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DOC # 20150044182

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Russell Shirts Washington County Recorder
12/22/2015 03:22:59 PM Fee \$ 50.00
By MAGELLAN TITLE



When Recorded, Mail to:
Hyde-Berry Park Subdivision LLC
C/O Benji Nelson
1427 Montezuma Circle
St. George, Utah 84790

**Declaration of Restrictive
Covenants and Conditions of
HYDE-BERRY PARK SUBDIVISION**

Declaration of Restrictive Covenants and Restrictions Agreements, Restrictions, Covenants, and Conditions affecting the real property known as **HYDE-BERRY PARK SUBDIVISION**, according to the official plat thereof, executed by **HYDE-BERRY PARK LLC** (hereinafter referred to as "Declarant")

Witness to:

WHEREAS, "Declarant" is the owner of certain real property, recorded:

Book: _____ Page: _____ Entry: _____

in the office of the Washington County Recorder, State of Utah, which real property is more particularly described as follows:

RECITALS:

A. Declarant owns certain real property (the "Property") located in Washington County, Utah, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

B. Declarant intends to develop a residential subdivision on the Property. Declarant will develop and convey all of the Property within the Subdivision subject to a general plan of development and subject to certain covenants, conditions and restrictions, all as set forth in this Declaration, which are deemed to be covenants running with the land, mutually burdening and benefiting all of the Property and each of the Lots.

NOTICE OF HAZARD

1. Based on the proximity of this property to the Virgin River, homes constructed within the boundaries of this subdivision may be subject to a flooding and erosion hazard. By purchasing property within this subdivision, the purchaser assumes any and all risk of damage and personal injury as a result of its proximity to the Virgin River, and does indemnify and hold the City of St. George, its officers, boards, employees, agents and assigns, harmless from any and all claims of injury, damage, expense or loss of whatever nature, and by any person, related to the use of their property now and in the future, by reason of flooding, flowage, or any damage, directly or indirectly, caused by water, erosion, or deposition, sudden or gradual, whether surface, flood, or rainfall.
2. The 100 year flood plain is an area defined by FEMA that will be inundated during the 100 year flood event. A 100 year flood event is defined as the flood event that has a 1% probability of being equaled or exceeded in any given year. Floods may extend beyond the boundaries of the 100 year flood plain. Floods equaling or exceeding the 100 year flood event can and do occur.
3. This parcel is located in the Erosion Hazard Boundary. The Erosion Hazard Boundary shown was adopted by the City of St. George in September of 2005 based on the river stability study completed by JE Fuller/Hydrology and Geomorphology Inc. The erosion hazard zone consists of the channel margin area at risk to sustain erosion damage during a 100 year flood. The risk from erosion has been reduced by implementing accepted river management strategies and erosion control improvement. Homeowners are encouraged to investigate and evaluate the risk prior to purchasing within the zone.
4. No encroachment, fill, clearing, removal of vegetation or activity or work of any kind is allowed in the Virgin River flood plain without necessary approvals from the City, State, and Federal Agencies.
5. All buildings within this subdivision must have an Elevation Certificate, prepared by a licensed professional, verifying the minimum finished floor elevation prior to issuance of a building permit. Said building minimum finished floor elevation shall be verified by the Licensed Professional before the certificate of occupancy is issued.
6. Property owners should consider flood insurance.

GENERAL NOTES AND RESTRICTIONS

1. All lots in this subdivision are subject to a 10.00 foot wide public utility and drainage easement in the front and 7.50 foot wide public utility and drainage easement on the rear and side yards, unless otherwise noted. Lots adjoining Parcels A & B do not have easements along those particular lot lines, as shown.
2. All lots in this subdivision are subject to a 25.00 foot front yard setback, an 8.00 and 10.00 foot side yard setback, and a 10.00 foot rear yard setback.
3. All lot corners must be monumented before a building permit can be acquired.
4. This subdivision utilizes lot size averaging; therefore, some lots may be under the minimum square footage requirement for the zoning classification.
5. Privacy walls on lot lines between Lots 20 & 21 shall be restricted to a maximum of 3 feet in height.
6. Due to the proximity of this subdivision to the Virgin River Flood Plain; and the presence of shallow ground water depths; and shallow sewer depths. No basements are allowed within this subdivision.
7. The owners of Lot 20-26 shall be responsible to maintain repair, restore, and replace the 25-foot graveled access easement from damage or disruption caused by the City of St. George in installing, maintaining, repairing, or replacing the sewer line and to maintain the easement in a drivable condition.
8. Owners of Lots 20-26 may not install, build, place or cause or allow anything to be installed, built or placed in the 25' access easement. If any improvement is installed, built, or placed within the easement, Owner bears the risk of loss or damage to those improvements resulting from the exercise of the easement rights and the City is not responsible to repair, replace, maintain, indemnify or reimburse Owner for any damage or loss.
9. For the public utility, drainage, and emergency access easement identified on the plat and plat legend, affecting Lots 7 and 20, no buildings, structures, pools, walls, or fences will be allowed. Gates may be allowed if they do not obstruct City access, upon approval of the Community Development Director. On Lot 20, any privacy fence must be built on the east side of the easement boundary.
10. Access for Lot 7 shall be from Gate House Lane, a public street, which shall be used as the lot front. Access also is allowed off Hydeberry Cove, a public street, but not as the lot front.

