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DOC # 20070032840

Amended Restrictive Covenants Page 1 of 71
Russell Shirts Washington County Recorder
06/25/2007 03:44:54 PM Fee \$ 153.00
By IVORY SOUTHERN LLC

After Recording Return to:
Ivory Southern, LLC
c/o Colin Wright
3143 So. 840 E.
St. George, UT 84790



Parcel No: SG-5-3-7-1101 (see Exhibit A)

**SECOND AMENDED AND RESTATED
MASTER DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS, AND
RESERVATION OF EASEMENTS
FOR
HIDDEN VALLEY AT ST. GEORGE
a Planned Mixed Residential Use Development**

This SECOND AMENDED AND RESTATED MASTER DECLARATION of Covenants, Conditions and Restrictions and Reservation of Easements for Hidden Valley at St. George, a Washington County, Utah, planned, mixed residential use development (the "Master Declaration") is executed by the State of Utah, School and Institutional Trust Lands Administration, of 675 East 500 South, Suite 500, Salt Lake City, Utah 84102-2818 (the "Declarant"), and is consented to by Ivory Southern, LLC, of 3143 South 840 East, St. George, Utah 84790 (the "Developer").

This Master Declaration shall apply to all phases properly annexed hereto or made a part of this Declaration, including all Estates, Villas and Casitas at Hidden Valley.

This SECOND AMENDED AND RESTATED MASTER DECLARATION supersedes and replaces in its entirety the document entitled "Amended and Restated Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Hidden Valley at St. George" recorded as Document No. 20070004364, recorded against Parcel No. SG-5-3-7-1101, on January 26, 2007 records of the Washington County Recorder, State of Utah.

RECITALS:

A. Declarant is the owner of the real property described on **Exhibit "A"** attached hereto (the "Tract"). The **Exhibit "A"** properties are hereby subjected to this Declaration. The **Exhibit "B"** properties encompass the **Exhibit "A"** properties and all **Exhibit "B"** properties shall be part of this Declaration and the Hidden Valley at St. George Community subject to Article II, Section 2.11 of this Declaration.

B. Declarant desires to submit the Tract, together with all buildings and improvements now or hereafter constructed on the Tract, and all easements and rights appurtenant thereto to this Master Declaration.

C. Declarant has previously recorded the amended and restated record of survey map with respect to the Tract (the "Plat").

D. Declarant intends that the Developer construct the Common Area, Lots and Dwelling Units (as defined in the Master Declaration) shown on the Plat.

E. Declarant desires to designate Developer as a "Builder" and "Developer" under the Declaration.

F. Hidden Valley at St. George is a planned mixed residential use development comprised of several Neighborhoods functioning under this Master Declaration. All such Neighborhoods shall be bound by this Master Declaration.

G. The "Villas at Hidden Valley at St. George" is a mixed residential development sharing in the Hidden Valley at St. George Common Area and Facilities, together with its own Exclusive Common Area, which is all part of the master planned community of the Hidden Valley at St. George Project (the "Villas").

G.1. A Plat Map of the Villas at Hidden Valley at St. George has been or will be recorded in the office of the Washington County Recorder.

H. The "Casitas at Hidden Valley at St. George" is a mixed residential development sharing in the Hidden Valley at St. George Common Area and Facilities, together with its own Exclusive Common Area, which is all part of the master planned community of the Hidden Valley at St. George Project (the "Casitas").

H.1. A Plat Map of the Casitas at Hidden Valley at St. George has been or will be recorded in the office of the Washington County Recorder.

I. The "Estates at Hidden Valley at St. George" is a mixed residential development sharing in the Hidden Valley at St. George Common Area and Facilities, together with its own Exclusive Common Area, which is all part of the master planned community of the Hidden Valley at St. George Project (the "Estates").

I.1. A Plat Map of the Estates at Hidden Valley at St. George has been or will be recorded in the office of the Washington County Recorder.

J. The Villas, the Casitas, and the Estates are adjoining Neighborhoods. The Developer may, at the Developer's sole election, annex land into the Hidden Valley at St. George project and create additional Neighborhoods or expand existing Neighborhoods (the "Neighborhood" or collectively "Neighborhoods"), provided that such lands are included within that State of Utah Development Lease Number 754 by and between Declarant and Developer.

K. The lands comprising the Tract and Neighborhoods feature unique and distinctive terrain.

L. By subjecting the Tract and Neighborhoods to this Master Declaration, it is the desire, intent and purpose of Declarant to create a master planned mixed residential use development in which beauty shall be substantially preserved, which will both enhance the desirability of living, and increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.

M. Declarant also desires to expand the Development to include the Additional Land, all of which they desire to be governed by this Master Declaration, as the same may be supplemented, added to, modified and amended from time to time.

N. The Declarant intends that the Tract and Neighborhoods, and such portions of the Additional Land annexed into the Hidden Valley at St. George project, shall be maintained, developed and conveyed pursuant to a general plan for the Tract and all of the Neighborhoods and subject to certain protective covenants, easements, equitable servitudes, liens and charges, all running with the

Neighborhoods as hereinafter set forth.

O. The Declarant hereby declares that the Tract and all of the Neighborhoods shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of enhancing and protecting the value, attractiveness and desirability of the Neighborhoods, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Neighborhoods or any portion thereof.

P. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Neighborhoods and shall be binding upon all persons having or acquiring any right, title, or interest in the Neighborhoods, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Neighborhoods and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by the Declarant, Developer, the Hidden Valley at St. George Homeowners Association (the "Master Association" or "MHOA"), and/or each Owner, and their respective heirs, executors, administrators, successors and assigns.

Q. Hereafter, this **Second Amended Master Declaration** shall be referred to as the "Master Declaration."

R. These Recitals shall be deemed covenants as well as recitals.

AGREEMENT

NOW, THEREFORE, for the reasons recited above, and in consideration of the reciprocal benefits to be derived from the conditions, covenants, restrictions, easements and requirements set forth below, the parties hereto, and each of them, hereby agree:

I. DEFINITIONS

As used in this Master Declaration (including the "Recital" section above) each of the following terms shall have the indicated meaning:

1.1 The term **Activity Card** shall mean and refer to those certain cards and/or any other device or devices which are issued by the Association, which confer upon the holder rights of access to, and use of, the Clubhouse Facility and other recreational facilities and amenities within the Project, if any.

1.2 The term **Area of Common Responsibility** shall mean and refer to the area for which the MHOA is responsible to maintain, repair, replace, administer and regulate, including the Common Area and Facilities, if any.

1.3 The term **Area of Personal Responsibility** shall mean and refer to the area privately owned property or Limited Common Area for the exclusive use of the Owner, and for which the Owner is responsible to maintain, repair and replace, unless the maintenance, repair and replacement for such privately owned area has been delegated in this Declaration to the MHOA.

1.4 The term **Benefited Expense** shall mean, to the extent consistent with Article IV, Section 4.4 below, an expense permitted by each Neighborhood to, with the prior written consent of the MHOA, elect, at its sole expense and for its benefit, upgrade its Neighborhood, or any part thereof. Such expenses shall be exclusive to the Neighborhood so benefited and shall not be considered part of the Master Operating Expenses.

1.5 The term **Board of Directors** shall mean and refer to the Board of Directors of the MHOA, appointed or elected in accordance with this Master Declaration and the Bylaws.

1.6 The term **Builder** shall mean and refer to by Ivory Southern, LLC.

1.7 The term **City** shall mean and refer to St. George City in Washington County, Utah.

1.8 The term **Common Area Manager** shall mean and refer to the person, firm or company designated by the MHOA to manage, in whole or in part, the affairs of the MHOA and the Common Area and Facilities.

1.9 The term **Common Area and Facilities** shall mean and refer to all common elements, private streets, areas and facilities in the Neighborhoods, including by way of illustration but not limitation all of the land, buildings, space and improvements not privately owned or dedicated to the City.

1.10 The term **Common Assessment** shall mean and refer to the amount imposed upon, assessed or charged an Owner or Member by the MHOA.

1.11 The term **Condominium Association** shall mean any condominium project and its distinct and separate association of Unit owners, if any, that may be annexed into and become a part of the MHOA. Any such Condominium Association shall be subject to its own unique covenants, conditions and restrictions and all of the terms and conditions of this Master Declaration. Each condominium Unit owner shall also be a member of the MHOA. There is no requirement, however, that condominiums be annexed into the MHOA.

1.12 The term **Covenant to Share Costs** shall mean and refer to the obligations set forth in this Master Declaration and any other covenant to share costs executed by the Developer or the MHOA which creates easements for the benefit of the MHOA, Owners and Members, subject to such Covenant to Share Costs, and/or which obligates the MHOA to share the costs of maintaining certain real, personal or mixed property described therein.

1.13 The term **Dedicated Streets** shall mean and refer to those streets and cul-de-sacs within the Project formally dedicated to the City or any other municipal or governmental body politic, entity or agency.

1.14 The term **Declarant** shall mean and refer to the State of Utah, School and Institutional Trust Lands Administration.

1.15 The term **Developer** shall mean and include Ivory Southern, LLC, its affiliates, successors and assigns, if any, who have expressly accepted the role of Developer and any Person or Persons who might acquire title from said parties to all or some of the unsold Lots or Dwelling Units through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure. The person/entity

acquiring any of such property from the Declarant shall be considered a Developer with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Master Declaration and any Supplemental Declaration applicable to the property; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant, or its successor in interest, and the new Developer with respect to such property.

1.16 The term **Developmental Rights** shall mean and refer to the right granted hereunder to the Developer, its agents, representatives, employees, successors and assigns, to develop and improve the Neighborhoods.

1.17 The term **Dwelling Unit** shall mean an improvement upon a Lot, including but not limited to, a detached living structure or an attached living structure (i.e., a townhome joined by a common party wall, etc.) intended for the occupancy and use by a single family.

1.18 The term **Entry** shall mean the entry way into the Property or Neighborhoods.

1.19 The term **Entry Monument** shall mean the monument, planter boxes, landscaping features and other physical improvements identifying the Property or Neighborhoods located at or near their Entry or entrance.

1.20 The term **Exclusive Common Area** shall mean and refer to that portion of the Common Area and Facilities intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods. Exclusive Common Area shall be owned by the Master Association.

1.21 The term **Guest** shall mean and refer to a family member, guest, invitee, licensee, and any person or occupant accompanied by a Member, or unaccompanied, who utilizes the rights of the Member in and to the Common Area and Facilities or Exclusive Common Area and Facilities.

1.22 The term **Individual Assessments** shall mean and refer to an assessment levied by the MHOA against an Owner or a group of Owners as the situation may require, for all expenses, costs, charges, fines, and attorney's fees resulting from the act or omission of such Owner(s), their guests, tenants or invitees or resulting from corrective action taken by the MHOA against the Owner(s) or the Owner's guests, excepting the Owner's failure to pay any Assessment. Individual Assessments shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner or guest, tenant, invitee including but not limited to:

1.22.1 The act or negligence of any guest shall be deemed to be the act or negligence of the Owner responsible for the guest.

1.22.2 The cost to repair any damage to any portion of the Common Area and Facilities or Exclusive Common Area and Facilities on account of loss or damage caused by such Owner or guest; or

1.22.3 Any sales tax, use tax or other tax levied pursuant to the laws of the State of Utah and payable by any Owner or Guest which the MHOA is or shall be required or entitled to collect on behalf of the levying authority, although this subsection is not considered an acknowledgment that any such tax may be levied.

1.22.4 Individual Assessments are secured by a lien in the same manner as other Assessments, as set forth below. The MHOA also shall have all other remedies, both legal and equitable, described in this Master Declaration available against any Owner for nonpayment of such Owner's other monetary obligations.

1.23 The term **Landscaping** shall mean and refer to the decorative rock, grass, trees, shrubs, bushes, flowers, plants, and like improvements located within the Neighborhoods, as well as the appurtenant sprinkling and irrigation systems.

1.24 The term **Lender** shall mean and refer to a Mortgagee.

1.25 The term **Lot** shall mean and refer to a portion of the Neighborhoods intended for any type of independent private ownership and use as may be set out in this Master Declaration and as shall be shown on the Plat Map previously filed, or any amendments or supplements thereto. Where the context indicates or requires, the term Lot includes a Dwelling Unit or any other physical structure or improvement constructed upon the Lot.

1.26 The term **Lot Number** shall mean and refer to the number, letter or combination thereof designating a particular Lot.

