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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 Of  
 DESERT HILLS TOWNHOMES**

THIS DECLARATION, by Desert Hills Townhomes, LLC, a Utah limited liability company, its successors and assigns (hereinafter referred to as "Declarant").

**BACKGROUND AND INTENT**

Declarant is the fee simple title holder of real property located in Washington County, Utah as further described in Article 2 below (the "Property") and desires to provide for the preservation of the values and to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth for the benefit of the Unit Owners thereof. The Association, a nonprofit Utah corporation, has been formed and shall have the powers of administering and enforcing these covenants, restrictions and easements, and collectively and disbursing the assessments, all as more particularly set forth herein.

**DECLARATION**

Declarant intends to develop the Property as a residential community to be known as Desert Hills Townhomes containing 54 Townhome Units (hereinafter the Property shall be sometimes referred to as "Desert Hills Townhomes"). The parties hereto Declarant does hereby publish and declare that the Property described in Article 2 below is subject to the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations, obligations, assessments, charges, liens, and the Plat (defined in Article 1 below), which all are for the purpose of protecting the value and desirability of the Property as a residential project; and all of which shall be construed as covenants of equitable servitude and shall run with the land and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1  
 DEFINITIONS AND MEANINGS**

The following words and phrases when used in this Declaration, unless the context should clearly reflect another meaning, shall have the following meanings:

1.1 "Act" means Utah Community Association Act, Utah Code Section 57-8a-101 et seq. With respect to any amendments to the Act which per their terms become effective and

applicable after the date of recording of this Declaration then the provisions of the Act as it exists upon recording of this Declaration shall control unless the Board, by resolution, determines otherwise.

1.2 "Annual Assessment" shall mean the charge against each Unit and Unit Owner and for an equal share of the funds required for payment of Common Expenses, pursuant to the annual budget established by the Association.

1.3 "Articles of Incorporation" shall mean the document establishing and governing the Association.

1.4 "Association" shall mean and refer to Desert Hills Townhomes Owners' Association, a Utah nonprofit corporation, its successors and assigns.

1.5 "Association Property" means that property, real and personal, owned by the Association for the use and benefit of its Members including all Common Property.

1.6 "Association Rules and Regulations" means the rules and regulations applicable to the Association and the Unit Owners that may be adopted by the Board as permitted or contemplated by this Declaration or the Act.

1.7 "Board" shall mean the Board of Directors or other representative body which shall be responsible for administration of the Association.

1.8 "Bylaws" means one or more codes of rules, other than the Articles of Incorporation, adopted pursuant to Utah Revised Nonprofit Corporation Act for the regulation or management of the affairs of the Association.

1.9 "Common Area" shall mean all real property, excepting the Units, within the boundary of Desert Hills Townhomes per the Plat.

1.10 "Common Expense" shall mean all expenses, services, reserves and assessments of the Unit Owners which shall be properly incurred by the Association, including, not limited to, the costs and expenses of operation incurred or paid by the Association in administering, operating, reconstructing, maintaining, repairing and replacing the Association Property for the benefit of the Unit Owners or of the Common Property, including without limitation, grounds maintenance, landscaping, tree cutting and trimming, maintenance of irrigation system, maintenance of the swimming pool and playground area, painting and maintenance of building exteriors, roof repairs and replacement, maintenance and service of amenities, maintenance of underground utilities and services, street maintenance and all other repair and replacement of the Common Property. Common Expenses also includes, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common and Limited Common Areas; the payment of administrative expenses of the Association; insurance deductible amounts; the payment of any professional or management services deemed necessary and desirable by the Board; and other amounts required by this Declaration or that the Board shall

determine to be necessary to meet the primary purposes of the Association. The Common Expenses may also include, at the discretion of the Board, charges including (without limitation) maintenance, management, utility, cable television, telecommunication services, trash collection, sewer and water charges to the extent available to all Members.

1.11 "Common Property" shall mean all real and personal property owned by the Association for the common use and enjoyment of the Members, including the Common Area, private streets and parking areas within the boundary of Desert Hills Townhomes, rock or other walls, all underground utilities (sanitary sewer, water service, irrigation water, drainage facilities, and security, telephone, electric and cable television systems), materials and equipment owned by the Association and not the utility provider, curbing, all driveways, street lights, fire hydrants, storm water management system, landscaping plants, irrigation system equipment and materials, the swimming pool and playground area, parking areas, paths and walkways and all natural open or drainage areas; and, all personal property owned and used by the Association.

1.12 "Declaration" means this instrument and any and all supplements or amendments hereto which shall be recorded in the Washington County Records' Office, Washington County, Utah.

1.13 "Governing Documents" shall mean this Declaration, the Articles of Incorporation, Bylaws and the Association Rules and Regulations.

1.14 "Limited Common Area" means the portion of the Common Area which has been designated for the primary or exclusive use of a particular Unit Owner or Unit Owners. Generally, Limited Common Area, as a portion of Common Area, is owned by the Association but reserved for the use and enjoyment of the Unit Owner or Unit Owners owning the Unit adjacent or appurtenant to the Limited Common Area. Limited Common Area may be designated on the Plat or otherwise established as provided for in this Declaration.

1.15 "Mortgagee" means any lending institution having a first mortgage lien upon a Unit and appurtenant Common Property.

1.16 "Member(s)" shall mean and refer to a Unit Owner(s) who may vote and participate in Association matters (or select one of their number) to vote and participate in Association matters. "Association Members" and "Members" shall mean and refer to the same persons or entities.

1.17 "Plat" means the map or plat of Desert Hills Townhomes, as recorded in the Washington County Records' office, Washington County, Utah, and as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration.

1.18 "Property" shall mean the real property described in Article 2 below.

1.19 "Special Assessment" means any assessment levied against the Unit Owners to defraying in whole or in part, the cost of any unanticipated and non-budgeted Common Expenses.

1.20 "Specific Assessment" means an assessment levied against a particular Unit Owner or Unit Owners as contemplated in Section 5.6 below.

1.21 "Unit" shall mean a particularly portion of the Property described and depicted on the Plat as Units 1 through 54, and any additional Units (if any) that may be added by annexation or expansion of the Property as permitted under Article 13 below. "Units" shall mean all the Units collectively.

1.22 "Unit Owner" shall mean and refer to the record holder, whether one or more persons of an entity or entities, of the fee or undivided fee, simple interest title to any Unit and includes the Declarant. "Unit Owners" shall mean all the record Unit Owners collectively.

1.23 "Voting Interest" means the voting rights of the Members pursuant to the Articles of Incorporation and Bylaws of the Association and this Declaration. With respect to matters on which Members are entitled to vote, each Member shall be entitled to one (1) vote for each Unit in which such person or entity holds the interest required for membership. When more than one person or entity holds such interest or interests in any Unit, the one (1) vote for such Unit shall be held and may be cast in the manner specified in the Bylaws.

## **ARTICLE 2**

### **REAL ESTATE SUBJECT TO THIS DECLARATION**

The real property, easements and other interests which are and shall be held, transferred, sold, conveyed, leased and occupied, subject to this Declaration, is located in Washington County, Utah and is more particularly described as follows:

SEE **EXHIBIT A** THAT IS ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

## **ARTICLE 3**

### **THE ASSOCIATION**

#### **3.1 The Association.**

The name of the Association is Desert Hills Townhomes Owners' Association. The name of the residential project to be constructed on the Property is "Desert Hills Townhomes". The project is not a cooperative.

A true and complete copy of the Articles of Incorporation and Bylaws of Desert Hills Townhomes Owners' Association are attached hereto as Exhibits "B" and "C" and incorporated herein.

**3.2 Purpose and Powers of Association.**

The purposes and powers of the Association are to promote the health, safety and welfare of the Members and to implement, administer, enforce and interpret the provisions of the Governing Documents and the Act; and to establish, make, levy and collect annual operating and special assessments against each Member and against each Member's Unit.

**3.3 Purpose and Powers of Board.**

Except as otherwise provided in this Declaration, the Articles of Incorporation or the Bylaws, the Association, acting under the supervision of the Board, shall have all the powers and privileges granted to nonprofit corporations under the laws of the State of Utah. Without limiting the generality of the foregoing, the Board shall have the right, on behalf of the Association, to:

3.3.1 In compliance with Section 57-8a-217 of the Act, establish, make and enforce Association Rules and Regulations governing the use and enjoyment of all Common Property, parking restrictions and limitations, limitations upon vehicular travel within Desert Hills Townhomes, and restrictions on other activities or improvements on the Common Area which, in the opinion of the Board, create a hazard, nuisance, unsightly appearance, excessive noise, or offensive smell, and other matters for which the Governing Documents or Community Association Act expressly or impliedly give the Board the right to regulate;

3.3.2 Enforce or oversee the enforcement of the provisions of this Declaration or the other Governing Documents;

3.3.3 Establish fines and a fine schedule for failure to abide by the Association Rules and Regulations or this Declaration;

3.3.4 Retain service providers, including, without limitation, landscaping and Common Area maintenance services, telecommunication services, and property management companies to perform such duties and provide such services as the Board may authorize and determine appropriate;

3.3.5 Exercise any other right or privilege given to the Board by the Governing Documents or the Act, or reasonably implied from or reasonably necessary to effectuate any such right or privilege; and

3.3.6 Charge reasonable fees to a Unit Owners as contemplated herein.

A copy of the Association Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered or made available for review to each Unit Owner and may, but need not, be recorded. Upon such mailing or other delivery or availability, said Association Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In addition to or in lieu of providing notice by mail, the Board may provide notice by electronic means such as electronic mail (e-

mail) to the Unit Owners or website access made available to the Unit Owners, and may require that Unit Owners, in addition to keeping the Board informed as to their current mailing address, maintain a current e-mail address with the Board for such purpose.

**3.4 Declarant's Exemption; Right to Promulgate Rules.**

The Declarant hereby reserves for itself, prior to the Turnover Date (as defined in the Bylaws), an exemption from the Association rules and the rulemaking procedure set forth in the Community Association Act. Consistent with that exemption, the Declarant reserves for itself, prior to the Turnover Date, the right to adopt, amend, and repeal rules and regulations governing the Property.

**3.5 Membership.**

Any person or entity who is now or becomes a Unit Owner shall automatically be a Member of the Association holding a Voting Interest, provided, however, that any such person or entity who holds such interest as a security for the performance of an obligation shall not be a Member and shall not have a Voting Interest, unless such person or entity acquires such interest pursuant to foreclosure proceedings or other lawful means in lieu of foreclosure. At such time as a person or entity is no longer a Unit Owner, the membership in the Association and the Voting Interest of such person or entity shall automatically terminate.