11. No walls or fences exceeding 3 feet in height will be allowed adjacent to Parcel A, on the west property boundary of Lot 20, and on the east property boundary of Lot 21, due to the type of heavy equipment required to maintain the public storm drain and sewer lines.

12. Owner may not install, build, place or cause or allow anything to be installed, built or placed within the irrigation and drainage easement located within Lot 7. If any improvement is installed, built, or placed within the easement, Owner bears the risk of loss or damage to those improvements resulting from the exercise of the easement rights and the City is not responsible to repair, replace, maintain, indemnify or reimburse Owner for any damage or loss.

GEO TECHNICAL INVESTIGATION

A geotechnical investigation was performed by Applied Geotechnical Engineering Consultants, Inc. The investigation results and specific recommendations for the construction of foundations, floor slabs and exterior flatwork, are compiled in a report dated: January 6, 2015. This report is available from the Developer and a copy is on file with the City of St. George. Owners, builders and contractors should become familiar with this report and comply with its recommendations.

ARTICLE I

DECLARATION

1.1 Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to and in strict accordance with all of the terms and conditions of this Declaration, including without limitation all of the covenants, conditions and restrictions set forth herein, all of which are created for the mutual benefit of the Owners of the Property and the Lots.

It is the intention of the Declarant in imposing the covenants, conditions and restrictions set forth in this Declaration to create a generally uniform pattern of development of the Property and to protect and enhance the property values and aesthetic values of the Property by eliminating inconsistent uses or improvements, all for the mutual protection and benefit of the Owners of the Lots.

All of the terms and conditions of this Declaration, including without limitation all covenants, conditions and restrictions set forth herein, are intended to and shall in all cases run with the title of the land comprising the Property and shall be binding upon the Owners, their successors, assigns, heirs, lien holders, and any other person holding any interest in the Property and shall inure to the benefit of all other Property in the Subdivision.

All of the terms and conditions of this Declaration, including without limitation the covenants, conditions and restrictions set forth herein, shall be binding upon Declarant as well as all of Declarant's successors in interest, and may be enforced by Declarant, by the Architectural/Technical Committee, or by any Owner.

Notwithstanding the foregoing, no provisions of this Declaration shall prevent Declarant from the completion of the Subdivision Improvements, or from using any Lot owned by Declarant as a model home, temporary construction or sales office, nor limit Declarant's right to post signs or engage in other reasonable activities on the Property incidental to sales or construction which are in compliance with the applicable ordinances of St. George City.

Once a lot has been sold it will be the responsibility of each new lot owner to maintain, replace, and repair any and all broken concrete curb, gutters or sidewalks. It will be the responsibility of each lot owner to import or export any fill material required once the lot has been purchased.

ARTICLE II

DEFINITIONS

2.2 Unless the context clearly requires the application of a more general meaning, the following terms, whether capitalized or not, when used in this Declaration, shall have the following meanings:

"Architectural/Technical Committee" shall mean the committee created under Article IV of this Declaration.

"Declarant" shall mean and refer to Hyde-Berry Park LLC.

"Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Hyde-Berry Park Subdivision, together with any subsequent amendments or additions, and any other matters or conditions shown on the official Hyde-Berry Park Subdivision, which are incorporated into this Declaration by reference.

"Dwelling" shall mean the single-family residence built or to be built on any Lot.

“Excavation” shall mean any disturbance to the surface of the land, including the removal of native vegetation, and also including trenching which results in removal of soil or rock from a depth of more than 12 inches from the natural surface of the land, or any grading of the surface. Excavation shall include any activities for which an excavation or grading permit would be required under the ordinances and regulations as adopted by St. George City

“Fill” shall mean the depositing of earth, soil, rock or other materials to the surface of the land, whether imported from offsite or resulting from the re-grading of excavated material from on-site, to raise the natural elevation of the surface.

“Improvements” shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Dwellings, garages and storage buildings.

