

After Recording, Return to:
494 West 1300 North
Springville, UT 84663

DECLARATION
of
EASEMENTS, COVENANTS, CONDITIONS,
AND RESTRICTIONS
of
DESERT PLAYA SUBDIVISION

THIS DECLARATION (hereinafter the "Declaration") is made and executed this ____ day of _____ 20____, by DESERT PLAYA, LLC, a Utah limited liability company (hereinafter the "Declarant"), in its capacity as the owner of the below described real property and as the developer of the certain subdivision located in Saint George, Washington County, Utah, known as DESERT PLAYA (hereinafter the "Project").

RECITALS

WHEREAS, the Declarant is the owner of certain real property located in Saint George City, Washington County, Utah, and more particularly described on Exhibit A attached hereto and by reference incorporated herein (hereafter sometimes referred to as the "Original Land").

WHEREAS, the Declarant is developing the Original Land as a subdivision which is to be known as DESERT PLAYA and on which Declarant, or other parties will construct certain single residences and other improvements.

WHEREAS, the Declarant desires to provide for the preservation of the values of the Lots (as defined below) and for the maintenance of any common private roads and other common areas as may be included on the Project or in the Subdivision and which will be constructed on the Original Land or Expansion Land (as defined below).

DECLARATION

NOW, THEREFORE, the Declarant does hereby state the Declaration in its entirety and hereby makes the following declaration:

ARTICLE I
DEFINITIONS

Unless the Declarant shall clearly indicate otherwise, the following terms as used in this Declaration shall have the meanings set forth in this article:

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

1.2 Assessment shall mean the amount which is to be levied and assessed against each Lot and paid by each Owner to the Association for Association expenses.

1.3 Association shall mean DESERT PLAYA Homeowners Association, Inc., a Utah nonprofit corporation, and its successors and assigns.

1.4 Board shall mean the Board of Trustees of the Association.

1.5 Common Areas and Facilities or Common Areas shall mean such portions of the Project, as shall be owned by the Association for the common use and enjoyment of the Owners including, but not limited to, the following;

- (a) any private roads within the subdivision as designated and shown on the Plat;
- (b) any trail areas, landscape strips and other open space areas as designated and shown on the Plat;
- (c) any storm water collection areas which are located in any of the open space areas as the same are designated and shown on the Plat;
- (d) such other common areas and facilities as shall hereafter be contributed to the Association by Declarant or acquired by the Association.

1.6 Declarant shall mean DESERT PLAYA, LLC, a Utah limited liability company and its successors and assigns, if any, as developer of the Project.

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

1.8 Declaration shall mean this Declaration of Easements, Covenants, Conditions, and Restrictions.

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

1.10 Land shall mean the Original Land and the Expansion Land.

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

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

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

1.14 Plat shall mean the plat covering the Property and which is entitled DESERT PLAYA Subdivision, Saint George City, Washington County, Utah, prepared and certified by D. Bradford Peterson, (a registered Utah land surveyor, Certificate No. 362255) which plat has been executed by Declarant and

is filed for record in the office of the Washington County Recorder or will be filed for Record concurrently with this Declaration. Plat shall also mean any amendments to the above-named plat(s), including any plats recorded for any of the Expansion Land.

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

1.16 Residence shall mean the single-family dwelling to be constructed on a Lot.

ARTICLE II SUBMISSION OF LAND AND EXPANSION LAND

2.1 Submission of Property. The Declarant hereby submits and subjects the real property located in Saint George City, Washington County, Utah and more particularly described on Exhibit A, the buildings, improvements, and other structures located thereon, all easements, rights and appurtenances, and all other Property, as defined herein, to the provisions of this Declaration and declares that all such real property, buildings, improvements, structures, easements, rights, appurtenances and other Property are and shall be held, possessed, occupied, used, leased, encumbered, transferred, sold, conveyed, devised and inherited subject to the provisions of this Declaration.

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

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

With the exception of perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms expire five (5) years after the date on which this Declaration is filed for record with the County Recorder of Washington County.

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

2.4 Annexation. All or any part of the Expansion Land may be annexed to and become subject to this Declaration as a part of the Property and thus become subject to the Declaration and the jurisdiction of the Association, provided that a Supplementary Declaration covering a portion of the Expansion Land shall be executed and recorded by Declarant. The recordation of said Supplementary Declaration shall

constitute and effectuate the annexation of said Expansion Land described therein making the same subject to this Declaration and subject to the functions, powers, and jurisdiction of the Association and thereafter said annexed property shall be a part of the Property and all of the Owners of Lots in said annexed property shall automatically be Members of the Association. There is no requirement that the Expansion Land or any part of it become part of the Project. Until such annexation, the Expansion Land shall not be part of the Project nor be subject to the terms of this Declaration. Additional provisions concerning the Expansion Land are set forth below in Article XIII.

