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AFTER RECORDING PLEASE RETURN TO:

Ivory Southern, LLC  
Skylar Tolbert  
978 East Woodoak Lane  
Salt Lake City, UT 84117  
(801) 747-7440

**DOC # 20210076452**

Restrictive Page 1 of 48  
Gary Christensen Washington County Recorder  
12/02/2021 01:46:57 PM Fee \$ 40.00  
By SOUTHERN UTAH TITLE CO



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

**DISTRICT DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS,  
AND BYLAWS  
FOR  
LAKESIDE AT DESERT SANDS,  
(a part of the Expandable Desert Sands Planned Development)**

This District Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and Bylaws for Lakeside at Desert Sands (the "District Declaration") is made and executed by Ivory Southern, LLC, a Utah limited liability company, of 978 East Woodoak Lane, Salt Lake City, UT 84117 (the "District Declarant") and The Hollows, LLC, a Utah limited liability company (the "Desert Sands Developer") and made effective on this 28<sup>th</sup> day of September, 2021. This Declaration affects every portion of Lakeside at Desert Sands, Phase 1 as further identified by legal description set forth in Exhibit "A" and other phases as may be annexed in the future.

**RECITALS**

A. This District Declaration affects that certain real property located in Hurricane City in Washington County, Utah described with particularity in Article II below (hereinafter referred to as the "District Property").

B. The District Property is an area featuring unique and distinctive terrain;

C. The District Property is subject to and bound by the Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Desert Sands at Hurricane City recorded in the official records of the County Recorder of Washington County, Utah on November 24, 2021 as Document Number 20210075237 (the "Master Declaration").

D. By subjecting the District Property to this District Declaration and the Master Declaration, it is the desire, intent and purpose of District Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this District Declaration, and which will increase and preserve the utility, attractiveness, quality and value of the District Lands and improvements therein.

E. District Declarant is the owner of the District Property. District Declarant subjects all of the District Property to this Declaration.

F. The Desert Sands Developer has constructed or is in the process of constructing upon the District Property a planned residential development which shall include certain District Lots, District Common Area and Facilities, including the right to use and easement of enjoyment of the Desert Sands, subject to Master Declaration. The construction will be completed in accordance with the plans contained in the District Final Plat to be recorded concurrently herewith, Master Declaration, this District Declaration and the District Final Plat for this District Property.

G. District Declarant intends to sell to various purchasers the fee title to the individual single-family homes contained in the District Property, together with an appurtenant undivided ownership interest in the District Common Areas, and District Common Area and Facilities, subject to this District Declaration and the Master Declaration.

H. District Declarant desires, by filing this District Declaration and District Final Plat, to submit the District Property and all improvements now or hereafter constructed thereon to the provisions and protective covenants set forth herein and the Master Declaration.

I. The Project is to be known as "Lakeside at Desert Sands."

J. Since the completion of the development of the District Property may be in phases, the completed project will consist of the original phase and all subsequent phases.

#### **COVENANTS, CONDITIONS, AND RESTRICTIONS**

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below and the Master Declaration, District Declarant hereby makes the following declarations.

#### **ARTICLE I DEFINITIONS**

It is expressly agreed that this District Declaration is an appendage to the Master Declaration, and all of the definitions set forth in Article I thereof which by this reference are made a part hereof and are to apply to this District Declaration as though they were expressly rewritten,

incorporated and included herein. In addition, the following terms shall have the following meanings:

1. The term District shall mean and refer to Lakeside at Desert Sands as it may be expanded from time to time. This project is not a cooperative.

2. The term District Assessment shall mean and refer to any amount imposed upon, assessed, or charged a District Lot Owner or a District Lot for his share of the District Expenses, including a District Lot Owner's pro rata share of the Common Expenses.

3. The term District Association shall mean and refer to the association of District Lot Owners acting or taken as a group in accordance with this District Declaration, which shall be known as the Lakeside at Desert Sands Homeowners Association.

4. The term District Board of Directors shall mean and refer to the governing board of the District Association.

5. The term District Bylaws shall mean and refer to the administrative code of rules for the administration of the District Association, as amended from time to time. A copy is attached as Exhibit "B".

6. The term District Common Area and District Common Area and Facilities shall mean and refer to all real District Property in the District owned and/or controlled by the District Association, and shall also include but not limited to the following items:

(a) The real property and interests submitted to the District Declaration hereby and all improvements constructed thereon, excluding the individual District Lots, parcels assigned to the city or other third parties;

(b) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the District and intended for the common use of all District Lot Owners, such as power, gas, water and sewer;

(c) All area adjacent to the District Property and between the District Property and Dixie Springs Drive including the property owned or controlled by the Desert Sands Community Association and all landscape area adjacent to the District Property which the District undertakes to maintain voluntarily or as required by the Master Declarant.

Utility installations such as power, gas, water, and sewer may be dedicated to the city or utility company and, if so, this definition shall not be construed to allow the District Association to exclude the City from the District Lot Ownership and control of the utility systems so dedicated.

7. The term District Common Expense shall mean and refer to:

(a) All sums lawfully assessed against the District Common Area and all sums lawfully assessed against the District Lot Owners or District Lots which the District Association determines should be treated as District Common Expense;

(b) All sums lawfully assessed against the District Association pursuant to the Master Declaration and all sums due under the Master Declaration;

(b) Expenses of administration, maintenance, repair or replacement of the District Common Area, and the Common Area and Facilities;

(c) Expenses allocated by the District Association among the District Lot Owners or District Lots;

(d) Expenses agreed upon as District Common Expenses by the District Association; and

(e) Expenses declared District Common Expenses by the Declaration or by the Declarant.

8. The term District Declaration shall mean and refer to this District Declaration of Covenants, Conditions, Restrictions, and Reservation of Easements, and Bylaws for Lakeside at Desert Sands.

9. The term District Declarant shall mean and include Ivory Southern, LLC and any person or persons who might acquire title from Ivory Southern, LLC to all or some of the unsold District Lots through purchase, assignment, or other transfer including foreclosure or deed in lieu of foreclosure which is also accompanied by a notice of succession or assignment of Declarant's rights, provided however that a notice or assignment is not required when transferred through foreclosure or deed in lieu of foreclosure; or, in the situation where any person purchases all or some of the remaining District Lots in a sale in the nature of a bulk sale. The person acquiring any of such District Property from the District Declarant shall be considered a District Declarant with respect to that portion of the District Property so acquired and shall have the right to develop the District Property and/or sell such District Property in accordance with the terms and provisions of this Declaration; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current District Declarant and by its successor in interest as the new District Declarant. The Desert Sands Developer assigns all of its rights, powers and privileges as the one executing this District Declaration and submitting it for recording to the Declarant and as the declarant.

10. The term District Declarant's Period of Control (or District Declarant's Control Period) shall mean and refer to that period commencing on the date this Declaration is recorded and continuing until such time as Declarant records an amendment to this Declaration terminating

the Declarant Period of Control, 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.

11. The term District Default Assessment shall mean and refer to an Assessment against a District Lot Owner or a District Lot for failure to perform an obligation under the District Documents or because the District Association has incurred an expense on behalf of the District Lot Owner under the Declaration.

12. The term District Developmental Rights shall mean and refer to the right granted hereunder to the District Declarant, its agents, representatives, employees, successors and assigns to develop and improve the District Property.

13. The term District Eligible Votes shall mean and refer to those votes available to be cast on any issue before the District Lot Owners. A vote which is for any reason suspended shall not be considered an "eligible vote".

14. The term District Final Plat shall mean and refer to the recorded District Final Plat or Plats for Lakeside at Desert Sands on file in the Office of the County Recorder.

15. The term District Governing Documents shall mean and refer to the Master Declaration, District Declaration, District Bylaws, District Articles of Incorporation, District Rules and Regulations and the Desert Sands documents.

16. The term District Guest shall mean and refer to a District Guest, visitor, or invitee of a District Lot Owner.

17. The term District Individual Charge shall mean and refer to a charge levied against a District Lot Owner for all expenses resulting from the act or omission of such Person, excepting the District Lot Owner's failure to pay any District Assessment. District Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any District Lot Owner including:

(a) The cost to repair any damage to any portion of the District Property on account of loss or damage caused by such Person; or

(b) The cost to satisfy any expense to any other District Lot Owner, the District Association or Architectural Review Committee due to any intentional or negligent act or omission of such Person, or resulting from the breach by such Person of any provisions of the District Documents;

(c) District Default Assessment; or

(d) District Fine.