**3.6 Association Property Appurtenant To Unit.**

A Member's interest in Association Property cannot be conveyed, assigned, hypothecated or otherwise transferred, except as an appurtenance to such Member's Unit and no Member shall bring or have the right to bring any action for partition or division. Notwithstanding the foregoing, an Owner may delegate any right of enjoyment to the Common Area to family members or tenants who reside within that Owner's Unit, subject to any rules and regulations established by the Board, including but not limited to the Board's right to require, as it determines necessary and as it establishes by rule, an Owner to forfeit the Owner's right of use for so long as the Owner has delegated such right to the Owner's tenant.

**ARTICLE 4  
PROTECTIVE COVENANTS AND USE RESTRICTIONS**

**4.1 Residential Use; Leasing; No Short-Term Rentals.**

**4.1.1 Residential Use.** Each Unit shall be used for residential purposes only. No Unit shall be reduced in size by further subdivision or by conveying or leasing less than the entire Unit.

**4.1.2 Rental Restrictions.** Owners may lease or rent their Units so long as (a) the term of the lease is at least 30 days, (b) the tenant under such lease enters into a written lease or rental agreement that provides that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents and that any failure by the tenant to comply with the

terms of such Governing Documents shall be a default under the lease, (c) the Owner who enters into such a lease or rental agreement notifies the Board of the same, in writing, within fifteen (15) days after execution of the lease or rental agreement and along with such notification provides to the Board a copy of the lease or rental agreement.

4.1.3 No Short-Term Rentals. Owners may not lease or rent their Units for a term less than 30 days.

4.2 Commercial Use Prohibited.

No commercial or business activities may be conducted on the Property without the express written consent of the Association. Notwithstanding the foregoing, the construction, development and sale or rental of improved Units or the construction and maintenance of Common Area services such as utilities, communications, security and the construction and maintenance of Common Area improvements shall be permitted.

4.3 Declarant's Right of Use.

Notwithstanding anything to the contrary contained in this Declaration and in recognition of the fact that Declarant will have a continuing and substantial interest in the development and administration of the Property, Declarant hereby reserves for itself and its successors and assigns the right to the use of all Common Property in conjunction with and a part of its program of sale, leasing, constructing and developing of and within Desert Hills Townhomes without charge or cost to Declarant for such rights and privileges. For purposes of this Article, the term Declarant shall include any Mortgagee who has loaned money to Declarant or one of them to acquire or construct improvements upon the Property if such Mortgagee acquires title to the Property or any Unit as the result of the foreclosure of any mortgage or acquires title thereto by deed in lieu of foreclosure.

4.4 Common Property.

The Common Property shall be used only for the purposes for which they are intended in the furnishing of services and facilities to the Unit Owners and the Association.

4.5 Disputes as to Use.

In the event there is any dispute as to whether the use of the Property or any portion thereof complies with this Declaration, such dispute shall be referred to the Board and a determination rendered by the Board shall be final and binding; provided, however, any use by Declarant of the Property or any affiliates thereof, in accordance with the terms of this Declaration, shall be deemed in compliance with this Declaration.

4.6 No Waiver of Use.

No Unit Owner may exempt himself or his Unit from liability for his contribution toward Common Expenses or Annual or Special Assessments by waiver of the use of or enjoyment of any of the Common Property or by abandonment or by lease of the Unit.

4.7 Nuisances.

Unit Owner shall not cause or permit any unreasonably loud or obnoxious noises, sounds or odors and shall not cause or permit nuisances of any kind that shall be the source of annoyance to other Unit Owners or which interferes with the peaceful possession and proper use of the Property and to the general health, safety and welfare of the neighborhood.

4.8 Illegal Activities.

No immoral, improper, illegal or offensive activities or use shall be made of any Unit or Association Property, and all valid laws, zoning ordinances and regulations of the governing authorities having jurisdiction therein, shall be complied with and observed.

4.9 Clothes Drying.

Clotheslines and clothes drying activity shall not be permitted outside of a Unit.

4.10 Garbage, Trash and Refuse.

In order to preserve a sanitary, odorless and inoffensive condition of the Property, no garbage, trash, refuse, rubbish or other solid or liquid waste material shall be deposited, dumped or kept outside a Unit or upon the Property, except in designated closed containers, secured trash bags or re-cycling bins for collection and disposition as may be established by the Association or the City of St. George, Utah, from time to time.

4.11 Animals and Pets.

Household pets may be permitted subject to the Association Rules and Regulations governing the number, type and size of permitted pets and prohibiting or regulating the use by such pets of the Common Areas as may be established by the Board. No animal, livestock or poultry of any kind shall be raised, bred or kept for commercial purposes in any Unit or on any portion of the Common Area.

4.12 Additional Use Restrictions.

No improvement, addition, modification, structure or change of any kind, including, without limitation, any building, shed, carport, trailer, awning, wall, sign, fence, walkway or screen enclosure, either temporary or permanent, shall be erected, installed, placed or maintained within any portion of a Unit or on Common Areas, without the prior written approval of the Board.

In addition, no sign, lawn ornament, or display may be maintained, erected, placed, or posted outside of any Unit without the prior written consent of the Board.

No alteration to the pre-existing exterior aesthetic or color of any building containing any Unit may be made without the prior written approval of the Board.

No newspaper, foil, sheets or other non-standard or unsightly window coverings may be installed in the Units if such items are visible from the Common Area or another Unit. All blinds or other standard window coverings within a Unit that are visible from the Common Area or another Unit shall be earth tones unless otherwise approved by the Board.

4.13 Agreement and Right to Access.

All Unit Owners shall permit the Board, its agents, subcontractors or employees, to enter upon the exterior of any Unit or Common Area for the purpose of fulfilling its obligations, duties and responsibilities imposed by this Declaration, Articles of Incorporation or Bylaws of the Association, including, without limitation, maintaining the Common Areas; to determine, in case of emergency, the circumstances threatening persons or property therein; and to determine each Unit Owner's compliance with provisions of this Declaration and the Bylaws and Association Rules and Regulations of the Association. The Association shall have the further right to have its employees, agents and subcontractors appointed by it, to enter upon any Unit and the Common Area at all reasonable times to do as is deemed reasonably necessary by the Board to enforce compliance with the provisions of the Governing Documents.

4.14 Alteration to Landscaping, Drainage and Shrubbery.

The removal of sod and shrubbery, alteration of landscaping and modification of storm water management controls shall not be permitted, except for the acts and activities of Declarant in the development of Desert Hills Townhomes. No sod, topsoil, trees or shrubbery shall be removed from the Property and no change in the condition of the soil or the level of the land of any portion of the Property shall be made which results in any permanent change in the flow or drainage of surface water of or within the Property without the prior written consent of the Board.

4.15 Management of the Surface Water or Storm Water Management System.

The Association shall be responsible for the maintenance, operation and repair of the surface water or storm water management system meaning the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or storm water management capabilities.

4.16 Repairs and Reconstruction of the Storm Water Management System.

Any repair or reconstruction of the surface water drainage or storm water management system shall be as originally permitted or, if modified, shall be approved by the applicable government authorities and the Board.

**4.17 Parking.**

No motor vehicle which is inoperable shall be allowed within the Property. There is no parking on the private streets in the Property unless and to the extent permitted by an Association Rule or Regulation and applicable municipal law.

The parking spaces designated on the Plat with numbers corresponding to Unit numbers are for the exclusive use of the Owner of the Unit with the corresponding number and constitute Limited Common Area.

Recreational vehicles, boats, travel trailers and similar personal property shall not be parked within the Property unless there is a designated RV parking area, or as permitted by rule of the Association. The Association may charge a fee for use of, or otherwise allocate and establish rules regarding the use of, any RV parking area.

Any motor vehicle, or other vehicle or trailer that is parked in violation of this Section or the Association Rules and Regulations is subject to removal by the Association, at the vehicle or trailer owner's expense. Any vehicle that at any time inhibits the flow of traffic on the streets in the Property is subject to removal by the Association, at the vehicle owner's expense. Upon demand, the owner of the vehicle shall pay any expense incurred by the Association in connection with the removal of that owner's vehicle or trailer. If the vehicle or trailer is owned by an Owner, any amounts payable to the Association shall be secured by the Unit and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments.

**4.18 Smoking.**

The Board is authorized to establish Association Rules and Regulations governing or prohibiting tobacco smoking within or around the Common Areas (including, without limitation, the Limited Common Area) when it is determined that the smoke or the smell from smoking might filter or drift into other Units or interfere with the use and enjoyment of the Common Areas or the Units by other Unit Owners. In addition, the Board is authorized to enforce and otherwise bring an action for nuisance under the provisions of Section 78B-6-1101 of the Utah Code for and on behalf of any Unit Owner against any other Unit Owner or occupant whose smoking creates or constitutes a nuisance under said provision of the Utah Code.

**ARTICLE 5  
ASSESSMENTS**

**5.1 Assessments in General.**

The Association is hereby granted the right, which shall be operative and binding upon each Unit Owner, to establish, make, levy and collect Annual Assessments and Special Assessments against each Unit Owner and against each Unit except as provided by Paragraph 5.9 below.

5.2 Uniform Assessments applicable to Annual and Special Assessments.

All Annual Assessments and any Special Assessments established, made, levied and collected against the Unit Owners and their respective Units shall be at a uniform rate of assessment for all Units. Annual Assessments may be prepaid annually, otherwise such Annual Assessment shall be prorated on a monthly basis against each Unit commencing monthly in advance on the first day of each and every month following its purchase by an individual or entity other than Declarant.

5.3 Budget.

The Board shall establish an annual budget and such budget shall project all operating expenses for the forthcoming year and such capital maintenance and replacement funds which are required to implement the purposes and powers of the Association. The Board shall present the adopted budget to Members at a meeting of the Members. After the Turnover Date (as defined in the Bylaws), the Members may disapprove the budget if within 45 days after the date of the meeting of Members at which the budget was presented:

5.3.1 there is a vote of disapproval by at least 51% of the votes held by Members in the Association; and

5.3.2 the vote is taken at a special meeting called for that purpose by the Members under this Declaration, the Articles of Incorporation or the Bylaws.

If a budget is disapproved under this Section 5.3, the budget that the Board last adopted that was not disapproved by Members continues as the budget until and unless the Board presents another budget to members and that budget is not disapproved.

5.4 Capital Replacements.

The Board, in establishing an annual budget, shall include a sum to be collected and maintained as a special reserve fund for capital replacements. Money placed in the reserve fund may not be used (i) for the Association's daily maintenance expenses, unless a majority of Members vote to approve the use of reserve fund money for that purpose; or (ii) for any purpose other than the purpose for which the reserve fund was established. The Association shall maintain any reserve fund separate from other Association funds.

5.5 Special Assessments.

In addition to Annual Assessments, the Association may levy in any assessment year, a Special Assessment applicable to that year only, for the purpose of defraying in whole or in part, the cost of any unanticipated and non-budgeted Common Expense.