ARTICLE III NATURE AND INCIDENTS OF OWNERSHIP

3.1 Transfer of Title to Common Areas. Concurrent with or immediately following the filing of the Plat, or any amended or additional plat with respect to the addition of some or all of the Expansion Land, Declarant shall convey to the Association title to the various Common Areas owned by Declarant described thereon and the Association shall accept the transfer thereof.

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

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

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

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

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

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

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

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

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

ARTICLE IV USE RESTRICTIONS

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

4.2 Architectural Control Committee. The Architectural Control Committee shall be the Declarant until the Declarant Control Period expires as indicated herein. The Declarant may assign the role of the Architectural Control Committee at any time during the Declarant Control Period. Prior to the expiration of the Declarant Control Period, the Declarant will either a) terminate the Architectural Control Committee by amending this Declaration or b) assign, in writing, the role of the Architectural Control Committee to three (3) Owners in the Plat. Members of the Architectural Control Committee who serve after the Declarant will serve for 2 (two) consecutive years. At the conclusion of the two (2) year term, three (3) new Architectural Control Committee members may be selected upon the written approval of the Owners of not less than two-thirds of Owners who submit a vote in person or by proxy. The Architectural Control Committee may be dissolved upon the written approval of the Owners of not less than two-thirds of Owners who submit a vote in person or by proxy only after the Declarant Control period has expired. The construction of any Residence, out-building, fence, wall or other structure (hereinafter 'Improvement') shall be subject to the following restrictions and conditions.

(a) No Improvement may be commenced, erected, or maintained without the approval of the Architectural Control Committee.

(b) Any Owner proposing the construction of any Improvement shall submit, in writing, plans and specifications for the same to the Architectural Control Committee. Such plans and specifications shall include but not be limited to the nature, kind, shape, height, materials, plot plans, floor plans, exterior color scheme, grading plan and finished elevations.

(c) The Architectural Control Committee shall have the right to refuse any such plans, specifications, or grading or landscaping plans which are not suitable or desirable, in the Committees opinion, for aesthetic or other reasons, and may take into consideration the suitability of the proposed building or other structure, the materials to be used, the harmony thereof with the surroundings, the topography of the land, and the effect of the proposed Improvement on the view from adjacent or neighboring Lots.

(d) In the event the Architectural Control Committee shall fail to disapprove of the plans and specifications within thirty (30) days of the date of submission, such failure shall be deemed to be approval.

(e) The Architectural Control Committee shall not be liable for its approval or disapproval of any plans of specifications or for any action or failure to act in regard to such approval process.

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

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

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

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

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

ARTICLE V DUTIES AND OBLIGATIONS OF OWNERS

5.1 Maintenance and Repair. Each Owner shall, at his or her sole cost and expense, keep his or her Lot and all improvements thereon, in a clean, safe, sanitary and attractive condition, and in a good

state of repair. Such obligation shall extend, but shall not be limited to, the painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces, thereby contributing to the beauty and value of the neighborhood. The Owners obligation shall include the obligations to keep any landscaping on his or her Lot in a clean, safe and attractive condition and in good order, condition and repair. No Residence, building, structure, landscaping or fencing upon any Lot shall be permitted to fall into disrepair.

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

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

ARTICLE VI ASSOCIATION

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

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

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

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

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

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

(a) The Association shall accept title to all Common Areas conveyed to it, whether by Declarant or by others.

(b) The Association shall keep, maintain, repair and replace the Common Areas, in a clean, safe and attractive condition and in good, order condition and repair, including the obligation to repair and maintain the private roads, the obligation to manage and maintain any storm water collection facilities and areas, and the obligation to maintain the landscaping on any other Common Areas.

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

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

6.7 Powers of Association. The Association shall have all the powers set forth in its Articles of Incorporation. and Bylaws, all powers that have been or may hereafter be conferred by law to nonprofit corporations, all powers as may hereafter be granted to it by its members, and the power to do all things authorized, required or permitted to be done by the Association under the provisions of this Declaration, including, but not limited to the following:

(a) The Association shall have the power to and shall appoint a three member Architectural Control Committee which may consist of members of the Board of Trustees of the Association. In the event the Association shall fail to appoint an Architectural Control Committee, then the Board of Trustees itself shall serve as the Architectural Control Committee. During the Declarant Control Period, the Declarant may either appoint members to the Architectural Control Committee or may serve as the Architectural Control Committee.