1.27 The term **Master Assessment** shall mean and refer to the charge for maintenance, repair, replacement, operation and administration assessed each Owner and/or Dwelling Unit or Lot by the MHOA to pay the Master Operating Expenses, and shall include an amount to fund an adequate reserve fund or funds.

1.28 The term **Master Association** or **MHOA** shall mean and refer to the Hidden Valley at St. George Homeowners Association. The MHOA shall own: all Common Areas and Facilities, Exclusive Common Area and Facilities and Limited Common Area throughout the Project including the Neighborhoods. The MHOA may own other real and personal property not described herein.

1.29 The term **Master Declaration** shall mean and refer to this Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements within the Hidden Valley at St. George Homeowners Association.

1.30 The term **Master Operating Expenses** shall mean and refer to the common expenses of maintaining, repairing, replacing, and operating the Common Area and Facilities, Project, Neighborhoods and administering the MHOA. Unless an expense is deemed an Individual Assessment, Neighborhood Assessment or Benefited Expense, as defined herein, then all expenses shall be a Master Operating Expense.

1.31 The term **Plat** or **Plat Map** shall mean and refer to the Plat Map or Maps showing property subjected to this Master Declaration, and any amendments or supplements thereto.

1.32 The term **Member** shall mean and refer to a Member of the MHOA. Every person or entity owning a Lot or Dwelling Unit shall be a member of the MHOA. The term "Member" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

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

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

1.35 The term **Neighborhood** shall mean and refer to any residential area within the Project which is designated as a Neighborhood, whether or not governed by a Neighborhood Association. By way of illustration and not limitation, a neighborhood of single family residences, townhomes, and twin homes might each be designated as a separate Neighborhood or may be combined as one Neighborhood or more Neighborhoods. A Neighborhood may be comprised of more than one housing type. In addition, a portion of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one Neighborhood upon development. Other Neighborhoods may be added by the Developer from time to time.

1.36 The term **Neighborhood Association** shall mean and refer to an association of property owners having jurisdiction, in whole or in part, over a specific Neighborhood concurrent with, but subordinate to, the MHOA. As stated above, however, no Neighborhood Association is required for any Neighborhood, but may be established if deemed necessary pursuant to this Master Declaration.

1.37 The term **Neighborhood Assessment** shall mean and refer to an assessment levied by the MHOA against a Neighborhood for maintenance items that only affect and benefit a distinct Neighborhood. Neighborhood Assessments are similar to Individual Assessments but are levied against an entire Neighborhood as opposed to an individual therein. Neighborhood Assessment shall be collected as any other assessment described in this Master Declaration.

1.38 The term **Office of the County Recorder or County Recorder** shall mean and refer to the Office of the County Recorder of Washington County, Utah.

1.39 The term **Period of Developer's Control** shall mean and refer to the period during which the Developer is entitled to appoint a majority of the Board of Directors, and otherwise direct and control the development, management and operation of the Project. The Period of Developer's Control shall expire upon the first to occur of the following: (a) Ninety days after Developer sells its last Lot or Dwelling Unit in the last phase of any property originally submitted to the Declaration or which may be annexed to this Project; or (b) when, in its discretion, the Developer so determines and records in the Office of the County Recorder a written "Notice of Termination of Period of Developer's Control."

1.40 The term **Private Street, Road, Cul-de-sac, Way or Drive** shall mean and refer to those streets, roads, cul-de-sacs, ways, drives or turnabouts within the Project not dedicated to the City or any county, state, or other governmental body politic, entity or agency.

1.41 The term **Project** shall mean and refer to the Neighborhoods, Lots, Dwelling Units, Common Area and Facilities, Exclusive Common Area and Facilities, and all improvements submitted to this Master Declaration.

1.42 The term **Regular Common Master Assessments or RCM Assessments** shall mean and refer to the annual assessments levied by the MHOA to pay the budgeted Master Operating Expenses.

1.43 The term **Residence Number** shall mean and refer to the number, letter or combination of name, numbers and letters that identifies only one Lot or Dwelling Unit in the Project.

1.44 The term **Residential Dwelling Unit** shall mean and refer to a residential Lot or Dwelling Unit in the Project. Only single family residences are permitted in the Project.

1.45 The term **Single Family** shall mean that each Lot or Dwelling Unit shall be occupied only by a single family, to wit: No one shall be entitled to reside in a residence constructed on a Lot unless he or she is a member of the immediate family therein residing, or are authorized foster children or wards. No boarding houses or other group housing for unrelated people of any kind is allowed regardless of the method or structure of the occupancy arrangement.

1.46 The term **Single Family Residence ("SFR")** shall mean and refer to both the architectural style of a Dwelling Unit and the nature of the residential use permitted,

1.47 The term **Size** shall mean and refer to the square footage of a Dwelling Unit or Lot, rounded to the nearest whole number ending in zero. Size shall be computed and determined on the basis of dimensions shown on the Survey Map or Maps. So long as the measurement substantially complies with the provisions of this section and is not arbitrary, the Association's determination of Size shall be conclusive,

1.48 The term **Special Common Master Assessments or SCM Assessments** shall mean and refer to assessments which the MHOA may levy from time to time against all Lots and Dwelling Units in the Project, in addition to the Regular Master Common Assessments, for unexpected Master Operating Expenses, major Repairs, Capital Improvements and Additions, or other purposes as provided herein.

1.49 The term **Total Votes of the MHOA** shall mean and refer to the total number of votes appertaining to all Lots, Dwelling Units or Developer's interests.

1.50 The term **Townhouse** shall mean and refer to a residential Lot or Dwelling Unit as shown on the Plat Map, with or without walls or roofs in common with other single family Lots or Dwelling Units and which shall include fee title to the real property lying directly below said single family Lot or Dwelling Unit and such other real property as shown on the Plat Map, if any there be.

1.51 The term **Unit** or **Attached Dwelling Units** shall mean and refer to all attached Dwelling Units within the Project which shall be a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all walls, floors and ceilings, roofs, exterior surfaces of all kind, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and doorframes, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit. The maintenance responsibility for a Unit or Attached Dwelling Unit shall be assigned as set forth in this Declaration. If condominium units are annexed into the Project, the definition of "Unit" shall be set forth in the Supplemental Declaration or document annexing said property to the Project.

1.52 The term **Use Restrictions** shall mean and refer to the rules, regulations and use restrictions described with particularity in this Declaration, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.

1.53 The term **Voting Group** shall mean and refer to a group of Owners, Neighborhoods or sub-associations (if any) designated by the Developer as a voting group.

II. INCIDENTS OF OWNERSHIP

2.1 **Types of Ownership.** The Developer desires to create within the Project the ownership of a Residential Lots and/or Dwelling Units. Anything to the contrary notwithstanding, the Developer expressly reserves the right to create such different types of ownership as Developer in its sole discretion deems necessary or desirable and shall not be obligated to create any specific ownership types.

2.2 **Membership in the MHOA.** Membership in the MHOA is appurtenant to and cannot be separated from a Lot or Dwelling Unit.

2.3 **Assignment or Transfer of Memberships in the MHOA.** Any attempt to assign, transfer, pledge, alienate, subdivide or partition a membership in violation of this Section shall be voidable by Developer or MHOA.

2.4 **Description and Ownership of Common Area and Facilities.** The Common Area and Facilities shall mean and include all of the Property not privately owned nor dedicated to the City or an individual. The Common Area and Facilities are designated on the Plat. Exclusive Common Area and Facilities and Limited Common Area are also designated on the Plat.

2.5 **Description of Limited Common Area and Facilities.** Limited Common Area and Facilities shall mean a portion of the Common Area and Facilities reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, decks, balconies, foyers, storage closets, hot tubs, patios,

attics, and other areas as indicated by this Master Declaration or the Plat to be for the exclusive use of one or more but fewer than all of the Lots or Dwelling Units. Mechanical systems or utility closets serving only the certain Lots or Dwelling Units, if any, shall be Limited Common Area and Facilities with respect to the Lots or Dwelling Units which they serve. The Limited Common Area and Facilities shall be those areas designated as such on the Plat or in this Master Declaration. The use and occupancy of designated Limited Common Area and Facilities shall be reserved to the Lots or Dwelling Units to which such Limited Common Area is adjacent, unless otherwise shown on the Plat or as specified in this Master Declaration. Owners may not reallocate Limited Common Area and Facilities between or among Lots or Dwelling Units in which they have an interest.

2.6 Land Subject to Public Utilities and Drainage Easements. All Common and Limited Common Area and private drives shown on the final Plat are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City to require the Association to assess its members to repair streets, landscaping, etc., where needed to repair or replace the public utilities.

2.7 Rock Walls. All rock walls on private Lots are privately owned and shall be maintained by the Owner thereof. All rock wall repairs and maintenance shall be the responsibility of the Owner, if located upon private property, or the Association, if located upon Common Area. Each Owner and/or the Association shall indemnify and hold harmless the City, its officers, boards, employees, agents and assigns, from any and all claims resulting from rock walls located within this Neighborhood in particular and the Project generally.

2.8 Activity Cards and/or Devices

2.8.1 Right to Use Amenities Subject to Valid Activity Card. Access to and use of the Clubhouse, if any, may be subject to the presentation of a valid Activity Card or Device issued by the MHOA.

2.8.2 Renewal of Activity Cards. If a Person remains in good standing and is not in violation of this Master Declaration, the Bylaws or rules and regulations of the MHOA and the Owner's assessments are current, then the Activity Card or Cards allocated to the Lot or Dwelling Unit may be renewed monthly without additional application.

2.8.3 Rules and Regulations. The MHOA may establish rules, regulations, policies, procedures conditions, restrictions, limitations, dues, fees and charges with regard to the Activity Cards and the issuance of Guest privileges and restrictions.

2.8.4 Prospective Buyers. Temporary Activity Cards may be issued by the Developer during the Period of Developer's Control.

2.8.5 Assignment of Rights. Except as may otherwise be expressly provided herein, the right to an Activity Card is based upon ownership of a Lot or Dwelling Unit and being in good standing with the Association. If, and so long as, a Lot or Dwelling Unit is occupied solely by Persons other than the Owner, pursuant to a lease or, other agreement, then (1) the Owner shall not be entitled to receive an Activity Card, and (2) the right of any occupant to receive an Activity Card shall depend on his or her good standing, which shall mean compliance with the Master Declaration, Bylaws and rules and regulations of the Association, including without

limitation being not more than sixty (60) days in arrears on any Assessments. Any Owner who leases or otherwise transfers occupancy of his Lot shall provide the Association with immediate written notice thereof and shall surrender to the Association his previously issued Activity Card. If the Owner or the Owner's guests and invitees also desire to utilize the Common Area and Facilities, including Exclusive Common Area and Facilities, then the Owner shall pay an additional charge in an amount to be determined at the discretion the Board of Directors.

2.8.6 Issuance to the Developer. As long as the Declarant owns any of the Property, the MHOA shall provide the Developer, free of charge, with as many temporary Activity Cards as the Developer, in its sole discretion, deems necessary for the purpose of marketing the Lots and Dwelling Units. The Developer may transfer the Activity Cards to prospective purchasers of Lots subject to such terms and conditions as it, in its sole discretion, may determine. Activity Cards provided to the Developer shall entitle the bearer to use the Clubhouse, all recreational facilities, and other Common Area and Facilities, Exclusive Common Area and Facilities, if any there may be.

2.9 Developmental Rights. The following Developmental Rights are hereby granted to or reserved by Developer:

2.9.1 Easements. Developer is hereby granted an easement throughout the Project for a period twenty (20) years from the recording of this Master Declaration for the purpose of completing all improvements contemplated by the Master Declaration and the Plat, including but not limited to improvements to any land annexed.

2.9.2 Construction of Improvements. Developer is hereby granted the right, but is not obligated to construct any improvements shown on the Plat; and any other buildings, structures or improvements that Developer desires to construct on the Property, or any other real estate owned by Developer, regardless of whether the same ever become part of the Project.

2.9.3 Use of Lots/Dwelling Units as Sales Office. Developer is hereby granted the right to maintain sales offices, management offices, signs advertising the Project and models in any of the Dwelling Units which it owns or leases or on the Common Area and Facilities of the Project for so long as Declarant is an Owner within the Project. All Developer installed signage shall comply with county regulations, as the same may be changed from time to time. Developer shall be entitled to utilize, at any one time, any number of Lots or Dwelling Units which it owns or leases and some or all of the Common Area and Facilities as sales offices, management offices, and models anywhere in the Project. Developer may relocate sales offices, management offices and models to other Dwelling Units or Common Area and Facilities at anytime. Notwithstanding an Owner's right to resell his Lot or Dwelling Unit and list such Lot or Dwelling Unit with any firm or agency as he shall determine, no person or entity other than Developer and/or its duly appointed affiliates, successors, agents or assigns, shall have the right to market or initially sell Lots or Dwelling Units within the Project. Sales offices and model lots and/or Dwelling Units, whether owned by the Developer or another entity or person(s), shall be exempt from all assessments while aiding Developer's sales efforts.