District Individual Charges may be secured by a lien against the District Lot Owner's interest in the District Property and the District Association also shall have all other collection remedies, both legal and equitable, available under Utah law and this Declaration.

18. The term District Land shall mean and refer to the District Property.

19. The term District Lender shall mean and refer to a District Mortgagee.

20. The term District Lot or "Lot" shall mean and refer to a District Lot which is a lot as shown on the District Final Plat. Each District Lot shall be assigned a separate parcel number or tax identification number by the appropriate governmental agency.

21. The term District Majority shall mean and refer to those eligible votes of District Lot Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

22. The term District Map shall mean and refer to the District Final Plat.

23. The term District Mortgage shall mean and refer to any mortgage, deed of trust, or other security instrument (including the seller's rights under a contract for deed) by which a District Lot or any part thereof or interest therein is encumbered. A District First Mortgage is a District Mortgage having priority as to all other District Mortgages encumbering a District Lot, or any part thereof or interest therein.

24. The term District Mortgagee shall mean and refer to any person or entity named as the mortgagee, beneficiary, or holder of the seller's interest (so long as a copy of the contract for deed is given to the District Association) under any Mortgage by which the interest of any District Lot Owner is encumbered, or any successor to the interest of such person under such District Mortgage. A District First Mortgagee shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a District First Mortgage. Any and all District Mortgagee protections contained in the District Declaration shall also protect the District Declarant as the holder of a District First Mortgage of a District Lot or any interest therein.

25. The term District Lot Owner, District Owner, and Owner shall mean and refer to a Person who is the District Lot Owner of a fee or an undivided fee interest in a District Lot, excluding a District Mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

26. The term District Property shall mean and refer to all of the District Land or real estate, improvements, and appurtenances comprising the District submitted to this Declaration, including the District Tract, and also including all annexed property.

27. The term District Tract shall mean and refer to all of the District Land, District Property or real estate submitted to this District Declaration.

28. The term Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial, or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

29. Voting Rights means the right of any District Lot Owner, including Declarant, to cast votes for the purpose of taking certain actions under this Declaration. The formula to be used for calculating votes of the Owners is as follows:

(a) An Owner shall be entitled to one (1) vote for each lot owned within the Property. When more than one person or entity owns any portion of a District Lot, the vote for such Owner shall be exercised as they among themselves collectively determine, but in no event shall more votes be cast with respect to any Owner than the number of votes such Owner would be entitled to cast with respect to ownership of a District Lot.

(b) District Declarant shall be entitled to five (5) votes for each District Lot owned.

## ARTICLE II SUBMISSION

The District Land, described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference, is hereby resubmitted to the District Declaration.

The District Land is hereby again made subject to and shall be governed by the Master Declaration, this District Declaration, and the covenants, conditions and restrictions set forth herein.

The District Land is SUBJECT TO the described easements and rights of way.

TOGETHER WITH (a) all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property; and (b) all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the Desert Sands Project, subject to any Membership Fees.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described District Property or any portion thereof, including, without limitation, any District Mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Survey District Final Plats or otherwise existing; an easement for each and every District Common Area and Facilities improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described District Property; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such District Common Area and Facilities improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

District Declarant shall have the unilateral right to expand the property subject to these Covenants, Conditions & Restrictions, and any amendments thereto. Such expansion may be accomplished by any means reasonably determined by District Declarant, including, but not limited to, recording a Supplemental Declaration or annexation amendment in the Office of the Recorder, describing the real property to be annexed and submitting it to the covenants, conditions and restrictions contained herein. Such expansion and any supplemental declaration or annexation amendment shall not require the consent of property owners. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. During the District Declarant's Period of Control, the District Declarant may prepare, execute, certify, and record amendments to this District Declaration on behalf of the Association. After the District Declarant's Period of Control, the District Board of Directors may prepare, execute, certify, and record amendments to this District Declaration on behalf of the Association. The expandable land may include that which is set forth on the Master Plan for Desert Sands and identified as Lakeside, or any other property.

The additional property which may be annexed and subjected to the District Declaration, as amended, includes multiple phases and any other property identified in the preliminary plat for Lakeside at Desert Sands, any other property identified as part of Lakeside at Desert Sands in the Planned Development Overlay Zone for Desert Sands, and any other property adjacent to Phase 1 and which may be identified herein by exhibit. The Preliminary Plat may be altered from time to time during the development stages.

**ARTICLE III  
COVENANTS, CONDITIONS, AND RESTRICTIONS**



The foregoing submission is made upon, under and subject to the Master Declaration and the following covenants, conditions, and restrictions. In the event of any conflict, incongruity or inconsistency between the provisions of the Master Declaration and the provisions of this District Declaration, the former shall in all respects govern and control:

1. **Description of Improvements.** The significant improvements contained in Lakeside at Desert Sands will consist of certain District Common Area, and other improvements of a less significant nature. There will be single family residential homes. Several floor plans will be available. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the District Final Plat for the District Property. The improvements shall be constructed in accordance with this Declaration and the Design Guidelines that District Declarant will develop and a copy of which will be available upon request from the ACC.

(a) **Public Utilities and Drainage Easements.** All District Common Area, and private drives shown on the District Final Plat are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City to require the District Association to assess its members to repair streets, District Landscaping, etc., where needed to repair or replace the public utilities.

(b) **Rock Walls.** All rock walls that are approved by the ACC will be privately owned by the individual property owners. Rock wall repair and maintenance shall be the responsibility of the Owner if located upon private property.

2. **Description and Legal Status of the District Property.** The District Final Plat shows District Common Area and Facilities as well as the type and location of each District Lot in the project and its District Lot Number. All District Lots shall be capable of being independently owned, encumbered, and conveyed, and shall have separate tax identification or parcel numbers.

3. **District Association.**

(a) **Corporate Status.** The District Association shall have a corporate status and shall register with the State of Utah. The District Board is hereby authorized to unilaterally re-file the articles of incorporation of the District Association if its status has been suspended or dissolved for any reason, and to adopt the prior District Bylaws without any additional approval required.

(b) **Membership in the District Association, Classes of Membership and Voting Allocations.** By virtue of his acceptance of a deed or other document of conveyance to a District Lot, each District Lot Owner shall be a member of a District Association. Membership in the District Association is mandatory and may not be partitioned from the ownership of a District Lot.

4. **Conveyancing.** Any deed, lease, District Mortgage, deed of trust, or other instrument conveying or encumbering a District Lot shall describe the interest or estate involved substantially as follows:

All of [District Lot No \_\_\_\_\_] contained within LAKESIDE AT DESERT SANDS, Phase No. [\_\_\_\_], a Utah planned residential development, as the same is identified in the District Final Plat recorded in Washington County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Washington County, Utah (as said District Final Plat may have heretofore been amended or supplemented), subject to the District Declaration in the Declaration of Covenants, Conditions, and Restrictions of LAKESIDE AT DESERT SANDS, recorded in Washington County, Utah on \_\_\_\_\_ as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Washington County, Utah (as said Declaration may have heretofore been supplemented), together with a non-exclusive right to use the Desert Sands, subject to provisions hereof and the Master Declaration recorded in Washington County, Utah on \_\_\_\_\_ as Document No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Official Records.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this District Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a District Lot. Neither the membership in the District Association, nor percentage of ownership interest in the District Common Area and Facilities, nor the right of non-exclusive use of the Desert Sands shall be separated from the District Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the District Association and such right of exclusive use shall automatically accompany the transfer of the District Lot to which they relate.

5. **District Common Expenses.** The District Common Expenses shall be charged to the District Lot Owners according to their respective percentage or fractional undivided interests in the District Common Area and Facilities, which shall be uniform and equal.