5.6 Specific Assessments.

The Association may levy Specific Assessments against a particular Unit to cover (i) costs incurred in bringing any Unit or the exterior of any building into compliance with the Governing Documents, or (ii) costs or damages incurred as a consequence of the conduct of the Unit Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the Governing Documents or other applicable law, before levying any Specific Assessment under this Section. In addition, the Association may charge as a Specific Assessment fees to Unit Owners for responding to requests for information, updating Unit Owner lists and leasing information, and other services to such Unit Owner or such Unit Owner's lender or prospective buyer or other interested or related party to such Unit Owner.

5.7 Exclusive Use; Reserve Funds.

The assessments levied by the Association shall be used exclusively for the purpose of paying the cost of implementing the purposes and powers of the Association, subject to the requirement set forth above regarding the use of reserve funds.

5.8 Reinvestment Fee.

5.8.1 Upon sale and transfer of record title to any Unit, the transferee shall pay a reinvestment fee (the "Reinvestment Fee") to the Association in an amount set by resolution of the Board, which may be a flat rate from year to year or, if so determined by the Board, may be a percentage of the value or sales price of the Unit; provided, that, the Reinvestment Fee may not exceed .5% of the value of the Unit sold. The Reinvestment Fee shall be in addition to, not in lieu of, the annual assessment, and shall not be considered an advance payment of such assessment. The Reinvestment Fee shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association.

5.8.2 The Association will use the Reinvestment Fee for (a) common planning, facilities, and infrastructure; (b) obligations arising from an environmental covenant; (c) community programming; (d) resort facilities; (e) open space; (f) recreation amenities; (g) charitable purposes; (h) Association expenses, or (i) any other expenses authorized by Utah Code § 57-1-46.

5.8.3 The following transfers are exempt from the Reinvestment Fee: (a) an involuntary transfer; (b) a transfer that results from a court order; (c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (e) the transfer by a financial institution.

5.9 Effect on Declarant.

Notwithstanding any provision contained in this Declaration to the contrary, for so long as Declarant, or their successors in interest, are the owner or owners of any Unit for the purposes of development or sale in the ordinary course of business, Declarant shall have no liability of any

kind to the Association for the payment of Annual Assessments or Special Assessments or Common Expense deficits or Reinvestment Fees or capital contributions of any kind or amounts.

**ARTICLE 6**  
**LIEN RIGHTS AND REMEDIES AND OBLIGATIONS OF OWNERS**

**6.1    Personal Obligation.**

Each Unit Owner, on the first day of the first month after acquiring their Unit, and by acceptance of such deed, covenants and agrees to pay the Annual Assessment, any Special Assessments and any Specific Assessments to the Association and such assessments shall be fixed, established and collected from time to time, as hereinafter provided. Each such assessment, together with interest thereon and the cost of collection thereof, shall also be the personal obligation of the person or entity that was the Unit Owner on the payment due date set forth in this Declaration or as otherwise established by the Board.

**6.2    Creation of Claim of Lien.**

6.2.1 If the assessments, as provided for herein, are not paid on the date when due, then such assessments shall become delinquent and, together with interest thereon and the cost of collection thereof, shall thereupon become a continuing lien on the Unit.

6.2.2 The Declarant hereby conveys and warrants pursuant to Utah Code Sections 57-1-20 and 57-8a-302 to Southern Utah Title Company, with power of sale, the Units and all improvements to the Units and the appurtenant rights corresponding to such Units for the purpose of securing payment of assessments under the terms of this Declaration. Under the power of sale, the Unit of a Member 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 substitute for the named trustee above any other person or entity qualified by law to serve as trustee for purposes of power of sale foreclosure in the manner provided by Utah law pertaining to deeds of trust.

**6.3    Effect of Non-Payment of Assessment – Remedies of Association.**

6.3.1 Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Board shall determine appropriate) until paid. In addition, the Board may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment.

6.3.2 As a remedy against any delinquent Unit Owner, the Board may, in the name of the Association,

(i) bring an action at law against the Unit Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment;

(ii) foreclose the lien against the Unit 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;

(iii) restrict, limit, or totally terminate any or all services performed by the Association on behalf of the delinquent Unit Owner;

(iv) terminate, in accordance with the Utah Community Association Act, Utah Code Ann. § 57-8a-204, the Owner's right to receive utility services paid as a Common Expense and/or terminate the Owner's right of access and use of any recreational facilities, including the swimming pool and playground area;

(v) if the Unit Owner is leasing or renting such Unit Owner's Unit, the Board may, in accordance with the Utah Community Association Act, Utah Code Ann. § 57-8a-205, demand that the Unit Owner's tenant pay to the Association all future lease payments due from the Unit Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;

(vi) suspend the voting rights of the Unit Owner for any period during which any assessment or portion thereof against the Unit Owner's Lot remains unpaid; and/or

(vii) accelerate all assessment installments that will become due within the subsequent twelve (12) months so that all such assessments for that period become due and payable at once. This acceleration provision may only be invoked against an Unit Owner who has been delinquent in paying any assessment or installment two (2) or more times within a twelve (12) month period.

6.3.3 There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the Unit from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

6.3.4 No Unit Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or by abandonment of a Unit.

#### 6.4 Satisfaction of Lien.

When full payment of all sums secured by such lien is made, the claim of Lien shall be satisfied of record by the President or Vice President of the Association.

#### 6.5 Notice of Lien Rights.

All persons, firms, corporations or other business entities which shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a

mortgage, lien or other encumbrance on a Unit, are hereby placed on notice of the lien rights granted to the Association under this Declaration and all of such persons, firms, corporations or other business entities shall acquire their rights, title and interest in and to such Unit, expressly subject to the lien rights provided herein.

**6.6 Subordination of Lien Rights to Mortgages.**

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Unit Owner from personal liability for assessments coming due after he or she takes title or from the lien of such later assessments.

**6.7 Certificate of Payment Status**

The Association, upon demand and receipt of payment of a reasonable charge, shall furnish a certificate signed by an officer or authorized agent of the Association setting forth whether the assessments on a specific Unit have been paid. Such certificate, duly signed, shall be binding on the Association as of the date of the certificate.

**ARTICLE 7  
MAINTENANCE, REPAIRS AND REPLACEMENTS**

**7.1 Common Property Maintenance.**

The Association shall at all times maintain in good repair, operate, manage, insure and replace as often as necessary the Common Property.

**7.2 Unit and Common Area Grounds Maintenance.**

The Association shall provide maintenance and repair of all areas of the Property not occupied by a building containing a Unit or other building improvements and all Common Area grounds in the form of lawn mowing, trimming and landscape treatment including fertilization and replacement of sod, all portions of the irrigation systems, landscape plantings, trees, shrubs and ground cover with materials of equal quality.

**7.3 Building Maintenance.**

In addition to Unit and Common Area maintenance, the Association shall provide and effect repairs and maintenance of certain exterior portions of all buildings containing Units in order to preserve the character, appearance and quality of each such building as originally constructed. Such maintenance shall include, but is not necessarily limited to:

- 7.3.1 the painting or re-painting of exterior walls and trim;
- 7.3.2 the repair, maintenance and replacement of exterior stucco and plaster;
- 7.3.3 the repair, maintenance and replacement of soffit and fascia material and trim;
- 7.3.4 the repair, maintenance and replacement of exterior lighting fixtures, exclusive of lamps and bulbs;
- 7.3.5 the repair, maintenance and replacement of roofs and related roofing materials.

Except to the extent the Board determines otherwise in its sole discretion, other minor exterior repairs, replacements and maintenance shall be the responsibility of and performed by each Unit Owner at his or her cost and expense, including, but not limited to, window cleaning, repair, and replacement of lamps and bulbs on exterior lighting fixtures.

#### 7.4 Common Area Improvements.

The Association shall, at all times, maintain in good repair, operate, manage, insure and replace as often as necessary, all Common Area improvements, including, without limitation, the swimming pool and playground area.

#### 7.5 Mechanical Maintenance.

All maintenance, repair or replacement necessary for the operation of the air conditioner and heating units solely serving a particular Unit shall be the sole responsibility of Unit Owner of such Unit.

#### 7.6 Other Maintenance.

The Association may elect to assume other Unit or Common Area maintenance and repair responsibilities for all Units generally, and in such event, the Board shall notify the Unit Owners of the election to do so. The cost of such maintenance and repair shall be a Common Expense in the same manner as all other Common Expenses which shall be assumed uniformly as to all Units.

#### 7.7 Damage by Negligence or other Act.

In the event any repair or replacement is required for any items associated either with a Unit, buildings or with Common Areas whereby repair or replacement is the result of negligence or the willful misconduct or other action of a Unit Owner, his or her lessees, guests or invitees, then, in that event, the Association may choose to repair or replace such items and shall be entitled to assess as a Specific Assessment the full costs of the repair or replacement from the

Unit Owner whose negligence or misconduct (or whose lessees, guests or invitees negligence or misconduct), resulted in the loss or damage.

**7.8 Private Road and Parking Area Maintenance.**

The Association shall at all times maintain, repair and replace the private street and parking areas within the Property, its street lighting, pavement and curbing, in a good, safe, functioning and attractive condition. No governmental agency, including the City of St. George, shall be responsible for the maintenance, repair or improvement of this private street or parking area as shown on the Plat. The Association shall establish and maintain an adequate reserve fund, funded by a portion of the Annual Assessment (or as required, special assessments), to accomplish the requirements of this paragraph.

**ARTICLE 8  
EASEMENTS**

**8.1 Easement for Use of Common Area**

Except as otherwise noted, the Common Areas shall be declared to be subject to a perpetual non-exclusive easement in favor of all Unit Owners for the use of those Unit Owners, their immediate families, guests, lessees, invitees and others similarly situated, for all proper and normal residential purposes, including ingress and egress and for the quiet enjoyment of such Unit Owners.

**8.2 Limited Common Area**

8.2.1 Each Unit Owner of a Unit is hereby granted an irrevocable and exclusive license to use and occupy the driveway appurtenant to such Unit and any outside area appurtenant to such Unit that is enclosed by a wall (if any) and is appurtenant to such Unit Owner's Unit (the foregoing hereby designated as "Limited Common Area"), subject to the rights of the Declarant and the Board as set forth in the Governing Documents. In addition, the following, if designated to serve a single Unit but located outside the Unit's boundaries, are Limited Common Areas and facilities allocated exclusively to a Unit: (a) a shutter; (b) an awning; (c) a window box; (d) a doorstep; (e) a stoop; (f) a porch; (g) a balcony; (h) a patio; (i) an exterior door; (j) an exterior window; and (k) any other fixture.

8.2.2 The Declarant reserves the right to designate other Limited Common Area as it deems necessary from time to time by: (i) indicating or designating on the Plat the Limited Common Area appertaining to one or more Units or (ii) designating, depicting, and/or describing such Limited Common Area in this Declaration or any supplemental declaration, amendment or any exhibit.