“Lot” shall mean any numbered building Lot shown on the Plat of Hyde-Berry Park Subdivision.

“Owner” shall mean the person or persons having title to any Lot as shown on the Plat of Hyde-Berry Park Subdivision. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of an obligation.

“Permitted Improvements” shall mean any Improvements installed, constructed, maintained or allowed to stand on the Property in conformity with this Declaration.

“Person” shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

“Plat” shall mean the Plat of Hyde-Berry Park Subdivision, Phase 1, as approved by St. George City and recorded in the office of the Recorder of Washington County, Utah, and any amendments that may be made from time to time, including the addition of subsequent phases of the Subdivision, if any, provided that such subsequent phase of the Subdivision is made subject to the provisions of this Declaration by a supplemental declaration stating that such subsequent phase has been added to the Subdivision and is subject to this Declaration. Any such subsequent declaration must be recorded in the Office of the Recorder of Washington County, Utah.

“Property” shall mean all of the land described on the Plat, including Lots and Roadways.

“Public View” shall mean that the object, Improvement, or activity on the Property is or would be in the line of sight originating from a point five feet above the surface of any public streets, including Roadways within the Subdivision.

“Roadway” shall mean those portions of the Property that have been or will be dedicated to St. George City as a public way.

“Subdivision” shall mean the subdivision known as Hyde-Berry Park Subdivision, Phase I and all Lots and other Property within the Subdivision as shown on the Plat, and as it may be amended or expanded from time to time.

“St. George City” shall mean the St. George City, a Utah municipal corporation, and its appropriate departments and officials.

ARTICLE III

PURPOSE OF DECLARATION

3.1 It is the purpose and intention of Declarant that the Property be developed and maintained as a high quality, attractive and well-designed residential development. It is the purpose of this Declaration that the natural beauty, serenity, views and present surroundings of the Property shall be protected as much as possible in connection with the Improvements to be constructed on the Property and the uses permitted on the Property as set forth in this Declaration.

ARTICLE IV

ARCHITECTURAL/TECHNICAL COMMITTEE

4.1 Introduction. It is the intention and purpose of this Declaration to impose architectural design standards of a type and nature that result in Dwellings and Permitted Improvements which are compatible with a high quality, attractive and well-designed residential development. The placement, dimensions and materials of the Permitted Improvements will be guided, but still allow for diversity in style and vitality in design. To accomplish this goal, the Declarant hereby establishes the Architectural/Technical Committee, which is empowered to oversee and enforce the provisions of this Declaration.

4.2 Architectural/Technical Committee Created. The Architectural/Technical Committee will consist of two (2) people appointed by the Declarant, who do not need to be Owners. At the time Dwellings have been constructed on 100% of the Lots, all two members of the Architectural/Technical Committee will be elected by the Lot Owners. The above percentages are to be based on the total number of Lots in the Subdivision so that the Declarant is able to remain active in the administration and enforcement of this Declaration while Lots are being marketed.

4.3 Approval by Architectural/Technical Committee. No Improvements of any kind, including without limitation the construction or installation of any Dwelling, garage, fence, out building or any other permanent structure may be constructed, installed, maintained or allowed to stand in the Subdivision without the prior written approval of the Architectural/Technical Committee. The construction of all Improvements must occur within the portion of a Lot, which is approved for the construction of Improvements by the ordinances of St. George City and also in compliance with all set back requirements set forth in this Declaration. No Excavation, Fill, grading, filling or draining shall be made without the prior written approval of the Architectural/Technical Committee. Approval of the Architectural/Technical Committee will be sought in the following manner:

(a) Plans submitted. A complete set of plans for the construction of any Improvement as described in Section 4.3 must be signed by the applicant and submitted to the Architectural/Technical Committee for review. It is recommended that preliminary plans be submitted before the expense of final construction drawings is incurred. The plans must be in sufficient detail to show the location on the Lot of the Improvements, including without limitation the exterior walls of any Dwelling and all other structures to be built with it; detailed drawings of all elevations of all buildings showing locations of windows, doors, roof pitches, decks and other exterior elements; a list of exterior and roofing materials and/or a sample, including color samples. In the case of an addition or modification to an existing Dwelling, the Architectural/Technical Committee may waive any of the foregoing requirements.

(b) Fee. A \$350.00 review fee will be charged payable to Hyde-Berry Park at the time of submission of plans to the Architectural/Technical Committee. This will cover the time and costs of the Architectural/Technical Committee.

(c) Review. The Architectural/Technical Committee shall exercise its best judgment in overseeing the construction of all Improvements on the Property within the Subdivision.