2.9.4 Modifications to Property. Notwithstanding anything to the contrary contained in this Master Declaration, Developer may unilaterally, in its sole discretion make such alterations, changes or modifications to any property, Lot or Dwelling Unit owned by Declarant or the adjacent Common Area and Facilities or

Exclusive Common Area and Facilities, as Developer deems necessary or appropriate, including but not limited to, the creation or removal of interior walls and modifications to plumbing and electrical systems.

2.9.5 Project Name Change. During the Period of Developer's Control, Developer hereby reserves the right to unilaterally change the name of the Project or a Neighborhood or to redistrict Neighborhoods.

2.9.6 Developmental Rights. Neither the MHOA, Neighborhood Association, Board of Directors, or any Committee, nor any Owner or Member may take any action or adopt any rule or regulation that interferes or diminishes any Developmental Rights hereunder, without Developer's express prior written consent, and any action taken in violation of this Section shall be null and void and have no force or effect.

2.10 Area of Application. This Master Declaration shall apply the entire Project, to all of the Neighborhoods, and any annexations or additions thereto.

2.11 Right to Expand Application, Withdraw Land, Reconfigure Structure, or Change the Nature of the Use. Without any other additional approval required the Developer reserves and is hereby granted and shall have the unilateral right to:

2.11.1 Annexation. Expand the application of this Master Declaration in order to annex additional land, Common Area and Facilities, Exclusive Common Area and Facilities, Limited Common Area, Dwelling Units, or Lots, or Condominium Unit, provided that such lands are included within that State of Utah Development Lease Number 754 by and between Declarant and Developer. When appropriate, a written supplement to this Master Declaration, duly recorded, shall be necessary and sufficient to expand the application of this Master Declaration.

2.11.2 Neighborhoods. Add, withdraw or merge Neighborhoods and the governing entity of such Neighborhood(s), if any; and

2.11.3 Withdraw Land. Withdraw land from this Master Declaration.

2.12 Bylaws. The initial Bylaws of the Association shall be adopted by the Board of Directors and are attached hereto as Exhibit "C."

2.13 Sub-associations. The Board of Directors has the right to require any Neighborhood or group of Neighborhoods to form a sub-association which shall assist, but be subordinate to, the MHOA. Membership in such a sub-association will be mandatory and all members of the Neighborhood will automatically become a member of the sub-association. Sub-Association may contain additional covenants, conditions and restrictions, including assessment obligation in addition to those of the MHOA. Sub-Associations, however, may not be required.

III. VOTING

3.1 Directors by Neighborhood and at Large. Subject to the Developer's right to control the Board of Directors during the Period of Developer Control, the MHOA shall be comprised of at least three (3) Directors but not more than seven (7) Directors. The Board of Directors is not obligated, but may elect to establish a "districting form" of elections to the Board by assigning each Neighborhood a specific number of Directors to be elected from each Neighborhood, provided that at least

one (1) but not more than three (3) Directors may be elected at large. The decision to use a "districting form" of elections, the manner in which it is effectuated, etc., shall be in the sole discretion of the then acting Board of Directors and memorialized in writing. Members, however, by a sixty percent (60%) affirmative vote of all of the voting rights of the Association, can require that a districting form of elections be used. The manner of setting up the respective districts, and the process thereof, shall be established by a Committee of Members and ratified by at least sixty percent (60%) of all voting rights of the Association. If a districting form of electing directors is not established then all Directors will be elected at large.

3.2 Voting. The Owner of each Lot or Dwelling Unit shall be entitled to one vote for each Lot or Dwelling Unit owned, regardless of size or value. The voting rights appurtenant to each Lot, Dwelling Unit or Membership shall vest upon execution and recording of this Master Declaration.

3.3 Classes of Membership/Voting Rights. The membership of the Master Association shall consist of all Owners within the Association, as defined in the Master Declaration, any Neighborhood Declaration or Supplemental Declaration. At any meeting of the Master Association, each Owner shall be entitled to cast votes pursuant to the classes of voting memberships set forth herein. The classes of voting memberships shall be as follows:

Class A: The Owner of each Lot or Dwelling Unit, as shown on the Plat Map, improved with a residence or designated for residential use shall be authorized to cast one (1) vote for each Lot or Dwelling Unit owned. Townhomes shall be classified as Lots and therefore, the Owners of each townhouse may cast one (1) vote per townhouse owned.

Class B: The Class B member is Developer and any successor of Developer who takes title for the purpose of development and sale of Lots and/or Dwelling Units and who is designated as such in a recorded instrument. The Class B Member shall be authorized to cast three (3) votes per Dwelling Unit and/or Lot owned. The Class B membership and the Class B Control Period shall terminate, and the Class B membership shall convert to Class A membership, upon termination of the Period of Developer's Control.

IV. EASEMENTS

4.1 Grant of Easement. Declarant hereby grants to Developer and also grants to the MHOA, nonexclusive, perpetual rights-of-way and easements over, across and through the Neighborhoods, together with the right to use, operate, maintain, repair and replace the Common Area and Facilities and Exclusive Common Area and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

4.2 Common Use of Easement. Said easement is to be used in common for ingress and egress over the Common Area by the Developer and each Neighborhood and its Owners, subject to all of the terms, covenants, conditions and restrictions set forth herein.

4.3 Private Easement. The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Developer, each Neighborhood and its Owners.

4.4 Benefited Expense Regarding Landscaping. Each Neighborhood is hereby empowered to and may, with the prior written consent of the MHOA, elect, at its sole expense and for its benefit, to upgrade its Neighborhood, or any part thereof (the "Benefited Expense"), although such Benefited Expense shall not be considered part of the Master Operating Expenses.

4.5 Encroachments. If any part of the Common Area and Facilities or Exclusive Common Area or Facilities encroaches or shall hereafter encroach upon a Lot or Dwelling Unit or Lots or Dwelling Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot or Dwelling Unit encroaches or shall hereafter encroach upon the Common Area and Facilities, or upon an adjoining Lot or Dwelling Unit or Lots or Dwelling Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities or the Lots or Dwelling Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

4.6 Improvements. Improvements, including Lots or Dwelling Units, Common Area and Facilities, Exclusive Common Area and Facilities and Limited Common Area and Facilities, constructed as subsequent phases of the Project may encroach upon portions of the Common Area and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and this Master Declaration necessary to repair, maintain and operate such improvements is hereby granted.

4.7 Rights of Access. Each Owner shall have the right to ingress and egress over, upon and across the Common Area and Facilities as necessary for access to the Lot or Dwelling Unit he is occupying and to any Limited Common Area and Facilities appurtenant to his Lot or Dwelling Unit, and he shall have the right to the horizontal, vertical and lateral support of his Lot or Dwelling Unit. Neighborhoods may have Exclusive Common Area and Facilities for the Benefit of one or more, but not all, Neighborhoods.

4.8 Developer's Easement. The MHOA hereby grants and conveys to the Developer an exclusive easement to make such use of the Common Area and Facilities and Exclusive Common Area and Facilities, as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to this Master Declaration, including, without limitation, the right to construct the Common Area and Facilities for use by the Owners and Members.

4.9 Construction Easements. The Declarant hereby grants to Developer and its affiliates and assignees a temporary construction easement over the Common Area and Facilities and Exclusive Common Area and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Lots, Dwelling Units, Common Area and Facilities, Limited Common Area and Exclusive Common Area and Facilities. The Owners of Lots and Dwelling Units do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Lots, Dwelling Units and the Common Area and Facilities, and Exclusive Common Area and Facilities until all improvements are complete, and such Owners

do hereby waive any right to object to such construction activity; provided, however, Developer shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners of Lots, Dwelling Units and Common Area and Facilities and Exclusive Common Area and Facilities in the Project. Developer's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

4.10 Locations Facilities Easements. Declarant grants Developer a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further grants Developer a right of access to the Locations of Facilities over, across, and through all other Common Area and Facilities and Exclusive Common Area and Facilities of the Project in order to access the Locations of Facilities to exercise the rights established herein. Declarant grants Developer the perpetual right to transfer by easement, license agreement or other conveyance the rights granted hereunder to one or more telecommunication facilities providers. Developer may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee or the MHOA. The MHOA, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Developer documenting the rights hereunder, in form satisfactory to the Developer, and any assignee of its rights hereunder.

4.11 Entry Monument. Declarant grants Developer a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace the Entry Monument.

4.12 Parking. While occupying a Lot or Dwelling Unit or using the Clubhouse, if any, all Owners and Members are entitled to use the parking areas designated as Common Area and Facilities (but not designated as visitor or guest parking spaces), except those in the designated Exclusive Common Area or reserved or assigned to a particular Lot, Dwelling Unit or Neighborhood, subject to and in accordance with the rules and regulations adopted by the MHOA.

4.12.1 Parking Rules. The parking rules and regulations may, among other things, regulate times, areas, location and assignment of parking spaces on public and private streets and may be enforced by the MHOA on both the public and private streets.

4.12.2 Reserved Parking Spaces. The Board of Directors may assign parking spaces in the Common Area and Exclusive Common Area to facilitate the use and demands of the Lots and Dwelling Units, and, among other things, may reserve spaces for a particular Neighborhood, may create tow, automatic tow and other zones, and may adopt parking rules and regulations.

4.12.3 Authority of Developer and Board of Directors. The Developer prior to the expiration of the Period of Developer's Control or thereafter the Board of Directors, shall have the right, power and authority to unilaterally relocate, reallocate and/or reconfigure any and all the easements or licenses or parking assignments described in this Master Declaration from time to time as it sees fit, and without the consent of any Owners.

4.12.4 Street Parking at The Villas. Street parking within the Villas Neighborhood or Neighborhoods is strictly prohibited and shall be considered an automatic tow away zone (at the vehicle owner's sole risk and expense) without

additional notice or warning required.

4.13 Developer's Non-Exclusive Easement. Declarant grants Developer a nonexclusive easement for itself and its affiliates and assignees over, through and under the Property for ingress to, egress from, and installation of all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity and cable communication that service the Property or any portion thereof as well as any such lines and systems which service property owned by the Developer. Upon installation of such utilities the responsibility to repair, maintain and replace the utilities shall be assumed by the MHOA or the City or other public or quasi-public entity having jurisdiction over the utility.

4.14 Reservation of Rights. All conveyances of Lots or Dwelling Units within the Project hereafter made, whether by Developer or otherwise, shall be construed to grant and reserve such easements and/or licenses as are provided herein, even though no specific reference to such easements appears in any such conveyance.

4.15 Common Area Repairs. All common areas shown on plats are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City of St. George to require the homeowners association to assess its members to repair streets, landscaping etc., where needed to repair or replace the public utilities.

V. NOTICES

5.1 Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board of Directors for the purpose of service of such notice or to the Lot or Dwelling Unit of such Owner if no such address has been given to the Board of Directors. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the Lot or Dwelling United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Board of Directors.

VI. INSURANCE

6.1 Insurance. The Board of Directors may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to maintain the insurability of the Project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners.

6.2 Insurance Obligation of the Association. The Association shall obtain the following insurance coverage (collectively, "Association Master Policy"):

6.2.1 Public Liability. Public liability coverage for the Common Area and Facilities;

6.2.2 Common Area and Facilities. Property, fire and extended hazard coverage for all Common Area, Elements and Facilities;

6.2.3 Buildings and Dwelling Units. Property, fire and extended hazard coverage for all Buildings that contain more than one Dwelling Unit for the full replacement value thereof, including any improvement which is a permanent part of a Building and is considered Common Area, Elements and Facilities. Those owners who reside in a Building containing more than one Dwelling Unit for which the Association pays the property, fire and hazard insurance, shall be individually assessed for this increase in Association expenses;

6.2.4 D&O Insurance. Directors and officers coverage; and

6.2.5 Fidelity Bond. A fidelity bond.

NOTICE: The Association Master Policy **does not** cover the contents or the personal property in the Dwelling Unit or belonging to the Dwelling Unit Owner or renter (as defined below), or personal liability. Coverage C (as that term is defined by the standard homeowners insurance policy) - Personal Property is excluded from the Association Master Policy. The Association **is not required** to cover property, fire or hazard insurance on a Dwelling Unit for loss of business, rents or rental income although it expressly reserves and is hereby granted the right to obtain such and other coverage for its benefit.

