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DOC # 20240019431

Restrictive Page 1 of 38
Gary Christensen Washington County Recorder
06/20/2024 04:02:43 PM Fee \$ 40.00
By G T TITLE



Recorded at the Request of:
Desert Vista at Desert Canyons, LLC

Record Against the Property
Described in Exhibit A

After Recording Mail to:
Desert Vista at Desert Canyons, LLC
494 West 1300 North
Springville, Utah 84663

**AMENDED AND RESTATED DECLARATION
of
EASEMENTS, COVENANTS, CONDITIONS,
AND RESTRICTIONS
of
DESERT VISTA AT DESERT CANYONS**

THIS AMENDED AND RESTATED DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS OF DESERT VISTA AT DESERT CANYONS (hereinafter the "Declaration") is made and executed this 19 day of June, 2024, by DESERT VISTA AT DESERT CANYONS, LLC, a Utah limited liability company (hereinafter the "Declarant"), in its capacity as the Declarant under certain instruments recorded against the real property described below and as the developer of the subdivision, property, and project located in Saint George, Washington County, Utah, known as DESERT VISTA AT DESERT CANYONS, which includes PHASES 1-4, phase 4 being the Townhome Plat (hereinafter collectively referred to as the "Project").

RECITALS

A. On April 9, 2020, the plat map of Desert Vista at Desert Canyons – Phase 1 was recorded with the Washington County Recorder's office as Doc # 20200017450 (the "Phase 1 Plat");

B. Declarant recorded the original Declaration of Easements, Covenants, Conditions, and Restrictions of Desert Vista at Desert Canyons Phase 1 Subdivision with the Washington County Recorder's office on April 9, 2020, as Doc. # 20200017452 (the "Original Declaration");

C. In part, Article XII, Section 12.2, of the Original Declaration provides that during the Declarant Control Period, the Declarant at any time and from time to time, alone, shall be entitled to amend the [Original] Declaration;

D. In part, Article XIII, Section 13.1, of the Original Declaration provides that Declarant reserves the right, at its sole election, to expand the Property covered by the Original Declaration to include additional property by unilateral action without the consent of the Owners. Declarant's

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unilateral right to expand as set forth in this paragraph shall expire ten (10) years after the date the Original Declaration was recorded in the office of the Washington County Recorder;

E. Article XII, Section 12.3, of the Original Declaration also provides that "Declarant's rights under this [Original] Declaration or in any way relating to the Property, the Expansion Land or the Project may be assigned.";

F. On March 4, 2021, the plat map of Desert Vista at Desert Canyons – Phase 2 was recorded with the Washington County Recorder's office as Doc # 20200015062 (the "Phase 2 Plat");

G. On October 1, 2021, the plat map of Desert Vista at Desert Canyons – Phase 3 was recorded with the Washington County Recorder's office as Doc # 20210064550 (the "Phase 3 Plat") The Phase 3 Plat, which was executed by Declarant, expressly states all Lots shown thereon shall be subject to the terms and conditions set forth in the Original Declaration;

H. On January 22, 2024, Springside Meadows of Payson, LLC, caused the plat map of Desert Vista Townhomes at Desert Canyons to be recorded with the Washington County Recorder's office as Doc # 20240001997 (the "Townhome Plat");

I. SPRINGSIDE MEADOWS OF PAYSON, LLC, a Utah limited liability company, and DESERT CANYONS LAND, LLC, a Utah limited liability company (collectively the "Builder Owner") are the owners all the real property more particularly described in the Townhome Plat;

J. This Declaration affects the real property identified and described on the Phase 1 Plat, Phase 2 Plat, Phase 3 Plat, and the Townhome Plat (herein collectively the "Plats"), which is located in Washington County, State of Utah, and described on the attached **Exhibit A**, which is incorporated herein by this reference, and defined in this Declaration as the "Property" or "Project";

K. The **Declarant** and **Builder Owner** have developed and intend to continue to develop a residential subdivision on the Property known as the Desert Vista at Desert Canyons subdivision subject to a general plan of development and subject to those certain covenants, conditions and restrictions set forth in the Original Declaration, as amended and superseded by this Declaration, which provisions are deemed to be covenants running with the land, mutually burdening and benefiting all of the Property and each of the Lots located therein;

L. This Amended and Restated Declaration of Easements, Covenants, Conditions, and Restrictions of Desert Vista at Desert Canyons Declaration is adopted with the authority and requisite approval of Declarant, as provided in the Original Declaration, during the Declarant Control Period. This Declaration shall replace and update the terms of the Original Declaration and any amendments thereto, to further define the rights of the Association and the Owners, further delineate the financial obligations and maintenance responsibilities of the Owners of the

Lots, including the Residences and other Improvements constructed upon the Lots, within the Property, and to provide for a general plan for managing the Project; all in furtherance of efforts to protect and enhance the value of the Project efficiently and economically;

M. This Declaration (along with and subject to any future amendments) shall be the sole Declaration for the Project and shall amend, restate, wholly replace, and substitute the Original Declaration and all prior declarations and amendments thereto (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration. This Declaration does not restate, replace, or nullify any provisions in prior instruments related to the annexation of the real property that is part of the Phase 2 Plat, Phase 3 Plat or the Townhome Plat, all of which were part of the Expansion Land and which are now part of the Property or Project subject to the terms of the Original Declaration, as amended by this Declaration. All the real property identified and defined to be part of the "Property" or "Project" under this Declaration shall be subject to the covenants, conditions, restrictions and easements set forth in this Declaration; and,

N. Utah's Community Association Act, Utah Code Sections 57-8a-101 *et. seq.* (the "Act"), as amended from time to time, shall supplement this Declaration. If an amendment to this Declaration adopts a specific section of the Act, such amendment shall grant a right, power, and privilege permitted by such section of the Act, together with all correlative obligations, liabilities, and restrictions of that section. The remedies in the Act and this Declaration — provided by law or in equity — are cumulative and not mutually exclusive.

DECLARATION

All the Property, including each Lot in the Project, shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the terms and conditions of this Declaration, including without limitation all of the covenants, conditions and restrictions set forth herein, all of which are created for the mutual benefit of the Owners of the Property and the Lots within the Property. The covenants, conditions and restrictions set forth in this Declaration are intended to create a generally uniform pattern of development, maintenance, and operation of the Project and to protect and enhance the property values and aesthetic values of the Project by eliminating inconsistent uses or improvements, all for the mutual protection and benefit of the Owners of the Lots. All of the terms and conditions of this Declaration, including without limitation all covenants, conditions and restrictions set forth herein, are intended to and shall in all cases run with the title of the land comprising the Property and shall be binding upon the Owners, their successors, assigns, heirs, lien holders, and any other Person holding any interest in the Property and shall inure to the benefit of all other Property in the Project. All the terms and conditions of this Declaration, including without limitation the easements, covenants, conditions and restrictions set forth herein, shall be binding upon and may be enforced by the Association, the Board, the ACC, or any Owner. The recitals above are hereby incorporated and part of this Declaration.

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The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat or otherwise void a provision of this Declaration or any other Governing Documents of the Association. If for any reason this Declaration does not comply with the Act, such noncompliance does not render a Lot or other portion of the Property unmarketable or otherwise affect the title if the failure is insubstantial.

ARTICLE I DEFINITIONS

The definitions in this Declaration are supplemented by the definitions in the Act. In the event of any conflict, the more specific and restrictive definition shall apply. Any defined terms in the Recitals or elsewhere in this instrument are hereby incorporated. Unless the context clearly requires the application of a more general meaning, the following terms, whether capitalized or not, when used in this Declaration, including the recitals, shall have the following meanings:

1.1 Articles shall mean and refer to the Articles of Incorporation or Organization of the Association, which are or shall be filed in the office of the Division of Corporations and Commercial Code, State of Utah, as amended from time to time.

1.2 Assessment or Assessments shall mean a charge imposed or levied by the Association on or against a Lot or a Lot Owner pursuant to the Act or Governing Documents.

1.3 Association Shall mean DESERT VISTA AT DESERT CANYONS HOMEOWNER'S ASSOCIATION, INC., a Utah nonprofit corporation, and its successors and assigns.

1.4 Board shall mean the Board of Trustees of the Association. Except as limited in the Governing Documents, the Board acts in all instances on behalf of the Association.

1.5 Common Areas or Common Area shall mean such portions of the Project (excluding Lots), as shall be owned by the Association (including any and all improvements thereto) for the common use and enjoyment of the Owners including, but not limited to, the following:

- (a) any private roads within the Project as designated and shown on the Plat;
- (b) any trail areas, landscape strips and other open space areas as designated and shown on the Plat;
- (c) any storm water collection areas which are located in any of the open space areas as the same are designated and shown on the Plat;
- (d) such other common areas (including all facilities and any other improvements thereto) as has been or shall hereafter be contributed to the Association by Declarant or otherwise transferred to or acquired by the Association; and,
- (e) all Limited Common Area, identified or otherwise described on the Plat.

1.6 Limited Common Area or Limited Common Areas shall mean that portion of Property owned by the Association and shown or otherwise designated on the Plat, as being

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dedicated to the exclusive use and enjoyment of the Owner of the Lot to which such limited common area is adjacent and appurtenant and to which there is a reasonable expectation of exclusive use by the Lot Owner. The Limited Common Area shall mean and include the Townhome Limited Common Area. Limited Common Area is subject to the rights of the Association set forth in this Declaration.