The Architectural/Technical Committee shall consider the materials to be used on the external features of all Improvements, including but not limited to exterior colors, harmony of external design with existing structures within the Subdivision, location with respect to topography and finished grade elevations and harmony of landscaping with the natural settings and surroundings.

While in receipt of a complete submission of the plans, the Architectural/Technical Committee will review the plans and make an initial determination whether or not the plans comply with the conditions imposed by this Declaration. If the plans do not comply, the plans will be rejected. If the plans are in compliance, the Architectural/Technical Committee will stamp and approve the plans.

The Architectural/Technical Committee may approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans to the Architectural/Technical Committee for informal and preliminary approval or disapproval.

The Architectural/Technical Committee will review preliminary plans and the Architectural/Technical Committee will make its comments known to the Owner.

However, no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission of plans as set forth in this Declaration.

All preliminary sketches will be kept by the Architectural/Technical Committee.

Upon final approval, the Architectural/Technical Committee and the Owner will each sign a copy of the approved plans, which shall be left with the Architectural/Technical Committee. Any construction that is not in strict compliance with the approved plans is prohibited.

Notwithstanding any provisions in the Declaration, all construction of any nature upon any of the Lots within the Subdivision shall be performed in compliance with the requirements of the land management code and the building and zoning ordinances of all governmental entities having jurisdiction with respect to the Subdivision.

(d) **Written Record.** The Architectural/Technical Committee will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of five years.

(e) **Failure to Act.** If the Architectural/Technical Committee has not approved or rejected any submission within 45 days after the submission of complete plans, the submission shall be deemed to have been disapproved.

(f) **Permits and Approvals from St. George City.** Notwithstanding any other provision of this Declaration to the contrary, prior to commencing the construction of any Improvements on any Lot, the Owner of each Lot must obtain from St. George City all necessary permits and approvals required by St. George City in connection with the construction of any such Improvements.

4.4 Variances. The Architectural/Technical Committee has the authority to deviate from the requirements contained in this Declaration under extenuating circumstances, when compliance with this Declaration would create an unreasonable hardship or burden for a Lot Owner. No such variance may be granted without the unanimous written consent of the Architectural/Technical Committee. The Architectural/Technical Committee does not, however, have the authority to deviate beyond the requirements of the land management code and the building code and zoning ordinances of all governmental entities having jurisdiction with respect to the Subdivision.

4.5 General Design Review. The Architectural/Technical Committee will use its best efforts to provide a consistent pattern of enforcement and consistent application of this Declaration that results in a high-quality, attractive, and well-designed residential development.

4.6 Declarant and Architectural/Technical Committee not Liable. The Declarant and the Architectural/Technical Committee and its members shall not be liable to the applicant or to the Owners of any Lots within the Subdivision for damages or any other remedy as the result of their actions, inactions, or approval or disapproval of any set of plans submitted to the Architectural/Technical Committee for review. In the absence of bad faith or malicious actions, the Owners shall have no claim against the Declarant, the Architectural/Technical Committee or its members as a result of the performance or failure to perform the duties created by this Declaration. Any person or persons acquiring title to any Lot in the Subdivision shall be deemed to have agreed and covenanted that such Owner will not bring any action or suit to recover damages against the Declarant or the Architectural/Technical Committee or its members, or the advisors, officers, employees or agents of the any of the foregoing, as a result of the performance by the Architectural/Technical Committee of its duties and responsibilities under this Declaration. Each Owner has the right to enforce this Declaration against another Owner.

4.7 Limitations on Review. The Architectural/Technical Committee's review is limited to those matters expressly described in this Declaration. The Architectural/Technical Committee shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws, or ordinances affecting the development or improvement of the Property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation.

The Architectural/Technical Committee shall not be responsible for reviewing, nor shall the approval by the Architectural/Technical Committee of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or compliance with any applicable building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of the Property. The structural integrity of any Improvements constructed within the Subdivision is not the responsibility of the Architectural/Technical Committee. Corrections or changes to plans as may be subsequently required to bring them into conformity with any applicable statutes, laws or ordinances must be reviewed and approved by the Architectural/Technical Committee prior to construction.

4.8 Approval to Proceed. The Architectural/Technical Committee shall stamp, date and sign the plans and deliver the plans to the applicant once the plans for any Permitted Improvements have been approved.