8.2.2 The right of exclusive use and occupancy does not include the right to repaint, remodel, erect structures upon or attach or install any deck, awning, wall or other improvement or apparatus to or within the Limited Common Area or Common Area, which a

Unit Owner may not do without the express written consent of the Board. Without limiting the generality of the foregoing, without the express written consent of the Board, no Owner (other than Declarant) shall be permitted to construct or enclose or divide any area (including rear yard) appurtenant to a Unit. In the event walls are not constructed to enclose or divide any area (including rear yards) appurtenant to a Unit, then such area shall constitute Common Area.

8.2.3 The Board's right of regulation in and maintenance of the Limited Common Area includes all rights it possesses with respect to the Common Area which are not inconsistent with exclusive use to a particular Unit or Units to which the Limited Common Area is assigned, and includes, but is not limited to, the right to maintain the Limited Common Area, establish Association Rules and Regulations governing the use of the Limited Common Area, and regulate and control architectural and aesthetic appearances of the Limited Common Area.

8.2.4 Except to the extent the Association elects to maintain the Limited Common Area, each Unit Owner shall maintain their respective Limited Common Areas in good repair and clean manner.

#### 8.2 Maintenance Easement.

There is hereby granted and created to the Association, its employees, subcontractors, agents and designees a non-exclusive perpetual easement over, through, across and under the exterior of each Unit, Common Area and Property to permit the Association, its employees, subcontractors, agents and designees to maintain and replace, as necessary, the Common Areas and those portions of all Units required to be maintained, replaced and repaired by the Association, as provided in this Declaration and this easement shall automatically be granted over and attached to any such Unit.

#### 8.3 Right of Egress and Ingress for Services.

There is also hereby granted and created a non-exclusive and perpetual right over and across the driveways, streets and easements as depicted on the Plat, to the benefit of persons and their vehicles for commercial delivery and services, police and law enforcement, fire protection services, United States Postal Service carriers, express delivery, scavenger and recycling services, utility employees, communication representatives, mortgage lien holders, contractors and sub-contractors authorized by the Association to serve Desert Hills Townhomes.

#### 8.4 Encroachments.

In the event that any buildings containing Units or appurtenance thereto, shall encroach upon the Common Areas or any adjoining Unit, for any reason, then an easement shall exist to the extent of such encroachment so long as the same shall exist.

#### 8.5 Right to Grant Easements.

The Declarant reserves the right to grant such easements as may be required for access over Common Areas to and the furnishing of utility, communication and other services which may be necessary for development of the Property.

**8.6 Limitation of Rights and Easements.**

The rights and easements of enjoyment created hereby shall be subject to the right of the Association to take such steps as may be necessary to protect the Common Areas against foreclosure and to establish Association Rules and Regulations regarding the use of such easements and the Common Property.

**8.7 Indemnity.**

The Association shall have the duty to defend and shall indemnify a Unit Owner against any and all expenses, claims and liabilities, including attorney's fees incurred by or imposed upon them for injuries or damages sustained and arising out of the actual use of such Unit Owner's Unit by the Association, if any.

**ARTICLE 9  
COVENANT AGAINST PARTITION AND TRANSFER OF RIGHTS**

**9.1 Restriction for Transfer or Partition of Membership Rights.**

The membership rights of any Unit Owner in the Common Areas shall have no right at law or equity to seek partition or severance of such membership rights in the Common Area and there shall exist no right to transfer the membership rights in the Common Areas in any other manner than as an appurtenance to and in the same transaction with a transfer of title or lease agreement.

**9.2 Membership by Separate Transfer.**

Any conveyance or transfer of a Unit shall include the membership rights in the Common Areas appurtenant to that Unit, whether or not such membership rights shall have been described or referred to in the deed by which said Unit shall have been conveyed.

**ARTICLE 10  
INSURANCE**

**10.1 Liability Insurance – Association Property.**

The Board shall obtain a comprehensive policy of public liability insurance covering all of the Common Property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association or other Unit Owners.

10.2 Casualty Insurance – Association Property.

The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

10.3 Casualty Insurance – Buildings.

In addition to casualty insurance on the Common Area, the Association shall obtain and continue in effect, on behalf of all Unit Owners, adequate blanket casualty and fire insurance in such form as the Board deems appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the buildings containing Units. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Units shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Unit Owners.

10.4 Loss Payable; Other Provisions – Association.

All policies purchased by the Association shall be for the benefit of the Members and all insurance proceeds payable on the account of loss or damage to Association Property shall be payable to the Association and shall be used in accordance with the terms hereof. The Association policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements herein. In the event of an insured loss, the deductible shall be treated as a common expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and opportunity to be heard, that the loss is the result of the negligence or willful misconduct of one or more Unit Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Unit Owner and the Unit Owner's Unit.

10.5 Loss Payable Provisions For Buildings.

Proceeds on account of loss or damage to a building containing Units shall be payable to the Association, and, in every event, shall be used only to repair, reconstruct or replace such building.

**10.6 Obligation to Repair or Reconstruct.**

In order to maintain and preserve the values of all Units and the overall appearance of the Property and the buildings containing Units, it is essential that all damaged or partially or fully destroyed buildings be promptly repaired, reconstructed or replaced. Accordingly, when loss or damage occurs either to a building on the Property or to the Common Property, it shall be obligatory upon the Unit Owner(s) to cooperate with and take action requested by the Association in the repair or reconstruction of the building(s) and to promptly contract for the replacement, repair or reconstruction of such building(s). No first mortgagee of record or any other mortgagee shall have the right to require the application of insurance proceeds to the payment of its loan except as to any proceeds remaining after the repair or reconstruction. The Association shall have the right to require application of the insurance proceeds to payment of all repair or replacement costs and expenses and to act on the Unit Owner(s) behalf in the repair, reconstruction or replacement of any building in the event the Unit Owner(s) fails or refuses to comply with the requirements of this paragraph.

**10.7 Assessments For Repair and Reconstruction – Association Property.**

If the proceeds of insurance are not sufficient to defray the actual cost of repair or reconstruction of Common Property, a special assessment shall be made by the Board against all Unit Owners in sufficient amount to provide funds for the payment of such costs.

**10.8 Conformance With Plans and Specifications.**

Any repair or reconstruction of Common Property or of buildings containing Units must be substantially in accordance with the plans, description of work and specifications as originally permitted and with materials of equal or better value and of equal or similar characteristics as were used for the original building or as the building was last repaired or reconstructed.

**10.9 Association's Powers to Compromise Claim.**

The Association is hereby irrevocably appointed agent for each Unit Owner for the purpose of compromising and settling claims arising under insurance policies purchased by the Association incident to Association Property and to execute and deliver releases therefrom upon the payment of claims.

**10.10 Unit Owner's Additional Insurance.**

Nothing herein contained shall be construed to prohibit a Unit Owner from purchasing, at his own expense, additional homeowner's insurance coverages upon or applicable to Unit or personal property.

**10.11 Other Association Insurance.**

The Association is authorized to obtain such other insurance from time to time as the Board shall determine to be desirable or beneficial for the protection of the Members or the Board (including D&O insurance) or for the preservation of the Property. Such policies may contain deductible clauses which the Board determines shall be within the financial capabilities of the Association. The premiums for such policies of insurance coverages shall be considered a Common Expense.

## **ARTICLE 11 ENFORCEMENT**

The Association, the Declarant or any Member, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association, Declarant or of any Member to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association, Declarant or any Member to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Member the reasonable attorney fees incurred with respect to such enforcement. The Board may impose or establish a schedule of liquidated damage amount (or "schedule of fines") for violations of this Declaration or the Association Rules and Regulations. Liquidated damage amounts (or fines) shall not exceed for each violation ten percent (10%) of the amount of the maximum annual assessment against any Member who fails to refrain from violation of these covenants or a rule of the Association. The Board shall give a Member three (3) days written notice and an opportunity for a hearing. A Member who cures his violation within the three (3) days of receiving notice may not be levied against. Any liquidated damage amount or fine levied by the Board which is not paid within the time period established by the Board or otherwise set forth in the Association Rules and Regulations shall be recoverable by the Association in the same manner as an assessment under Articles 5 and 6, and shall create a lien in favor of the Association against the Unit Owner's Unit in the same manner as an assessment.

## **ARTICLE 12 AMENDMENT AND TERMINATION**

### **12.1 Amendment After Turnover Date.**

After relinquishment of Declarant control of the Association (i.e. the Turnover Date as defined in the Bylaws), this Declaration may be amended at a duly constituted special meeting for such purpose or at an annual meeting of the Members by a vote of not less than two-thirds (2/3) of the aggregate votes of Unit Owners. Such Members may amend, modify or rescind such provisions of this Declaration as they deem necessary or desirable and shall be evidenced by a certificate executed by the President and the Secretary of the Association with the formality of a deed and recorded in the Washington County Records' office in Washington County, Utah

certifying to the adoption of the amendment, modification or rescission. Such certificate shall recite that the amendment was adopted at a meeting duly called, at which a quorum was present and that at least a minimum of those entitled to vote had voted for the adoption of such amendment or termination.

**12.2 Amendment Prior to Turnover Date.**

Until relinquishment of Declarant control of the Association (i.e. the Turnover Date as defined above), this Declaration may be unilaterally amended by the Declarant for any purpose with or without notice to the Members.

**ARTICLE 13  
EXPANSION**

**13.1 Expansion Rights.** Declarant reserves the right, at its sole election, to expand the Property to include additional property more particularly described below by unilateral action without the consent of Members, for a period that continues until the Turnover Date (as defined in the Bylaws).

**13.2 Expansion Property.** The property, all or part of which may be included in one or more expansions, is located in Washington County, Utah, and is more particularly described as follows:

ALL PROPERTY LOCATED IN THE GENERAL VICINITY OF THE PROPERTY PREVIOUSLY DESCRIBED HEREIN, WHICH IS CONTIGUOUS TO ANY PHASE OF THE DEVELOPMENT.

**13.3 Procedure for Expansion.** Expansion shall occur by the Declarant filing:

13.3.1 an additional subdivision plat or plats creating additional planned unit developments on the property described above, 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 filing of a Declaration of Annexation; and

13.3.2 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.** Any additional properties annexed hereto by the Declarant shall be exclusively for residential dwellings or corresponding amenities, architecturally compatible to the existing Units and buildings, similar to the Units and buildings already constructed, constructed out of similar materials, with similar Unit and building size. The Declarant shall have the sole discretion as to development of the Common Area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such Common Areas shall be owned by the Association.

**ARTICLE 14**  
**GENERAL CONDITIONS**

**14.1 Equitable Servitude.**

The covenants, conditions, easements and restrictions of this Declaration shall constitute covenants running with the land and each shall constitute an equitable servitude upon the Unit Owner and the appurtenant undivided interest in the Common Property and upon the heirs, personal representatives, successors and assigns of each Unit Owner.