1.7 Declarant shall mean DESERT VISTA AT DESERT CANYONS, LLC, a Utah limited liability company and its successors and assigns, if any, as developer of the Project.

1.8 Declarant Control Period shall mean the period of time from recordation of the Original Declaration, which was recorded on April 9, 2020, until the earlier of (a) the date that the Declarant, or its successor or assign, has sold all of the Lots in the Project which shall mean and include not only all of the Lots within the Property but all the Lots that are or could be included in the Project on the Expansion Land, if and as the same may be included in the Project as provided herein, or (b) the date the Declarant shall elect to terminate the Declarant Control Period and shall execute a written termination thereof.

1.9 Declaration shall mean this Amended and Restated Declaration of Easements, Covenants, Conditions, and Restrictions of Desert Vista at Desert Canyons, including any amendments hereto.

1.10 Dwelling or Residence shall mean the attached or detached single-family residence built or to be built on any Lot within the Project. As required by the context, Dwelling or Residence shall mean and include the Lot upon which the Dwelling or Residence is constructed.

1.11 Expansion Land shall mean and refer to the real property situated in Saint George City, Washington County, Utah, further described in Article XIII.

1.12 Governing Documents shall mean this Declaration, the Plats, the Bylaws, the Articles, the rules and regulations, and any other documents, including all other documents identified in Utah Code § 57-8a-102(11), by which the Association may exercise power or manage, maintain, operate or which otherwise affect the Project, including any of the foregoing as may be amended from time to time.

1.13 Land shall mean all the real property identified and described by the Plats, including any additional real property within the Expansion Land that is annexed and made part of the Property subject to this Declaration.

1.14 Lot or Lots shall mean and refer to any of the separately numbered and individually described parcels of land within the Project as designated on the Plat, including any amended or supplemental plat.

1.15 Mortgage shall mean any recorded mortgage or deed of trust encumbering a Lot; and Mortgagee shall mean any mortgagee under a mortgage or a beneficiary under a Deed of Trust.

1.16 Owner shall mean any person or entity, including the Declarant, who is the owner of record or the contract purchaser of a fee or undivided fee interest in a Lot within the Project. Owner shall not mean or refer to any Mortgagee unless such Mortgagee has acquired fee title pursuant to foreclosure, or any sale, conveyance or other proceeding in lieu of foreclosure. If more than one person or entity shall be the Owner of a particular Lot, then all of such persons or entities shall be jointly and severally liable for all obligations and responsibilities of an Owner hereunder.

1.17 Plat or Plats shall mean and collectively, or as required by the context separately, refer to the Phase 1 Plat, the Phase 2 Plat, the Phase 3 Plat and the Townhome Plat described in the recitals. Plat and Plats shall also mean any amendments to the above-named plat(s), including any plats that have been or will be recorded for any of the Expansion Land.

1.18 Property or Project shall mean all Land covered by this Declaration, including the Common Areas and Lots, all buildings, improvements and other structures thereon, all easements, rights and appurtenances belonging thereto, and all personal property intended for use in connection therewith.

1.18 Townhome shall mean the Residence built or to be built on a Lot within the Townhome Plat. As required by the context, Townhome shall also mean and refer to the Lot, which is part of the Townhome, as well as any Residence or other Improvement on the Lot.

1.19 Townhome Limited Common Area shall mean that portion of the Common Area specifically designated in this Declaration or the Townhome Plat as Limited Common Area, which shall be for the exclusive use and enjoyment of one or more Owners of a particular Townhome to which such Limited Common Area is adjacent or appurtenant to the Townhome, such as, but not necessarily limited to, the driveway, sidewalk, entryway, porch, exterior stairs, deck, balcony, patio, and the areas behind a Townhome as identified on the Townhome Plat.

1.20 Townhome Service Area shall mean and only include the Lots and Townhome Limited Common Area identified by the Townhome Plat, which includes the Townhomes built or to be built upon the Lots within the Townhome Plat. The Townhome Service Area does not include the other property identified and described by the Townhome Plat as anything other than a Lot, Limited Common Area, or public street, and such other property shall be considered as Common Area for the non-exclusive use of all members of the Association.

1.21 Townhome Service Area Assessments shall mean those Assessments described in Section 14.5 to fund the Townhome Service Area Assessments, and any other Assessments levied by the Association in connection with the Townhome Service Area.

1.22 Townhome Service Area Expenses shall mean all the expenses that the Association incurs or expects to incur in connection with providing benefits or services to the Townhome Service Area, including any operating or reserve expenses for maintenance, repair, or replacement of items or property within the Townhome Service Area that is the responsibility of the Association. The Townhome Service Area Expenses are an Assessment as provided in this Declaration and the Act except that they are only paid by the owners of the Lots and Townhomes within the Townhome Plat.

ARTICLE II SUBMISSION OF LAND AND EXPANSION LAND

2.1 Submission of Property. Declarant hereby reaffirms the dedications, easements, covenants, conditions and restrictions against the Property as set forth in the Original Declaration as amended and restated in this Declaration and submits and subjects all such Property, including the buildings, improvements, and other structures located thereon, all easements, rights and appurtenances, and all other property, within the Property as that term is defined herein, to the provisions of this Declaration and declares that all such real property, buildings, improvements, structures, easements, rights, appurtenances and other Property are and shall be held, possessed, occupied, used, leased, encumbered, transferred, sold, conveyed, devised and inherited subject to the provisions of this Declaration, as may be amended from time to time.

2.2 Reservation. Declarant reserves, however, such easements and rights of ingress and egress over, across, through and under the Property and any improvements (other than Buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant:

- (a) to construct and complete on the Property the private and public roads to serve the Project;
- (b) to construct and complete all of the improvements to the Common Areas;
- (c) to construct and complete each of the Residences and all of the other improvements to be constructed on the Lots and to do all other things reasonably necessary in connection therewith;
- (d) to construct and complete on the Property and to improve portions of the Property with such other additional improvements, structures, facilities or landscaping designed for the use and enjoyment of the Owners as Declarant may reasonably deem to be necessary or appropriate; and,
- (e) to such marketing, sales, management, promotional or other activities designed to accomplish or facilitate the sale of the Lots hereof.

With the exception of perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms expire five (5) years after the date from recordation of the Original Declaration, which was recorded on April 9, 2020, with the County Recorder of Washington County.

2.3 Covenants to Run with Land. This Declaration and all the provisions hereof are declared to be and shall constitute covenants which run with the land or equitable servitudes and shall be binding upon and inure to the benefit of Declarant and any and all parties who have acquired or hereafter acquire any interest in a Lot or in the Common Areas, their respective grantees, transferees, mortgagees, tenants, heirs, devisees, personal representatives, successors and assigns. Each present and future Owner, Mortgagee, tenant, or occupant of a Lot shall be subject to and shall comply with the provisions of this Declaration and the provisions of any rules and regulations contemplated by this Declaration. Each party acquiring any interest in a Lot thereby consents to and agrees to be bound by all of the provisions of this Declaration.

2.4 Annexation. All or any part of the Expansion Land may be annexed to and become subject to this Declaration as a part of the Project and thus become subject to the Declaration and the jurisdiction of the Association, provided that a supplementary declaration covering such portion of the Expansion Land shall be executed and recorded by Declarant. The recordation of said supplementary declaration shall constitute and effectuate the annexation of said Expansion Land described therein making the same subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association and thereafter said annexed property shall be a part of the Property and all of the Owners of Lots in said annexed property shall automatically be Members of the Association. There is no requirement that the Expansion Land or any part of it become part of the Project. Until such annexation, the Expansion Land shall not be part of the Project nor be subject to the terms of this Declaration. Additional provisions concerning the Expansion Land are set forth below in Article XIII.

ARTICLE III NATURE AND INCIDENTS OF OWNERSHIP

3.1 Transfer of Title to Common Areas. Upon the expiration or termination of the Declarant Control Period, or concurrent with or immediately following the filing of the Plat, or any amended or additional plat with respect to the addition of some or all of the Expansion Land, the Declarant shall cause title to the various Common Areas identified in such Plat to be conveyed to the Association and the Association shall accept the transfer thereof.

3.2 Easement for Use of Common Areas. Subject to the terms and limitations of this Declaration and the Governing Documents, each Lot shall have appurtenant thereto a nonexclusive right and easement for use of any of the Common Areas within the Project, including any improvements and facilities thereon. The rights and easements described herein shall pass with the title to each Lot, whether by gift, devise, inheritance, transfer, conveyance, encumbrance, or otherwise and whether or not reference is made thereto and in no event shall such rights and easements be separated from the Lot. No Owner shall bring any action for partition of the Common Areas. The rights and easements described herein shall be for the purposes and uses set forth in this Declaration and shall be subject to such reasonable rules and regulation regarding the use of the Common Areas and as the Association shall establish.

3.3 Utility Easements. There is reserved hereby an easement for all pipes, lines, utility lines, cables, wires, optical fiber lines or other similar facilities which traverse, intersect, or underlie the Property, whether such pipes, lines, utilities and facilities are now existing or hereafter constructed and further are subject to an easement necessary for ingress to, egress from, repair, maintenance, and replacement of such pipes, lines, utility lines, cables, wires, optical fiber lines or other similar facilities.