ARTICLE V

RESTRICTIONS ON ALL PROPERTY

The following restrictions on use apply to all Property within the Subdivision:

5.1 Governing Regulations. The lawfully enacted zoning regulations of St. George City and of any other governmental body having jurisdiction with respect to the Property, including without limitation any and all applicable building, fire, and health codes, are in full force and effect in the Subdivision, and no Lot may be occupied in a manner that is in violation of any such statute, law, ordinance or regulation. If the provisions of this Declaration are more stringent than any applicable governmental statute, law, ordinance or regulation, it is the intent that the provisions of this Declaration shall control. This Declaration shall not authorize any uses, improvements, or activities that are prohibited by any local, state or federal statute, law, ordinance or regulation.

5.2 No Mining Uses. No mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including but not limited to oil, gas, minerals, gravel, sand, rock and earth, shall ever be permitted on the Property within the Subdivision. The foregoing limitation shall not preclude drilling and excavation in connection with the construction of roads, utility lines and other Permitted Improvements.

5.4 Restrictions on Signs. No signs will be permitted on any Lot or within the Subdivision, except for traffic control and directional signs for Roadways placed by St. George City or temporary signs warning of some immediate danger and except for such other signs as may be approved by the Architectural/Technical Committee. Signs indicating a Lot is for sale may be placed in accordance with St. George City sign regulations. The Declarant may erect a sign acceptable to St. George City at the entrance to the Subdivision announcing the availability of Lots and giving sales information. An entrance monument for the Subdivision may be constructed by Declarant, at Declarant's sole discretion.

5.5 Dwelling to be Constructed First. No garage, storage unit, or other out-building may be constructed on any Lot prior to the construction of the Dwelling on such Lot. Enclosures, kennels, runs and the leash areas must be kept clean and sanitary. No pets may be kept in unreasonable numbers, as determined by the sole discretion of the Architectural/Technical Committee, and the Architectural/Technical Committee may establish rules and restrictions from time to time concerning specific breeds or types of animals, which may be kept on any Lot. No boarding of animals for hire shall be allowed within the Subdivision. Owners are required to be in control over their respective animals and pets in order to protect inhabitants of the Subdivision and other animals kept within the Subdivision. No dangerous animals will be allowed in the Subdivision. The Owner of each Lot shall make such Permitted Improvements as are necessary to assure that animals kept on such Owner's Lot do not trespass on other Lots.

5.6 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be, unreasonably dangerous or hazardous, or which would cause the cancellation of conventional property casualty insurance. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses.

5.7 No Unsightliness. No unsightliness is permitted on any Lot. This requirement shall prohibit, without limitation, the open storage of any building materials (except during the construction of any Dwelling or Improvements); open storage or parking of construction equipment, trucks larger than pick-up trucks (except during periods of actual loading and unloading); accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage.

5.8 No Annoying Lights. No outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by St. George City.

5.9 No Transient Lodging Uses. The Lots are to be used for residential housing purposes only and shall not be rented in whole or in part for transient lodging purposes, vacation rental homes, boarding house, "bed and breakfast," or other uses for providing accommodations to travelers.

5.10 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept on any Lot, except in sanitary containers approved by the Architectural/Technical Committee. All equipment for the storage or disposal of waste or rubbish shall be kept in a clean and sanitary condition and must meet the approval of the Architectural/Technical Committee.

5.11 Parking and Storage of Personal Property. No personal property, including but not limited to boats, trailers, campers and motorized vehicles, shall be placed or stored upon any Lot prior to the time the Owner thereof is ready to commence the construction of Permitted Improvements, and thereafter all such personal property shall be placed within the property lines of the Lot and not within the streets and shall be placed in such a manner as not to constitute an aesthetical nuisance upon the rights of other Lot Owners. The Owner of each Lot shall be obligated to construct on such Lot sufficient on-site parking on the Lot to accommodate all automobiles placed or parked on the Lot. No storage of any articles, material, equipment or vehicles of any nature is permitted in the front yard portion of any Lot, except that regularly used passenger cars and light pickup trucks may be parked on the driveway areas in the front yard. Boats, trailers, campers, motorized vehicles and all other types of recreational and/or accessory equipment shall be restored and repaired only in side or rear yards, garages, or driveways acceptable to the Architectural/Technical Committee. No automobiles, trucks, campers, trailers, boats, equipment, recreational vehicles, motor homes or other similar vehicles shall be parked or stored on a public street or right of way for more than seven (7) consecutive days without the express written consent of the Architectural/Technical Committee. All, trucks, campers, trailers, boats, equipment, recreational vehicles, motor homes or other similar vehicles, if parked outside, shall be parked a minimum of 3' behind the front corner's of home.

5.12 Outdoor Furniture. All furniture placed on the front porches and other outdoor areas within any Lot that is within Public View must be of a type and quality generally characterized as "outdoor furniture."