6. **District Board of Directors' Rights and Obligations.**

(a) **District Board of Directors.** Subject to the rights of the Master District Association, the unique business, property and affairs of the District Association shall be managed by a District Board of Directors composed of one (1) to three (3) individuals. Until the termination of the District Declarant's Period of Control, the District Declarant alone shall be entitled to select the three (3) members of the District Board of Directors. In the event a seat on the District Board of Directors which was filled by District Declarant becomes vacant, District Declarant shall have the right to select a replacement member to sit on the District Board of Directors for the balance

of the term associated with the vacated seat. In all other cases of vacancy the remaining District Board of Directors members shall elect a replacement as provided in the District Bylaws.

(b) **Right and Privilege.** The District Board of Directors may exercise any right or privilege given to it expressly by this District Declaration, or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

(c) **Obligations.** The District Board of Directors shall have the rights and obligations set forth in the District Bylaws.

(d) **Management.** Subject to the right of the Master District Association, the District Board of Directors shall be responsible for the management and control of the physical improvements unique and common to the District, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The District Board of Directors shall be responsible for repair or replacement of such and shall have the right to contract for all goods, services, and insurance payments which are made for such repairs or replacement. The cost of such management, operation, maintenance, and repair by the District Association shall be a District Expense.

(e) **District Expenses.** The District Board of Directors may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the District Board of Directors shall determine to be necessary or desirable for the proper operation of the District Property, whether such personnel are furnished or employed directly by the District Board of Directors or by any person or entity with whom or which it contracts. The District Board of Directors may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the District Property; the enforcement of this District Declaration, the District Bylaws, or any Rules and Regulations. The cost of unique services provided by the District Association shall be a District Expense.

(f) **District Property, Machinery and Equipment.** The District Board of Directors may acquire and hold, for the use and benefit of all Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners equally.

(g) **Rules and Regulations.** The District Board of Directors may make Rules and Regulations governing the use of the District Property.

(h) **Suspension of Rights.** The District Board of Directors may suspend an Owner's voting rights for the period during which such Owner fails to comply with the District Governing Documents. Notice of non-compliance will be sent to an Owner at least ten (10) days prior to any meeting at which action may be taken by the Owners.

(i) **Judicial Action.** The District Board of Directors may also take judicial action against any Owner to enforce compliance with the Rules and Regulations, with other obligations, or to obtain damages for non-compliance, all to the extent permitted by law.

(j) **Exemption.** Pursuant to UCA 57-8a-217, the District Declarant reserves the right to exempt the District Declarant from the association rules and the rulemaking procedures contained in the governing documents and in UCA 57-8a, and the District Declarant is exempt from said rules and procedures.

## 7. **District Assessments.**

7.1 **Budget.** At least thirty (30) days prior to the Annual Meeting of the District Association, the District Board shall prepare and deliver to the District Lot Owners a proposed Budget:

(a) **Itemization.** The Budget shall set forth an itemization of the anticipated District Common Expenses, including that portion earmarked for the reserve account(s) and the District Association's proportionate share of the cost of operating the Desert Sands Community Association and maintaining the Common Area for the twelve (12) month calendar year, commencing with the following January 1.

(b) **Basis.** The Budget shall be based upon advance estimates of cash requirements by the District Board to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the District Common Areas, including the District Association's proportionate share of the cost of operating the Desert Sands Community Association and maintaining the Common Area, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the District Board is required or permitted to maintain, common lighting and heating, common water charges, trash collection, storm drain fees, common sewer charges, sewer maintenance costs, carpeting, painting, repairs and maintenance of the District Common Areas, including the District Association's proportionate share of the cost of operating the Desert Sands Community Association and maintaining the Common Area, that must be replaced on a periodic basis, wages for District Board employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, additions, capital improvement reserve, and other expenses and liabilities which may be incurred by the District Association for the benefit of the District Lot Owners under and by reason of this District Declaration. Until the District is completed, and all phases are added, this estimate may need to be adjusted periodically as each new phase is completed. The District Board shall be responsible for collecting the Desert Sands Community Association Fee and forwarding that fee to the Community Association.

(c) Except during the District Declarant's Period of Control, the District Lot Owners may call a special meeting within forty-five (45) days of the meeting providing the proposed Budget to vote to disapprove the Budget, although to set it aside and to reject a proposed Budget requires the affirmative written consent of at least a majority of total ownership. If the new budget is disapproved, then the prior year's budget continues.

**7.2 Independent Duty to Pay District Assessments.** Each Owner, by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the District Association to pay his share of the District Assessments including District Expenses and other fees as provided in the District Governing Documents.

**7.3 District Declarant Exemption.** The District Declarant is not required to pay District Assessments on District Lots owned by him until the property is sold or sixty (60) days after a final certificate of occupancy is issued for a home constructed on a District Lot owned by District Declarant, whichever first occurs.

**7.4 Basis for Annual District Assessments.** The total Annual District Assessments against all District Lots shall be based upon advance estimates of cash requirements by the District Board of Directors to provide for the management of the District Association and the maintenance, repair and replacement of physical improvements unique and common to the District.

**7.5 Apportionment.** District Expenses shall be apportioned among all District Lots equally.

**7.6 Notice of Annual District Assessments.** Annual District Assessments shall be made on a calendar year basis. The District Board of Directors shall give written notice of each Annual District Assessment with respect to any District Lot not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. The first Annual District Assessment shall be for the balance of the calendar year remaining after the date fixed by the District Board of Directors. Each Annual District Assessment shall be due and payable in monthly installments on the first day of each and every month and no separate notices of such monthly installment shall be required. Each monthly District Assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

**7.7 Special District Assessments.** In addition to Annual District Assessments, the District Board of Directors may levy in any District Assessment year a Special District Assessment, payable over such a period as the District Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the District Property or any part thereof, or for any other expense incurred or to be incurred as provided in this District Declaration. This paragraph shall not be construed as

an independent source of authority for the District Board of Directors to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs of this District Declaration. Any amounts assessed pursuant hereto shall be assessed to the Owners in proportion to their respective undivided interest in District Common Areas. Notice in writing of the amount of such Special District Assessments and the time for their payment shall be given promptly to the Owners. Payment shall be due on the dates and in the manner provided in the notice. Any Special District Assessment or part thereof shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

**7.8 Lien Rights.** All sums assessed to any District Lot pursuant to this section, together with interest thereon as provided herein shall be secured by a lien on such District Lot in favor of the District Association. Such lien shall have such priorities as established by law. Southern Utah Title Company is appointed as trustee. The District 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.

**7.9 Notice of Lien.** To establish a lien for any unpaid District Assessment, the District Board of Directors shall prepare a written notice of lien as set forth by statute. No notice of lien shall be recorded until there is a delinquency in payment of the District Assessment. Such lien may be enforced by judicial or non-judicial foreclosure by the District Board of Directors as provided by law. The lien shall also secure, and the Owner shall also be required to pay to the District Board of Directors any District Assessments against the District Lot which shall become due during the period of foreclosure sale or other legal sale. The District Board of Directors may bid on the District Lot at foreclosure or other sale and may acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

**7.10 Release of Lien.** A release of lien shall be executed by the District Board of Directors and recorded in the office of the County Recorder of Washington County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

**7.11 Rights of Other Lienholders.** An encumbrancer holding a lien on a District Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the District Board of Directors with respect to such lien, including priority.

**7.12 Personal Obligation of Owner.** The amount of any Annual or Special District Assessment against any District Lot shall be the personal obligation of the Owner thereof to the District Association. Suit to recover a judgment of such personal obligation shall be maintainable by the District Board of Directors without foreclosing or waiving the lien securing

the same. No Owner may void or diminish any personal obligation by waiver of the use and enjoyment of any of the District Common Areas or by abandonment of a District Lot.

**7.13 Statement of District Assessments Due.** Upon payment of a reasonable fee not to exceed ten dollars (\$10) and upon written request of any Owner, or any District Mortgagee, prospective District Mortgagee or prospective purchaser of an District Lot, the District Board of Directors shall issue a written statement setting forth the amount of unpaid District Assessments, if any, with respect to such District Lot; the amount of the current yearly District Assessment and the portion thereof which has theretofore been paid; and credit for advanced payments or prepaid items. Such statement shall be conclusive upon the District Board of Directors in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid District Assessments which become due prior to the making of such request shall be subordinate to the lien of a District Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such a request, both the lien and unpaid District Assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within ten (10) days, and that purchaser subsequently acquires the District Lot.