**14.2 Compliance with Laws.**

The Association shall take such action as it deems necessary or appropriate in order for the Property and the improvements thereon to be in compliance with all laws, statutes, ordinances and regulations of any governmental authority.

**14.3 Duration.**

As permitted pursuant to Utah Code Section 57-8a-108, this Declaration shall be perpetual in duration unless terminated in accordance with the Project Documents and the Act. In the event such Utah Code Sections are repealed or otherwise declared unenforceable by a court of competent jurisdiction, then this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, Board, or any Unit Owner or their respective legal representatives, heirs, successors, and assigns for a term of (30) years from the date this Declaration is recorded in the Washington County Records' office of Washington County, Utah, after which time this Declaration shall automatically be extended for successive twenty (20) year periods, unless an instrument signed by not less than two-thirds (2/3) percent of the then Unit Owners is recorded containing an agreement of said Unit Owners with respect to the alteration, change, modification or termination, in whole or in part, of the provisions of this Declaration.

**14.4 Notices.**

Any notices, demands, requests, consents or other communications required or permitted to be sent to any Member or Unit Owner under the provisions of this Declaration shall be deemed to be properly sent when mailed, postpaid to the last known address of the person or entity who appears as a Member or Unit Owner on the records of the Association at the time of such mailing.

The Association may also provide notice by electronic means, including text message, email, or through Association's website unless a Member, by written demand, requires the Association to provide notice to the Member by mail.

**14.5 No Implied Waiver.**

Failure of the Board, Unit Owner or Declarant to enforce any provision of the Declaration or other Governing Documents for any period of time, shall in no event be deemed a waiver or estoppel by such parties or other persons or entities having an interest therein, of the right to object to same and to seek compliance therewith, in accordance with the provisions of the Governing Documents.

**14.6 Secondary Mortgage Market.**

Declarant intends that the provisions of this Declaration meet and be consistent with the Federal Home Loan Mortgage market requirements in effect on the date hereof. Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Unit Owners have given their prior written approval, not to be reasonably withheld, no amendment of this Declaration shall be effective if such amendment would disqualify or preclude the purchase of first mortgages on the Federal Home Loan Mortgage Corporation secondary mortgage market.

**14.7 Severability.**

Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any provisions which shall remain in full force and effect.

**14.8 Title and Captions.**

Article titles or other captions contained in this Declaration are inserted only as a matter of convenience and for reference purposes and in no way define, limit, extend or describe the scope of the Declaration or the intent of any provision hereof.

**14.9 Person or Gender.**

Whenever the singular number is used herein and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

**14.10 Applicable Law.**

The provisions of this Declaration and any dispute arising hereunder shall be governed by the laws of the State of Utah.

**14.11 Assignment of Declarant's Rights.**

All of the rights and powers of Declarant herein contained may be delegated, transferred, or assigned, in whole or in part. To be valid, said delegation, transfer, or assignment must be via a written instrument recorded in the Washington County Records' office of Washington County, Utah.

**ARTICLE 15  
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

**15.1 Alternative Dispute Resolution Without Litigation.**

**15.1.1 Bound Parties.** The Declarant; the Association; the Unit Owners; the officers, directors, committee members, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article 15 (collectively, "Bound Parties"), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Property and/or the Units that may be involved. Accordingly, (and in addition to the additional limitations on litigation found in Sections 15.3 and 15.4 below) each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection 15.1.2, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 15.2 in a good faith effort to resolve such Claim.

**15.1.2 Claims.** As used in this Article 15, the term "Claim" means any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents; or
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction or maintenance of improvements on the Property.

**15.1.3 Exclusion from Definition of Claims.** The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 15.2:

- (i) any suit by the Association to collect assessments, fines, fees or other amounts due from any Unit Owner;
- (ii) any suit by the Association to enforce, or seek remedy for the violation of, this Declaration or the Association Rules and Regulations or other Governing Documents;
- (iii) any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
- (iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 15.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 15.2.1, unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article 15;

(vi) any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Property; and

(vii) any suit or dispute involving a governmental entity as a party.

## 15.2 Dispute Resolution Procedures.

15.2.1 Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give notice in the manner required or permitted herein ("Notice") to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

15.2.2 Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Association Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

15.2.3 Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Washington County, Utah area. Each Bound Party shall present the mediator with a written summary of the Claim.

(i) Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be

relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(ii) Termination of Mediation Proceedings. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. Subject to Section 15.3 below, the Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iii) Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

15.2.4 Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

15.3 Initiation of Litigation by Association. The Association shall not bring any legal action after the Turnover Date against the Declarant (or any person who had been a declarant), the Board (or any person who is serving or who had served on the Board), or an employee, an independent contractor, or agent of the Declarant (or any person who has been a declarant) or the Board unless:

15.3.1 approved in advance at a meeting where Unit Owners of at least 51% (75% in the case of Contingent Fee Litigation defined below) of the Voting Interests are: (i) present; or (ii) represented by a proxy specifically assigned for the purpose of voting to approve or deny the legal action at the meeting; and

15.3.2 the legal action is approved by vote in person or by proxy of Unit Owners of the lesser of: (i) more than 75% (90% in the case of Contingent Fee Litigation defined below) of the Voting Interests of the Unit Owners present at the meeting or represented by a proxy as described in Section 15.3.1; or (ii) more than 51% (75% in the case of Contingent Fee Litigation defined below) of the Voting Interests of the Unit Owners in the Association; and

15.3.3 in addition to the requirements of Section 15.4 below with respect to Contingent Fee Litigation, prior to any vote contemplated by this Section 15.3 the Association provides each Unit Owner: (a) a written notice that the Association is contemplating legal action; and (b) after the Association consults with an attorney licensed to practice in Utah, a written assessment of: (i) the likelihood that the legal action will succeed; (ii) the likely amount in

controversy in the legal action; (iii) the likely cost of resolving the legal action to the Association's satisfaction; and (iv) the likely effect the legal action will have on a Unit Owner's or prospective Unit buyer's ability to obtain financing for a lot while the legal action is pending; and

15.3.4 the Association allocates an amount equal to 10% of the cost estimated to resolve the legal action and places such amount in a trust that the Association may only use to pay the costs to resolve the legal action.

15.4 Informed Vote with respect to Contingent Fee Litigation. In addition to the requirements of Section 15.3 above, with respect to any legal action by the Association involving legal representation undertaken on any contingent fee basis (the "Contingent Fee Litigation"), the law firm proposing to represent the Association on such basis (the "Proposed Law Firm") must provide to the Unit Owners in a writing signed by the managing partner (or similar position) for the Proposed Law Firm and the lead attorney proposing to handle the representation the following opinions and disclosures at least 30 days prior to any Member casting any vote to initiate judicial or administrative proceedings:

15.4.1 The following information regarding all contingent fee based litigation by a homeowner or condominium association in Washington County that was active during the prior 10 year period and known by or disclosed to the Association or the Proposed Law Firm ("Prior Washington County HOA Contingent Fee Litigation"), (1) the name of the association involved in the litigation, (2) the amount of damages claimed in such litigation, (3) the length of time elapsed since such litigation commenced until conclusion (or, if not yet concluded, through the date of this disclosure), (4) the amount of any monetary payments received by the association in such litigation through the date of disclosure and the extent to which it exceeded attorneys' fees, costs and expenses for such litigation (if none, disclose that fact), and (4) the amount of attorney's fees received or paid to the law firm handling such litigation.

15.4.2 An opinion of the Proposed Law Firm that the proposed Contingent Fee Litigation will not impose a stigma on or otherwise reduce the value of any of the Units within the Property in excess of that which may already exist due to the conditions sought to be remedied by the proposed Contingent Fee Litigation or, if the Proposed Law Firm is unable or unwilling to provide such opinion, then a prominently disclosed statement as follows:  
"The proposed contingent fee litigation may reduce the value and marketability of your homes as home buyers may be reluctant to buy homes within an association involved in ongoing litigation alleging substantial damages and harm have occurred within the Property. [Insert name of Proposed Law Firm] is unwilling or unable to provide an opinion that the proposed contingent fee litigation will not reduce the value and marketability of your homes."

15.4.3 An opinion of the Proposed Law Firm stating (1) the range of monetary recovery that the Proposed Law Firm reasonably expects will be recovered by the Association (net of attorneys' fees, costs and expenses), (2) the attorneys' fees expected to be received by the Proposed Law Firm from the Contingent Fee Litigation, (3) the period of time the Proposed Law Firm reasonable expects litigation to continue before a monetary recovery will be received by the Association, (4) if the foregoing opinion regarding recovery amounts and period of time

materially differs from the Prior Washington County HOA Contingent Fee Litigation, an opinion of why the proposed Contingent Fee Litigation will differ from the Prior Washington County HOA Contingent Fee Litigation, and (5) the involvement that will be required by the Unit Owners and the Association Board to respond to discovery requests, attend and participate in depositions, attend and testify at trial, and otherwise assist in the proposed Contingent Fee Litigation.

15.4.4 A prominent and succinct description of any out of pocket expenses or fees that the Association will be obligated to pay for the proposed Contingent Fee Litigation.

15.4.5 A prominent and succinct description of any restrictions on the ability of the Association (including any estimate of fees and expenses, including attorneys' fee that may be required to be paid) to (1) terminate or dismiss the proposed Contingent Fee Litigation or (2) terminate the services of the Proposed Law Firm.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned, as a Declarant herein, has hereunto set its hand this 24<sup>th</sup> day of OCTOBER, 2018.

**Declarant**

Desert Hills Townhomes, LLC  
a Utah limited liability company

By: Ed Burgess  
Ed Burgess, Manager

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF WASHINGTON        )

On this 24 day of October, 2018, before me personally appeared Ed Burgess whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did each say that he is the Manager of Desert Hills Townhomes, LLC, a Utah limited liability company, and that the foregoing document was signed by him as manager of Desert Hills Townhomes, LLC by authority of the governing documents of Desert Hills Townhomes, LLC, and that the document was the act of Desert Hills Townhomes, LLC for its stated purpose.