ARTICLE VI

RESTRICTIONS ON LOTS

6.1 Dwelling and Ancillary Structures. No Dwelling or other Improvements shall be placed, erected, altered, or permitted to remain on any Lot other than one (1) single family Dwelling and one (1) garage together with related nonresidential Improvements which have been approved by the Architectural/Technical Committee. At the time of construction of the single family Dwelling on any Lot, said Lot must also be improved with a garage with at least a two (2) car capacity. The Dwelling on each Lot shall be used for private residence purposes only, and no structure of any kind shall be moved from any other location and placed upon a Lot, nor shall any incomplete building or Improvement

of any type be permitted to remain incomplete on a Lot for a period in excess of one (1) year from the date the Improvement was started, unless otherwise approved by the Architectural/Technical Committee. No structure of a temporary character nor any trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. No structure greater than one hundred (100) square feet in area may be built upon any Lot without the prior written Consent of the Architectural/Technical Committee.

6.2 Finished Area Above Grade. The Dwelling constructed on each Lot in the Subdivision shall have the following minimum finished area above grade, excluding the garage. Minimum size of the finished area above grade is 2300 square feet of living space. No multi-level or split-level homes shall be allowed.

6.3 Completion of Dwelling. All construction and alteration work shall be prosecuted diligently, and each Dwelling which is commenced on any Lot shall be entirely completed within twelve (12) months after commencement of construction. A three (3) month grace period after the initial twelve (12) month period has expired may be granted by the Architectural/Technical Committee upon the showing of just cause for such grace period.

6.4 Towers, Satellite Receivers and Antennas: No towers, exposed or outside radio, television or other electronic antennae, with the exception of television receiving antennae, shall be allowed or permitted to remain on any Lot. Satellite receivers, in excess of eighteen (18) inches in diameter, must have an enclosure to screen them from view from any surrounding Lot Owner.

6.5 Used or Temporary Structures: No used or previously erected or temporary house, structure, house trailer, mobile home, camper, or nonpermanent outbuilding shall be placed, erected, or allowed to remain on any Lot except during construction periods, and no Dwelling shall be occupied in any manner prior to its completion and approval in accordance with Article V hereof.

6.6 Minimum Architectural Requirements: The following shall be considered to be minimum architectural requirements with respect to Dwellings constructed within the Subdivision, although the Architectural/Technical Committee shall have broad discretion in the approval of plans for Dwellings constructed in the Subdivision and shall be entitled to consider factors in addition to the following minimum requirements:

(a) Exterior materials on all Dwellings shall be limited to brick, stone, stucco, rock, hardy board, hardy plank or hardy shingle. LP siding or similar manufactured materials of equal quality. Upon the express written approval of the Architectural/Technical Committee, other exterior building materials may be used. Exceptions to the foregoing requirements may be allowed to accommodate an architectural duplication of a certain era or style, such as Victorian.

(b) No dome, Metal Carport, A-frame or modified A-frame Dwellings shall be allowed or constructed.

(c) No prefabricated Dwellings or trailers shall be allowed or constructed.

(d) Roofs on all buildings shall be constructed with Tile roofs.

(e) All buildings, structures and improvements on any Lot shall comply with the construction guidelines and specifications of the planning and building department of the governmental authority having jurisdiction over the Subdivision.

6.7 Slopes and Drainage Control. No Improvement, planting or other material shall be placed or permitted to remain, nor shall any other activities be undertaken, which may damage or interfere with established slope ratios, which create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of each Lot and all Improvements within them shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible. All Lot Owners shall retain and control all water runoff from such Owner's Lot or Lots, so as not to damage or hinder other Lots or Owners.

6.8 Landscaping. The Landscaping of the front yard of each Lot, including the planting of grass or the placement of sod, and the planting of at least a minimal number of shrubs or trees on the Lot, must be completed within eighteen (18) months from the time the construction of the Dwelling is commenced. The Owner of each Lot within the Subdivision shall keep such Owner's Lot clean of weeds and trash. If the Owner fails to do so, the Declarant or the Architectural/Technical Committee shall have the right to cause such maintenance work to be done and to cause the cost of such maintenance work to be charged to and paid by the owner of such Lot. The recordation by the Declarant and/or the Architectural/Technical Committee in the Office of the Recorder of Washington County, Utah of a Notice of Charge against the Owner of any Lot shall constitute a lien against such Lot, which lien shall remain in effect until such amount, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of such Notice of Charge, is paid. Thereupon the Notice of Charge shall be released of record.

6.9 Easement: A few different easements have been recorded on the plat. The easements exist along the back and or the sides of lots 6,7,8,15,16, 19, 20, 21, 22, 23, 24, 25, 26 and 27. Out-buildings or other permanent structures are not permitted within the easement. Gates are permitted within said easement if they can be opened if needed by city officials. The owners of said lots shall be responsible to maintain the easement.