6.3 Minimum Amount of Insurance Coverage. The liability insurance purchased by the Association shall be in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate and optional umbrella liability coverage to be determined by the Board of Directors from time to time for bodily injury, death, and property damage. This amount may be increased or decreased unilaterally by the Board of Directors.

6.4 Name Association as "Loss Payee" or "Additional Insured." Any insurance policy obtained independently by a Neighborhood Association, if any, shall name the MHOA as a certificate holder, additional insured and/or loss payee if applicable.

6.5 Premium a Common Expense. The premiums for insurance coverage and the fidelity bond are to be considered a Common Expense.

6.6 Insurance Obligation of Owners. The foregoing obligation and right of the Association to purchase insurance coverage does not preclude the right or negate the obligation of each Owner to insure his own Lot and/or Dwelling Unit for his benefit. **EXCEPT AS PROVIDED FOR IN SECTION 6.2.3 ABOVE, EACH OWNER SHALL OBTAIN AT LEAST THE FOLLOWING INSURANCE COVERAGE** (collectively, "Owner Policy");

6.6.1 Public Liability Insurance. Public liability coverage for his/her Lot and/or Dwelling Unit. The limits of this public liability insurance policy shall be in an amount not less than \$500,000.00 for bodily injury, death and property damage.

6.6.2 **Coverage "A" Building** (as that term is defined by the standard homeowners insurance policy) A coverage "A" building policy in the amount of at least \$100,000.00.

6.6.3 **Individual Owner Insurance.** EXCEPT AS PROVIDED IN SECTION 6.2.3 ABOVE, EACH LOT OWNER SHALL PURCHASE INDIVIDUAL PROPERTY, FIRE AND EXTENDED COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT, WHICH SHOULD BE AN AMOUNT SUFFICIENT TO REPAIR ANY DAMAGE TO HIS LOT AND DWELLING UNIT.

6.6.4 **Changes in Amounts of Required Insurance.** The amounts of insurance required may be increased or decreased unilaterally by the Board of Directors.

6.6.5 **Coverage C** (as that term is defined by the standard homeowners insurance policy) - **Personal Property/ Contents and Lost Rents.** EACH OWNER IS RESPONSIBLE TO PURCHASE COVERAGE C - PERSONAL PROPERTY INSURANCE COVERING THE CONTENTS OF HIS LOT AND/OR DWELLING UNIT AND LOST BUSINESS, RENTS OR RENTAL INCOME. For use herein the term "contents" shall mean and refer to in the broadest possible sense all furniture, furnishings, appliances, accessories, dining and cooking ware, televisions, stereo equipment, electronic equipment and systems, computers, art, table lamps, linens, blankets, quilts, rugs, lost business, rents, income and profits, personal items not specified in the original design and specifications, and all personal property, belongings and effects in the Lot, Dwelling Unit, Building or Common Area and Facilities not covered by the Master Association Policy.

6.6.6 **Premium Is An Individual Expense.** The insurance premium on the Owner Policy shall be an Individual Expense.

6.6.7 **Maintenance of Coverage.** The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah.

6.6.7 **Not a Limitation.** The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he may deem appropriate.

6.6.8 **Name Association as "Additional Insured."** Each Owner Policy shall name the, Master Homeowners Association as an "Additional Insured."

6.6.9 **Certificate of Insurance.** Each Owner shall provide the Association with a "Certificate of Insurance" upon request.

6.7 **Owner's Default.** If an Owner fails to obtain his Owner Policy or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to purchase the required insurance and treat the cost as an Individual Expense. Anything to the contrary notwithstanding, if an Owner fails to obtain his required Owner Policy, then he shall be personally responsible to pay any deductible on the Master Association Policy as well as any and all costs, up the minimum

amount of coverage, incurred for repairs of or to the building as defined in Subsections 6.6.2 and 6.6.3 above.

6.8 Payment of Deductible. It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the Association Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose Lot and/or Dwelling Unit the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Dwelling Unit Owner shall be responsible for the deductible. It is the intent of the Declarant to obtain property, fire and extended hazard insurance with a \$5,000.00 deductible. This amount may be increased or decreased unilaterally by the Board of Directors upon a written recommendation for its insurance agent without amending the Declaration. Each Owner is encouraged to purchase insurance to cover the cost of the deductible.

6.9 Damages. Each Owner is responsible for the maintenance of his Lot and/or Dwelling Unit and for the repair of any damage he causes to another Lot and/or Dwelling Unit or the Common Area and Facilities.

6.10 Validity of Document. If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Utah, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.

6.11 Right to Adjust Claims. The Association has the right, power and authority to adjust claims.

6.12 Use of Insurance Proceeds and Repairs. Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

6.13 Quality of Insurance Company. The Association and Owners shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

6.14 Primary Coverage. It is the intent of the Declarant that the Owner's Coverage A - Building provide **primary** coverage and that the Association Master Policy provide **secondary** coverage.

VII. MAINTENANCE

7.1 Operation and Maintenance of Common Area. The MHOA shall have the power, authority, right, and duty to operate, maintain, keep, and replace all Common Area and Facilities and Exclusive Common Area and Facilities not separately maintained by a Neighborhood Association in a state of good repair and condition. As stated above, there may not be a distinct Neighborhood Association to carry out such maintenance obligations in a given Neighborhood area. In such cases the MHOA shall perform maintenance as required in this Article VII.

7.2 Area of Common Responsibility. Unless the maintenance responsibility is expressly delegated to, and accepted by, a Neighborhood Association, the maintenance, replacement, and repair of the Common Area and

Facilities and Exclusive Common Area and Facilities, shall be the sole responsibility of the MHOA.

7.3 Common Parking and Utilities. The MHOA shall also maintain, replace, and repair all common parking areas, and all common utilities, conduits, ducts, plumbing and wiring and other common central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. Where, however, such utilities, conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service are associated with a single Lot, Townhouse or Dwelling Unit, the Owner of such Dwelling Unit shall be responsible for the maintenance, replacement, and repair.

7.4 Incidental Damages. All incidental damages caused to private property by the maintenance, replacement, and repairs of the Common Area and Facilities or utility services shall be repaired promptly and the cost thereof charged as an Operating Common Expense.

7.5 Access Through Common Area. Because some of the Common Area and Facilities and Exclusive Common Area and Facilities are, or may be located within private property or may be conveniently accessible only through such property, the MHOA shall have the irrevocable right to have access to each Lot, Townhouse, or Dwelling Unit and to all Common Area and Facilities and Exclusive Common Area and Facilities from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Area and Facilities and Exclusive Common Area and Facilities or for making any emergency repairs at any time and when necessary to prevent damage either to the Common Area and Facilities or to any Lot, Townhouse or Dwelling Unit.

7.6 Access Through Lots or Dwelling Units. The MHOA shall also have the irrevocable right to have Access to any Lot, Townhouse, or Dwelling Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction, or reconstruction for which the MHOA is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the MHOA.

7.7 Maintenance of Attached Townhouses and/or Dwelling Units. The MHOA shall have the power, authority, right, and duty to maintain, keep, and replace all of the exterior elements, excluding glass, doors and electrical and mechanical equipment, of all attached Townhouses and Dwelling Units in a state of good repair and condition. The costs of maintaining, keeping, and replacing such exterior elements shall be assessed to the Neighborhood for which such elements are appurtenant as a Neighborhood, Benefited and/or Individual Assessment. All incidental damages caused to private property by the maintenance, replacement and repairs of the Exclusive Common Area and Facilities shall be repaired promptly and the cost thereof charged as a Neighborhood Expense.

7.7.1 Damage to Attached Townhouses and/or Dwelling Units. Notwithstanding the foregoing, if all or any portion of an attached Townhouse or Dwelling Unit is damaged or destroyed by fire or other casualty, and the Owner, their guests, invitees and/or tenants, are responsible for such loss or damage, then the Owner, and not the Association, shall be responsible for all such necessary repairs or reconstruction.

7.8 Damage to Detached Dwelling Units - Reconstruction. Owners are responsible for their detached dwelling and Lot. If all or any portion of any Lot or detached Dwelling Unit is damaged or destroyed by fire or other casualty the Owner of such Lot shall, at the Owner's election, either rebuild, repair, or reconstruct the Lot and the Dwelling Unit in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty, or as otherwise approved by the Board of Directors, or restore the Lot by removing from the Neighborhoods all damaged or destroyed building materials. The Owner of any damaged Lot or Dwelling Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction or restoration of the Lot to commence within three (3) months after the damage occurs and to be completed within fifteen (15) months after damage occurs, unless prevented by causes beyond the Owner's reasonable control. A transferee of title to the Lot which is damaged or upon which is located a damaged Dwelling Unit shall commence and complete reconstruction of the Dwelling Unit or restoration of the Lot in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, in no event shall such transferee of title be required to commence or complete such reconstruction or restoration of the Lot or Dwelling Unit in less than thirty (30) days from the date such transferee acquired title to the Lot.

7.9 Party Walls.

7.9.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.9.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall, including perimeter walls, shall be shared by the Owners who make use of the wall in proportion to such use, or the Owner of the wall even if there is no wall in common.

7.9.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall shall restore it, and, if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.9.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

7.9.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

7.9.6 **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Board of Directors of the Association shall select an arbitrator for the refusing party.

7.9.7 **Perimeter Walls.** The MHOA shall not be obligated to maintain any walls in the Project, except walls dividing a Lot and Common Area shall be maintained jointly by the Owner of the Lot and the MHOA or the Neighborhood, as the case may require.

VIII. GRANT OF POWERS, OFFICERS, LIMITATION OF LIABILITY AND OTHER PROVISIONS REGARDING THE BOARD OF DIRECTORS

8. **General.** The MHOA shall be governed by the following provisions:

8.1 **Board of Directors.** The management and maintenance of the Project and the administration of the affairs of the MHOA shall be conducted by a Board of Directors, who shall be elected as provided in this Master Declaration and in the Bylaws.

8.2 **Delegation of Powers.** The Board of Directors may appoint committees to assist the Board of Directors. Notwithstanding anything to the contrary, to the extent of any conflict between decisions of Board of Directors and any committee, the decision of the former shall in all respects govern and control.

8.3 **Grant of Powers.** Unless limited by this Master Declaration or Bylaws, the Board of Directors shall have all the powers, duties and responsibilities as are now or may hereafter be provided herein, including but not limited to the following:

8.3.1 **Rules and Regulations.** To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Lots and Dwelling Units and to levy fines, after notice and an opportunity to be heard, for the violation thereof.

8.3.2 **Common Area and Facilities,** To make and enforce all rules and regulations governing the conduct of all persons upon the Common Area and Facilities, Limited Common Area and Facilities, the Lots and Dwelling Units.

8.3.3 **Common Area Manager.** To engage the services of the Common Area Manager, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore.

8.3.4 **Operation of Common Area.** To operate, maintain, repair, improve and replace the Common Area and Facilities and Exclusive Common Area and Facilities.

8.3.5 **Payment of Master Operating Expenses** To determine, budget for, and pay the Master Operating Expenses.

8.3.6 **Assessments to Owners.** To assess and collect the proportionate share of Master Operating Expenses from the Owners.

8.3.7 Neighborhood Assessments. To assess and collect Neighborhood Assessments, Benefited Assessment and Individual Assessments.

8.3.8 Authority to Execute Documents. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

8.3.9 Bank Accounts. To open bank accounts on behalf of the MHOA and to designate the signatories therefore.

8.3.10 Conveyance of Lot/Dwelling Unit. To purchase, hold, sell, convey or mortgage any one or more Lots or Dwelling Units in the name of the MHOA or its designee.

8.3.11 Litigation. To bring, prosecute and settle litigation for the MHOA and the Project. The prevailing party in any such dispute shall be entitled to recover their costs and actual attorney fees.

8.3.12 Insurance. To obtain insurance for the MHOA, Neighborhood Associations, Lots, Dwelling Units, the Common Area and Facilities and the Exclusive Common Area and Facilities, as well as worker's compensation insurance.