**7.14 Liability of Buyers and Sellers.** Subject to the provisions of subparagraph (m), a purchaser of an District Lot shall be jointly and severally liable with the seller for all unpaid District Assessments against the District Lot up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such District Assessments.

**7.15 Right to Suspend Privilege to Use Recreational Amenities or Voting Rights, and Assignment of Rents.** The District Board of Directors reserves the right to elect to (a) terminate utilities and the right to use amenities for non-payment of District Assessments and/or (b) collect rents directly from a renter if the District Lot Owner who is renting the District Lot fails to pay any District Assessment for a period of more than 60 days after it is due and payable,

**7.16 Foreclosures and Past Due Accounts.** Anything to the contrary notwithstanding, any District First Mortgagee who obtains title to a District Lot pursuant to the remedies in the District Mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted District Assessments, dues or charges accrued before acquisition of the title to the property by the District Mortgage, although the District First Mortgagee will also be liable for any reasonable attorneys fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a District Lot in a voluntary conveyance or pursuant to the remedies in a District Mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid District Assessments, late fees, default interest and collection costs, including a reasonable attorneys fee, against the District Lot for its share of the District Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

**7.17 Reinvestment Fee.** Unless prohibited by statute, the District Association may charge a Reinvestment Fee to benefit the District Land obligating a future buyer and seller of a District Lot to pay to the Association upon and as a result of a transfer of a District Lot, 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 Fee will not apply to the conveyance of any lot from the Desert Sands Developer to Declarant, and will not apply to the conveyance of any lot from Declarant to a buyer. The Reinvestment Fee will not exceed .5% of the value of the burdened property.

**7.18 Reserve Analysis and Reserve Fund.**

(a) As used in this section, the term "reserve analysis" means an analysis to determine: (i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas and facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the District Association; and (ii) the appropriate amount of any reserve fund.

(b) After the expiration of the Declarant's Period of Control, the District Board of Directors shall cause a reserve analysis to be conducted no less frequently than required by statute; and review and, if necessary, update a previously conducted reserve analysis no less frequently than required by statute.

(c) The District Board of Directors may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the District Board of Directors, to conduct the reserve analysis.

(d) The District Board of Directors may not use money in a reserve fund: (i) for daily maintenance expenses, unless a majority of the members of the District Association vote to approve the use of reserve fund money for that purpose; or (ii) for any purpose other than the purpose for which the reserve fund was established.

(e) The District Board of Directors shall maintain a reserve fund separate from other funds of the District Association.

(f) This Subsection (4) may not be construed to limit the District Board of Directors from prudently investing money in a reserve fund provided it is government insured.

(g) The District Association shall: (a) annually, at the annual meeting of the District Association or at a special meeting of the District Association: (i) present the reserve study; and (ii) provide an opportunity for Unit Owners to discuss reserves and to vote on whether



to fund a reserve fund and, if so, how to fund it and in what amount; (b) prepare and keep minutes of each meeting so held and indicate in the minutes any decision relating to funding a reserve fund; provided, however, and anything to the contrary notwithstanding, the District Association shall fund and maintain a reserve account sufficient to satisfy the requirements for certification by the US Department of Housing and Urban Development.<sup>1</sup>

(h) The District Directors are responsible to present to the District Lot Owners each year the amount of money that should be deposited into the reserve account each year to properly or adequately satisfy the recommendations of the plan for deferred maintenance adopted, based, at least in part on the Reserve Study. The contents of the Reserve Study shall be comprehensive, complete and accurate, and must address not only the systems, equipment and facilities but the components effectively. The District Directors shall provide a summary of the most recent Reserve Study to the all Owners each year, even if they do not attend the annual meeting. The full Reserve Study (and any updates) must be made available to the District Lot Owners upon request. The District Association must now include a specific Reserve Fund line item in its annual budget. The District Board of Director must establish the amount of the Reserve Fund line item; and set forth the steps for the District Lot Owners to veto the Board's Reserve Fund line item in accordance with the statutory requirements.

(i) Anything to the contrary notwithstanding, this subsection (i) does not apply to a District Association during the District Declarant's Period of Control.

## 9. Insurance.

### 9.1 Property and Liability Insurance Required.

(a) The District Association must maintain, to the extent reasonably available, property insurance on all District Common Area.

(b) The District Association must maintain to the extent reasonably available adequate Liability Insurance for the District Common Area.

(c) If property or liability insurance is not available, then the Association must notify Owners within seven (7) days.

(d) The District Association may but is not required to carry other types of insurance.

(e) A District Lot Owner's act or omission may not void a policy.

9.2 **Property Insurance.** The Property Insurance, which shall include all District Common Area, must be provided by blanket coverage (as opposed to a schedule listing

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<sup>1</sup> Currently HUD requires a 10% reserve fund and a 10% contribution from annual assessments as they accrue.  
Lakeside at Desert Sands District Declaration and Bylaws

each building separately) and may not be less than 100% of the full replacement cost, which must be reviewed at each renewal.

(a) The District Association is not required to insure a dwelling unit or a District Lot.

(c) The District Association is not required to submit a claim to the District Association's insurance carrier if the District Board of Directors determines that the amount of the claim is likely not to exceed the amount of the District Association's insurance deductible.

(d) The insurer for the master policy shall adjust with the Association a loss covered under the association's policy.

(e) The District Association receives insurance payments in trust for the owners and insurance proceeds received by the District Association must first be disbursed for the repair or restoration of the damaged property.

**9.3 Liability Insurance.** The District Association shall obtain a public liability policy covering the District Common Area and Facilities. The public liability policy shall have coverage limits common to this area for this kind of project in the opinion of an independent insurance agent but not less than a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection. The District Association may insure for more than this but not less. Each District Lot Owner is an insured person under the District Association's liability policy that insures an owner's interest against liability arising from the District Common Area or membership in the District Association.

**9.4 Damage to a Portion of the Project- Insurance Proceeds.** Repairs must be done within a reasonable amount of time. If the associated expenses to repair are in excess of the insurance proceeds, such costs will be considered a District Common Expense.

**9.5 Miscellaneous.**

(a) The District Association may but is not obligated to purchase additional endorsements or coverage, including by way of illustration but not limitation, directors and officers insurance, a fidelity bond, earthquake insurance.

(b) For those rare situations that may occur; such as dealing with a project that is terminated and distributions to lien holders and District Owners if the

District is destroyed, the provisions of the Utah Community Association Act shall in all instances govern and control.

(c) If any provision of this Section is held to be (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This Section will be construed and enforced as if the (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this Section 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 Section. Furthermore, in lieu of each such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this Section, a provision as similar in terms to such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

#### 10. Architectural Control And Building Restrictions

10.1 Architectural Control Committee. The District Declarant shall appoint a three (3) member committee (hereinafter "ACC" or "Committee"), the function of which shall be to insure that all exteriors of Homes and landscaping of all Lots within the Property harmonize with other surroundings and structures within Lakeside and with this District Declaration. The Committee need not be composed of Owners; however, members must be appointed by Owners by election. Members shall be appointed for 2-year terms. To facilitate transition, in the initial appointment or election of an Owner-Committee, one member shall be appointed or elected for a one-year term. Thereafter, all terms shall be two-years.

The District Declarant reserves the right, during the District Declarant's Period of Control, to appoint the ACC. If such election is made by the District Declarant, at any time during the District Declarant's Period of Control, the District Declarant's appointees shall perform the duties required of the Committee herein. Under such District Declarant-election, the District Declarant shall have the right to appoint members of the ACC until the voluntary yielding of such right by the District Declarant to the Owners. Thereafter, a majority of the Owners of Lots in Phase 1, or as expanded thereto, shall appoint members of the ACC, which committee shall thereafter be vested with the powers described herein and shall have jurisdiction over all of the Lots subject to this Declaration.

1) Submission to Committee: No Home, accessory, addition, or modification to the exterior of a Home, its landscaping, or other improvements of or to a Lot shall be constructed, until 1) an ACC Request Form is submitted to the ACC and 2) said Form is accompanied by a complete set of plans, or to-scale drawings, and specifications pertaining to the intended work and 3) a written letter of approval has been issued by the ACC and delivered

to the Owner. In the event of ACC-denial, no such intended work shall be undertaken by the Lot Owner.