(b) The Association shall have the power and duty to perpetually obtain, contract and pay for:

(i) the construction, maintenance, repair and landscaping of the Common Areas;

(ii) such insurance policies or bonds as may be required by this Declaration or as the Board may deem reasonable or necessary for the benefit of the Association, the Trustees and the Owners; and

(iii) such materials, supplies, and other personal property and such labor and other services as the Board may deem reasonable and necessary to carry out the duties of the Association,

(c) The Association shall have the power to levy and collect assessments as hereinafter provided.

(d) The Association shall have the power to adopt, amend, modify, repeal, construe and enforce reasonable rules and regulations governing among other things the use of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

(e) The Association shall have the power, in its own name, and in its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Association, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations. The Association shall also have power to adopt bylaws or rules and regulations regarding the suspension of the rights, including voting rights, of an Owner as a member of the Association during any period of time during which the Owner fails to comply with the rules and regulations of the Association or with Owner's obligations under this Declaration.

(f) The Association shall have all other rights, powers and privileges reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

6.8 Governance of Association. Except as herein set forth, the Association shall be governed by its Articles of Incorporation and Bylaws, and the resolutions adopted by its members or the Board.

ARTICLE VII ASSESSMENTS

7.1 Agreement to Pay Assessments. Except for the Declarant, the Owner for each Lot within the Project, and for and as the Owner of the Land and Property and every part thereof, hereby covenants and each Owner of any Lot by the acceptance of a deed or other instrument of conveyance and transfer therefor, whether or not it be so expressed in said deed or other instrument, shall be deemed to covenant and agree with each other Owner and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration, any special assessment for capital improvements and other matters as provided in this Declaration Such assessments shall be fixed, established, and collected from time to time as provided in this Article VII.

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

7.3 Annual Budget. The Board shall authorize and levy the amount of the annual assessment upon each Lot, except those owned by the Declarant, by a majority vote of the Board. Annual assessments shall commence on all Lots at the close of escrow for the sale of a Lot, The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual period. Written notice of any change in the amount of any annual assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board.

7.4 Uniform Rate of Assessment. The Common Expenses shall be apportioned and assessed to all Owners at a uniform rate which shall be in proportion to the number of Lots in the Project; provided, however, that during the Declarant Control Period, Common Expenses shall not be allocated to Declarant with respect to any Lots owned by Declarant on which the construction of a Residence has not been completed or with respect to any Lots owned by Declarant with Residences which are not then occupied as a residence.

7.5 Payment. Each Annual Assessment shall be due and payable in annual or monthly installments. If to be paid annually, such Annual Assessments shall be payable on the 2nd day of January of each year and no separate notices, other than the Annual Budget, of such annual installment shall be required. The Association, in its discretion, may elect to have the Annual Assessments due and payable in twelve (12) equal monthly installments due on the 1st day of each and every month. Each annual or monthly assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within (30) days after such date plus a \$10 late fee. In addition, in the event that any installment of the Annual Assessment is not paid within thirty (30) days of the date such installment

becomes due, the Association may, at its option, and upon, thirty (30) days' prior written notice to the Owner accelerate the due date for all remaining installments for the calendar year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said thirty (30) day notice period and interest shall accrue on the entire sum at the rate of eighteen percent (18%) per annum from such date until paid in full. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date thirty (30) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

7.6 Reserve Analysis and Inadequate Funds. The Association shall cause a reserve analysis or study to be conducted in accordance with the provisions of U.C.A. Section 57-8a-211 no less frequently than every five years with the first such reserve analysis to be performed in the year 2017. The results of such reserve analysis shall be presented to the Lot Owners for discussion with respect to whether to fund a reserve fund and if to how to fund it and in what amount. In the event that it is otherwise determined that the Common Expense Fund is inadequate for the needs of the Association at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 7.7 below, except that the vote therein specified shall be unnecessary.

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

7.8 Lien for Assessments. All sums assessed to a Lot pursuant to the provisions of Article VII, together with late charges, interest, court costs and reasonable attorney's fees, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article VII, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner, and a description of the Lot. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Washington County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. A release of lien shall be executed by the Association and recorded in the office of the County Recorder of Washington County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

7.9 Foreclosure of Lien for Assessments. The lien for assessments may be foreclosed in accordance with and subject to the provisions of U.C.A. Section 57-8a-302 through 308 through a judicial

foreclosure in the manner provided by law for foreclosure of mortgages or through non-judicial foreclosure as though the lien were a deed of trust. The Owner shall be required to pay the costs and expenses of such foreclosure proceedings, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees incident to either the filing of the lien or the foreclosure proceedings and any costs and attorneys' fees associated with the collection of the amounts due under the lien. Such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid an amount equal to its existing lien at any foreclosure sale, and to acquire, hold, convey, lease, rent, mortgage or use the Lot the same as the Owner.