6.10 Fencing: Only block or wrought iron fencing is allowed in the front, side, and rear property lines. Those lots with meandering property backing the river may use the fencing of their choice in the meandering property area only.

ARTICLE VII

OWNERS' MAINTENANCE OBLIGATIONS

7.1 Duty to Maintain. It is the obligation of the Owner of each Lot to maintain properly his Lot and the Improvements to the Lot in a good state of repair and an attractive, safe, and healthy condition at all times in order to preserve and enhance the enjoyment of the Subdivision.

7.2 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Architectural/Technical Committee. No subsequent exterior alterations, improvements or remodeling, whether structural or cosmetic, will be made without the advance written consent of the Architectural/Technical Committee.

7.3 Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Architectural/Technical Committee, provided however that alterations or deviations from the originally approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before reconstruction begins. Such temporary measures may be taken without the consent or approval of the Architectural/Technical Committee, provided that any such measures must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Architectural/Technical Committee.

ARTICLE VIII

CONSTRUCTION COVENANTS

8.1 Introduction. In order to minimize the disturbance of the Property within the Subdivision during any construction activities, and to minimize the inconvenience to adjoining Owners, the following construction regulations shall be enforced. These regulations shall be made a part of the construction contract between the Owner and the builder of each Dwelling or other Improvements on a Lot. The Owner shall be bound by these regulations, and violations committed by the builder or its employees, subcontractors or others shall be deemed a violation by the Owner for which the Owner shall be liable.

8.2 Construction Debris Removal. The builder must comply with the ordinances of St. George City and the requirements of the Architectural/Technical Committee requiring the placement and maintenance of a trash container or dumpster on the Lot. The builder shall collect trash at the end of each work day and deposit construction trash, packing material, unusable scraps, and other debris in a suitable container, protected from the wind. Such container shall be regularly serviced. No trash may be burned, buried, or otherwise disposed of on the Property. No concrete trucks may be cleaned out on the Lot, the Property or anywhere within the Subdivision.

8.3 Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of a Dwelling or other Improvements. Once the Dwelling is enclosed, materials shall be stored inside the Dwelling and out of sight, whenever practical and possible.

8.4 Sanitary Facilities. The builder is responsible for the installation and maintenance of an approved portable toilet facility during construction. The portable toilet must be located on the Lot at a location approved by the Architectural/Technical Committee and must be removed from the site at such time as the permanent plumbing system is operational.

8.5 Construction Parking and Vehicles. Construction crews must park their vehicles on the Lot on which they are working or on the street in front of such Lot and shall not use or park on any other Lot or any other Property within the Subdivision. All vehicles must be parked to allow the free flow of traffic within the Subdivision.

8.6 Removal of Mud. The builder is responsible for cleaning up and removing mud from the construction site that is deposited on the Roadways of the Subdivision.

8.7 Duration of Construction. No construction shall be undertaken without a building permit and all other necessary permits from St. George City and any other governmental entity having jurisdiction over construction on the site. No materials, tools, temporary offices or portable toilets, excavation or construction equipment or similar materials or equipment may be delivered to the site prior to the issuance of the permit(s). It is the obligation of the Owner to proceed with construction with all reasonable speed once construction has commenced, and in any event, all exterior surfaces of the Dwelling shall be substantially complete within a period of six months from commencement. All landscaping and soil stabilization work must be completed as soon as possible after completion of the exterior of the Dwelling, but in no event later than the summer following completion of the exterior of the Dwelling.

8.8 Repair of Damage. Each Owner is responsible for the prompt repair of any damage to any Property within the Subdivision caused by or incidental to such Owner's construction, including without limitation any cracked or broken sidewalks. The

Declarant or the Architectural/Technical Committee, if necessary, may initiate legal action against any Owner for the repair of damage that occurs from construction activity pertaining to that Owner's Lot. The Declarant or the Architectural/Technical Committee shall be entitled to record a Notice of Charge against such Owner's Lot until all such damage is repaired and paid for, in the manner described in Section 6.8 above.

ARTICLE IX

GENERAL PROVISIONS

9.1 The covenants, conditions, and restrictions contained in this Declaration may be enforced as follows:

9.2 Violation Constitutes Nuisance. The violation of the provisions of this Declaration is deemed to be a nuisance, and the Owner of the Property on which the violation occurs is responsible for the removal or abatement of the nuisance.