2) Meetings of Committee: The ACC shall meet from time to time as may be necessary to perform its duties hereunder. Any action taken by the ACC shall require the written approval of a majority of its members.

3) Standards: In deciding whether to approve or disapprove plans and specifications submitted to it, the ACC shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots conform to the provisions hereof and harmonize with existing surroundings and structures with the Project. The ACC may formulate general guidelines and procedures pertaining to this Article. The adopted guidelines and procedures shall be incorporated as ACC Guidelines.

4) Approval Procedure: Any Request Form, including plans and specifications attached thereto, which is submitted to the Committee shall be approved or disapproved by the Committee, in writing, within thirty (30) days after the submission date of the Request Form. In the event the Committee fails to take appropriate action within such period, the Request shall be deemed to have been approved as submitted. All Request Form submittals shall include color samples, type samples and materials samples, as the case may apply.

5) Disclaimer of Liability: Neither the ACC, nor any member thereof acting in good faith, shall be liable to the Owner for any damage, loss, or prejudice suffered or claimed on account of:

- a) The approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications.
- b) The development or manner of development of any of the property, or
- c) Any engineering or other defect in approved plans and specifications.

6) Non-Waiver: The approval of the ACC of any Request, with its plans and specifications, for any work done or proposed on a Lot/Home shall not constitute a waiver of any right of the ACC to disapprove any subsequently submitted similar Requests, including its plans and specifications.

7) Exception for District Declarant: The provisions of this Article III shall not apply to any improvement, construction, landscaping, or alteration which is carried out by District Declarant or District Declarant's assignee of this right on any Lot.

8) Violations: Failure to obtain written approval of the ACC of any plans affecting the exterior of a Home or the Lot itself shall be considered a violation of this

Declaration and shall be subject to rule of law through civil action. Any failure on the part of an Owner to obtain ACC approval prior to start of construction improvements may result in the ACC seeking intervention on the part of the City with regard to permits that may or may not have been issued or through court intervention.

9) Interior Home Improvements: Interior improvements to a Home shall not be subject to ACC review, unless said improvements in any way require modification to the exterior of a home; in such instances, interior improvements shall require prior written approval of the ACC of an Owner's Request Form submittal.

## 10.2 Building Restrictions.

1) Building Type: All Lots shall be used for single-family residential purposes. No professional or commercial use shall be made of the same, nor any portion thereof. Nor shall any Owner's or resident's use of a Lot endanger the health or disturb the reasonable enjoyment of any other Owner or resident.

The building or structure permitted to be placed and erected on any Lot within the Project shall be a detached single-family dwelling with not less than a two-car garage. Carports and other outdoor or partially enclosed parking facility shall not be permitted. All structures shall be constructed in accordance with the zoning and building ordinances of the City of Hurricane. Detached garages are permitted provided however that the garage door opening cannot exceed 14 feet in height. A third car garage door can be up to 18 feet in height so long as it is approved by the ACC

"Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of the law.

2) Driveways: Driveways shall be constructed out of concrete. Driveways of brick, pavers, cinders, sand, gravel, asphalt, or dirt shall not be allowed. There shall be sufficient driveway parking area as to allow the parking of not less than two (2) vehicles per Lot. Notwithstanding, provision for such does not serve to replace the intent that an Owner's or resident's vehicles shall be parked in the attached garage.

3) Walls, Fences, Separation Walls, Shared Walls, Retaining Walls. Prior written approval from the ACC is required before any walls, fencing, gates, courtyard walls and other barriers are constructed. All walls, including retaining walls, shall be of CMU block (concrete masonry unit) reddish brown in color as approved by the ACC.

The District Declarant shall not be required to construct a wall of any kind, nonetheless, District Declarant may construct a perimeter wall. Except for the perimeter wall, all walls constructed within the Property shall be the sole responsibility of Lot Owners to CONSTRUCT, MAINTAIN AND REPAIR. The following provisions shall guide the construction and maintenance of all walls:

a) Required Wall Type. Only masonry block walls, of a color and type as approved by the District Declarant or ACC shall be permitted on the Property. Vinyl, wood, and chain-link fencing shall not be permitted. Wrought iron or other metal fencing shall not be allowed, except as such is a part of a gating system, as approved by the ACC.

b) Side Walls. Sidewalls are not allowed except as permitted and approved by the ACC, except such Wall(s) is a Perimeter.

c) Walls Over 6'. Walls over six-feet (6') high, of any type, shall not be allowed, except as approved by the City and the ACC, and the Master Association as being necessary and reasonable due to unique topographical considerations of the Lot(s); approval by the City shall not constitute a demand for approval by the ACC.

d) Completion Requirements. Rear Walls and Perimeter Side Walls shall be completed prior to the issuance of a CO by the City. Side Walls, once construction has started, shall be completed within three (3) months from such start date.

e) Wall Returns. Wall returns from a Perimeter Side-Wall to the exterior of the Home shall not be permitted except as allowed and approved by the ACC and must be masonry block, including, as appropriate, with provision for a gate(s). Gates shall be wrought-iron of color and style as approved by the ACC.

f) Condition of Walls. No Owner shall paint, construct, any addition to, color, or otherwise decorate the Walls within the subdivision without ACC approval. Any Owner found in violation of this provision shall bear the entire cost of refurbishing and restoring the affected Wall to its original condition, consistent with other Walls in the Property.

g) Wall Dispute. In the event of any dispute arising in connection with a Separation Wall, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority vote of all of the arbitrators. The cost of arbitration shall be the sole responsibility of the 'disputing Owners' and none else.

h) General Rule of Law. Notwithstanding "g)" above, to the extent not inconsistent with the provisions of this Section, general rules of law regarding separation walls and liability for property damage thereof, due to negligence or willful acts or omissions, shall apply.

4) Satellite Dishes and other External Apparatuses, Antennas, Clotheslines: No antennas shall be permitted. No solar panels or satellite dishes shall be allowed in Lakeside at Desert Sands or allowed to be affixed to any rooftop except as approved in advance by the ACC. All solar panel or satellite dish installations shall require advance approval by the ACC as to type, size, and installation location. All limitations shall conform to applicable law.

No outside clotheslines or other outside clothes drying or airing facilities shall be allowed on any Lot, unless the ACC finds such facilities to be adequately concealed so as not to be seen from any adjacent Lot.

5) Temporary and Other Structures and Out-Buildings: No structure of a temporary nature, and no trailer, bus, house, tent, shack, garage, or other outbuilding shall be used at any time as a residence either temporarily or permanently. No old or second-hand structures shall be moved onto any of the Lots, it being the intent of the District Declarant, as herein described, that all dwellings and other buildings be erected on any given Lot, using only new materials. Any ACC approved out-buildings shall be constructed to appear similar to the Home, i.e., stucco exteriors and tile roofing.

6) Landscaping: All landscaping, front side, and rear-yard, whether at the time of initial installation or a subsequent-to-occupancy installation or modification shall require approval of the ACC, following Owner's submittal of an ACC Request for Review Form. Pools require approval of the ACC and must comply with all state and local statute, rules, regulations, and ordinances. Hot tubs or similar items are not allowed except as approved by the ACC and must be enclosed by a wall and gate with a height of six feet.

a) Landscape Requirements: Landscaping must comply with the Planned Community Development and requirements of Desert Sands. So long as it conforms with the requirements, front-yard landscaping shall consist of plants or lawn or a combination of both. Other front and side-yard landscaping may consist of additional lawn, trees, shrubs, and planting beds.

Types of shrubs and trees shall be selected from a) an ACC Plant List Guide, if available, OR, b) from a list of landscaping plants as recommended by the Hurricane Parks Department, as being appropriate to survive and thrive the elements of the Hurricane area climate.

b) Landscape Installation: All landscaping, which includes front, side and rear, shall include a sprinkling system with an electronic clock for automatic operation. Such landscaping shall be completed not later than the date of obtaining a Certificate of Occupancy ("CO") or occupancy of the Home, whichever first occurs, provided however, that installation of rear landscaping may be extended so long as it is installed no later than 9 months after CO. All landscaping shall be completed in accordance to the Owner's plan for such, as reviewed and approved by the ACC.