8.3.13 Damage or Destruction. To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of this Master Declaration.

8.3.14 Disposal of Personal Property. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the MHOA and the Board of Directors and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

8.3.15 Books and Records. To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. The MHOA or the Board of Directors shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Dwelling Unit current copies of the Master Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the MHOA. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

8.3.16 All Other Accounts. To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Dwelling Unit if the same is necessary to protect or preserve the Project.

8.3.17 Budgets. To prepare, adopt, amend and disseminate budgets and, other information from time to time in accordance with the terms of this Master Declaration, the Bylaws or policies of the Association.

8.3.18 Common Area Rights-of-Way. To grant conveyances, easements and rights-of-way over the Common Area and Facilities and Exclusive Common Area and Facilities and to approve signage for the Project.

8.3.19 Enforcement of Rules. To enforce the rules, regulations, policies and procedures of the MHOA.

8.3.20 Delegation of Committees. Subject to the limitations of applicable law, the Board of Directors may delegate to a committee, a Neighborhood Association, Common Area Manager by written agreement all or some of the foregoing powers, duties and responsibilities.

8.4 Officers, Agents and Employees. Members of the Board of Directors, the officers and any assistant officers, agents and employees of the MHOA shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the MHOA in their capacity as such; shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for and/or by them in their capacity as such; and shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

8.5 Limitation of Liability. When a member of the Board of Directors, a committee member or other member volunteer is sued for liability for actions undertaken in his or her role as a member of the Board of Directors (or in another authorized capacity stated above), the MHOA shall indemnify him or her for losses or claims.

8.6 Subcontracts. The MHOA acting through the Board of Directors may enter into a contract or management agreement with a Neighborhood Association, Common Area Manager, or other Manager for the management of the Project, in whole or in part, which complies with the covenants, conditions and restrictions set forth herein. All such contracts shall be in writing signed by the parties. The person or entity so engaged shall be responsible for managing the Project, or any portion thereof, for the benefit of the MHOA and the Owners or Members, and shall, to the extent permitted by law and by the terms of the agreement with the MHOA, be authorized to perform any of the functions or acts required to be performed by the MHOA itself. Any such contract or management agreement executed on or before the termination of the Period of Developer's Control may be terminated by the Developer without cause at any time.

8.7 Reservation of Rights. Developer reserves the right, for a period of twenty (20) years following the recording of this Master Declaration, to unilaterally and without notice to or consent of the Owners or the MHOA, bind the Property and the Buildings or physical improvements to the utilization of the services of any service company, service district or improvement district or any entity or organization acting in a similar capacity, including Developer, its affiliates, successors and assigns (collectively referred to as "Service District"), established for the purpose of providing utility service or quasi-utility services or similar common service to the Property and/or other adjacent or proximate Properties of property, and to include the charges and assessments from such Service District as a "Master Operating

Expense" or "Neighborhood Expense," as the case may require.

IX. ARCHITECTURAL REVIEW COMMITTEE

9.1 **Members of the Committee.** An Architectural Review Committee ("ARC") shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. The ARC may be a designated and paid agent of the Board, if determined to be in the best interests of the community. A member of the ARC shall hold office until he has resigned or has been removed, but in any event, until said Member's successor has been appointed. Members of the ARC may be removed at any time, with or without cause. In the event that no committee is appointed, the Board shall serve as the ARC.

9.2 **Appointment.** So long as the Declarant owns any Lot or parcel within the Property, the Developer shall have the sole right to appoint and remove all members of the ARC. The ARC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ARC. In the absence of such designation, the vote of any two (2) members of the ARC shall constitute an act of the ARC.

9.3 **Compensation.** The members of the ARC and/or its agent, may receive compensation for services rendered upon execution of an agreement with the Board relative to such compensation, and may be reimbursed for actual expenses incurred by them in the performance of their duties hereunder.

9.4 **Non-Liability.** Neither the ARC, or any member thereof, or the Grantor or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ARC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application.

Every person who submits an application to the ARC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ARC, or any member thereof, or the Grantor or any officer, partner, employee, agent, successor or assign thereof to recover such damages.

9.5 **Approval Required.** No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Subdivision without the prior express written approval of the ARC. IN ADDITION, THE ARC, BY AND THROUGH THE BOARD, MAY ESTABLISH A SEPARATE AND DISTINCT SET OF RULES ENTITLED **ARCHTECTURAL GUIDELINES** WHICH SHALL SUPPLEMENT THIS ARTICLE AND CONTAIN ADDITIONAL RESTRICTIONS CONSISTENT WITH THE DEVELOPMENT OBJECTIVES AND TERMS OF THIS DECLARATION. ALL SUCH IMPROVEMENTS OR ADDITIONS SHALL REQUIRE THAT THE APPROVALS AND PROCEDURES HEREIN TO BE FOLLOWED.

9.6 Variances. The ARC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Master Declaration, the ARC Rules/ARC Standards, or any prior approval when, in the sole discretion of the ARC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ARC.

If a variance is granted as provided herein, no violation of this Master Declaration, ARC Rules/ARC Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Master Declaration or the ARC Rules/ARC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby. The ARC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon.

The granting of a variance by the ARC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the applicable ordinances of Washington County, Utah or any annexing municipality.

9.7 Application. To request ARC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in a form required by the ARC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, two (2) copies of each of the following (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ARC:

- (a) Site Plan. A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements, at a scale no smaller than 1" = 200'.
- (b) Building Plan. A building plot plan at a scale no less than 1" = 20'. Building elevation drawings of the north, south, east and west sides, and detailed specifications which shall indicate, by sample if required by the ARC, all exterior colors, materials and finishes, including roof, to be used.
- (c) Landscape Plan. A landscape plan for portions of the Lot to be landscaped which - shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways. Builders of more than one

home shall submit prototypical plans for ARC approval - such plans to be approved pursuant to this Master Declaration.

The ARC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ARC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ARC in reviewing and processing the application.

All detached Dwelling Units must have their landscaping (front, rear and sides) fully installed and completed within nine (9) months of closing on the purchase of the Dwelling Unit in accordance with this Master Declaration and the Design Guidelines of the Association.

9.8 Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ARC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Subdivision as a quality residential development.

Unless extended by mutual consent of the Owner and the ARC, the ARC shall render its decision with respect to an application within thirty (30) days after the receipt of a properly submitted and complete application. The decision of the ARC can be in the form of an approval, a conditional approval or denial. If, however, an Owner has not received a decision by the ARC within the above-mentioned thirty (30) day period, there is no automatic default approval of the Owner's plans. The Owner must then send to the ARC a certified letter requesting a response to its request. If there is no response from the ARC upon confirmation that the ARC did, in fact, receive the certified letter, then the plans shall be approved so long as the application, plans and materials submitted do not result in the construction of a structure in violation of the Association's Design Guidelines.

The decision of the ARC shall be in writing, signed by a member of the ARC, dated, and a copy thereof mailed to the Owner at the address shown on the application.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

A denial of an application shall state with particularity the reasons for such denial.

9.9. Inspection and Complaints. The ARC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating thereof or is violating this Master Declaration or the ARC Rules/ARC Standards or the approved plans and specifications.

Each owner or builder shall instruct their respective workers and employees to follow construction only per ARC approved plans. Any modifications or deviations from approved plans must be re-approved by the ARC prior to installation.

The ARC is empowered to receive from other Owners ("Complainant") complaints in writing involving deviations from approved applications or violations of this Master Declaration or any applicable ARC Rules/ARC Standards. In the event the ARC receives such a complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise.

Should the ARC determine that there has been a substantive deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- (a) The Owner shall immediately cease the activity which constitutes a deviation or violation.
- (b) The Owner shall adhere to the corrective measures set forth in the written notice.

Should the ARC determine there has been no substantive deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant. Notwithstanding any other remedy available to the ARC or the Board, the Board may levy fines/Individual Assessments for deviations or violations of the ARC Rules/ARC Standards of the Association.

9.10 Hearing. An Owner submitting an application under this Section, or served with a written notice of deviation or violation, or a Complainant shall have the right to request and be heard at a hearing held by the ARC for the purpose of presenting facts and information to the ARC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ARC is mailed to the Owner (and Complainant) as evidenced by the records of the ARC. The hearing shall be held within thirty (30) days following receipt by the ARC of the request for a hearing, unless the ARC shall extend said period of time because of the unavailability of ARC members.

A hearing may be continued by the ARC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ARC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ARC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ARC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant or consultants to advise the ARC and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 9.12 below.

9.11 Appeal. Either an Owner or a Complainant shall have the right to appeal to the Board a decision of the ARC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ARC adverse to

the Owner or the Complainant reached following a hearing held pursuant to Section 9.10, above, provided, however, that neither an Owner nor a Complainant shall be entitled to such an appeal with respect to deviations or violations unless said Owner or Complainant, or their authorized representatives, have participated in the ARC hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the ARC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, if any, and a copy of the written decision or determination of the ARC. The failure of an Owner or Complainant to appeal a decision of the ARC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.

The Board shall fix a date for the hearing of such an appeal which date shall be no later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner and Complainant, if any, shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the ARC.

The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ARC shall be considered final and not subject to further appeal. At the hearing the Owner, Complainant, if any, and the ARC, together with their representatives and other witnesses, shall present their position to the Board.

The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board provided, however, that the Owner, the Complainant, if any, and the ARC shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner, the Complainant, if any, and the ARC will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the ARC or the Board.

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, the Complainant, if any, and the ARC members shall be given written notice of the decision which shall be deemed given when deposited in the Dwelling United States mail, postage prepaid and properly addressed.

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ARC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 9.12, below.

A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal.

9.12 Enforcement. The ARC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to levy a fine, commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Master Declaration, the ARC Rules/ARC Standards or the approved plans and specifications.

The ARC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ARC shall have the sole discretion to commence such proceedings.

The authority of the ARC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

In the event the ARC and/or Association shall prevail in any such legal or equitable proceedings, the Board may elect to require that all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefor is mailed to the Owner, the Association shall have the right to levy a Individual Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Individual Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion.

The failure of the Owner to pay said assessments or any installment thereof when due, shall be enforceable in the manner provided in this Declaration.

9.13. Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Individual Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Individual Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Individual Assessment shall be the same as provided in this Declaration.

9.14. Non-Exclusive Remedy. The right of the Association to levy an Individual Assessment as described in Sections 9.12 and 9.13, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole

discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Individual Assessments, proceed to collect any amount due directly from the Owner, levy fines against the Owner, and/or pursue any other remedies available at law or in equity.

9.15 **Private Rights.** The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefited thereby.

X. ASSESSMENTS

10. Master Assessments.

10.1 **Obligation of Members of Master Association.** Each Member of the Master Association, unless otherwise exempted herein, shall pay to the MHOA its share of the Master Operating Expenses.

10.2 **Obligation of Developer to Pay Assessments.** The Declarant and/or Developer may, but is not required to, pay any shortfalls in the operating budget of the Association until such time as there are a sufficient number of Lots sold to cover operating expenses. In such a case, the Declarant and/or Developer shall not be entitled to reimbursement for such expenditures unless approved by a Board which is not elected and/or appointed by the Declarant and/or Developer. However, the Declarant and/or Developer shall not be required to pay assessments on any Lots owned by the Developer until such time as a Use and Occupancy permit has been granted.

10.2.1 **Deferred Payment by Developer.** After the date a Use and Occupancy Permit is issued by the proper authorities for any Lot owned by the Declarant, the Declarant and/or Developer may elect to defer payment to the Association of that portion of the Annual Assessment or any other assessment attributable to reserves or any Individual Assessment for the particular Lot until the closing of the sale of the Lot. However, the Declarant and/or Developer may not defer payment of accrued assessments for reserves beyond the Turnover Meeting or if the Turnover Meeting is not held, the date that the Owners assume administrative control of the Association.

10.3 **Covenant to Pay.** Each Owner, unless otherwise exempted herein, by virtue of accepting a deed or other document of conveyance to a Lot or Dwelling Unit, hereby covenants and agrees to pay his share of all Master Operating Expenses and Master Assessments.

10.4 Neighborhood Assessments and Individual Assessments.

10.4.1 **Neighborhood Assessments/Benefited Assessments.** The Board of Directors may elect to incorporate into the billing for the Master Assessment any Neighborhood Assessment (or Benefited Assessment as defined above). A Neighborhood Association, if any, may elect to have its Assessment incorporated into the Master Assessment.