3.4 Easements Deemed Created. All conveyances of Lots within the Project, whether by Declarant or otherwise, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

3.5 Title to Lots. Title to a Lot, consisting of a fee simple interest therein, may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.

3.6 Description of a Lot. Every deed, mortgage, purchase contract, lease, or other instrument, conveying, encumbering or affecting the title to a Lot shall describe that Lot by the number shown on the Plat with the appropriate reference to the Plat and to this Declaration, as each shall appear on the records of the County Recorder of Washington County, Utah, in substantially the following fashion:

Lot _____, DESERT VISTA _____, recorded in the County Recorder of Washington County, Utah, as Entry No. _____, in Book _____, Page _____, SUBJECT TO the Declaration of Easements, Covenants, Conditions and Restrictions Desert Vista at Desert Canyons, recorded in the office of the Washington County Recorder as Entry No. _____, in Book _____, at Page _____ (as the same is amended or modified) TOGETHER WITH a right and easement of use of the Common Areas as described and provided in the said Declaration and Plat described above.

Whether or not the above form is used in any such instrument, the provisions of this Declaration shall be binding upon and inure to the benefit of any party acquiring an interest in a Lot.

3.7 Easement for Access for Repair and Maintenance of Common Areas. Some of the Common Areas may be conveniently accessible for repair and maintenance only on or through the Lots. The Owners of the Lots shall have the irrevocable right, to be exercised by the Association as their agent, to have access to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas.

3.8 Easement to Association. The Association shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

ARTICLE IV USE RESTRICTIONS

4.1 Residential Use. Each of the Lots in the Project shall be used for single-family housing in compliance with Saint George City ordinances. No building shall be erected or placed on any Lot other than a residence, together with a garage and such outbuildings as are customarily appurtenant to a residence and are permitted by Saint George City ordinances. An "outbuilding" shall mean an enclosed covered structure not directly attached to the residence.

4.2 Architectural Control Committee. The Architectural Control Committee (herein "ACC") shall be the Declarant until the Declarant Control Period expires as indicated herein. The Declarant may assign the role of the ACC at any time during the Declarant Control Period. Upon expiration or termination of the Declarant Control Period, the Association's Board shall have the authority to appoint a three-member committee to act as the ACC, which may consist of members of the Board of the Association. In the event the Association fails to appoint an ACC, then the Board itself shall serve as the ACC. The ACC may be dissolved upon the written approval of the Owners of not less than two-thirds of Owners who submit a vote in person or by proxy only after the Declarant Control Period has expired. The construction of any Residence, out-building, fence, wall or other structure (hereinafter "Improvement") shall be subject to the following restrictions and conditions.

- (a) No Improvement may be commenced, erected, or maintained without the approval of the ACC.
- (b) Any Owner proposing the construction of any Improvement shall submit, in writing, plans and specifications for the same to the ACC. Such plans and specifications shall include but not be limited to the nature, kind, shape, height, materials, plot plans, floor plans, exterior color scheme, grading plan and finished elevations.
- (c) The ACC shall have the right to refuse any such plans, specifications, or grading or landscaping plans which are not suitable or desirable, in the Committee's opinion, for aesthetic or other reasons, and may take into consideration the suitability of the proposed building or other structure, the materials to be used, the harmony thereof with the surroundings, the topography of the land, and the effect of the proposed Improvement on the view from adjacent or neighboring Lots.
- (d) In the event the ACC fails to disapprove of the plans and specifications within thirty (30) days of the date of submission, such failure shall be deemed to be approved, unless the plans and specifications violate express provisions of this Declaration.
- (e) The ACC shall not be liable for its approval or disapproval of any plans or specifications or for any action or failure to act in regard to such approval process.

(f) Upon approval by the ACC, the construction of the Improvements shall be promptly commenced and shall diligently proceed to completion. All such construction shall be completed within twelve (12) months of the approval or deemed approval unless the ACC shall extend the time for completion upon a determination that such extension is warranted by unusual circumstances or to delays which are beyond the control of the Owner constructing such Improvements.

4.3 Common Area Use. The Common Areas shall be used only in a manner consistent with their community nature and the use restrictions applicable to Lots as set forth herein.

4.4 No Alterations or Obstructions to Common Areas. Without the prior written consent of the Association in each specific instance, no Owner shall make or cause to be made any alteration, addition, removal or improvement in or to the Common Areas or any part thereof, or do any act which would impair the structural soundness or integrity of any improvement, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Land. Without the prior written consent of the Association, no Owner or guest shall obstruct the Common Areas or any part thereof, or park any recreational vehicles, including trailers, campers, motorhomes, boats and snowmobiles, on the Common Areas. Without the prior written consent of the Association, no Owner shall store or keep any property on the Common Areas or any part thereof.

4.5 Other Restrictions. Nothing shall be done on or kept on or in any Lot or in the 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. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by Owner or Owners invitees; provided, however, that any invitee to the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Residence or Lot shall be used in such a manner as to obstruct or interfere with the enjoyment of occupants of other Residences or Lots. No obnoxious, destructive, or offensive activities shall be carried on any Lot or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project. Without the prior written consent of the Association nothing shall be done on or kept on or in any Lot or in the Common Areas or any part hereof which would result in the cancellation of the insurance on the Common Areas or any part thereof or increase the rate of the insurance on the Common Areas or any part thereof over what the Association, but for such activity, would pay.

4.6 Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the use of the Project, Lots and Common Areas, as the same may be adopted, modified, amended and construed by the Association.

ARTICLE V DUTIES AND OBLIGATIONS OF OWNERS

5.1 Maintenance and Repair. Each Owner shall, at the Owner's sole cost and expense, keep the Owner's Lot and all improvements thereon, in a clean, safe, sanitary and attractive condition, and in a good state of repair. Such obligation shall extend, but shall not be limited to, the painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces, thereby contributing to the beauty and value of the neighborhood and Project. The Owner's obligation shall include the obligations to keep any landscaping on the Owner's Lot in a clean, safe and attractive condition and in good order, condition and repair. No Residence, building, structure, landscaping or fencing upon any Lot shall be permitted to fall into disrepair. Notwithstanding the aforementioned, each Owner of a Townhome, at the Townhome Owner's expense, is only responsible to maintain, repair, and replace the following exterior items: (a) the Townhome's windows and doors (including any approved screen or storm doors and garage doors), and all elements and equipment related or solely serving the Townhome (AC Units, etc.); (b) approved Improvements to the Townhome and adjacent planters; and (c) the driveway and sidewalks serving only the Townhome; and (d) the other portions of the Townhome Limited Common Area appurtenant to the Townhome, excepting only those elements and items expressly allocated to the Association in this Declaration.

5.2 Assessments. Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration or the other Governing Documents.

5.3 Observation of Rules and Regulations. Each Owner shall be responsible for the observance by Owner and any guests or invitees of Owner of the Governing Documents, including any rules and regulations adopted from time to time by the Association.

ARTICLE VI ASSOCIATION

6.1 Membership. Each Owner shall be entitled and required to be a Member of the Association. Upon acquiring title to a Lot, an Owner shall automatically become a member of the Association, and upon ceasing to be an Owner, for any reason, an Owner's membership in the Association shall automatically cease, each membership in the Association shall be appurtenant to and may not be separated from the Lot to which it relates. No person or entity, other than an Owner, may be a member of the Association. Any sale, transfer, conveyance, devise, encumbrance or other disposition of a Lot shall automatically sell, transfer, convey, devise,

encumber or otherwise dispose of the Owner's membership in the Association and the right and obligations appurtenant thereto.

6.2 Voting Rights. During the Declarant Control Period, Declarant shall be entitled to all votes as to all Association matters and the Owners of each Lot shall not be entitled to any votes as to Association matters. After the Declarant Control Period, each Owner, including Declarant, shall be entitled to one (1) vote for each Lot owned by such Owner as to all Association matters.

6.3 Multiple Owners of a Lot. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the one (1) vote appurtenant to such Lot be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting or in writing by another Owner of the same Lot, in which event no vote will be counted with respect to such Lot except to determine the presence or absence of a quorum.

6.4 Record of Owners. Each Owner shall promptly notify the Association of any change of ownership, contract sale, or conveyance of a Lot and, if requested by the Association, shall deliver to the Association a copy of any such conveyance document or sale contract. The Association may rely on the information from the Washington County Recorder regarding the Owners and Mortgagees of Lots.

6.5 Bylaws. The Association shall adopt bylaws for the operation and management of the Association which Bylaws shall be recorded with the Washington County Recorder as required by Utah Code § 57-8a-216. Such Bylaws may be amended and modified as provided therein.

6.6 Obligations of the Association. The Association shall have the obligation to do and perform the following for the benefit of the Owners and the maintenance and improvement of the Project:

- (a) The Association shall accept title to all Common Areas conveyed to it, whether by Declarant or by others.
- (b) The Association shall keep, maintain, repair and replace the Common Areas and any other areas within the Project designated to be maintained, repaired and replaced by the Association. Such areas shall be maintained in a clean, safe and attractive condition and in good order, condition and repair, including the obligation to repair, replace, and maintain the private roads, the obligation to manage and maintain any storm water collection facilities and areas, and the obligation to maintain the landscaping on any other Common Areas.