All landscaping schemes and designs, as installed, shall include an automatic watering system. Such systems shall be maintained in good working order, being repaired in a timely fashion, when necessary, so as to timely provide watering to all landscape feature. In this regard, each Owner or his/her/its resident(s) shall not suffer or allow the automatic watering system to fall into disrepair, nor shall an Owner or his/her/its resident fail to maintain electrical power and water service to said system.

Shrub and tree planting on corner Lots shall be located so as not to create a sight-hazard for the movement of vehicles along streets; no trees or shrubs shall be planted on any corner that will grow in excess of three (3) feet high, or which shall be maintained at such height, perpetually, in keeping with City ordinances.

c) Landscape Maintenance and Upkeep: The maintenance, repair, replacement and upkeep of all landscaping features appurtenant to any given Lot, shall be performed by the Lot Owner. All landscaping shall be maintained at a reasonable standard of care and presentation which is compatible with other Lots in the subdivision.

7) Architectural Control: No building shall be erected, placed, or altered on any Lot until the construction plans and specification and a site plan showing the location of the structure have been approved by the ACC as to the proposed 1) quality of workmanship, 2) quality of materials, 3) harmony of exterior designs with existing structures, and 4) location with respect to topography and finish grade elevation. Landscaping, initial or subsequent to occupancy is subject to this provision.

8) Minimum Square Footage; Building Height: The minimum total square footage of living area on the first level above ground and located within the area of a foundation for a residential dwelling constructed on any Lot within the Project, exclusive of porches, balconies, patios, decks and garages, shall not be less than 1,500 square feet for one-story homes; two-story homes shall be allowed only if approved by the ACC, and shall have a minimum of 1,980 total square feet combined main and upper level, without a main level floor requirement.

9) Building Height shall not exceed the height limitations established by Hurricane City ordinance, as measured from the top of the foundation to the highest point of the roof line of a Home.

10) Parking of Vehicles and Equipment: The following restrictions apply:

a) Parking on Streets and Driveways. Personal vehicles are to be parked in the garage area of the Home or on the driveway. Personal vehicles belonging to the Lot Owners shall not be parked on the Streets of the subdivision, except as may be necessary for temporary, short-term purposes associated with coming and going. Personal vehicles shall not be parked overnight on the Subdivision Streets.

b) Commercial Vehicles: No commercial trucks or vehicles over one ton shall be parked on the streets, in front of any Lot, except for purposes of temporary delivery, which shall be short-term by nature; otherwise, no such commercial vehicles shall be allowed.



c) Parking of Recreational Vehicles and Equipment. Owners shall not park, store, or keep on their driveway or on any street within the Property (i) any large commercial type vehicle (including, but not limited to, any dump truck, cement mixer, truck, oil or gas truck, or delivery truck); (ii) any recreational vehicle (including, but not limited to, any RV, camper, travel trailer, or motor home); (iii) any bus, trailer, trailer coach, camp trailer, boat, watercraft, aircraft or mobile home; (iv) any inoperable vehicle; or (v) any Razor or other similar off-road vehicle, whether licensed or not for road travel.

Camper trucks and similar vehicles up to and including one ton when used for everyday-type transportation may be kept on the Property, as set forth herein. Such vehicles, in addition to motorhomes, boats, trailers, RVs, campers, Razors, and similar recreational vehicles may be parked in the side-yard of a Lot, on a cement pad, behind the front foundation line of the Home and behind a gate, or in an enclosed garage, unless otherwise approved by the ACC. Such cement pad parking area shall not have access to a sewer clean-out or a dump facility.

d) Motorhomes, boats, trailers, campers, and similar recreational vehicles may be parked in driveways once every thirty (30) days for a maximum twenty-four (24) hour period to allow for loading, unloading, and cleaning. No Owner shall park, store, or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board.

e) Guest, Visitor Parking. Guests and Visitors are allowed to park on the Streets, temporarily. In the event an Owner has a family guest for an extended visit, parking shall be encouraged to take place on the driveway. In the event two Homes, lying across the street from each other, have guests at the same time, such Guests or Visitors shall not park their vehicles directly across the street from each other; rather the Owners shall be responsible to instruct their Guests regarding the need to 'stagger the parking of their vehicles' along the street.

f) Parking on Driveways. Vehicles parked on a driveway shall not be parked so as to be parked-on or extending over any portion of the sidewalk adjacent to the driveway apron.

The purpose of the foregoing restrictions is to safeguard that emergency vehicles and delivery vehicles can easily and effectively negotiate passage through the streets, thereby adding to the safety of the Community. Considerations and actions in this matter should always prevail and govern.

g) Motorbikes, Etc. All motorcycles, trail bikes, three-wheel powered devices, ATV's, scooters, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only by individuals with current driver's licenses and only on established streets and parking areas, in keeping with City ordinances; such are specifically prohibited from all other portions of the Property, and are to be used on said streets only for ingress, egress, and access purposes and not for recreational purposes anywhere within the Property.

11) Construction Materials: In order to promote a harmonious Community and protect the character of the neighborhood, the following guidelines shall apply:

a) Home Style, Design, Alterations, and Additions shall be approved by the ACC, in keeping with Section 10.1 hereof.

b) Home Exterior Surface shall be a combination of brick and high quality partial synthetic stucco or stone and high quality partial synthetic stucco and shall be in colors as approved by the ACC. Batten board accents may be utilized so long as they meet the approval of the ACC. Aluminum siding, masonite, concrete, or vinyl siding are not permitted. Any other exterior material may only be used upon the express written approval of the ACC.

c) Home Construction and accessory structures, as ACC-approved, shall utilize only new materials, unless otherwise approved in writing by the ACC.

d) Roofing Materials shall be concrete tile or slate material. Metal accent treatments may be used as part of the roof construction and finish, subject to the express written approval of the ACC; said approval may dictate type, color, style, etc.

No asphalt shingles, built-up roofs, or wood shakes shall be allowed. No mansard roofs shall be allowed. Dome structures of any type, concrete homes, block homes, or basement homes shall not be allowed.

e) Exterior Construction Materials shall be of colors as approved by the ACC.

f) Front Courtyards shall have the same finish as the front exterior of the Home.

12) Lateral and Subjacent Support and Draining: Under the rule of law, an Owner shall be responsible for all damages proximately caused by such Owner upon adjacent Lot Owners, if and when:

a) An Owner's activities affect the lateral or subjacent support, or both, of adjacent Owner's Lot;

b) For all damage proximately caused by activities of a Lot Owner upon a neighboring Lot;

c) For all damage proximately caused by an Owner's drainage upon a neighboring Lot;

d) Structures, plantings or other materials shall be placed or permitted to remain or other activities, undertaken which may damage or interfere with established slope

ratios, create erosion or sliding problems, or which may change the direction of flow or drainage channels, obstruct or retard the flow of water through drainage channels upon a neighboring Lot.

13) Site Distance at Intersections shall be governed by Hurricane City Ordinance. In general, no structure, wall, hedge or shrub planting which obstructs sight lines at elevation between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines or in the case of a rounded property corner, from the intersection where the street property lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sight lines.

14) Roof Mounted Heat Pumps, Swamp Coolers, and AC Units: Heat pumps, air conditioning units, and swamp coolers of any type shall not be allowed to be mounted on roof surfaces.

15) Mobile, Modular, and Pre-Fab Homes: No mobile, modular or pre-fab home shall be placed on any Lot, part, or portion of the Property. Modular, newly constructed wall panels and trusses shall be allowed, as approved by the ACC.

16) Time of Construction: Once begun, at a beginning date as evidence by the date shown on a Building Permit, which Permit shall be required prior to any construction activity of any kind being undertaken. Any improvements or construction approved by the ACC shall be diligently undertaken and pursued to completion, which date of completion shall not be later than twelve (12) months from the date show on the Building Permit for same.

Any modification or alteration to a Home having previously received a CO, as approved by the ACC, shall be timely undertaken following ACC approval and shall be completed within three (3) months of the date of ACC approval or the Building Permit for same, whichever occurs later. No such work shall begin prior to the ACC-approval of same and/or a Building Permit for same, as issued by the City.

Landscaping, for initial Home construction, of the front and side-yards shall be completed prior to receiving a CO. Landscaping of the rear-yard shall be undertaken, following ACC-approval of such, and shall be completed within six (6) months following the receipt of CO for initial Home construction. (See also Section 2.2(g).)