9.3 Remedies.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by any other Owner, or by the Architectural/Technical Committee in its own name. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys' fees and costs of litigation.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state, or local laws and ordinances pertaining to health, safety, abatement of nuisances or other matters. The remedies available under this Declaration are to be construed as being in addition to all other remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The delay or failure by anyone to take enforcement action with respect to any violation of this Declaration shall not be construed as a waiver of the covenants contained in this Declaration with respect to such violation or with respect to any other violations.

9.4 Severability. Each of the covenants, conditions, restrictions and provisions contained in this Declaration shall be independent of the others, and in the event that any covenant, condition, restriction or provision of this Declaration is found to be invalid, unenforceable or illegal by a court of competent jurisdiction, the remaining covenants, conditions, restrictions and provisions of this Declaration shall remain in full force and effect.

9.5 Limited Liability. Neither the Declarant, nor the Architectural/Technical Committee or its individual members, nor any Owner shall have personal liability to any other Owner for actions or inactions taken pursuant to the terms of this Declaration, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority under this Declaration and without malice.

9.6 Term of Declaration, Renewal. This Declaration shall expire fifty years from the date it is first recorded with the Recorder of Washington, Utah, provided however that in the last year prior to expiration, the Owners of eighty percent (80%) of the Lots may, by written notice which is recorded with the Recorder of Washington County, Utah, agree to extend the term of this Declaration for a period of an additional twenty years, and at the end of each additional period of twenty years thereafter, the Owners of eighty percent (80%) of the Lots may, by written notice which is recorded with the Recorder of Washington County, Utah, agree to extend the term of this Declaration for a period of twenty additional years.

9.7 Amendment, Mortgagee Not Bound. At any time while this Declaration is in effect, the Owners of eighty percent (80%) of the Lots subject to this Declaration may amend the provisions of this Declaration, provided that if the Declarant owns or controls an interest in all or a portion of the Additional Land at the time of the proposed amendment, the consent of the Declarant will be required. Any such consent shall be in the exclusive judgment of the Declarant. Any amendment must be in writing and must be properly recorded in the office of the Recorder of Washington County, Utah. No amendment will be binding upon the holder of any mortgage or trust deed on any Lot which mortgage or trust deed is of record at the time of the amendment, unless the mortgage or trust deed holder joins in the amendment. This Declaration may not be repealed by amendment.

9.8 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Subdivision is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provisions of this Declaration against such Owner's Lot, whether or not there is any reference to this Declaration in the instrument by which such Owner acquires an interest in any Lot.

9.9 Reservation of Easements. Easements affecting the Lots within the Subdivision are reserved as shown on the Plat for utility installation and maintenance, drainage and other purposes as designated on the Plat.

9.10 Notices. All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

9.11 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Subdivision. Section headings are inserted for convenience only and shall not be considered in the interpretation of the provisions. The singular shall include the plural, and the plural shall include the singular. Any reference to gender is intended to include masculine, feminine and neuter as well.

9.12 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Subdivision to the public or for any public use, except as specifically shown on the Plat.


IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date first above written.

MW UTAH PROPERTIES 3, LLC

By: 
Marcel Willden

Title: Manager

HYDE BERRY PARK ESTATES

By: 
Tiffany Nelson

Title: Msr.

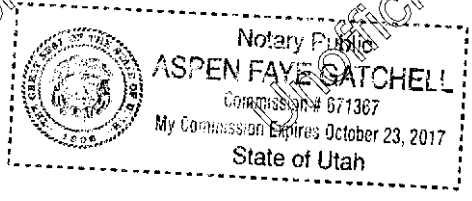
Declaration of Restrictive Covenants and Conditions of Hyde-Berry Park Subdivision

State of Utah)
 :ss
County of Washington)

On the 23rd day of October, 2015, personally appeared before me Charles Marcel Wilden, also known as C. Marcel Wilden, who being by me duly sworn, says that he is the Manager of MW Utah Properties 3, LLC, a Utah the Limited Liability Company that executed the herein instrument and acknowledged the instrument to be the free and voluntary act and deed of the Limited Liability Company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes herein mentioned, and on oath stated that they are authorized to execute this instrument on behalf of the Limited Liability Company.

Charles Marcel Wilden

Notary Public



State of Utah)
 :ss
County of Washington)

On the 26th day of October, 2015 personally appeared before me Tiffany Nelson, who being by me duly sworn, says that she is the Manager of Hyde Berry Park Estates, LLC, a Utah the Limited Liability, the Limited Liability Company that executed the herein instrument and acknowledged the instrument to be the free and voluntary act and deed of the Limited Liability Company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes herein mentioned, and on oath stated that they are authorized to execute this instrument on behalf of the Limited Liability Company.

Tiffany Nelson

Notary Public