(c) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(d) The Association shall obtain and maintain in force the policies of insurance required by the provisions of the Act, this Declaration, and the Governing Documents.

(e) Townhome Limited Common Area. The maintenance, replacement, and repair of the Townhome Limited Common Area, including without limitation, all recreational facilities and any private roads, walkways and parking stalls within the Townhome Service Area, shall be the responsibility of the Association, and the cost thereof shall be a Townhome Service Area Expense. The Association shall also maintain, replace, and repair all conduits, ducts, plumbing, and wiring and other central facilities for the furnishing of gas, light, power, water, sewer service, and any other utility to the extent such serves more than one Townhome and the costs thereof shall be a Townhome Service Area Expense. All incidental damages caused to a Townhome by the maintenance, replacement and repairs of the Townhome Common Areas or utility services shall be repaired promptly and the cost thereof charged as a Townhome Service Area Expense. Notwithstanding the aforementioned, each Owner of a Townhome shall keep the Limited Common Area appurtenant and adjacent to said Townhome clean and orderly, free of debris, garbage, etc.

6.7 Association Maintenance of Townhome Service Area. As further set forth in Article XIV of this Declaration, the Association shall maintain, repair, and replace the following located in the Townhome Service Areas, the costs of which shall constitute Townhome Service Area Expenses: (a) the general exterior surfaces of the Townhomes and buildings in which Townhomes are located, which includes, without limitation, the roof, rain gutter, stucco, and other exterior surfaces and finishes except for the windows and doors assigned to the Townhome Owners; (b) foundations, bearing walls, shared or party walls, and other structural components of the Townhomes and the buildings in which the Townhomes are located, but exclusive of those elements for which the Owners of the Townhomes are responsible to maintain, repair, and replace under this Declaration; (c) the Townhome Limited Common Areas, including the back yard areas, but excepting those elements identified in Section 5.1 as being the responsibility of the Owner of the Townhome to maintain, repair, or replace; (d) landscaped areas and sprinkler or irrigation systems servicing the landscaped areas, except for the planters assigned to the Townhome Owners; (e) fences and walls unless constructed by a Townhome Owner; and (f) any private streets, parking stalls, curb and gutters, and sidewalks.

6.8 Powers of Association. The Association shall have all the powers set forth in its Articles and Bylaws, all powers that have been or may hereafter be conferred by law to nonprofit corporations, all powers as may hereafter be granted to it by its members, and the power to do

all things authorized, required or permitted to be done by the Association under the provisions of this Declaration or the Governing Documents, including, but not limited to the following:

- (a) The Association's Board shall have the authority to appoint members to or otherwise act as the ACC after expiration of the Declarant Control Period.
- (b) The Association shall have the power and duty to perpetually obtain, contract and pay for:
 - (i) the construction, maintenance, repair, replacement and landscaping of the Common Areas, including the improvements thereon;
 - (ii) such insurance policies or bonds as may be required by this Declaration or as the Board may deem reasonable or necessary for the benefit of the Association, the Board, and the Owners; and
 - (iii) such materials, supplies, and other personal property and such labor and other services as the Board may deem reasonable and necessary to carry out the duties of the Association,
- (c) The Association shall have the power to levy and collect assessments as Provided by the Act or Governing Documents.
- (d) The Association shall have the power to adopt, amend, modify, repeal, construe and enforce reasonable rules and regulations governing among other things the use of the Common Areas, Lots and other property within the Project, which rules and regulations shall be consistent with the rights and duties established in this Declaration.
- (e) The Association shall have the power, in its own name, and in its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any of the Governing Documents, including any rules and regulations promulgated by the Association, or to enforce by mandatory injunction or otherwise all of the provisions of the Governing Documents. The Association shall also have power to adopt bylaws or rules and regulations regarding the suspension of the rights, including voting rights, of an Owner as a member of the Association during any period of time during which the Owner fails to comply with the Governing Documents, including the Owner's obligations under this Declaration.
- (f) The Association shall have all other rights, powers and privileges 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.

6.9 Governance of Association. Except as herein set forth, the Association shall be governed by its Articles and Bylaws, and the resolutions adopted by its members or the Board. Except as may be expressly limited in the Governing Documents, the Board acts in all instances on behalf of the Association.

ARTICLE VII ASSESSMENTS

7.1 Agreement to Pay Assessments. Excepting the Declarant and Builder Owner, each Owner of any Lot within the Project, by the acceptance of a deed or other instrument of conveyance and transfer therefor, whether or not it be so expressed in said deed or other instrument, shall be deemed to covenant and agree with each other Owner within the Project and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration or the Governing Documents, including without limitation, any special assessment for capital improvements and other matters as provided in the Governing Documents. Such assessments shall be fixed, established, and collected from time to time as provided in this Article VII.

7.2 Annual Assessments. Except Lots owned by the Declarant or Builder Owner, annual assessments shall be computed and assessed against all Lots in the Project based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas and any other areas within the Project for which the Association has any responsibility. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments on the Common Areas; premiums for all insurance that the Association is required or permitted to maintain hereunder; common trash collection, if any; repair, maintenance and replacement of the Common Areas and any other areas or property within the Project for which the Association is responsible to maintain, repair or replace; wages for Association employees, including fees for a Manager (if any); legal and accounting fees; any deficit remaining from a previous period; creation of reasonable contingency reserve, major or maintenance reserve, and/or surplus or sinking fund; creation of an adequate reserve fund for maintenance repairs and replacement of those Common Areas or other areas that must be replaced on a periodic basis, where such reserve is to be funded by monthly payments rather than extraordinary special assessment; and, any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the common expenses, and all funds received from assessments under this Section 7.2 shall be part of the common expense fund.

7.3 Annual Budget. The Board shall authorize and levy the amount of the annual assessments upon each Lot, except those owned by the Declarant or Builder Owner, by a majority vote of the Board. Annual assessments have commenced against all Lots within the Project, excepting those Lots in the Townhome Plat that have not been conveyed from Declarant or the Builder Owner to a third-party. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual period. Written notice of any change in the amount of any annual assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board. Failure to send such notice shall not invalidate the assessment.

7.4 Uniform Rate of Assessments. The common expenses of the Association, excepting only the specific expenses that are part of the Townhome Service Area Assessment, shall be apportioned and assessed to all Owners at a uniform rate which shall be assessed and paid in

proportion to the number of Lots in the Project; provided, however, that during the Declarant Control Period, common expenses shall not be allocated to Declarant or Builder Owner with respect to any Lots owned by Declarant or Builder Owner on which the construction of a Residence has not been completed or with respect to any Lots owned by Declarant or Builder Owner with Dwellings that are not then occupied as a residence. Notwithstanding the above or anything else in this Declaration to the contrary, in addition to Assessments for common expenses, Owners of Lots in the Townhome Service Area (excepting Declarant and Builder Owner), shall pay a Townhome Service Area Assessment as described in Article XIV. The Townhome Service Area Assessment shall be apportioned uniformly amongst all Owners of Lots within the Townhome Plat and assessed as a common expense of the Townhome Owners, in addition to the regular annual assessments levied against all Lots within the Project. As used in this Declaration, the term Annual Assessment shall mean and include the Townhome Service Area Assessment with respect to each Owner of a Lot in the Townhome Plat.

7.5 Payment. Each Annual Assessment, as well as the additional Townhome Service Area Assessment as to the Owners of Townhomes, shall be due and payable in annual or monthly installments. If to be paid annually, such annual Assessments shall be payable on the 2nd day of January of each year and no separate notices, other than the Annual Budget, of such annual installment shall be required. The Association, in its discretion, may elect to have the Annual Assessments due and payable in twelve (12) equal monthly installments due on the 1st day of each and every month. Each annual or monthly 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 (30) days after such date plus a \$10 late fee, or such other reasonable amount as may be determined by the Board from time to time. In addition, in the event that any installment of the Annual Assessment is not paid within thirty (30) days of the date such installment becomes due, the Association may, at its option, and upon, thirty (30) days' prior written notice to the Owner accelerate the due date for all remaining installments for the calendar year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said thirty (30) day notice period and interest shall accrue on the entire sum at the rate of eighteen 'percent (18%) per annum from such date until paid in, full. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date thirty (30) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

7.6 Reserve Analysis and Inadequate Funds. The Association shall cause a reserve analysis or study to be conducted in accordance with the provisions of Utah Code § 57-8a-211 no less frequently than every six years with the first such reserve analysis to be performed by no later than January 1, 2025. The results of such reserve analysis shall be presented to the Owners for discussion with respect to whether to fund a reserve fund, and if so, how to fund it and in what amount. To the extent the Association creates a reserve fund to pay for maintenance, repair,

or replacement of elements that are part of the Townhome Service Area, such funds shall be assessed as Townhome Service Area Assessments and maintained separate from general reserve funds and only used for the maintenance, repair, or replacement of elements that are part of the Townhome Service Area. In the event that it is otherwise determined that the common expense fund is inadequate for the needs of the Association at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 7.7 below, except that the vote therein specified shall be unnecessary.

7.7 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Board on behalf of the Association may, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the members of the Association, special assessments (hereinafter "Special Assessments"), payable over such periods as the Association 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 Project or improvements therein or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation common expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners on the same basis as set forth in Section 7.4 (namely in proportion to the number of Lots in the Project). Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due if not paid within thirty (30) days after such date plus a \$10 late fee.

