facilities, the denial of access and use of recreational amenities to trespassers, violators, misusers or abusers, the transfer of lots, rental terms, the disposal of personal property, etc.

(8) The rules may regulate the maintenance and use of the Common Area and Facilities, late fees, accruing interest, indemnity, etc.

(9) No rule may be in conflict, inconsistent or incongruent with the Declaration and Bylaws. If any provision of this subsection is held to be illegal, invalid, or

³ Note: The Board of Directors is NOT required to call a special meeting unless a petition is submitted to it in accordance with the requirements of the Bylaws for a petition to require a special meeting.

unenforceable under any present or future law, then that provision will be fully severable. This subsection will be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this subsection will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this subsection. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this subsection, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

ARTICLE VI OFFICERS AND THEIR DUTIES

Section 6.01 Enumeration of Officers. The officers of the Association shall be a President and Secretary, plus such other officers as the Board of Directors may from time to time by resolution create. The same individual may not concurrently hold the office of President and Secretary. The officers need not be Directors.

Section 6.02 Election of Officers. The Board of Directors shall elect or appoint officers at the first meeting of the Board of Directors during each calendar year.

Section 6.03 Term. Each officer of the Association shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 6.04 Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

Section 6.05 Resignation and Removal. Any officer may be removed from office with or without cause by a majority vote of the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.06 Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6.07 President. The President shall (a) preside at all meetings of the Board of Directors, (b) see that orders and resolutions of the Board of Directors are carried out and (c) sign all contracts.

Section 6.08 Secretary. The Secretary shall (a) record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Association, (b) keep the corporate seal of the Association and affix it on all papers requiring said seal, (c) serve notice of meetings of the Board of Directors and of the Association, (d) keep appropriate current record showing the

Members of the Association together with their addresses and (e) perform such other duties as may be required by the Board of Directors.

ARTICLE VII SUBCOMMITTEES

Section 7.01 Subcommittees. The Board of Directors may appoint such committees as deemed appropriate in carrying out its purpose.

ARTICLE VIII BOOKS AND RECORDS

Section 8.01 Books and Records. The books and records shall be kept with detailed accounts of the receipts and expenditures affecting the Tract, and the administration of the Tract, specifying the maintenance, repair and any other expenses incurred. The books and records, including any invoices, receipts, bills, proposals, documents, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices.

Section 8.02 Production of Records. The Association shall: (a) keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and any other expenses incurred; and (b) make those records available for examination by any Lot Owner or Owners at a convenient hour during the regular work week no later than fourteen (14) days after the Lot Owner makes a written request to examine the records.

Section 8.03 Signatures. All checks, drafts, contracts, and legally binding agreements must be signed by an individual or individuals authorized in writing by the Board.

Section 8.04 Bookkeeping. The accounting and financial statements for Association must be kept and prepared by either the property manager or an independent bookkeeper or accountant, who may not be a member of the Board of Directors or an officer of the Association. A monthly profit and loss statement, balance sheet, and check register may be sent or delivered by the bookkeeper or accountant to each Member and Association or their designee. The accountant or bookkeeper shall prepare and file all tax returns for the Association.

Section 8.05 Audit. A majority vote of either the Directors or the Lot Owners shall be necessary and sufficient to require either a Compilation Report, Reviewed Statement or Audited Statement of the Association.

ARTICLE IX AMENDMENTS

Section 9.01 Amendment to Bylaws. In addition, during the Declarant's Period of Control any amendment to these Bylaws shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Lot Owners cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting, when the Declarant has voted in favor of the amendment. During the Declarant's Period of Control, where the Declarant does not vote in favor of the amendment, any amendment to these Bylaws shall require the affirmative written vote or consent of at least ninety percent (90%) of the Lot Owners cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners. Following the expiration of the Declarant's Period of Control any amendment to these Bylaws shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Lot Owners cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Notwithstanding the foregoing, these Bylaws may be amended unilaterally by the Declarant until the expiration of the Declarant's Period of Control.

Section 9.02 Conflict Between Articles, Bylaws and Declaration. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall in all respects govern and control.

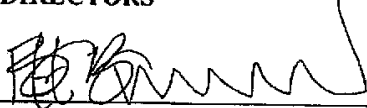
**ARTICLE X
MISCELLANEOUS**

Section 10.01 Miscellaneous. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of January of every year, except that the first fiscal year shall begin on the date of incorporation.

The undersigned has hereunto set its hand this 28th day of September, 2021.

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SIGNATURES FOLLOW ON NEXT PAGE.**

DIRECTORS



Brett Burgess



McKenzie Burgess (Sep 24, 2021 16:35 MDT)

McKenzie Burgess



Ed Burgess (Sep 28, 2021 16:44 MDT)

Ed Burgess