10.4.2 Individual Assessments. The MHOA may levy Individual Assessments against a particular Owner of a Lot, Townhouse or Dwelling Unit to pay the costs directly attributable to, or reimbursable by that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Master Declaration, plus interest and attorney's fees. Fines and penalties levied by the Board of Directors pursuant to this Master Declaration and the Rules and Regulations may be assessed as an Individual Assessment. Individual Assessments may only be levied upon the vote of the Board of Directors after notice to the Member and an opportunity for a hearing. In addition to the foregoing, if a street lamp is located on a Lot or directly adjacent to a Lot and not on Common Area, then the electricity used to operate the street lamp will be the responsibility of such Lot Owner and will be an Individual Assessment which may be included in the Master Assessment of the Lot Owner.

10.5 Computation of Master Assessments. The MHOA shall base the annual Master Assessments upon budgeted estimates of the Master Operating Expenses expected to be incurred during the coming calendar year, plus amounts required to establish an adequate reserve.

10.6 Apportionment of Master Operating Expenses. The Master Operating Expenses shall be allocated equally among all of the Members.

10.7 Budget. The MHOA shall prepare and furnish to each Member an operating budget for the MHOA for the coming calendar year at least thirty (30) days prior to the beginning of each year. The MHOA shall also prepare and furnish to each Member subject to a Neighborhood Assessment an operating budget for the Exclusive Common Area and Facilities and/or maintenance, repair, and replacement of the exterior elements of attached Townhouses or Dwelling Units for the coming calendar year at least thirty (30) days prior to the beginning of each year.

10.8 Books and Records. The MHOA shall (a) keep books and records in accordance with generally accepted accounting practices and (b) prepare monthly billing statements and/or ledgers for each Member detailing its share of the Operating Expenses and any other charges.

10.9 Payment. Neighborhood Assessments, Master Assessments and each Member's share of the Master Operating Expenses shall be payable in twelve (12) equal monthly installments. Monthly invoices for each Member will be prepared by the MHOA. Payment of the Assessments must be made to the MHOA within on the first day of each month. A late fee of \$25.00 per month shall be assessed on all payments not received by the tenth day of the month. In addition, delinquent accounts shall be charged interest at the rate of 1.5% per month on the outstanding balance on all delinquent accounts. The MHOA may elect to accelerate the entire Annual Master Assessment in the event of default.

10.10 Reserves. The MHOA shall establish and fund a reasonable reserve account or accounts for unforeseen operating expenses, major repairs, and capital improvements. In the event the reserve account(s) fall below an amount considered acceptable by the Board of Directors, then, in its sole discretion and without any additional approval required, the MHOA may restore or replenish the account(s) by an equitable increase in the monthly Master Assessment, a special assessment, or

any combination.

10.11 Capital Asset Table. The Board of Directors shall establish and update at least every three years a Capital Asset Table which shall list each major asset and physical Improvements for which the MHOA is responsible, its expected useful life, the present cost of replacement; the estimated cost to replace the item at the end of its useful life, the percentage and a mount of each Assessment designated for the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item.

10.12 Analysis Report. The Board of Directors shall prepare and update at least every three years a written Reserve Account Analysis, and make the report(s) available to the Owners at the annual meeting of the Association. Any reserve account study shall include, at a minimum:

10.12.1 MHOA Repair Obligations. Identification of the major components which the MHOA is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

10.12.2 Identification of Useful Life. Identification of the probable remaining useful life of the components identified above, as of the date of the study.

10.12.3 Cost Estimate. An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified above, during and at the end of its useful life.

10.12.4 Estimate of Contribution. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

10.12.5 Reserve Account Requirements. For the purposes of this Section, the term "reserve account requirements" means the estimated funds which the Board of Directors has determined are required to be available at a specified point in time to repair, replace or restore those major components which the MHOA is obligated to maintain.

10.13 Miscellaneous Provisions. The making and collection of Master Assessments by the MHOA from Owners of Lots or Dwelling Units and Memberships for their share of Operating Common Expenses shall be made as follows and subject to the following provisions:

10.13.1 Distribution of Common Profits, Expenses and Voting Rights. The common profits of the Property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to the Residential Lot, Townhouse and Dwelling Unit Owners on an equal basis regardless of size or value of the Lot, Townhouse or Dwelling Unit.

10.13.2 Creation of Funds. At least two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for reserve expenses.

10.13.3 **Master Assessments.** Master Assessments shall include both Regular Master Assessments and Special Master Assessments.

10.13.4 **Operating Common Expenses.** Until the MHOA makes an assessment for Operating Common Expenses, the Developer shall pay all Operating Common Expenses.

10.13.5 **Regular Master Assessments.** After an assessment has been made by the MHOA, Regular Master Assessments must be made at least annually, based on a budget adopted at least annually by the MHOA in accordance with the provisions of this Master Declaration and the Bylaws.

10.13.6 **Commencement of Regular Master Assessments.** Regular Master Assessments shall be levied against each separate Lot, Townhouse or Dwelling Unit, and shall commence as to all Lots, Townhouses or Dwelling Units in the Project on the first day of the month following the closing of the first sale of a Lot, Townhouse or Dwelling Unit.

10.13.7 **Changes in Regular Master Assessments.** The Board of Directors may make equitable changes in the Regular Master Assessments during any calendar year provided, however, the MHOA shall provide notice, by first class mail to all Owners, of any increase in the Regular Master Assessments not less than thirty (30) nor more than sixty (60) days prior to the date any modified Regular Common Assessment is due.

10.13.8 **Special Master Assessments.** In addition to the Regular Master Assessments, the MHOA may levy in any fiscal year, Special Master Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any unforeseen expenditure or the construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Area and Facilities, including the necessary' fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Master Assessments from the Owners.

10.13.9 **Special Master Common Assessment.** Any Special Master Common Assessment levied against a particular Lot, Townhouse or Dwelling Unit shall be levied on an equal basis.

10.13.10 **Exclusive Common Area and Facilities.** Special Assessments for Exclusive Common Area and Facilities or Special Assessments for maintenance, repair and replacement of exterior elements of attached Townhouses and Dwelling Units may be levied by the Board of Directors in the same manner as Special Master Assessments.

10.13.11 **Allocation of Special Master Assessment.** These provisions with respect to the imposition or allocation of Special Master Assessments shall not apply when the special assessment is to pay an increase in real property taxes.

10.13.12 **Providing Notice.** The Board of Directors shall provide notice by first class mail to all Owners or Members of any Special Master Assessments not less than thirty (30) days prior to the date such Assessment is due.

10.13.13 **Payment by Developer.** To the extent permitted by law, Developer may pay the MHOA an amount less than its proportionate share of Operating Common Expenses or other permitted Master Assessments for which It

owes, provided Developer has executed a subsidy agreement requiring Developer to pay monies which are sufficient, together with the Master Assessments paid by all other Owners, to enable the MHOA to timely pay all of the Operating Common Expenses. Any subsidy agreement shall require Developer to pay its full proportionate share of all reserves for replacement and capital improvements assessed against the Lots, Townhouses or Dwelling Units which it owns.

10.13.14 Payment of Assessments. All payments of Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due.

10.13.15 Judgments. All Master Assessments to pay a judgment against the MHOA may be made only against the Lots, Townhouses or Dwelling Units in the Project at the time the judgment was entered, in proportion to their liabilities for Operating Common Expenses.

10.13.16 Misconduct of Owner. If any Operating Common Expense is caused by the misconduct of any Owner, the MHOA may assess that expense exclusively against such Owner's Lot, Town house or Dwelling Unit.

10.13.17 Unpaid Assessments. There shall be a lien upon the applicable Lot, Townhouse or Dwelling Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Master Declaration.

10.13.18 Lien for Unpaid Assessments. The lien for unpaid Assessments and related charges shall be effective upon recordation in the Office of the County Recorder of a written notice of lien by the Board of Directors, the Common Area Manager, or the attorney for the MHOA.

10.13.19 Notice of Lien. The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Lot, Townhouse or Dwelling Unit and a description of the Lot, Townhouse or Dwelling Unit.

10.13.20 Priority of Lien. Any Assessment levied against each Lot, Townhouse or Dwelling Unit is a debt of the Owner and/or Member at the time the Assessment is made and is collectible as such. If any Owner or Member fails or refuses to pay an Assessment when due, that amount constitutes a lien on the Owner's Lot, Townhouse or Dwelling Unit, which lien is prior to all other liens and encumbrances, recorded or unrecorded, except:

(i) tax and special assessment liens on the Lot, Dwelling Unit or Membership in favor of any assessing Dwelling Unit or special improvement district; and

(ii) encumbrances on the interest of the Owner or Member recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law. Non-judicial lien foreclosures are permitted.

10.13.21 **Foreclosure.** In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed.

10.13.22 **Assessments During Foreclosure.** The Owner shall also be required to pay to the MHOA any Assessments against the Lot, Townhouse or Dwelling Unit which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed.

10.13.23 **Authority of MHOA.** The Board of Directors shall have the right and power in behalf of the MHOA to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Lot, Townhouse or Dwelling Unit in the name of the MHOA.

10.13.24 **Action Against Owner.** In furtherance of such foreclosure rights, the MHOA may bring an action at law against the Owner personally obligated to pay the same or the MHOA may foreclose the lien in accordance with the provisions of Title 57, Chapter 1 of the Utah Code.

10.13.25 **Appointment of Trustee.** The MHOA and each Owner hereby appoints the attorney of the Association (who has been retained by the Association at the time a foreclosure is initiated) as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., or as may be amended from time to time.

10.13.26 **Appointment of Successor Trustee.** The MHOA reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code. Each Owner hereby conveys all of its right, title and interest in its Lot, Dwelling Unit or Membership to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Master Declaration, including but not limited to the obligation to pay all Master Assessments.

10.13.27 **Bid on Lot.** The MHOA may, through its duly authorized agents, bid on the Lot, Dwelling Unit or Townhouse at any foreclosure sale and acquire, hold, lease, mortgage and convey the same.

10.13.28 **Superiority of Lien.** The lien of the MHOA shall be superior to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Master Declaration, a First Mortgage on a Lot, Dwelling Unit or Membership as provided for herein and Master Assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental Master Assessments or charges past due and unpaid on the Lot, Dwelling Unit or Membership.

10.13.29 **Recovery.** The lien procedures described herein do not prohibit actions to recover sums for which this Master Declaration creates a lien or prohibit the MHOA from taking a deed in lieu of foreclosure.

10.13.30 **Unpaid Assessments.** The Board of Directors, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Lot, Dwelling Unit or Townhouse. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the MHOA, the Board of Directors, the Common Area Manager and every Owner, in

favor of all who rely on such statement in good faith.

10.13.31 Common Assessment. The amount of any Common Assessment against any Lot, Dwelling Unit or Membership shall be the personal obligation of the Owner.

10.13.32 Recovery of Judgment. Suit to recover a money judgment for such personal obligation shall be maintainable by the MHOA without foreclosing or waiving the lien securing the same.

10.13.33 Owner Waiver of Amenities. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area and Facilities or by abandonment of his Lot, Dwelling Unit or Townhouse or by waiving any services or amenities provided for in this Master Declaration.

10.13.34 Recovery of Unpaid Assessments. In the event of any suit to recover a money judgment of unpaid Master Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the MHOA in connection therewith, including reasonable attorneys' fees.

10.13.35 Conveyance. In a voluntary sale, transfer, conveyance, exchange or assignment, the personal obligation of an Owner or Member to pay unpaid Master Assessments against his Lot, Dwelling Unit or Townhouse shall also pass to his successors in title.

10.13.36 Sale or Transfer Affecting Lien. A lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Lot, Dwelling Unit or Townhouse unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments.

10.13.37 Purpose of Reserve Account. The Board of Directors shall not expend funds designated as reserves for any purpose other than unforeseen expenses or the repair, restoration, replacement or maintenance of major components of the Common Area and Facilities for which the MHOA is responsible and for which the reserve fund was established or for litigation involving such matters.

10.13.38 Management of Reserve Account Funds. The Board of Directors shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve Account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above.

10.13.39 Notice to Owner. If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board may demand that the tenant pay to the MHOA all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the MHOA is paid. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant under this subsection.

10.13.40 Obligations of Owner. No Owner or Member may waive or otherwise exempt himself or herself from liability for the payment of his share of the Master Operating Expenses or his Regular or Special Common Master Assessments provided for herein, including but not limited his non-use or abandonment of his Lot, the Common Area and Facilities, or Club Ivory.

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

10.13.42 Initial Working Capital Fund (Initial Assessment). Each initial Owner of a Lot shall make initial contributions to the working capital fund of the Association in a reasonable amount as determined by the Board. Such amounts paid shall not be deemed to be advance payments of the Master or other Assessment, but shall be in addition thereto.