7.8 Creation of the Lien and Personal Obligation of Assessments. Excepting the Declarant and Builder Owner, Owner and each subsequent Owner of any Lot in the Project, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments and charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as provided in the Governing Documents; (3) any other amount or assessment levied or charged by the Association or Board pursuant to this Declaration; (4) any benefited assessments; and, (5) interest, late fees, other charges identified in the Governing Documents, costs of collection, and reasonable attorney fees, as provided in the Governing Documents. All such amounts shall be a charge on the land and Lot and shall be a continuing lien upon the property against which each such assessment or amount is charged. Additionally, the person who was the Owner of such property at the time when the assessment fell due shall remain personally liable. The Association shall have the right to collect assessments through a lawsuit, judicial foreclosure, non-judicial foreclosure or other means as provided in Sections 301 through 311 of the Act. Such remedies shall be cumulative and not exclusive.

The Board may, in the name of the Association, (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) foreclose the lien, judicially or non-judicially, against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Owner. There shall be added to the amount of any delinquent assessment the costs and expenses of any collection activity including, but not limited to, interest as provided herein, collection agency costs, costs of sale or foreclosure, and reasonable attorney fees and costs.

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale, the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure. The Association and each Owner of a Lot hereby conveys and warrants pursuant to Sections 212 and 302 of the Act, and Utah Code § 57-1-20, to the attorney that the Association engages to act on its behalf with power of sale, the Lot and all improvements and appurtenances to the Lot for the purpose of securing payment of assessments under the terms of the Declaration. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of the Owner's Lot.

7.9 Subordination of Liens to Mortgages. The lien for the assessments provided herein shall have priority over each other lien and encumbrance on the Lot except for:

- (a) a lien or encumbrance recorded before the Original Declaration was recorded;
- (b) a first or second security interest on the Lot secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the Association; or
- (c) a lien for real estate taxes or other governmental assessments or charges against the Lot.

The holder of a first or second mortgage or deed of trust or purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure of such mortgage or deed of trust through the exercise of a power of sale under such Mortgage shall take free of such assessment lien as to any assessment installment which accrues or becomes due prior to the foreclosure; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot in connection with any foreclosure of a Mortgage shall relieve any Lot from the lien of any assessment installment thereafter becoming due.

7.10 Certificate of Payment of Assessments. Upon payment of a reasonable fee and upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective

purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot; the amount of the current yearly assessment and the portion thereof which has heretofore been paid; credit for advanced payments or prepaid items, including, but not limited to prepaid insurance premiums; and such statement shall be conclusive upon the Association 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 assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the ten (10) days provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Lot.

7.11 Notice to and Payment by Mortgagee of Unpaid Assessments. The Association shall report to any Mortgagee or other encumbrancer of a Lot any unpaid assessments remaining unpaid for longer than ninety (90) days after the same shall have become due; provided, however, that such Mortgagee or encumbrancer first shall have furnished to the Association written notice of such encumbrance and a request for notice of unpaid assessments. A Mortgagee or other encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Notice, and upon such payment such shall be subrogated to all rights of the Association with respect to such lien, including priority.

7.12 Personal Obligation of Owner. The amount of any Annual or Special Assessment shall be the personal obligation of the Owner to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of the Owner's Lot or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney fees, including any efforts to collect the same.

7.13 Personal Liability of Purchaser. Subject to the provision of Sections 7.10 and 7.11 a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

7.14 Lien for Fines. The Association may levy fines against any Owner who violates any of the provisions of the Governing Documents. Said fines shall be secured by a lien on such Lot and shall be superior to all other liens and encumbrances on such Lot except as set forth in Section

7.10 above and other annual and special assessments recorded prior to the date notice of this lien is recorded.

7.15 Reinvestment Fee Assessments. In addition to all other Assessments which may be levied pursuant to the Governing Documents, upon the transfer of a Lot there shall be one (1) Reinvestment Fee Assessment charged to the buyer or seller, as the buyer and seller may determine. For purposes of this Section, a "transfer" is any change in the ownership of the Lot as reflected in the office of the County Recorder, regardless of whether such change of ownership is pursuant to the sale of a Lot or not. The amount of the Reinvestment Fee Assessment shall be in the amount or percentage determined pursuant to a resolution of the Board, which may be comprised of one or more of the following charges:

(a) An Assessment charged for:

- (i) common planning, facilities, and infrastructure;
- (ii) obligations arising from an environmental covenant;
- (iii) community programming;
- (iv) recreational facilities and amenities; or
- (v) Association expenses as provided for in Utah Code § 57-1-46(1)(a).

(b) As provided for in Utah Code § 57-1-46, no Reinvestment Fee Assessment shall exceed one-half percent (0.5%) of the fair market value of the Lot at the time of the transfer, which value includes the value of all Improvements on the Lot. When the seller, or transferor, is a financial institution, the Reinvestment Fee Assessment shall be limited to the costs directly related to the transfer, not to exceed Two Hundred and Fifty Dollars (\$250.00). The Association may assign the charges, or a portion thereof, collected under this subsection directly to the Association's Manager.

(c) A reinvestment fee covenant, may not be enforced upon:

- (i) an involuntary transfer;
- (ii) a transfer that results from a court order;
- (iii) a bona fide transfer to a family member of the seller within three (3) degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; or
- (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
- (v) a transfer from the Declarant or Builder Owner to another party.

(d) The Association has the authority to record any notice required by law to effectuate the assessment and collection of the Reinvestment Fee Assessment. The Board further has have the authority to enact Rules and Regulations which may include: (i) requirements for Owners to provide sales and transfer documents; (ii) requirements for the timing of the Owner providing responses to the Association's requests; (iii) provisions allowing the Association to select an appraiser to value the Lot; and (4) other procedural requirements and Rules as the Board deems appropriate to effectuate the provisions of this Section in a prompt and reasonable manner

ARTICLE VIII INSURANCE

8.1 Hazard Insurance. The Association shall procure and maintain, to the extent reasonably available as provided under Utah Code § 57-8a-401 et seq., from a company or companies holding a general policyholder's rating of B+ or better from AM Best's Insurance Reports, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, roads, excavation and other items normally excluded from coverage) of the improvements to the Common Areas including common personal property and supplies, owned by the Association with either a Replacement Cost Endorsement or a Guaranteed Replacement Cost Endorsement and an Agreed Amount Endorsement or its equivalent, an Inflation Guard Endorsement, if available, and such other endorsements as the Association shall deem necessary. Such policy or policies shall provide for deductibles which shall not be greater than the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy. Such insurance policy or policies shall name the Association as insured and shall afford protection against loss or damage by fire and other hazards that are normally covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, and such other risks as are normally covered by the standard "all risk" or Cause of Loss-Broad Form policy of insurance. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured.

8.2 Liability Insurance. The Association shall procure and maintain, to the extent reasonably available as provided under Utah Code § 57-8a-401 et seq., from a company or companies holding a general policyholder's rating of B+ or better from AM Best's Insurance Reports a policy or policies (herein called the "Policy") of public liability insurance to insure the Association, the Board, the Manager and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the operation, maintenance and use of the Common Areas, any activities thereon, and any conditions of the Common Areas under a Comprehensive General Liability form of policy. Such insurance shall be for such limits as the Association may decide, but not less than \$2,000,000 for personal injury and property damage arising out of a single occurrence which coverage shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use to the Common Areas. The Policy shall contain an endorsement which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds, as between themselves, are not prejudiced. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured.

8.3 Fidelity/Crime Insurance. The Association shall procure and maintain from a company or companies holding a general policyholder's rating of B+ or better from AM Best's Insurance Reports a policy or policies of blanket fidelity/crime insurance to protect against dishonest acts on the part of any trustee, officer, manager, agent, employee or other person who administers, handles, or is otherwise responsible for the funds of the Association. Such policy or policies shall name the Association as the obligee, shall provide coverage for the maximum sum of funds, including reserves, which will be in the possession or custody of the Association at any time the policy is in force, but in no event less than three (3) months assessments on all Lots, plus reserves. The policy or policies shall provide that they may not be cancelled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured. The policy shall contain a waiver of any defense for persons who serve without compensation. In the event the Association shall engage the services of a management agent who shall administer, handle or be responsible for the funds of the Association, then the Association shall require such management agent to provide a policy or policies of fidelity/crime insurance which shall provide the same insurance coverage as required of the Association by this Section.

8.4 Worker's Compensation. The Association shall carry worker's compensation and employer's liability insurance and other similar insurance with respect to all employees and volunteers of the Association in the amounts and in the forms now or hereafter required by law.

8.5 Directors' and Officers' Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, committee members, other members of committees of the Board, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). To the extent reasonably available, the policy should: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing act or similar statute, or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager, and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

8.6 Additional Insurance. The Association may also procure such additional insurance which shall insure the Common Areas, the Association or the Owners and others against such additional risks as the Association shall deem advisable.

8.7 General Requirements. Each policy of insurance obtained by the Association shall be written by insurers licensed in the State of Utah. If reasonably possible, each policy of insurance to be obtained by the Association shall provide:

- (a) a waiver of the insurer's right of subrogation against the Association, Owners, and their respective trustees, directors, officers, agents, employees, invitees and tenants;
- (b) that it cannot be cancelled, suspended or invalidated due to the conduct of any Owner or Owners, but only due to the conduct of the Association, and then only after the Association shall have failed to cure or correct the defect within a reasonable time after a written demand to so cure or correct; and
- (c) that any "no other insurance" clause shall not apply to any insurance maintained individually by any Owner.