11. **Incorporation of Master Declaration.** It is to be understood that this District Declaration is subject to the Master Declaration, which is by reference made a part hereof, and all the terms, conditions, covenants, restrictions, and provisions thereof, unless specifically modified herein, are to apply to the District Property and are made a part of this District Declaration as though they were expressly rewritten, incorporated, and included herein. The ownership and use of the District Property is subject to the Master Declaration as it may be amended from time to time.

12. **Interpretation.** To the extent Utah law is consistent with this District Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions or headings which precede the Articles and Sections of this District Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders.

13. **Severance.** The invalidity or unenforceability of any portion of this District Declaration shall not affect the validity or enforceability of the remainder hereof. If any covenant, condition, restriction, part, term or provision of this District Declaration is deemed to be inconsistent, incongruent or in conflict with (the "Inconsistent Provision") any approval guidelines for the financing, insuring or the guaranty of the District Property, or any part thereof (the "Required Provision"), then (a) the rights and obligations of the parties shall be construed and enforced as if the Declaration did not contain such Inconsistent Provision, and (b) the Required Provision shall be and is hereby incorporated herein by this reference, anything to the contrary notwithstanding.

14. **Covenants to Run with District Land.** This District Declaration and all the provisions hereof shall constitute covenants to run with the District Land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of District Association, all other signatories hereto, all parties who hereafter acquire any interest in a District Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a District Lot shall comply with, and all interests in all District Lots shall be subject to, the terms of this District Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this District Declaration. By acquiring any interest in a District Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this District Declaration. The District Declarant, District Association, Master District Association, District Board of Directors or an aggrieved Owner may bring an action to enforce the District Governing Documents, for injunctive relief or damages, including the recovery of a reasonable attorney's fee and costs, regardless of whether a lawsuit is filed.

15. **Term.** This District Declaration shall continue for a term of forty (40) years from its date of recordation. Thereafter, this District Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty percent (50.0%) of the Members determines that this District Declaration shall terminate.

16. **District Mortgagee Protection.** Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any District Mortgage or deed of trust, given in good faith and for value.

17. **Registered Agent.** The initial registered agent of the District Association is Jair Y. Almaraz. The initial registered office of the District Association is 1611 East 2450 South, #4A, Utah 84790.

18. **Bylaws.** The District Association shall be administered according to the Bylaws of the District Association, which are referred to and incorporated herein by this reference, and where the context requires any references to the District Association shall refer to the District Association and any reference to the Board of Delegates shall refer to the District Board of Directors. Notice hereunder shall be provided as required in the Bylaws.

19. **Amendment.** This District Declaration may be amended as follows:

19.1 **By The Owners.** During the District Declarant's Period of Control any amendment to this District Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the District Association 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 District Declarant has voted in favor of the amendment. During the District Declarant's Period of Control, where the District Declarant does not vote in favor of the amendment, any amendment to this District Declaration shall require the affirmative written vote or consent of at least ninety percent (90%) of the Total Votes of the District Association 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 District Declarant's Period of Control any amendment to this District Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the District Association 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.

19.2 **Accomplishment of Amendment.** Any Amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the District Association provided however, that during the Declarant Control Period, only the District Declarant's signature is required. After the Declarant Control Period, in such instrument an officer of the District Association shall certify that the vote required by this Section for Amendment has occurred.

19.3 **Initial District Declarant Right to Amend.** The District Declarant alone may amend or terminate this District Declaration prior to the closing of a sale of the first District Lot.

19.4 **Unilateral Right to Amend Under Certain Conditions.** Notwithstanding anything contained in this District Declaration to the contrary, this District Declaration may be amended unilaterally at any time and from time to time by District Declarant if such Amendment is (i) necessary to correct typographical errors or inadvertent omissions; (ii) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or

judicial determination which shall be in conflict therewith; or (iii) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the District Lots subject to this District Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any District Lot unless any such Owner shall consent thereto in writing.

**19.5 District Declarant's Right to Amend Unilaterally Prior to Termination of District Declarant's Period of Control.** Notwithstanding anything contained in this District Declaration to the contrary, prior to the expiration of the District Declarant's Period of Control, District Declarant may unilaterally amend this District Declaration for any purpose. Such amendment requires only the signature of the District Declarant.

**19.6 To Satisfy Requirements of District Lenders.** Anything to the contrary notwithstanding, District Declarant reserves the unilateral right to amend all or any part of this Master Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this District Declaration or approval of the sale of District Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any District Lot, or any portions thereof. Any such amendment shall be effected by the recordation by District Declarant of an Amendment duly signed by the District Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all District Lots and all persons having an interest therein. It is the desire of District Declarant to retain control of the District Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of District Declarant, District Declarant shall have the unilateral right to amend this District Declaration to restore such control. Any proposed action which would require the consent of a specified percentage of District Mortgagees, if proper notice is given to a District Mortgagee or other creditor, then a legal presumption is created that the District Mortgagee and/or creditor consented, absent the delivery of a written objection.

**19.7 District Declarant's Rights.** No provision of this District Declaration reserving or granting to District Declarant the District Developmental Rights shall be amended without the prior express written consent of District Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at District Declarant's sole and exclusive discretion.

19.8 **Conflict With Master Declaration.** No provision of the Master Declaration may be amended hereby either directly or indirectly.

20. **Insurance.** Nothing shall be done or kept in, on or about any District Lot or in the District Common Areas which may result in the cancellation of the insurance on the District Property or an increase in the rate of the insurance on the District Property, over what the District Board of Directors, but for such activity, would pay.

21. **Laws.** Nothing shall be done or kept in, on or about any District Lot or District Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

22. **Damage or Waste.** No damage to, or waste of, the District Common Areas shall be committed by any Owner or resident, or their District Guests, visitors or invitees. Each Owner and Resident shall indemnify and hold the District Board of Directors and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner or resident, or their District Guests, visitors or invitees; provided, however, that any invitee of the District Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

23. **Nuisance.** No Owner shall create or maintain or permit the creation or maintenance of a nuisance.

24. **Enforcement.** The District Board of Directors may exercise its business judgment in deciding whether to impose sanctions or pursue legal action against violators and shall consider common concerns when taking or deciding not to take formal action, such as a weak legal position, conflict with current law, technical violations, minor or collateral issue, and whether or not it is in District Association's best interests to pursue the matter and, if so, to what extent. District Owners, the District Declarant, and the Association are authorized to take action to enforce this Declaration.

25. **Default.** A default of the Master Declaration shall be considered a material default of this District Declaration. A default of this District Declaration shall be considered a material default of the Master Declaration.

26. **Conflict.** In the event of any conflict, inconsistency or incongruity between the provisions of this District Declaration and the provisions of the Master Declaration, the latter shall in all respects govern and control.

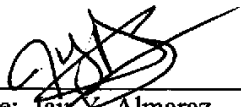
27. **Effective Date.** This District Declaration, any amendment or supplement hereto, and any amendment or supplement to the District Final Plat shall take effect upon its being filed for record in the office of the County Recorder of Washington County, Utah.

The undersigned have hereunto set their hands and made effective the foregoing as of the date set forth above.

**THIS SPACE INTENTIONALLY LEFT BLANK.  
SIGNATURES FOLLOW ON NEXT PAGE.**



DISTRICT DECLARANT:  
IVORY SOUTHERN, LLC

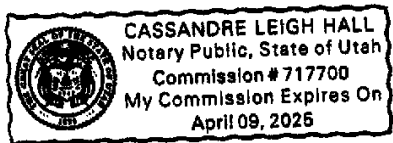
By:   
Name: Jair Y. Almaraz  
Title: Authorized Representative

**ACKNOWLEDGMENT**

STATE OF UTAH                    )  
  ss:  
COUNTY OF WASHINGTON    )

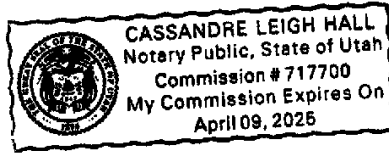
The foregoing instrument was acknowledged before me this 28<sup>th</sup> day September, 2021 by Jair Y. Almaraz, as Authorized Representative of IVORY SOUTHERN, LLC, a Utah limited liability company, and said Jair Y. Almaraz duly acknowledged to me that said IVORY SOUTHERN, LLC executed the same.