XI. INITIAL USE RESTRICTIONS

11.1 General. Subject to the Developmental Rights, the Lots, Townhouses, Dwelling Units, Common Area and Facilities, Exclusive Common Area and Facilities, including but not limited to the Limited Common Area, shall be used in accordance with the following restrictions:

11.1.1 No Commercial Use. Except to the extent specifically permitted by this Master Declaration, Owners shall not make any commercial use of the Residential Lots, Townhouses or Dwelling Units, or any portion thereof, with the exception of home occupations which do not increase traffic into the Property, subject to rules and regulations enacted by the Board of Directors; provided, however, that nothing in this subsection shall prevent Developer or an affiliated entity or a duly authorized agent from using any Lot, Townhouse or Dwelling Unit owned or leased by Developer as sales offices and model Dwelling Units or a property management office or for other commercial purposes.

Home based businesses are allowed under limited circumstances, and must comply with community guidelines. The prior written consent of the Board of Directors is required for any type of home based business. No businesses are allowed that have employees of any kind, or that have any customers that are not residents of the community. Examples include, but are not limited to: day care/pre-schools, hair/nail salons, photo studios, auto repair, general office (i.e. mortgage, accounting, legal), call centers, etc. In the event of a dispute between an Owner and the Board of Directors regarding compliance with this subsection, the decision of the Board of Directors shall be final, conclusive and binding.

11.1.2 Subject to Project Documents. Use of the Lots, Dwelling Units and Townhouses shall be pursuant to the Project Documents, rules and regulations of the MHOA, as each document may be amended from time to time.

11.1.3 Signs.

11.1.3.1 No for rent or lease signs shall be permitted in the Project.

11.1.3.2 For all attached Dwelling Units, one (1) "for sale" sign may be located in the front window of an attached Dwelling Unit and must be professionally prepared and may not exceed a total of 378 square inches.

11.1.3.3 For all detached Dwelling Units (i.e., Estate Homes), one (1) "for sale" sign is permitted in the front yard so long as it does not exceed 378 square inches.

11.1.4 Owner Rights of Occupation and Use. Subject to the payment of all Assessments and other charges approved by the MHOA and levied against the Owners and Members, and subject to compliance with the provisions of this Master Declaration, and with rules and regulations promulgated from time to time by the MHOA, each Owner and Member shall have the right with all other Owners and Members to occupy and use the Lots, Townhouses, Dwelling Units, Common Area and Facilities, and the Exclusive Common Area and Facilities.

11.1.5 No Construction. No Owner shall erect or construct, in the Common Area and Facilities, and Exclusive Common Area and Facilities any structure of any type whatsoever.

11.1.6 Placement of Outbuildings. Outbuildings such as sheds are only permitted on Lots with detached Single Family Residences and then only upon approval of the ARC and/or Board of Directors.

11.1.7 Storage of Vehicles. No Owner shall place, store, keep or permit to be placed, stored or kept, upon the Common Area and Facilities or Exclusive Common Area and Facilities any personal property, including, but not limited to, vehicles of any type except pursuant to the rules and regulations of the MHOA without the prior written approval of the Board of Directors.

11.1.8 Unauthorized Activity. No noxious, offensive, illegal or unauthorized activity shall be carried on in or upon any part of the Project nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners. Normal construction activities shall not be considered to violate the terms and conditions of this Section and by accepting a deed to a Lot, Dwelling Unit or Townhouse, an Owner or Member acknowledges that noises, lights and odors common to recreational and commercial activities, as well as construction activities, may exist on or near the Property, at anytime and from time to time.

11.1.9 Safety. No activities shall be conducted, or improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

11.1.10 Signage. Except for United States Flags of reasonable size and as permitted by State and Federal law, no signs, flags or advertising devices of any nature, including, without limitation, for sale or for rent signs, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger, except as may be used by Developer as part of its sales program, except to advertise the Project, or except as otherwise approved by Developer or, after expiration of the Period of Developer's Control, the Board of Directors.

11.1.11 Restriction of Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats, birds or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the Neighborhoods which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Lot Owners. All pets must be kept within the boundary of the Lot or on a leash attended to by a Person when in the Common Area or Exclusive Common Area. Such pets may not be kept in the Limited Common Area unless attended to at all times by a Person. All pet waste must be immediately cleaned up. The following are not considered household pets; reptiles, rodents, swine, insects and animals weighing fifty (50) pounds or more. This Section may be made more restrictive by Rule of the MHOA. A dog or cat which repeatedly barks or howls, whether or not within the Owner's yard, will be considered to be a nuisance. No outside dog houses or dog runs are allowed without the prior written consent of the Board of Directors.

11.1.12 Smoking. No smoking is permitted within any attached Dwelling Units, the Clubhouse or pool area. Utah Code Annotated, Title 78-13-1(3) has defined second hand tobacco smoke that drifts into a residential unit as a nuisance under the law. Therefore, in order to enforce and maintain the integrity of the covenants of the Association and to promote the health, safety and welfare of the community, all attached Dwelling Units shall be "smoke free" and Owners may be fined or all other legal remedies explored, in the event that smoking occurs within an attached Dwelling Unit.

11.1.13 Littering. Owners and Members shall not, and shall not permit their Guests to litter.

11.1.14 Trash. No burning trash, garbage or other waste materials will be permitted on the Property. Garbage cans must be screened from view for the streets, except for a period not to exceed 24 hours on the day of garbage collection.

11.1.15 Window Coverings. The Board of Directors shall have the right to establish rules requiring interior and exterior window coverings to present a uniform appearance or common design scheme from the exterior of Dwelling Units and Townhouses.

11.1.16 Reasonable Accommodation. No Townhouse or Dwelling Unit shall be used to accommodate more persons than it was designed to accommodate comfortably and safely.

11.1.17 Alterations. Except as otherwise permitted by this Master Declaration, no Owner shall, without the prior written consent of the Board of Directors, make or permit to be made any alteration, improvement or addition in or to any Lot, Townhouse or Dwelling Unit.

Examples of improvements that must be submitted for review include but are not limited to the following: swimming pool, tennis courts, basketball court, accessory buildings (storage sheds, detached garage structures, etc.) fencing, landscaping, decks and walls. In addition, any alterations of any kind or nature to the primary structure including changes in colors or materials, awnings, roofing, windows, porches, courtyards, etc. must also be submitted for review. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all exterior changes or improvements must be submitted for review and approval prior to construction.

11.1.18 Maintaining Structural Soundness. No Owner shall, without the prior written consent of the Board of Directors, do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any easement or hereditament appurtenant to the Project.

11.1.19 Actions Affecting Insurance. Nothing shall be done or kept in any Lot, Townhouse or Dwelling Unit or in the Common Area and Facilities and Exclusive Common Area and Facilities or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Lot, Townhouse or Dwelling Unit which would increase the rate of insurance on the Project or any part thereof over what the MHOA but for such activity, would pay, without the prior written consent of the Board of Directors.

11.1.20 Violation of Statutes. Nothing shall be done or kept in any Lot, Townhouse or Dwelling Unit or in the Common Area and Facilities and Exclusive Common Area and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

11.1.21 Damage or Waste. No damage to, or waste of, the Neighborhoods or any part thereof shall be committed by any Owner, Member, Guest, tenant, visitor or invitee, and each Owner or Member shall indemnify and hold the MHOA and the other Owners or Members harmless against all loss resulting from any such damage or waste caused by him or his Guests, tenants, visitors, or invitees.

11.1.22 Use of Lots. No Owner shall violate the rules and regulations for the use of Lots, Townhouses, Dwelling Units, Common Area and Facilities and Exclusive Common Area and Facilities as adopted from time to time by the MHOA.

11.1.23 Rental Restrictions. At least 80% of Lots, Townhouses and/or Dwelling Units in the Project shall be owner-occupied at all times. The Board of Directors may allow up to 20% of the Lots, Townhouses or Dwelling Units to be leased, rented or occupied by non-owner occupants. This will allow the Association to:

11.1.23.1 Protect the equity of the individual property owners at the Project; and

11.1.23.2 Carry out the purpose for which the Project was formed by preserving the character of the Project as a homogeneous residential community of predominantly owner-occupied Lots and by preventing the Project from assuming the character of an apartment, renter-occupied complex; and

11.1.23.3 Comply with the eligibility, requirements for financing in the primary and secondary mortgage market insofar as such criteria provide that the Project be substantially owner-occupied, the leasing of more than 20% of the Lots, Townhouses or Dwelling Units shall be prohibited. Exceptions may be granted in the case of undue hardship as that term is defined below.

11.1.24 **Owner-Occupancy.** No Owner shall be entitled to lease the Owner's Dwelling Unit until the Owner has owned the Dwelling Unit for at least two (2) years. The term "owner-occupied" shall mean a Lot occupied by one of the following:

11.1.24.1 The owner of record, as a primary or secondary residence, as shown in the Office of the County Recorder of Washington County, Utah; or

11.1.24.2 The spouse, children or parents of the owner of record; or

11.1.24.3 The shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner (provided, such person holds a beneficial interest in such legal entity of at least 50%) and/or his spouse, children or parents.

11.1.25 **Hardship Exception.** Priority shall be given to requests to lease or rent property in order to avoid undue hardship on an Owner. By way of illustration and not by limitations, examples of circumstances which would constitute undue hardship are those in which:

11.1.25.1 An Owner must relocate his residence and cannot, within ninety (90) days from the date the Lot was placed on the market, sell the Lot while offering it for sale at a reasonable price no greater than its current appraised market value;

11.1.25.2 The Owner dies and the Lot is being administered by his estate;

11.1.25.3 The Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot;

11.1.25.4 The Lot is to be leased to a member of the Owner's immediate family, which shall be deemed to encompass children, grandchildren, grandparents, brothers, sisters, parents, and spouses.

11.1.26 **Rental Rules and Regulations.** The Board of Directors shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Master Declaration and Bylaws, in order to enforce the provisions of this subparagraph. Any transaction which does not comply with this Section shall be voidable at the option of the Board of Directors.

11.1.27 Business or Corporate Ownership. In the event that a business entity owns a Lot or Townhome, and such business is a legitimately formed and operating entity in the furtherance of a business objective, then temporary visitors shall not be considered renters for purposes of this Declaration. The Board, however, has broad authority to define, regulate and limit the temporary occupancy of business or corporate guests.

11.1.28 Leases Subject to Project Documents. Any lease agreement between an Owner and a renter respecting a Lot, Townhouse or Dwelling Unit shall be subject in all respects to the provisions of this Master Declaration, the Articles and Bylaws and any failure by the renter to comply with the terms of such documents shall be a default under the lease.

11.1.29 Leases Must Be In Writing. All such lease agreements shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his property.

11.1.30 Owner Responsible for Renters. An Owner shall be responsible and liable for any damage to the Project caused by his renter.

11.1.31 Minimum Lease Terms. All leases shall be for a minimum term of twelve (12) months.

11.1.32 Owner-Occupation and Joint Value Agreement. By accepting title to a Lot, Dwelling Unit or Townhouse, each Owner (for himself and for his heirs, successors-in-title and assigns) understands, accepts and agrees that this Project is intended to be an owner-occupied subdivision and that "churning," the excessive buying and selling of real estate, in the market or second home ownership has, or may have, an adverse affect upon this stated purpose of the Project; therefore, each Owner covenants and agrees to the following:

11.1.33 Sale of Unit Within First Year of Ownership. \$25,000.00 shall be paid to the MHOA if the Owner sells the Dwelling Unit within the first year of ownership, unless such payment is waived by the Board based upon a hardship of the Owner.

11.1.34 Fractional Ownership. No owner may own less than twenty-five percent (25%) of a Dwelling Unit.

11.1.35 Partition of Property. By accepting title to a Lot, Dwelling Unit or Townhouse, each Owner, for himself and for his heirs, successors-in-title and assigns, does absolutely and forever waive any right to seek or obtain physical partition of the property, or any portion thereof, and does further waive the right to seek or obtain partition of the property by means of the sale of thereof, in whole or in part, unless the institution of such suit or action for partition has been approved by the affirmative vote of the same number of Owners that would be required to sell all or any portion of the Project pursuant to and in compliance with this Master Declaration and the Developer, if Developer still then retains the right to control the MHOA. Notwithstanding the foregoing, there shall be no limitation on judicial sale in lieu of partition in the case of co-owners of individual Lots, Dwelling Units or Townhouses.