8.8 Owners' Insurance. Each Owner shall obtain insurance at the Owner's expense, providing coverage on the Owner's Lot, Owner's personal property or Owner's personal liability and covering such risks as Owner may deem appropriate. Each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies of the Association, the other Owners, and the trustees, directors, officer, servants, employees, agents, invitees or tenants of any of them, if such insurance can be obtained in the customary practice without substantial additional premium charge for the waiver of rights of subrogation.

8.9 Townhome Insurance and Claims Subject to Utah Code § 57-8a-405. As to the Townhomes within the Townhome Plat, the Association shall maintain, to the extent reasonably available, blanket property insurance or guaranteed replacement cost insurance on the physical structure of all Townhomes (attached dwellings), and limited common areas appurtenant to each Townhome constructed on a Lot, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. Such property insurance for the Townhomes shall include coverage for any fixture, improvement, or betterment installed at any time to a Townhome or to a limited common area appurtenant to a Townhome, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Townhome or to the appurtenant limited common area thereto.

If a loss occurs that is covered by the Association's property insurance and another property insurance policy in the name of an Owner of a Townhome, the Association's policy provides primary insurance coverage. Notwithstanding the foregoing: (i) the Owner of a Townhome is responsible for the Association's policy deductible; and (ii) building property coverage, often referred to as coverage A, of the Townhome Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

(a) As used in this Section: "covered loss" means a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance; "Townhome damage" means damage to any combination of a Townhome or limited common area appurtenant to the Townhome, or both; and "Townhome damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to Townhome damage. An Owner of a Townhome that has suffered Townhome damage as part of a covered loss is responsible for an

amount calculated by applying the Townhome damage percentage for that Townhome to the amount of the deductible under the Association's property insurance. If an Owner of a Townhome does not pay the amount required under this Subsection within thirty (30) days after substantial completion of the repairs to the Townhome or limited common area appurtenant to the Townhome, the Association may levy an assessment against the Owner of the Townhome for that amount.

(b) The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the policy deductible exceeds Ten Thousand Dollars (\$10,000.00), an amount not less than Ten Thousand Dollars (\$10,000.00).

(c) Association's Right to Not Tender Claims which are under the Deductible. If, in the exercise of the business judgment rule, the Board determines that a covered loss is likely not to exceed the property insurance policy deductible of the Association and until it becomes apparent the covered loss exceeds the deductible of the property insurance of the Association and a claim is submitted to the Association's property insurance insurer: (i) an Owner's policy is considered the policy for primary coverage for a loss occurring to the Townhome; (ii) the Association is responsible for any covered loss to any Common Areas, including Limited Common Area; (iii) a Townhome Owner who does not have a policy to cover the damage to the Owner's Townhome is responsible for that damage, and the Association may recover, as provided for in Subsection (a) above, any payments the Association makes to remediate that Townhome; and (iv) the Association need not tender the claim to the Association's insurer.

(d) Notice Requirement for Deductible. Pursuant to Utah Code § 57-8a-405, the Association shall provide notice to each Owner of the Owner's obligation under this Subsection for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration. **Each Owner is hereby provided with notice that the Association's policy deductible is \$10,000.00 as of the date this Declaration is recorded.**

(e) An insurer under a property insurance policy issued to the Association shall adjust with the Association's loss covered under the Association's policy. Notwithstanding this Subsection, the insurance proceeds for a loss under the Association's property insurance policy are payable to an insurance trustee that the Association designates or, if no trustee is designated, to the Association, and may not be payable to a holder of a security interest. An insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property. After the disbursements described herein are made and the damaged property has been completely repaired or restored or the Project terminated, any surplus proceeds are payable to the Association, the Owners, and lien

holders based on their respective ownership interests in the Lot and Property and their equitable share of such insurance proceeds.

(f) Pursuant to Utah Code § 57-8a-405, an insurer or the insurer's authorized agent that issues a property insurance policy under this Section shall issue a certificate or memorandum of insurance to the Association and, upon written request, to the Owner and holder of a security interest. A cancellation or nonrenewal of a property insurance policy under this Section is subject to the procedures stated in Utah Code § 31A-21-303, as may be amended and supplemented.

(g) A Board that acquires from an insurer the property insurance required in this Section is not liable to a Townhome Owner if the insurance proceeds are not sufficient to cover one hundred percent (100%) of the full replacement cost of the insured property at the time of the loss.

(h) Nothing in this Section shall prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss.

(i) All policies of property insurance must provide that notwithstanding any provision affording the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the insurance may be a party, or any requirement of law.

(j) Notwithstanding anything to the contrary in this Declaration, to the extent the Association is required to obtain any insurance policy that is required for the Townhomes in the Townhome Phase by virtue of the Townhomes being attached dwellings, that is not otherwise provided to the Owners of Lots in the Phase 1 Plat, Phase 2 Plat, and Phase 3 Plat, the Owners of the Townhomes shall pay the difference in the cost of such insurance policy or policies based upon the estimate of such additional costs as provided by the Association's insurer. Such additional costs, if any, shall constitute a Townhome Service Area Expense and shall be levied as an additional assessment against the Owners and their respective Lots in the Townhome Phase.

ARTICLE IX DAMAGE OR DESTRUCTION

9.1 Damage or Destruction to Common Areas. In the event the Common Areas, or any portion thereof, shall be damaged or destroyed, the Association shall take all necessary and appropriate action to effect repair or reconstruction thereof. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of such Common Areas, or in accordance with such other plans and specifications as the Owners may approve, provided

that in the latter event the location of the Lots and of any buildings shall be substantially the same as prior to the damage and destruction.

9.2 Funds for Repair and Reconstruction. If the proceeds of any insurance shall be insufficient to pay the estimated or actual costs of repair or reconstruction, the Association may levy, in advance, one or more Special Assessments sufficient to pay for such estimated or actual costs of repair or reconstruction. Such Special Assessment shall be levied and collected in accordance with the provisions of Section 7.7. The costs of repair and reconstruction shall be deemed disbursed first from any insurance proceeds, and then from any Special Assessment. Any unexpended portion of the Special Assessment shall be returned to the Owners in proportion to their contributions thereto.

ARTICLE X MORTGAGEE PROTECTION

10.1 Amendment. After the Declarant Control Period, no amendment to this Declaration shall affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment or any successor or assign thereof, unless Mortgagees representing a majority of all Lots with a Mortgage in the Project have consented in writing to such amendment or such percentage of the Mortgagee's consents are presumed in accordance with the provisions of Utah Code § 57-8a-210.

10.2 Notice of Matters Affecting Security. The Association shall give written notice to any Mortgagee of a Lot requesting such notice in writing from the Association whenever:

- (a) there is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within ninety (90) days after default occurs; or
- (b) damage to the Common Areas from any one occurrence exceeding \$10,000.00; or
- (c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

10.3 Notice of Meetings. Upon written request of a Mortgagee, the Association shall give to such Mortgagee of a Lot notice of all meetings of the Association. Each Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

10.4 Right to Examine Association Records. Any Mortgagee shall, upon written request, have the same right as the Owner of the Lot to inspect the records of the Association and receive financial statements of the Association.

10.5 Right to Pay Common Area Taxes and Charges. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies

pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

10.6 Insurance and Condemnation Proceeds. No provision of this Declaration shall be deemed to grant any Owner any rights in or to a distribution of insurance proceeds or a condemnation award for the loss to or the taking of the Common Areas which are prior to the rights of the Mortgagee under its respective Mortgage to such distribution of insurance proceeds or condemnation award.

ARTICLE XI BUILDING AND DESIGN STANDARDS

11.1 Building Locations. Each Residence and any other buildings shall be located such that all setback requirements are in conformity with minimums set by Saint George City and as otherwise noted on the recorded subdivision plat.

11.2 Building Structures and Accessories. Every Residence, exclusive of garages, shall have a minimum finished area above the grade level of the Lot of One Thousand Four Hundred (1400) square feet for a single-level Residence and Two Thousand (2000) square feet for a two-story, of which Twelve Hundred (1200) square feet in such two-story Residence must be on the main floor.

11.3 Building Height. No building shall be erected to a height in excess of thirty-five (35) feet above the finished street grade. No Residence shall be erected to a height less than one (1) full story above the finished street grade. The ACC shall have the power to further limit the number of levels and stories and the height of structures in its sole and absolute discretion.

11.4 Garages. Each Residence must accommodate a minimum of two (2) cars, in a fully enclosed garage. Where possible, side entry garages are encouraged to present a varied and less uniform scope. Carports are not permitted.

11.5 Exterior Building Materials. Brick, stone, stucco, or other masonry materials approved by the ACC are required to cover at least eighty percent (80%) of the exterior of the Residence. Other high quality exterior materials, including but not limited to LP Smartside, may be used but must first be approved by the ACC. The colors and materials on the Residences shall be varied to improve the aesthetics of the Subdivision. Color combinations should blend well as to enhance the overall look of each Residence. Extreme color combinations and designs are not permitted.