Logan Blake  
NOTARY PUBLIC



**Exhibit A – Property Description**

**Parcel No. SG-HVCM-2-C**

BEGINNING AT A POINT LOCATED ON THE SECTION LINE, SAID POINT BEING SOUTH 88°46'42" EAST ALONG THE SECTION LINE, A DISTANCE OF 504.128 FEET FROM THE SOUTHWEST CORNER OF SECTION 8, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 01°14'36" WEST 24.410 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF DESERT HILLS DRIVE, DEDICATED AS PART OF THE HIDDEN VALLEY COMMERCIAL MINOR SUBDIVISION, AS RECORDED AND ON FILE WITH THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE ALONG SAID RIGHT-OF-WAY LINE AND THE WESTERLY RIGHT-OF-WAY LINE OF 840 EAST STREET, ALSO DEDICATED AS PART OF SAID HIDDEN VALLEY COMMERCIAL MINOR SUBDIVISION, THE FOLLOWING (4) FOUR COURSES: (1) NORTH 88°45'24" WEST 301.452 FEET TO A POINT OF CURVATURE; (2) RUNNING NORTHWESTERLY ALONG THE ARC OF A 25.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 39.270 FEET; (3) NORTH 01°13'44" EAST 206.204 FEET TO A POINT OF CURVATURE; (4) RUNNING NORTHEASTERLY ALONG THE ARC OF A 1081.510 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 23°11'02", A DISTANCE OF 437.616 FEET TO THE SOUTHWESTERLY BOUNDARY CORNER OF LOT 1, IN SAID HIDDEN VALLEY COMMERCIAL MINOR SUBDIVISION; THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID LOT 1 THE FOLLOWING (6) SIX COURSES: (1) SOUTH 67°15'55" EAST 60.128 FEET TO A POINT OF CURVATURE; (2) RUNNING SOUTHEASTERLY ALONG THE ARC OF A 115.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 03°50'18", A DISTANCE OF 7.704 FEET; (3) SOUTH 63°25'41" EAST 38.431 FEET TO A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 26°54'48" EAST); (4) RUNNING SOUTHEASTERLY ALONG THE ARC OF A 115.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 25°34'44", A DISTANCE OF 51.340 FEET; (5) SOUTH 88°39'55" EAST 72.979 FEET TO A POINT OF CURVATURE; AND (6) RUNNING SOUTHEASTERLY ALONG THE ARC OF A 31.320 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 37°09'46", A DISTANCE OF 20.315 FEET; THENCE SOUTH 01°14'36" WEST 573.201 FEET TO THE POINT OF BEGINNING.

CONTAINS 192,922 SQ. FT., (4.429 ACRES)

**Exhibit B**

**Articles of Incorporation**

[copy attached]

**ARTICLES OF INCORPORATION  
OF  
DESERT HILLS TOWNHOMES OWNERS' ASSOCIATION**

The undersigned, acting as incorporator pursuant to Utah Revised Nonprofit Corporation Act (the "Act"), Title 16, Chapter 6a of the Utah Code (1953, as amended), adopts the following Articles of Incorporation:

**ARTICLE 1  
NAME OF CORPORATION;  
TERMS AND DEFINITIONS**

A. The name of the corporation shall be **"Desert Hills Townhomes Owners' Association"**, hereinafter referred to as the **"Association"**.

B. Unless otherwise indicated herein, capitalized terms used in these Articles have the same meaning as defined in the Declaration of Covenants, Conditions, and Restrictions of Desert Hills Townhomes ("Declaration"), and the Bylaws of Desert Hills Townhomes Owners' Association ("Bylaws"), which are or will be recorded in the office of the Washington County Recorder, Utah, as the same may be amended from time to time.

**ARTICLE 2  
PURPOSE OF THE CORPORATION**

The Association is organized and formed to: (i) serve the Members by acting to preserve, protect, and enhance property values within Desert Hills Townhomes, a planned development located in Washington County, Utah; (ii) manage and maintain Association property for the benefit of the Members; (iii) exercise the rights and powers and to perform the duties and obligations of a property owners association in accordance with the Association's Governing Documents and applicable law, as each may be amended from time to time; and (iv) to engage in any lawful act for which a nonprofit corporation may be organized under the Act. The Association does not contemplate any pecuniary gain or profit to the Members, and no part of the net earnings of the Association may inure to the benefit of any Member or individual.

**ARTICLE 3  
VOTING MEMBERS; APPOINTMENT OF DIRECTORS**

The Association will have voting Members. The Bylaws will designate the different classes of Members (if any) and the qualifications and voting rights of each class. The qualifications of Members of the Association shall be set forth in the Bylaws and Declaration. The Association will not issue shares of stock or membership certificates to evidence membership in the Association.

Declarant (as defined in the Declaration) shall have the right to appoint, designate, elect, remove and replace the directors to or from the Board of Directors of the Association until the

"Turnover Date", as shall be determined by and according to the terms and conditions of the Bylaws.

Except as provided in such Bylaws, Declarant shall relinquish its right to appoint Board Members and cause the first Board to resign on the "Turnover Date". Thereafter the Association Members shall designate directors to serve on the Board of Directors of the Association in accordance with the provisions of the Bylaws.

#### **ARTICLE 4 REGISTERED AGENT AND OFFICE**

The name of the initial registered agent of the Association is [Registered Agent Name] and the street address and the mailing address of the initial registered office is [Registered Agent Street Address].

#### **ARTICLE 5 LIMITATION ON LIABILITY; INDEMNIFICATION; ADVANCEMENT OF EXPENSES**

A. No director, officer, or committee member of the Association shall be personally liable to the Association or its Members for monetary damages arising from acts or omissions made in the performance of his or her duties as a director, officer, or committee member, unless the acts or omissions are the result of his or her intentional infliction of harm on the Association or its Members, a violation of criminal law, or an unlawful distribution.

B. To the extent not prohibited by law, every director, officer, and committee member of the Association, and any Member volunteering services to the Association, shall be indemnified by the Association against all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon the director, officer, committee member, or volunteer in connection with any proceeding or any settlement of any proceeding to which the director, officer, committee member, or volunteer may be a party or in which such person may become involved by reason of being or having been a director, committee member, officer, or volunteer of the Association, whether or not he or she is a director, committee member, officer, or volunteer at the time such expenses are incurred, except when the director, committee member or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director, committee member, or officer may be entitled by applicable law.

C. The Association shall advance all expenses, including attorneys' fees, incurred by or on behalf of a director, officer, committee member, or volunteer in connection with any proceeding to which the director, officer, committee member, or volunteer may be a party or in which such person may become involved by reason of being or having been a director, committee member, officer, or volunteer of the Association, whether or not he or she is a

director, committee member, officer, or volunteer at the time of the proceeding ("Indemnatee"). Such advance shall be made by the Association within thirty (30) days after the receipt by the Association of a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of such proceeding. Such statement or statements shall reasonably evidence the expenses incurred by Indemnatee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnatee to repay any expenses advanced if it shall ultimately be determined that Indemnatee is not entitled to be indemnified against such expenses. Any advances and undertakings to repay shall be unsecured and interest free.

#### **ARTICLE 6 AMENDMENT**

These Articles may be amended or restated in accordance with the applicable provisions of the Act, except that an amendment may not impair or dilute any right or privilege granted to the Declarant unless the prior written consent to the amendment is obtained from the Declarant.

#### **ARTICLE 7 INCORPORATORS**

The name and address of the incorporator is E. Troy Blanchard, 50 E. 100 South Suite 101, St. George, Utah 84770.

The undersigned incorporator has executed these Articles of Incorporation as of the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
E. Troy Blanchard, Incorporator

**Exhibit C**  
**Bylaws for Desert Hills Townhomes Owners' Association**

[copy attached]

**BYLAWS  
OF  
DESERT HILLS TOWNHOMES OWNERS'  
ASSOCIATION**

**A Utah Non-Profit Corporation**

**ARTICLE 1  
IDENTITY AND LOCATION**

These are the Bylaws of Desert Hills Townhomes Owners' Association, herein called the "Association," a Utah non-profit corporation, for the purposes set forth in the Articles of Incorporation and the Declaration of Covenants, Conditions and Restrictions recorded against the real property comprising the residential townhome development in City of St. George, Washington County, Utah known as Desert Hills Townhomes (the "Declaration").

**ARTICLE 2  
PURPOSES, RIGHTS AND OBLIGATIONS**

The purposes for which this non-profit corporation shall be formed shall be to govern and exercise all of its powers, privileges and rights; to perform all the duties and obligations of the Association pursuant to the terms of the Articles of Incorporation, these Bylaws, and the Declaration.

**ARTICLE 3  
MEMBERSHIP AND VOTING**

**3.1 Membership**

The members of the Association shall consist of all the record owners of each Unit as defined by the Declaration.

**3.2 Membership Change**

Change of membership in the Association shall be established by recording in the Washington County Recorders' office, of Washington County, Utah, a deed or other instrument conveying title to a Unit and the delivery to the Association of a true copy of such instrument. The Unit Owner (grantee) designated by such instrument shall thereby become a member of the Association. The membership of the prior Unit Owner (grantor) shall be thereby terminated.

**3.3 Voting Rights**

Each Member shall be entitled to one (1) vote for each Unit in which such person or entity holds the interest required for membership. When more than one person or entity holds such interest or interests in any Unit, all such persons or entities shall be Members and the vote

for such Unit shall be cast by the person or entity named in a certificate as provided by paragraph 3.4 below. If such certificate shall not be filed, the vote of such members shall neither be considered in determining the requirement for a quorum nor for any other purpose. All actions required to be taken by Members and all notices required to be communicated to Members shall be taken by and communicated to such Members as are entitled to vote.

#### 3.4 Voter Designation

3.4.1 If a Unit shall be owned by one person, the right to vote shall be held and established by the sole record title owner of the Unit.

3.4.2 If a Unit shall be owned by more than one person, the person entitled to cast the vote for the Unit shall be designated in a writing signed by all of the record owners of the Unit and filed with the Secretary of the Association.

#### 3.5 Approval or Disapproval of Matters

Whenever the decision of a Unit Owner shall be required upon any matter, whether or not the subject of or presented for vote at an Association meeting, such decision shall be expressed by the same person who would cast the vote of such Unit Owners if at an Association meeting, unless the joinder of all record Unit Owners shall be otherwise expressly required by the Declaration of Covenants and Restrictions or these Bylaws.

### **ARTICLE 4 MEMBER MEETINGS**

#### 4.1 Annual Meeting

The annual membership meeting shall be held on such date as the Board of Directors shall designate for the purpose of electing Directors and of transacting any other business which shall be authorized to be transacted by the Members.

#### 4.2 Special Meetings

Special meetings of the Members may be called at any time by the President or a majority vote of the Board of Directors, or upon written request of a majority of the Members who are entitled to cast votes at a membership meeting.

#### 4.3 Place of Meeting

All membership meetings shall be held at the principal office of the Association or at such place as shall be determined, from time to time, by the Board of Directors of the Association.

#### 4.4 Notice of Meeting

Notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or other person authorized to call the meeting, in compliance with Section 7.3 below (regarding Notice), not less than ten (10) days or more than sixty (60) days before the date of such meeting to each Member entitled to vote. Such notice shall specify the place, day and hour of the meeting and in the case of a special meeting, the purpose of the meeting. If the meeting shall be held for the purpose of fixing the annual or special assessment, notice shall be given as provided herein.