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

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

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

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

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

7.13 Personal Obligation of Owner. The amount of any Annual or Special Assessment shall be the personal obligation of the Owner to the Association. Suit to recover a money judgment for such personal

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

7.14 Personal Liability of Purchaser. Subject to the provision of Sections 7.11 and 7.12 a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

7.15 Lien for Fines. The Association may levy fines against any Owner who violates any of the provisions of the Declaration of Easements, Covenants, Conditions and Restrictions, or the Articles of Incorporation, By-laws or Rules and Regulations of the Association. Said fines shall be secured by a lien on such Lot and shall be superior to all other liens and encumbrances on such Lot except for set forth in Section 7.10 above and other annual and special assessments recorded prior to the date notice of this lien is recorded.

ARTICLE VIII INSURANCE

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

8.2 Liability Insurance. The Association shall procure and maintain, to the extent reasonably available as provided under U.C.A. Section 57-8a-401 et seq., from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies (herein called the "Policy") of public liability insurance to insure the Association, the Board, the Manager and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the operation, maintenance and use of the Common Areas, any activities thereon, and any conditions of the Common Areas under a Comprehensive General Liability form of policy. Such insurance shall be for such limits as the Association may decide, but not less than \$1,000,000 for personal injury and property damage arising out of a single occurrence which coverage shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for the property of others and such other risks as shall customarily be covered with respect to property

similar in construction, location and use to the Common Areas, The Policy shall contain an endorsement which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds, as between themselves, are not prejudiced. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured.

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

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

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

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

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

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

**ARTICLE IX
DAMAGE OR DESTRUCTION**

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

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

**ARTICLE X
MORTGAGEE PROTECTION**

10.1 Amendment. After the Declarant Control Period, no amendment to this Declaration shall affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment or any successor or assign thereof, unless Mortgagee representing sixty-seven percent (67%) of the Lot Owners have consented in writing to such amendment or such percentage of the Mortgagee's consents are presumed in accordance with the provisions of U.C.A Section 57-8a-210.

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

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

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

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

10.5 Right to Pay Common Area Taxes and Charges. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

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

ARTICLE XI BUILDING AND DESIGN STANDARDS

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

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

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

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

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

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

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

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

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

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

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

11.12 Antennas and Satellite Dishes. All antennas are restricted to the attic or interior of a dwelling. Satellite dishes shall be allowed, provided they are screened from view from the streets whenever possible unless the Architectural Control Committee shall waive the requirement of such screening, FCC Antenna and Dish Policy. Owners are encouraged to use cable service for television and internet. Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite ("DBS") antennas (dishes) one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the FCC regulated dish is placed in a location screened from view of the Streets. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner. The dish must comply with all applicable city, county and state laws, regulations and codes. The Association must be provided with a copy of any applicable governmental permits. Installation must be pursuant to the manufacturer's instructions. In order to protect against personal injury and property damage, a dish may not be placed in a location where it may come into contact with a power line. In order to protect against personal injury and property damage, all dishes must be properly grounded and secured. In order to protect against personal injury, dishes may not block or obstruct any driver's view of an intersection or Street. The Owner is responsible for all costs associated with the installation and maintenance of a dish, The Owner is responsible for all damage caused by or connected with the dish. The Owner must hold the Association harmless and indemnify the Association in the event that someone is injured by the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna. In the event of a violation of this Section, the Association may bring an action for declaratory relief with the FCC or the Fifth District Court, Washington County, after notice and an opportunity to be heard. If the FCC or Court determines that this Section is enforceable, the Owner shall pay a \$50.00 fine to the Association for each violation.. If the violation is not corrected within a reasonable length of time, additional fines of \$10.00 per day will be imposed for each day that the violation continues. If an antenna poses a serious, immediate safety hazard, the Association may seek injunctive relief to compel the removal of the antenna. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if frilly set forth herein.

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

11.14 Mechanical Equipment. All air conditioning, heating equipment, swamp coolers and soft water tanks must be screened from view from the street and adjoining lots unless such screening is waived

by the Architectural Control Committee. Air conditioning units and swamp coolers are not permitted on roofs or through windows.

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

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

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

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

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

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

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

**ARTICLE XII
MISCELLANEOUS**

12.1 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address -for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the registered agent, or any officer or Trustee of the Association.