11.6 Roofs. Roofing materials will consist of concrete tile or slate. Roof pitch shall not be less than 4/12 over the main portion of the structure.

11.7 Home Accessory Structures. Patio structures, trellises, sunshades, gazebos and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures and materials approved for the Residence, and shall be integral to the architecture of the Residence.

11.8 Mailboxes. Mailboxes will be located in accordance with the U.S. Postmaster requirements.

11.9 Solar Equipment. If solar panels are used, they are to be integrated into the roof design. Panels and frames must be copper or compatible with roof colors and all equipment must be hidden from view.

11.10 Skylights. Skylights are to be designed as an integral part of the roof. Skylight glazing may not be reflective. Skylight framing shall be copper or colored to match adjacent roofing material.

11.11 Fences and Walls. Individual Lot fences, which are located within the minimum setback lines of the Lot or street, may be constructed of brick, cinder block, pre-cast concrete or wrought iron, or combinations of the above materials. Wrought iron fences or country style fences (such as rail fences) are highly encouraged. No vinyl, chain link, wire, or wood, fencing or gates will be allowed. Fences are not to exceed 36 inches in the front yard, and not to exceed six (6) feet in the back and side yard and need to be in compliance with Saint George City ordinance for fences. Side yard fences on corner lots must be set back at least 10 feet from the sidewalk. Rear and side yard fencing is encouraged. Gates shall be of wrought iron or metal which is visually compatible in color and design with walls and fences on the Lot and surrounding Lots. Privacy backing for gates must also be metal.

11.12 Antennas and Satellite Dishes. All antennas are restricted to the attic or interior of a dwelling. Satellite dishes shall be allowed, provided they are screened from view from the streets whenever possible unless the ACC shall waive the requirement of such screening, FCC Antenna and Dish Policy. Owners are encouraged to use cable service for television and internet. Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite ("DBS") antennas (dishes) one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the FCC regulated dish is placed in a location screened from view of the Streets. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner. The dish must comply with all applicable city, county and state laws, regulations and codes. The Association must be provided with a copy of any applicable governmental permits. Installation must be pursuant to the manufacturer's instructions. In order to protect against personal injury and property damage, a dish may not be placed in a location

where it may come into contact with a power line. In order to protect against personal injury and property damage, all dishes must be properly grounded and secured. In order to protect against personal injury, dishes may not block or obstruct any driver's view of an intersection or Street. The Owner is responsible for all costs associated with the installation and maintenance of a dish. The Owner is responsible for all damage caused by or connected with the dish. The Owner must hold the Association harmless and indemnify the Association in the event that someone is injured by the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna. In the event of a violation of this Section, the Association may bring an action for declaratory relief with the FCC or the Fifth District Court, Washington County, after notice and an opportunity to be heard. If the FCC or Court determines that this Section is enforceable, the Owner shall pay a \$50.00 fine to the Association for each violation. If the violation is not corrected within a reasonable length of time, additional fines of \$10.00 per day will be imposed for each day that the violation continues. If an antenna poses a serious, immediate safety hazard, the Association may seek injunctive relief to compel the removal of the antenna. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if frilly set forth herein.

11.13 Pools, Spas, Fountains, Game-courts. Pools, spas, fountains and game-courts shall be located to avoid impact on adjacent Lots or Residences with light or sound. No game court shall be located in front yards. Pool heaters and pumps must be screened from view and sound insulated from neighboring Residences. No unsightly structures shall be constructed or permitted.

11.14 Mechanical Equipment. All air conditioning, heating equipment, swamp coolers and soft water tanks must be screened from view from the street and adjoining lots unless such screening is waived by the ACC. Air conditioning units and swamp coolers are not permitted on roofs or through windows.

11.15 Landscaping Guidelines and Requirements. For each Residence, landscaping of entire yard, including grass, trees, and shrubs, must be completed within twelve (12) months following completion or occupancy. All demolition, clearing, grubbing, stripping of soil, excavation, and compaction and grading must be performed within the confines of the Lot. Each Lot Owner will commence construction of a home within twelve (12) months of Lot purchase. Landscaping that includes wooded cluster of trees and shrubs is encouraged. Landscaping shall conform with the standard community wide landscaping plan approved by the city of Saint George. The remaining landscaping shall be groomed grass and other landscaping materials and plant life.

11.16 Sprinkler System. Each Lot must have a functional automated watering system.

11.17 Water Drainage. Each Lot Owner is responsible for retaining all soil erosion and water drainage, including but not limited to, rain, snow melt and sprinklers within their own Lot. Any desired or necessary retaining walls to accomplish such retention are the responsibility of each Lot Owner.

11.18 Machinery and Equipment. No large machinery or equipment of any kind shall be placed, stored, used, operated or maintained in, on or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Residence or appurtenant structures. Any machinery or equipment that is allowed on a Lot shall be screened from view behind the front yard setback and shall not be a nuisance to the community.

11.19 Trash Container and Collection. All garbage and trash shall be placed and kept in covered containers. As much as is possible, such containers shall be maintained as not to be visible from the front road or neighboring Lots, except to make them available for collection, and then only for the shortest time necessary to effect such collection.

11.20 Ground Water and Soil Erosion. If the Lot Owner chooses to design the Owner's home with a basement, the Owner is encouraged to obtain a Soils Engineer's study and follow the recommendations therein. Declarant shall not be responsible for waterproofing, removing ground water, or any liability incurred by Owner or others as a result of ground water. It is the responsibility of each Owner to prevent runoff water from entering adjacent Lots. Each Owner shall be responsible to perform the Owner's own site work in such a manner as to provide positive drainage away from the Residence and to minimize erosion and runoff. Any desired or necessary retaining walls are the responsibility of each Lot Owner and must meet the requirements of the ACC and applicable Saint George City Ordinances.

11.21 Recreational and Other Vehicles. No large trucks (over 10,000 pounds gross vehicle weight) and commercial vehicles belonging to Owners or other residents of the Residence shall be parked within or adjacent to the Lot, except temporary parking, not to exceed twenty-four (24) hours. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot driveway or front of a dwelling, private or public street, except that these restrictions shall not apply to emergency repair to vehicles. Boats, motor homes, or other recreational vehicles, other than regularly used passenger cars and light trucks which may be parked upon driveway areas, must be kept on side or rear yards behind the front yard setback obscured from the view from the front.

ARTICLE XII MISCELLANEOUS

12.1 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or

mailed, postage prepaid, to the person named as the Owner at the latest address -for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the registered agent, or any officer or Trustee of the Association.

12.2 Amendment of this Declaration. During the Declarant Control Period, the Declarant at any time and from time to time, alone, shall be entitled to amend this Declaration and the Plat; provided, however, that Declarant shall not have the right to amend the Plat so as to modify the location, dimensions or size of any Lot which has been previously conveyed to an Owner. After the Declarant Control Period, the Owners at any time, and from time to time, shall have the right to amend this Declaration and/or the Plat upon the written approval of the Owners of not less than two-thirds of Owners who submit a vote in person or by proxy. Any such amendment shall be by an instrument signed by the Board President and duly recorded with the County Recorder of Washington County, Utah.

12.3 Declarants Rights Assignable. Declarant's rights under this Declaration or in any way relating to the Property, the Expansion Land or the Project may be assigned.

12.4 Enforcement of Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with, or to obtain redress for violation of this declaration: (a) any Owner; (b) the Association; (c) any Mortgagee; (d) the Builder Owner; or (e) the Declarant. The prevailing party in an action for the interpretation of, the enforcement of, or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney fees.

12.5 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the singular, and the use of any gender shall include all genders.

12.6 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

12.7 Topical Headings. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning, or intent of this Declaration of any paragraph or provisions hereof.

12.8 Effective Date. This Declaration, any Plat and any amendment or supplement to either, shall take effect upon the recording thereof in the office of the County Recorder of Washington County, Utah and shall remain in effect until terminated by the recording of an

instrument executed and consented to in writing (or presumed consented to) by sixty-seven percent (67%) of the Mortgagees of Lots affected thereby in accordance with the provisions of Section 12.2.

12.9 Conflict. In case any provisions shall conflict with Utah law, Utah law shall be deemed to control.

12.10 Default in Maintenance. If any Owner, or occupant, fails to: (a) maintain a Dwelling, Lot, including any improvement upon such Lot, or Limited Common Area as required in the Governing Documents; or (b) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment and discretion of the Board to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Dwellings in the Project, then the Association may take any action allowed for a failure to comply with the Governing Documents, and may give written notice to such Owner or occupant stating with particularity the nature of the default and the corrective action that the Board determines to be required, and requesting that the same be carried out within a period of not less than two (2) days and not more than fourteen (14) days. If the Owner or occupant fails to carry out such action within the period specified by the notice, then the Association may cause corrective action to be taken (which may include completing the maintenance, repairs and replacements) and assessing the Owner, as an individual assessment, for all costs associated therewith. The Board, in its discretion and upon a showing of good cause by the Owner, may grant additional time beyond fourteen (14) days for the Owner to complete the requested action; however, this decision to grant additional time does not preclude the Association from levying any applicable fines for an on-going violation as allowed under the Governing Documents and the Act.