#### 4.5 Quorum

Except as otherwise expressly provided, a quorum for all meetings shall exist if there shall be present, in person or by proxy, Members entitled to cast not less than twenty percent (20%) of the votes. If a quorum shall not be present at any meeting, the Members present may adjourn and re-schedule the meeting for a later date and shall give all Members notice thereof, in accordance with the provisions contained herein. If no quorum shall be present at such second meeting, the notice procedure shall be repeated, if the Members present decide to call a third meeting. A quorum at such third meeting shall consist of whatever number of Members shall be present, whether or not their combined votes shall be equal to or exceed of twenty percent (20%) of the votes. The acts approved by a majority of those present at a meeting at which a quorum shall be present shall constitute the acts of the members, except when approval by a greater number of votes or by the Declarant shall be required by the Articles of Incorporation, the Declaration or these Bylaws.

#### 4.6 Proxies

At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary prior to the meeting for which the proxy is valid. Every proxy shall be revocable and shall automatically cease upon conveyance of a Unit by the Member.

#### 4.7 Waiver of Notice

Any Member may waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by such Member at any meeting of the Members shall constitute a waiver of notice by such Member, of the time and place thereof, except where a Member attends a meeting with the express purpose of objecting to the transaction of any business, because the meeting was not lawfully called.

#### 4.8 Order of business – Annual Membership Meeting

The order of business and all other matters of procedure at every meeting of Members shall be determined by the presiding officer. Except as may be modified by resolution of the Board, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law or the Articles of Incorporation, the Declaration or these Bylaws.

4.1 Minutes

The Secretary of the Association shall record and maintain minutes of each and every meeting in a businesslike manner and provide each Member access thereto.

4.12 Assessment Notice

Notice of any meeting in which Assessments against Unit owners shall be considered for any reason, shall specifically contain a statement that such Assessments shall be considered and such statement shall include the nature of such Assessments.

**ARTICLE 5  
BOARD OF DIRECTORS**

5.1 Directors

The affairs of the Association shall be managed by a Board of Directors of not less than three (3) or more than nine (9) Directors who need not be a Member entitled to cast a vote in the Association and who may be authorized representatives, officers or employees of a Member.

5.2 Board of Directors Prior to Turnover Date

The initial Directors of the Association are:

[Director 1 Name]

[Director 2 Name]

[Director 3 Name]

Notwithstanding anything contained in these Bylaws, the Declaration or Articles of Incorporation to the contrary, until the Turnover Date (defined below), the Board of Directors shall be appointed exclusively by Declarant.

5.3 Board of Directors After Turnover Date

The "Turnover Date" referenced to in Article 3 of the Articles of Incorporation shall mean fifteen (15) days after the date when Declarant ceases to own or have rights or ability (through ownership of property subject to the Declaration) to develop at least one Units for the purposes of development or sale in the ordinary course of business or such earlier such date as Declarant voluntarily relinquishes its exclusive right to appoint the Board of Directors, whichever shall first occur. At the next ensuing annual meeting after Turnover Date and at each annual meeting thereafter, all of the directors of the Association shall be elected by the Unit Owners. The election of directors shall be by ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. There shall be appurtenant to each Unit as many votes for directors as there are directors to be elected, provided, however, that no member may cast more than one vote for each Unit owned by that member for any person nominated as a director, it being the intent hereof that voting for directors shall be non-cumulative. A ballot may

be incorporated in a limited proxy form. A nominating committee of not more than five (5) members of the Association may be appointed by the Board of Directors not less than forty (40) days prior to the Annual Member's Meeting. The committee shall nominate one (1) or more persons for each director then serving. A director then serving may be nominated to a successive term. Additional nominations may be made from the floor at the time of the meeting.

#### 5.4 Powers of the Board

The Board of Directors shall manage the affairs of the Association in accordance with the terms of the Act, the Articles of Incorporation, the Declaration, and these Bylaws. Such powers shall be exercised exclusively by the Board, the Association's officers, agents, contractors and employees, and shall be subject to approval by the Unit Owners only when expressly required by the Declaration, the Articles of Incorporation or these Bylaws.

#### 5.5 Compensation

No Director shall receive compensation for any personal service they may render to the Association or attending meetings, however, a Director may be reimbursed for actual expenses in the performance of any duties on behalf of the Association.

#### 5.6 Vacancies and Removals

Any Director may be removed from the Board, with or without cause, by concurrence of a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, the successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of the predecessor. Vacancies on the Board of Directors occurring between annual meetings of Members shall be filled by the remaining Directors. The Members may elect a Director by a special meeting at any time to fill any vacancy not filled by the Directors.

#### 5.7 Duties of the Board

It shall be the duty of the Board of Directors to cause to be kept a complete record of all its acts, its corporate affairs and to present a statement thereof, to the Members at each annual or special meeting of the Members or when such records or statements shall be requested for in writing, by any Member or Members.

#### 5.8 Term of Board Members

Directors shall serve a term of which shall extend until the next annual meeting of the Members and thereafter, until a successor shall be duly elected and qualified or until such Director shall be removed in the manner herein provided.

#### 5.9 Delegation of Tasks.

The Board of Directors may delegate to a property or association manager the right to collect assessments under the Declaration, provide notice regarding compliance issues under the Declaration, and to otherwise carry out, enforce and implement the requirements of the Declaration; provided, that, such manager shall remain subject to the oversight and direction of the Board of Directors.

## **ARTICLE 6 MEETINGS OF DIRECTORS**

### **6.1 Regular Meetings**

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority vote of the Directors and shall be open to all Members. Notice of regular board meetings shall be given or delivered to each Director, personally, by mail, telephone, email or other convenient means of communication stating the time, place and purpose of such meeting, at least five (5) days prior to the day named for such meeting, except in the event of an emergency or special meeting.

### **6.2 Quorum**

A quorum at the Board of Directors meetings for the transaction of business shall consist of a majority of the entire Board of Directors. The acts approved by the majority of those present at a meeting, at which a quorum shall be present, shall therein constitute the act of the Board of Directors, except where approval by a greater number of Directors shall be required by the Declaration, the Articles of Incorporation, or these Bylaws.

### **6.3 Special Meetings**

Special Board meetings of the Directors may be called by the President or a majority of the Directors, upon notice personally, by mail, telephone, email or other convenient means of communication, stating the time, place and purpose of such meeting, no less than three (3) days in advance of such meeting.

### **6.4 Adjourned Meetings**

If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present shall adjourn the meeting until such time as a quorum shall be present. At any adjourned meeting, any business which shall have been transacted at the meeting as originally called, shall be transacted without further notice.

### **6.5 Presence at Meeting**

The Board of Directors may allow any director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating in the meeting may hear each other during the meeting. A director

participating in a meeting through means permitted under this section shall be considered to be present in person at the meeting.

## **ARTICLE 7 CORPORATE MATTERS**

### **7.1    Fiscal Year**

The fiscal year of the Association shall be as designated by the Board of Directors.

### **7.2    The Seal**

The Association does not have a seal.

### **7.3    Notice**

Whenever any notice whatever shall be required to be given under the provisions of these Bylaws, such notice shall be deemed sufficient, if given by depositing the same in a post office box in a sealed, postage paid envelope, addressed to the member entitled thereto, at the post office address, as it appears on the books of the Association and such notice shall be deemed given on the day of such mailing. A waiver of notice, whether before or after the time stated therein, shall be equivalent to notice.

The Association may also provide notice by electronic means, including text message, email, or through Association's website unless a Member, by written demand, requires the Association to provide notice to the Member by mail

### **7.4    Resignations**

Any Director or Officer may resign, for whatever reason at any time, provided such resignation shall be made in writing and take effect at the time specified therein; or, if no time shall be specified, at the time of official acceptance of such receipt.

## **ARTICLE 8 OFFICERS AND THEIR DUTIES**

### **8.1    Officers**

The officers of the Corporation shall consist of a President; one Treasurer; one Secretary; and may consist of one or more Vice-Presidents, Assistant Secretaries and Assistant Treasurers, as the Board of Directors may from time to time elect or appoint. Only the office of Treasurer and Secretary may be held by the same person.

### **8.2    Election of Officers**

The officers of the Corporation shall be elected or appointed by the Board of Directors and shall hold office at the pleasure of the Board. If, at any time, a vacancy shall occur in the office of any officer for whatever reason, it shall be filled as soon as practical by a vote of the majority of the Board of Directors then in office.

### 8.3 Removal of Officers

All officers shall be subject to removal for whatever reason, at any time. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with cause or without cause and such successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board called for such purpose. Any officer may resign, at any time, by giving written notice to the Board and such resignation shall take effect on the date of receipt of such notice or at any other time specified therein.

### 8.4 Term

Each officer shall be elected annually by the Board and shall hold office for one (1) year or until death, resignation, retirement, removal disqualification or a successor shall be qualified and elected.

### 8.5 Compensation

Except as may be permitted under paragraph 12.2 below, no officer shall receive any compensation or remuneration for services from the Association for acting as such officer.

### 8.6 President

8.6.1 The President, subject to the control of the Board of Directors, shall be the chief executive officer of the Association and shall supervise, control and be in general charge of the affairs of the Association in the ordinary course of its business.

8.6.2 The President, or his designated alternate, shall preside at all meetings of the Members and of the Board of Directors.

8.6.3 The President shall have the power to appoint committees to assist in the administration of affairs of the Association.

8.6.4 The President shall, when authorized to do so, make, sign and execute all deeds, conveyances, assignments, bonds, contracts and agreements.

8.6.5 The President shall co-sign with the Treasurer all checks and promissory notes on behalf of the Association.

8.6.6 The President shall see to it that all orders and resolutions of the Board of Directors shall be carried out in accordance with the terms of such directives and resolutions.

8.6.7 The President shall perform such other duties as may be assigned to this office, from time to time by the Board of Directors.

8.7 Vice President

8.7.1 The Vice President, if one is so appointed by the Board, shall act in the place and stead of the President in the event of the absence, inability or refusal to act and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

8.7.2 Any action taken by the Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President, at the time such action was taken.

8.8 Treasurer

8.8.1 The Treasurer shall receive, have custody of and be responsible for the safekeeping of all funds, notes, mortgages and securities of the Association.

8.8.2 When necessary or proper, the Treasurer shall co-sign with the President all checks and promissory notes and endorse, on behalf of the Association, for collection, checks, notes and other obligations and shall deposit the same, in a timely manner, to the credit of the Association in such bank, banks or depositories as shall be designated in the manner described by the Board of Directors.

8.8.3 The Treasurer shall keep accurate and proper books of account and shall, from time to time at the direction of the Board, prepare such statements of account, including but not limited to, an annual statement of the Association's books of account, which shall be made at the completion of each fiscal year.