  
NOTARY PUBLIC



The Hollows, LLC

By: [Signature]  
Brett Burgess, Manager



**ACKNOWLEDGMENT**

STATE OF UTAH                                    )  
  ss:  
COUNTY OF WASHINGTON                    )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day September, 2021 by Brett Burgess as Authorized Representative of The Hollows, LLC, a Utah limited liability company, and said Brett Burgess duly acknowledged to me that said The Hollows, LLC executed the same.

[Signature]  
NOTARY PUBLIC

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF THE**  
**LAKESIDE AT DESERT SANDS PHASE 1**

The District Land described in the foregoing document as Lakeside at Desert Sands Phase 1 is located in Washington County, Utah and is described more particularly as follows:

**LAKESIDE AT DESERT SANDS – PHASE 1 FINAL PLAT BOUNDARY**

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 NORTH 89°59'05" WEST 50.085 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 20.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 90°04'33", A DISTANCE OF 31.442 FEET; THENCE SOUTH 00°03'38" EAST 245.302 FEET; THENCE SOUTH 89°56'22" WEST 153.979 FEET; THENCE SOUTH 87°58'34" WEST 85.016 FEET; THENCE SOUTH 86°10'19" WEST 85.016 FEET; THENCE SOUTH 84°22'04" WEST 85.016 FEET; THENCE SOUTH 82°34'42" WEST 181.237 FEET; THENCE SOUTH 79°08'42" WEST 45.000 FEET; THENCE NORTH 10°51'18" WEST 4.550 FEET; THENCE SOUTH 79°08'42" WEST 129.667 FEET; THENCE SOUTH 14°04'17" EAST 11.370 FEET; THENCE SOUTH 76°41'28" WEST 174.148 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS SOUTH 76°41'28" WEST); THENCE ALONG THE ARC OF A 877.500 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 03°55'45", A DISTANCE OF 60.177 FEET; THENCE NORTH 17°14'17" WEST 266.343 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 3035.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 17°40'41", A DISTANCE OF 936.416 FEET; THENCE SOUTH 89°59'05" EAST 593.431 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 25.000 FOOT RADIUS CURVE TO THE LEFT, 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 THE SAND HOLLOW ROAD 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 128.000 FEET; THENCE NORTH 89°59'05" WEST 3.000 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 LEFT, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 39.270 FEET; THENCE NORTH 89°59'05" WEST 103.693 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 60.500 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 05°42'38", A

DISTANCE OF 6.030 FEET; THENCE NORTH 84°16'27" WEST 75.411 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 39.500 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 05°42'38", A DISTANCE OF 3.937 FEET; THENCE NORTH 89°59'05" WEST 234.595 FEET TO THE POINT OF BEGINNING.

CONTAINS 366,826 SQ. FT., (8.421 ACRES)

8.412 acres within Section 14, T42S, R14W, SLB&M

Also Known as:

Lots 1 through 19 LAKESIDE AT DESERT SANDS PHASE 1, according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

Tax Serial Number: H- LADS -Lots 1-19

**EXHIBIT "B"**

**BYLAWS OF THE  
LAKESIDE AT DESERT SANDS HOMEOWNERS ASSOCIATION**

**ARTICLE I  
NAME AND LOCATION**

**Section 1.01 Name and Location.** The name of the District Association is the Lakeside at Desert Sands Homeowners Association (the "District Association"). The principal office of the corporation shall be located at 1611 East 2450 South, #4A, Utah 84790. 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 DISTRICT 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 District Association may be called at any time by the President or by a majority of the District Directors.

**Section 3.03 Notice of Meetings.** Written notice of each meeting of the District 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 District Association, or supplied by such Owner to the District 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 District Governing Documents.

**Section 3.05 Proxies.** At all District 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 District 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 District 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 District 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 District Lot Owners, with the exception of District Declarant, and shall be entitled to one (1) vote for each District Lot owned, except that when more than one person or entity owns an interest in any District Lot, the membership for such District Lot shall be shared among the District Owners of that particular District Lot and the one vote appurtenant to such District Lot shall be exercised as they jointly determine, but in no event shall more than one vote be cast with respect to any such District Lot.

(b) Class B. The Class B Member shall be District Declarant and shall be entitled to five (5) votes for each District Lot owned. Class B membership shall cease and be converted to Class A membership at the conclusion of the District 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.

Whenever in this Bylaws some act or decision requires a vote, approval or consent by the Voting Power, Association, Membership, Members, District Owner, or District Lot Owners, one vote shall be appurtenant to each District Lot owned by Class A Members and five votes shall be appurtenant to each District Lot owned by the Class B Member, and each of said votes voted or cast shall be counted when determining whether the specified approval has been obtained. Although each of the multiple District Owners of a single District Lot shall be a Member, in no event shall more than one vote exist or be cast with respect to a single District Lot.

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

**Section 5.03 Powers.** The District 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 this District Declaration. The District 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 District Association. Without in any way limiting the generality of the foregoing, the District 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 District Assessments.** The power, authority and right to charge District Assessments and to collect payment in accordance with the Declaration.

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

- a. Maintain and repair in an attractive, safe and functional condition the District Common Areas and Facilities;
- b. Pay all taxes and District Assessments levied upon the District Common Areas and Facilities and all taxes and District Assessments payable by the District Association;
- c. Obtain any water, sewer, gas and electric services needed for the District Common Areas and Facilities; and
- d. Do each and every other thing reasonable and necessary to protect and preserve the District Common Areas and Facilities, and to manage the District 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 District Association may give notice by text message, e-mail, text message, the District Association website, or other electronic notice; provided, however an Owner may by making a written demand to the District 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 District 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:

- Declaration;
- (a) Any express provisions, restrictions and limitations in the
  - (b) The Business judgment rule<sup>2</sup>; and
  - (c) The right of District Lot Owners to notice and to disapprove.

Before it adopts or changes a rule or regulation, the District Board of Directors must provide the District Lot Owners within fifteen (15) days of its meeting advance notice of its intention. Notice is not required in an emergency.<sup>3</sup> The governing District Board must provide an open forum at a District Board meeting and provide District Lot Owners with a chance to be heard. The District Lot Owners may, within sixty (60) days, and by a vote of at least a majority of the total District Lot Ownership at a special meeting called for this purpose disapprove the proposed rule or regulation.<sup>4</sup>

- (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 District Lot Owners to display religious and holiday signs inside their dwelling, although the rules may

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<sup>2</sup> 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.

<sup>3</sup> Imminent risk of immediate and substantial harm to person or property.

<sup>4</sup> 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.

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 an District 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 District 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 District 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 District 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 District 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 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 District 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 District 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 District 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 District 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 District Association, (b) keep the corporate seal of the District Association and affix it on all papers requiring said seal, (c) serve notice of meetings of the Board of Directors and of the District Association, (d) keep appropriate current record showing the Members of the District 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 District Tract, and the administration of the District 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 District Association shall: (a) keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the District Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the District Common Areas and Facilities and any other expenses incurred; and (b) make those records available for examination by any District Lot Owner or Owners at a convenient hour during the regular work week no later than fourteen (14) days after the District 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 District Board.

**Section 8.04 Bookkeeping.** The accounting and financial statements for District 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 District Association. A monthly profit and loss statement, balance sheet, and check register shall be sent or delivered designee by the bookkeeper or accountant to each Member and District Association or their designee. The accountant or bookkeeper shall prepare and file all tax returns for the District Association.

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

**ARTICLE IX  
AMENDMENTS**

**Section 9.01 Amendment to Bylaws.** In addition, during the District 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 District 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 District Declarant has voted in favor of the amendment. During the District Declarant's Period of Control, where the District

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 District 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 District 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 District 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 District Declarant until the expiration of the District 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 District 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 28<sup>th</sup> day of September, 2021.

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SIGNATURES FOLLOW ON NEXT PAGE.**

**DIRECTORS**



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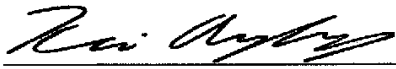
Jair Y. Almaraz



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Skylar Tolbert (Nov 4, 2021 09:22 MDT)

Skylar Tolbert



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Kevin Anglesey