12.11 Access. The Association shall have the irrevocable right to have access to all Common Areas, including the Townhome Limited Common Area, from time to time during such reasonable hours as may be necessary for the cleaning, maintenance, repair or replacement of any Common Areas or for making any emergency repairs at any time and when necessary to prevent damage to the Common Areas or other property within the Project. The Association shall also have the irrevocable right to have access to any Townhome, when necessary, in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction of the Townhome exterior for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association. When practicable, the Association shall provide the respective Owner(s) with prior reasonable written notice of such desired entry.

ARTICLE XIII EXPANSION

13.1 Expansion Rights. Declarant reserves the right, at its sole election, to expand the Property covered by this instrument to include additional property more particularly described below by unilateral action without the consent of the Owners. Declarant's unilateral right to expand as set forth in this paragraph shall expire ten (10) years after the date the Original Declaration was recorded in the office of the Washington County Recorder, State of Utah.

13.2. Expansion Land. Expansion Land shall mean and refer to the real property situated in Saint George City, Washington County, Utah, further described as follows:

ALL PROPERTY, TOGETHER WITH ANY IMPROVEMENTS THEREON, LOCATED IN THE GENERAL VICINITY OF THE REAL PROPERTY PREVIOUSLY DESCRIBED HEREIN, WHICH IS CONTIGUOUS OR ADJACENT TO ANY PHASE OF THE PROJECT, INCLUDING THE ORIGINAL LAND OR ANY PREVIOUSLY ANNEXED EXPANSION LAND.

If Declarant chooses to expand the Property covered by this instrument to include any additional portions of the Expansion Land, then the boundaries and dimensions of such Expansion Land will be described at a later time through one or more supplements hereto. This reference to the Expansion Land is set forth in the Declaration solely for purposes of identification and this Declaration is not deemed to constitute a lien, encumbrance, or restriction upon all or any portion of the Expansion Land unless and until the same is added to and becomes a part of the Property in accordance with the provisions of this Declaration.

13.3. Procedure for Expansion. Expansion shall occur by the Declarant recording:

(a) an additional subdivision plat or plats creating additional Lots on the Expansion Land, stating on each plat the intention to have the property described on said Plat bound by the terms, covenants and conditions of this Declaration upon the recording of a Declaration of Annexation; and/or

(b) a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration.

13.4. Use of Expansion Property. Declarant may expand the Property in its sole and absolute discretion. The Declarant shall have the sole discretion as to the addition, and development of the Common Area in any expansion area and may include any improvements, facilities or amenities thereon that Declarant deems necessary and such Common Areas shall be owned by the Association.

13.5. Common Area. The Declarant shall cause the Common Area in any such expansion area to be deeded or otherwise conveyed to the Association, free and clear of all encumbrances and liens, prior to expiration or termination of the Declarant Control Period and the Association shall accept the deed. Owners in the original and expansion areas shall have the same rights to

the use and enjoyment of such Common Areas of the Association, including the improvements and facilities thereon. Declarant's Control Period ownership status shall extend to all Lots in the expansion area. Otherwise, Owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each Lot and Lot Owner in any expansion area shall be equal to the liability of each Lot and Lot Owner in the original Properties except that within the Townhome Service Area, the Association shall charge the Townhome Owners a Townhome Service Area Assessment as described in Article XIV.

ARTICLE XIV TOWNHOME SERVICE AREA

14.1 Designation of Townhome Service Area. The "Townhome Service Area" shall mean and include the following: (i) all the property described and identified as "Limited Common Area" on the Townhome Plat; and (ii) all Lots within the Townhome Plat, including each Residence constructed thereon. The Townhome Service Area does not include any other property or Common Area within the Townhome Plat that is not identified as Limited Common Area or a Lot. Such Townhome Service Area receives services and benefits from the Association that are not provided to the other Lots in the Project.

14.3 Provision of Services to the Townhome Service Area. The Association shall provide certain services to the Townhome Service Area (collectively, the "**Townhome Services**"), including, without limitation, maintenance, repair, and replacement of the Townhome Limited Common Area, maintenance, repair, and replacement of the exterior surfaces of the Townhomes, and insurance that may be different than the insurance provided to or for the benefit of other Lots in the Project that are not located within the Townhome Plat. As set forth in Article VII and its related subsections of this Declaration, maintenance, repair, and replacement of the Townhome Limited Common Areas shall include landscaping and sprinkler services, water, power for streetlights and path lighting. The Association is further authorized to enter into any bulk service contracts (such as for internet, cable television, and similar services) to provide additional services to the Townhomes.

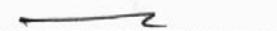
14.4 Townhome Service Area Expenses. The Townhome Service Area Expenses shall include, without limitation, all expenses that the Association incurs or expects to incur in connection with providing the Townhome Services and, to the extent reasonably calculated by the Association, the increase in the costs and expenses to the Association for (i) the Manager to manage, oversee, and account for the additional responsibilities and obligations related to the Townhomes and Townhome Service Area beyond what is necessary to manage the remainder of the Project and (ii) the Association's property, general liability, and other insurance policies for the Townhome Service Area beyond what would be required for the other areas of the Project. Townhome Service Area Expenses may further include a reasonable administrative charge in such an amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Townhome.

14.5 Townhome Service Area Assessments. Each Owner of a Townhome, for each Townhome which the Owner owns, shall be liable for a proportionate share of the Townhome Service Area Expenses, including any reserves to be collected by the Association to pay for future or anticipated Townhome Service Area Expenses, which shall be levied as "**Townhome Service Area Assessments**." Except as otherwise provided herein, Townhome Service Area Assessments shall be allocated equally among the Townhomes. All amounts the Association collects as Townhome Service Area Assessments shall be held in trust for and expended solely for the benefit of the Townhome Service Area and shall be accounted for separately from all other funds levied, held, and collected by the Association. The Association shall have all collection, lien and foreclosure rights in connection with Townhome Service Area Assessments as granted the Association in this Declaration and the Act and specifically in connection with common expenses as set forth in Article VII hereof.

IN WITNESS WHEREOF, the undersigned, being the Declarant has hereunto set its hands the day and year first above appearing.

DATED this 19 day of June, 2024.

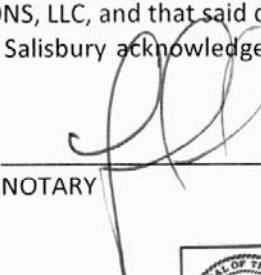
DECLARANT:
DESERT VISTA AT DESERT CANYONS, LLC

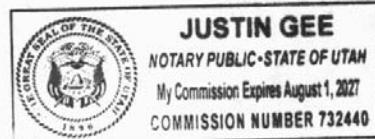
By: R.M.S. 
Rick Salisbury, Manager

STATE OF UTAH)
:ss.

COUNTY OF Washington)

On this day of 19 June 2024, personally appeared before me Rick M. Salisbury, the Manager of DESERT VISTA AT DESERT CANYONS, LLC, and that said document was signed by him in behalf of said company and said Rick M. Salisbury acknowledged to me that said company executed the same.


NOTARY



Consent and approval of Builder Owner as to the property identified and described in the Townhome Plat

The undersigned, as the "Builder Owner" hereby approves and consents to the property identified by the Townhome Plat to be subject to all terms and conditions of the Declaration.

Builder Owner:

SPRINGSIDE MEADOWS OF PAYSON, LLC, a DESERT CANYONS LAND, LLC, a Utah limited Utah limited liability company

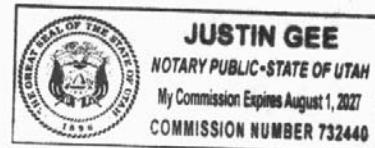
Rick Salisbury
By: Rick Salisbury
Its: Manager

Rick Salisbury
By: Rick Salisbury
Its: Manager

STATE OF UTAH)
:ss.
COUNTY OF Washington)

On this day of June 19, 2024, personally appeared before me Rick Salisbury,
the Manager of SPRINGSIDE MEADOWS OF PAYSON, LLC, and
Rick Salisbury, the Manager of DESERT CANYONS LAND, LLC, that said
document was signed by him/her in behalf of said company and said persons acknowledged to
me that said company(ies) executed the same.

NOTARY



*Information for Reference Purposes Only:*

SG-DVAD-1-1 THRU SG-DVAD-1-4, SG-DVAD-1-70 THRU SG-DVAD-1-101, SG-DVAD-2-5 THRU
SG-DVAD-1-8, SG-DVAD-2-28, SG-DVAD-2-102 THRU SG-DVAD-2-114, SG-DVAD-3-9 THRU
SG-DVAD-3-27, SG-DVAD-3-29 THRU SG-DVAD-3-45, SG-DVTDC-101 THRU SG-DVTDC-120

EXHIBIT "A"

The real property referred to herein is situated in **WASHINGTON** County, Utah, and is described as follows:

LOTS 1-4 AND 70-101 AND COMMON AREAS, DESERT VISTA AT DESERT CANYONS - PHASE 1 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER.

ALSO:

LOTS 5-8, 28, 46-69 AND 102-114 AND COMMON AREAS, DESERT VISTA AT DESERT CANYONS - PHASE 2 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER.

ALSO:

LOTS 9-27, 29-45 AND COMMON AREAS, DESERT VISTA AT DESERT CANYONS - PHASE 3 SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER.

ALSO:

LOTS 101 THROUGH 120 AND COMMON AREAS, DESERT VISTA TOWNHOMES AT DESERT CANYONS, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, STATE OF UTAH.