8.8.4 Whenever required by the Board of Directors, the Treasurer shall render a statement of the cash account and shall enter or cause to be entered regularly on the books of the Association kept for that purpose, a full and accurate account of all monies received and paid out on account of the Association.

8.8.5 The Treasurer shall prepare or cause to be prepared an annual budget which shall be presented to the Membership at the annual meeting and deliver or mail copies of the budget to those not present for any annual meeting.

8.8.6 At the conclusion of each fiscal year of the Association and prior to the annual meeting of Members, the Treasurer shall prepare or cause to be prepared a Statement of Financial Condition and a Statement of Income and Expense which shall also be presented at the annual meeting of Members. In addition, the Treasurer shall prepare and reveal to the Members at such annual meeting a reserve analysis in accordance with the Utah Community Association Act, Utah Code Section 57-8a-211 analyzing the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, or restoring common areas that have a useful life of three years, which include the private streets, common area amenities and building roofs.

8.8.7 At all reasonable times, the Treasurer shall exhibit the books and accounts to any Director of the Association and, upon written notice, shall make the books and records available to any Member.

8.8.8 The Treasurer, at the request of the Board, shall cause an annual audit of the Association's books by a public accountant licensed in the State of Utah.

#### 8.9 Secretary

8.9.1 The Secretary shall record the votes, keep, protect and maintain the minutes of all meetings and proceedings of the Board of Directors and the minutes of all meetings of the Members in books provided for such purposes.

8.9.2 The Secretary shall serve appropriate notice of any and all meetings of the Board of Directors and meetings of the Members.

8.9.3 The Secretary shall compile and maintain in an up to date manner a complete list of Members together with their last known addresses. Such list shall be open to inspection by Members and other persons lawfully entitled to inspect the same at reasonable times during regular business hours.

8.9.4 The Secretary shall be responsible for verifying the validity of any and all proxies submitted to the Board at the annual meeting of Members.

8.9.5 The Secretary shall perform any and all other duties as the Board of Directors may direct from time to time and, in general, perform all the duties incident to the Office of Secretary.

### ARTICLE 9 COMMITTEES

#### 9.1 Appointment

9.1.1 The Board of Directors of the Association may appoint certain permanent committees or ad hoc committees of no less than three (3) members per committee, who may or may not be Members of the Association, to perform advisory services and make recommendations to the Board as deemed appropriate in carrying out its purpose.

9.1.2 The committees shall serve at the convenience and discretion of the Board, but in any event, if the Board so directs, the following such committees shall be permanent committees and each such committee shall consist of a majority of the Members of the Association:

#### 9.2 Limitation of Powers

Any such committees appointed by the President or the Board shall be advisory in capacity only and shall not be permitted to act on behalf of the Board or its officers without such specific authority.

## **ARTICLE 10 DOCUMENTS, BOOKS AND RECORDS**

### **10.1 Books and Records**

The Association shall keep and maintain those records required by the Act and the Declaration. Such records shall be maintained in written form or in another form capable of conversion into written form within a reasonable time.

### **10.2 Inspection**

The books and records of the Association shall at all times be subject to inspection by any Member, upon reasonable notice and during normal business hours. A request to inspect such records shall be filed by the Member with the appropriate officer or officers of the Association responsible for such books and records.

## **ARTICLE 11 AMENDMENTS**

### **11.1 Definition**

The words "amend" and "amended" shall be broadly interpreted to include alterations, modifications, additions and repeal, in whole or part.

### **11.2 Requirements**

11.2.1 After relinquishment of Declarant control of the Association (*i.e.* the Turnover Date as defined above), these bylaws may be amended at a duly constituted special meeting for such purpose or at an annual meeting of the Members by a vote of not less than sixty-six and two thirds (66 2/3%) of the aggregate votes of the Members or by a vote or written consent of at least two-thirds of the members of the Board of Directors.

11.2.2 Until relinquishment of Declarant control of the Association (*i.e.* the Turnover Date as defined above), these Bylaws may be unilaterally amended by the Declarant for any purpose with or without notice to the Members.

### **11.3 Conflicts**

In no event shall the Bylaws be amended to conflict with the Declaration or Articles of Incorporation and in the event of any conflict between the Declaration or Articles of Incorporation and these Bylaws, the Declaration shall control and survive such conflict.

**11.4 Recording of Amendments**

Any amendment to these Bylaws shall be filed for recording in the Washington County Recorder's office in Washington County, Utah.

**ARTICLE 12  
NON-PROFIT ASSOCIATION**

**12.1 Purpose**

This Association shall not be organized for profit and either any Unit Owner, Member, member of the Board of Directors or person from whom the Association may receive any property or funds, shall participate or shall be lawfully entitled to receive any monetary gains or pecuniary profit from the operation thereof, unless otherwise described herein.

**12.2 Compensation**

In no event, shall any part of the funds or assets of the Association be paid as a salary or as compensation to, or distributed to, or inure to the benefit of any Member or Directors, provided, however that:

12.2.1 Subject to Board approval, reasonable compensation may be paid to any Member or Director while acting as an agent or employee of the Association for services rendered in effecting certain purposes of the Association.

12.2.2 Actual and reasonable expenses may be reimbursed to a Director and other designated Members such as, but not limited to, committee members, for costs incurred in connection with the administration of the affairs of the Association, upon Board approval.

12.2.3 This section shall not apply to Members or Directors who may be under separate contract for the management and operation of the Common Property.

**ARTICLE 13  
MORTGAGES**

**13.1 Notice**

Upon request of the Association, any Unit Owner who shall mortgage his Unit shall notify the Association in writing revealing the following information: (a) the name of the mortgagee; (b) the mortgagor(s) as indicated on the mortgage document; (c) the current address of the mortgagee; and (d) the account number or identification of the mortgage.

**13.2 Records**

The Secretary of the Association may maintain such mortgage information in a record entitled "Mortgages of Units".

### 13.3 Report of Delinquency

At the request of any mortgagee inquiring as to the status of assessments paid or unpaid by any Member, the Association may report to such mortgagee, either the current status of the Member, if such may be the case, or the delinquency or unpaid assessments due from the Unit Owner.

## ARTICLE 14 INDEMNIFICATION

### 14.1 General

The Association shall indemnify any director, officer, former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against all loss, cost and expense. Such costs shall include attorney's fees and liabilities actually and reasonably incurred by them in connection with the defense of or as a consequence of any threatened pending or completed action, suit or proceeding, whether civil or criminal, in which they shall be made a party of, shall be threatened to be made a party by reason of being or having been such director or officer, except in relation to matters as to which they shall be judged in such action, suit or proceeding, to be liable for willful misfeasance or malfeasance in the performance of his or her duties. In the event of a settlement, indemnification shall be provided only in connection with such matters in which the Association shall be advised by counsel that the person or persons to be indemnified shall not have been guilty of willful misfeasance or malfeasance in the performance of his or her duties as a director or officer in relation to the matter involved.

### 14.2 Exclusivity

The indemnification provided herein shall not be deemed exclusive of any other rights to which these indemnified may be entitled under any statute, the Articles of Incorporation, Bylaw, agreement, vote of Members or disinterested directors or otherwise, both as to action in their official capacity and as to action in another capacity while holding such office and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

### 14.3 Insurance

The Association may purchase and maintain insurance on behalf of any person who shall be a director, officer, employee or agent of the Association or shall serve at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. Such insurance shall provide protection against any liability asserted against them and incurred by them in such capacity or arising out of their status as such, whether or not the Association shall have the power to indemnify them against such liability.

### 14.4 Common Expense

Any and all liability, loss, damage, fine, cost and expense incurred or suffered by the Association in connection with the foregoing indemnification provision shall be treated and handled by the Association as "Common Expense," as defined by the Declaration.

## **ARTICLE 15 MISCELLANEOUS**

### **15.1 Association Documents**

Copies of the Declaration of Covenants and Restrictions, Articles of Incorporation, Bylaws of the Association, Rules and Regulations and other forms and documents described herein, shall be available from the Secretary of the Association upon request and such copies may be purchased at reasonable cost or may be provided in electronic format.

### **15.2 Definition of Terms**

The terms used in these Bylaws, to the extent they are defined in said Declaration, shall have the same definition as set forth in the Declaration as the same may be amended from time to time.

### **15.3 Gender**

Whenever required by the context, the masculine gender shall include the feminine and neuter genders, and vice versa; the word "person" or "persons" shall include a corporation, partnership, firm, trust, entity or other form of association; and the singular shall include the plural, and vice versa.

### **15.4 Power of Attorney**

Each Unit Owner shall, if necessary, execute and deliver a special power of attorney in favor of the Association, appointing the Association or one of its duly elected officers as Attorney-in-Fact, to act on behalf of the Unit Owner and Unit Owner's Unit in the event of destruction of such Unit as permitted, authorized, required and subject to the Declaration.

### **15.5 Rules and Regulations**

Subject to the provisions of the Act and the Utah Community Association Act (Utah Code Section 57-8a-101 *et seq.*), the Board of Directors shall have the power to adopt and establish by resolution such rules and regulations as it may deem necessary for the maintenance, operation, management and control of the Association property, equipment, facilities of the Association, and interaction with the Members (including rules and regulations regarding fee schedules to provide information and records to or for the benefit of any Member). The Board of Directors may alter from time to time such rules and regulations. The Members shall at all times obey such regulations and use their best efforts to see that they are faithfully observed by the

persons with whom they reside, their lessees, invitees and others over whom they may exercise control or supervision.

**CERTIFICATION**

I, the undersigned, do hereby certify:

1. I am the duly elected or appointed secretary of Desert Hills Townhomes Owners' Association, a Utah non-profit corporation,

2. The foregoing Bylaws constitute the Bylaws of said Association as duly adopted by unanimous written consent of the Board of Directors dated as of the \_\_\_\_ day of \_\_\_\_\_, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand as of the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
[Secretary Name], Secretary

**WRITTEN CONSENT IN LIEU OF ORGANIZATIONAL MEETING**

**BY THE INCORPORATOR**

**OF**

**DESERT HILLS TOWNHOMES OWNERS' ASSOCIATION**

By signing below, the incorporator of **Desert Hills Townhomes Owners' Association**, a Utah non-profit corporation (the "Corporation"), hereby consents in writing to the actions set forth in the following resolutions:

**RESOLVED**, that this written consent of the incorporator of the Corporation shall be in lieu of an organizational meeting as permitted by Section 16-6a-205(2) of the Utah Revised Nonprofit Corporation Act and shall have the same force and effect as though adopted by the incorporator at an organizational meeting duly called and held.

**RESOLVED FURTHER, THAT** the following persons are elected to the Board of Directors of the Corporation, to hold office until their respective successors are elected and duly qualified or until their prior death, resignation or removal, and to complete the organization of the corporation:

[Director 1 Name]

[Director 2 Name]

[Director 3 Name]

DATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
E. Troy Blanchard, Incorporator