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

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

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

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

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

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

12.8 Effective Date. This Declaration, any Plat and any amendment or supplement to either, shall take effect upon the recording thereof in the office of the County Recorder of Washington County, Utah and shall remain in effect until terminated by the recording of an instrument executed and consented to in writing (or presumed consented to) by sixty-seven percent (67%) of the Mortgagees of Lots affected thereby in accordance with the provisions of Section 12.2.

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

XIII EXPANSION

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

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

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

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

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

- (a) an additional subdivision plat or plats creating additional Lots on the Expansion Land, stating on each plat the intention to have the property described on said Plat bound by the terms, covenants and conditions of this declaration upon the filing of a Declaration of Annexation; and/or
- (b) a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration.

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

13.5. Common Area. The Common Area in such expansion area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, prior to recordation of the Declaration of Annexation and the Association shall accept the deed. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of Association property and facilities. Declarant's Control Period ownership status shall extend to all Lots in the expansion area. Otherwise, Owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each Lot and Lot Owner in any expansion area shall be equal to the liability of each Lot and Lot Owner in the original Properties.

[Remainder of page intentionally left blank. Signatures appear on the following page.]

[Signature Page to CC&RS for Desert Playa Subdivision]

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

Dated this ____ day of _____ 20____.

DECLARANT:

DESERT PLAYA, LLC

By: _____
Rick Salisbury, Manager

STATE OF UTAH)
 :ss.
COUNTY OF _____)

On this day of _____ 20____, personally appeared before me Rick M. Salisbury, the Manager of DESERT PLAYA, LLC, and that said document was signed by him in behalf of said company and said Rick M. Salisbury acknowledged to me that said company executed the same.

NOTARY

EXHIBIT A

DESERT PLAYA PLAT BOUNDARY DESCRIPTION

BEGINNING AT A POINT NORTH 01°10'49" EAST ALONG THE SECTION LINE, A DISTANCE OF 1827.827 FEET AND NORTH 88°49' 11" WEST 1467.998 FEET FROM THE EAST ONE-QUARTER CORNER OF SECTION 35, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE & MERIDIAN, (BASIS OF BEARING BEING NORTH 01°10'49" EAST ALONG THE EASTERLY SECTION LINE BETWEEN THE EAST ONE-QUARTER CORNER AND THE NORTHEAST CORNER OF SAID SECTION 35), SAID POINT ALSO BEING ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 06°57'10" WEST), AND RUNNING THENCE ALONG THE ARC OF A 478.000 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 51°12' 33", A DISTANCE OF 427.221 FEET; THENCE NORTH 31°50' 17" EAST 84.830 FEET; THENCE SOUTH 58°09'43" EAST 47.000 FEET; THENCE SOUTH 53°45'51" EAST 304.971 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 500.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 21°30'26"¹¹, A DISTANCE OF 187.686 FEET; THENCE SOUTH 32°15'25"¹¹ EAST 172.013 FEET; THENCE SOUTH 57°44'35" WEST 25.000 FEET; THENCE SOUTH 50°23'48" WEST 136.784 FEET; THENCE SOUTH 51°44'46" WEST 63.999 FEET; THENCE SOUTH 55°37'04" WEST 119.550 FEET; THENCE SOUTH 60°39'00" WEST 119.009 FEET; THENCE SOUTH 65°40' 16" WEST 119.009 FEET; THENCE SOUTH 70°41'31" WEST 119.009 FEET; THENCE SOUTH 74°50'18" WEST 77.567 FEET; THENCE SOUTH 76°28'27" WEST 199.872 FEET TO THE EASTERLY BOUNDARY OF A PARCEL OF GROUND, DESCRIBED IN THAT CERTAIN SPECIAL WARRANTY DEED RECORDED MARCH 18, 2020 AS DOC. NO. 20200012677, WITH THE WASHINGTON COUNTY RECORDER'S OFFICE; THENCE ALONG SAID EASTERLY BOUNDARY THE FOLLOWING (5) FIVE COURSES: (1) NORTH 10°53'49" WEST 86.375 FEET; (2) NORTH 05°40'00" WEST 68.302 FEET; (3) NORTH 00°30' 49" EAST 68.284 FEET; (4) NORTH 01°35'18" EAST 68.670 FEET; AND (5) NORTH 05°12'59" EAST 135.953 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY, NORTH 05°35'17" WEST 100.024 FEET; THENCE NORTH 06°57' 10" WEST 90.000 FEET TO THE POINT OF BEGINNING.

(CONTAINS 490,822 SQ. FT. (11.268 ACRES))