11.1.36 Validity of Master Declaration. It is intended that this Master Declaration alone, incorporating by reference the Bylaws, Articles, rules and regulations of the MHOA, shall govern all rights with respect to the use, possession,

enjoyment, management and disposition of the Property. accordingly, all rights with respect to the use, possession, enjoyment, management and disposition of the property which an Owner might otherwise have are hereby unconditionally and irrevocably subordinated to this Master Declaration for so long as this Master Declaration shall remain in effect.

11.1.37 Fencing. The following fencing is expressly prohibited: Front yard fencing of any kind (the only exceptions may be on corner lots and/or collector roads if approved in writing by the Board of Directors), fencing inside fencing, fencing (including by way of illustration but not limitation all hedges, trees, bushes, shrubs or other animate or inanimate, natural or artificial objects) behind entry monuments and other monuments, planter boxes or special landscaping established by the Developer, spite fences, and any other fencing not expressly approved by the Board of Directors in writing. Fencing adjacent to any trail system must only be installed by Developer. Block and wrought iron fencing is the only fence type which are specifically approved, any other type of fence must be approved in advance and in writing by the Board of Directors. Fencing of the front yard is not allowed.

11.1.38 Satellite Dishes. Satellite dishes may be installed in accordance with FCC regulations and ARC prior approval taking into consideration the written guidelines established for or by Board of Directors. Further, Developer may identify the location of satellite ports on each Lot or Dwelling Unit where an acceptable quality signal can be obtain. In the event, the Developer so designates the location of the satellite ports then any satellite dish must be installed at the location of the port.

11.1.39 Storage and Parking of Motor Vehicles, Trailers and Transportation Devices. Except as otherwise expressly and specifically stated herein or in a Neighborhood Declaration (and in the event of a conflict the more restrictive provision shall apply), the driving, parking, standing and storing of motor vehicles throughout, the Project shall be subject to the following:

11.1.40 Parking Rules. The parking rules and regulations adopted by the Management committee from time to time;

11.1.41 Recreational Vehicles. Recreational vehicles may only be stored in the Estates and Lots with detached Single Family Residences. Recreational vehicles must be stored behind a fence or in a garage, except for loading and unloading which cannot exceed 24 hours in any 72 hour period. In no event may recreation vehicles be stored overnight in any part of the Project containing attached Townhouses or attached Dwelling Units. Recreation vehicles shall include boats, trailers, utility trailers, buses, motor homes, motorcycles, all terrain vehicles, off road vehicles, snowmobiles, campers, and any other related vehicles defined as recreational vehicles by the Board.

11.1.42 Parking Obstacles or Dangerous Situations. No motor vehicle or trailer may be parked or stationed in such a manner so as to create a potentially dangerous situation, so as to create an obstacle or along any street or road, or in front of any garage, walkway, driveway, Building or Lot, or in an unauthorized Common Areas.

11.1.43 **Designated Parking Areas.** Residents may only park their motor vehicles within their garages or in other areas designated by the Declarant or MHOA.

11.1.44 **Parking in Red Zones and Fire Lanes.** Residents may not park their motor vehicles in red zones, fire lanes, guest or visitor parking, or other unauthorized areas.

11.1.45 **Guest Parking.** Guests and visitors shall park their motor vehicles in Common Area designated for "Guest" or "Visitor" parking.

11.1.46 **Vehicle Repairs.** No Owners or Residents shall repair or restore any vehicle of any kind in, on or about any Lot or the Common Area, except for emergency repairs, and then only for a seventy-two (72) hour period to enable movement thereof to a proper repair facility.

11.1.47 **Parking Garage Alterations Prohibited.** No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonable parked in the garage as originally designed and constructed.

11.1.48 **Vehicle Access.** No motor vehicle shall be parked in such a manner as to inhibit or block access to a Lot, garage, covered parking space, uncovered parking space, entrance, exit, or parking area.

11.1.49 **Parking - Intended Purposes.** All parking areas shall be used solely for the parking and storage of motor vehicles used for personal transportation.

11.1.50 **Damaged or Disabled Vehicles.** Vehicles that are not operational or licensed or which leak fluids must be stored in a garage or behind an enclosure and so as not to be visible from the street or another Lot or Dwelling Unit.

11.1.51 **Landscaping.** Notice is hereby given that the total area of landscaping requiring irrigation on any given Lot shall be restricted to a maximum of five thousand (5,000) square feet, in order to comply with conservation requirements set by the City of St. George and Washington County Conservancy District.

11.1.52 **Landscaping Installation Deadline.** Full yard landscaping must be installed on all Estate homes within nine (9) months of occupancy.

11.1.53 **Maintenance Costs for Entry and Entry Monument.** The Developer may provide water and power utility services to the Entry, Entry Monument and other common elements at its expense (the "Common Utility Service"). Such Common Utility Service shall be maintained and paid for by the ARC as a Common Expense; provided, however, the Developer ARC may elect to provide such Common Utility Services through a meter or meters on an individual Lot or Lots and, if so, each such Owner agrees, by accepting a deed or other document of conveyance to such Lot, to provide, and not terminate, delay or interrupt, those Common Utility Services to the Entry, Entry Monument or other common elements not separately metered and billed to the ARC by the provider, although in such

circumstance the Owner of each such Lot shall be entitled to reasonable water and power credits for the additional charges as determined by the Board of Directors.

11.1.54 **Chimes and Musical Sound Makers.** Chimes, dream catchers, bells, tubes or other objects hung vertically outside the Dwelling Unit which ring, strike or otherwise produce musical sounds or harmony heard by other residents are prohibited.

11.1.55 **View Impairment.** The Developer and its affiliates and assigns do not guaranty or represent that any view over and across any property, including any Lot, Dwelling Unit or Building will be preserved without impairment. Neither the Developer nor the ARC shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

11.1.56 **Entry Monument.** If an Owner purchases a Lot which includes a common improvement, including by way of illustration but not limitation an Entry, Entry Monument, planter, planter box, planter strip, perimeter fence, wall, street light, exterior lighting or other landscaping treatment of any kind, shall, at his sole expense, maintain such common elements in good condition, and may not improve his property or place any plant, hedge, tree, bush, shrub or object, natural or artificial, behind, to the side or in front of such improvement or feature or so as to impair, obstruct, block or impede the view or purpose of the Entry, Entry Monument or other improvement, planter box, landscaping strip, or any such special landscaping feature.

XII. TERMINATION

12.1 **Termination.** The Project may be terminated only by the unanimous agreement of all Owners, giving each Owner one (1) vote for each Lot, Townhouse or Dwelling Unit owned by the Owner.

12.2 **Recording of Notice of Removal.** All of the Owners may remove the Project from the provisions of the Master Declaration by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Lots, Dwelling Units or Townhouses consent or agree by instruments duly recorded that their liens are transferred to the undivided ownership interest of the Owners in the Project. Provided further, as long as Developer has ownership rights in the Project, its consent shall also be required to remove the Project from the provisions of this Master Declaration. Upon removal of the Project from the provisions of this Master Declaration, the Project shall be deemed to be owned in common by the Owners.

12.3 **Termination Agreement.** A termination agreement may provide that all of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

12.4 **Mortgagees.** Following termination, Mortgagees holding Mortgages on the Lots, Dwelling Units or Memberships which were recorded before termination may enforce those liens in the same manner as any lienholder.

12.5 **Common Area and Facilities.** In the event of the dissolution of the MHOA, the MHOA Property shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the

Common Area and Facilities and improvements on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth herein. To the extent the foregoing is not possible, the Common Area and Facilities shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners as tenants in common.

XIII. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

13.1 General. The MHOA, Developer, all Owners and Members subject to this Master Declaration, and any person not otherwise subject to this Master Declaration who agrees to submit to this Section (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Neighborhoods at the Project, and to avoid the emotional and financial costs of litigation if at all possible. accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving Neighborhoods at the Project, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Master Declaration or the Project Documents (collectively "Claim"), except for those Exempt Claims authorized under this Section, shall be subject to the procedures set forth herein.

13.2 Exempt Claims. Any Bound Party having an Exempt Claim (as defined below) may submit it to the alternative dispute resolution procedures set forth in this Section, but there shall be no obligation to do so. The following Claims ("Exempt Claims") shall be exempt from the provisions of hereof:

13.2.1 Enforcement of Declaration. Any suit by Developer against any Bound Party to enforce the provisions of this Master Declaration or to enforce any of Developer's developmental rights set forth in this Master Declaration, including any defensive or responsive actions by the party against whom this Master Declaration is taken; Any suit by the MHOA against any Bound Party to enforce the provisions of this Master Declaration, including any defensive or responsive actions by the party against whom this Master Declaration is taken;

13.2.2 Temporary Restraining Order. Any suit by the MHOA to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the MHOA's ability to enforce the provisions of this Master Declaration, including any defensive or responsive actions by the party against whom this Master Declaration is taken;

13.2.3 Claims Exceeding \$20,000.00. Any suit between Owners (other than the Developer) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Utah in the absence of a claim based on the Project Documents, if the amount in controversy exceeds \$20,000.00; and

13.2.4 Enforcement Regarding Mortgage. Any suit or enforcement action or exercise of any right or remedy under or in respect of any Mortgage, any indebtedness secured by such Mortgage or any other document or agreement executed in connection with such Mortgage or in respect of any right provided herein with respect to such Mortgage.**13.3 Mandatory Procedures for All Other Claims.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") other than an Exempt Claim, shall not file suit in any court or

initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

13.4 Notice. The Claimant shall notify each Respondent in writing of the Claim ("Notice"), stating plainly and concisely:

13.4.1 The nature of the Claim, including date, time, location, person involved, Respondent's role in the Claim;

13.4.2 The basis of the Claim (i.e., the provision of the MASTER DECLARATION, Project Documents, or other authority out of which the Claim arises);

13.4.3 What Claimant wants Respondent to do or not to do to resolve the Claim; and

13.4.4 That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

13.5 Good Faith Negotiation. Each Claimant and Respondent ("Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board of Directors may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Project.

13.6 Final and Binding Arbitration. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), the Claimant shall have thirty (30) days following Termination of Negotiations to submit the Claim to arbitration in accordance with the Rules of Arbitration maintained on file in the office of the MHOA or the Claim shall be deemed abandoned, and Respondent shall be release and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

13.7 Arbitration Award. This constitutes an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable Utah arbitration law. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under Utah law.

13.8 Allocation of Costs of Resolving Claims,

13.8.1 Costs Incurred. Each Party shall bear all its own costs incurred prior to and during the proceedings described herein, including the fees of its attorney or other representative.

13.8.2 Costs of Arbitration. Each Party shall share equally in the costs of conducting the arbitration proceeding (collectively, "Arbitration Costs"), except as otherwise provided herein; provided, however, if the Claim is rejected in whole or in part, the Claimant shall pay all Arbitration Costs, including the costs incurred by the Respondent.

13.9 Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation in accordance herewith and any Party thereafter fails to abide by the terms of such Agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth herein. In such event, the party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

XIV. SECURITY

14.1 Security. The MHOA may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. Neither the MHOA, nor the Declarant nor the Developer shall in any way be considered insurers or guarantors of security within the Project, however, and neither the MHOA, nor the Declarant nor the Developer shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and his, her or its tenants, Guests and invitees acknowledge that the Declarant, the Developer, the MHOA and its Board of Directors do not represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglar alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner or his, her or its tenant, guest or invitee acknowledges and understands that the Declarant, the Developer, the Board of Directors and the MHOA are not insurers and that each Owner or his, her or its tenant, guest and invitee assumes all risks for loss or damage to persons or property within the Project and further acknowledges that the Declarant, the Developer, the Board of Directors and the MHOA have made no representations or warranties nor has any Owner or his, her or its tenant, Guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

XV. AMENDMENT

15.1 General. Except as provided elsewhere in this Master Declaration, including byway of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Master Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the MHOA cast either in person or by proxy or by ballot at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any Amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the MHOA. In such instrument an officer or delegate of the MHOA shall certify that the vote required by this Section for Amendment has occurred.

15.2 Initial Declarant Right to Amend. The Declarant alone may amend or terminate this Master Declaration prior to the closing of a sale of the first Lot, Dwelling Unit or Townhouse.

15.3 Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained in this Master Declaration to the contrary, this Master Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is necessary to correct typographical errors or inadvertent omissions; necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, Dwelling Units or Memberships subject to this Master Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Lot, Dwelling Unit or Membership unless any such Owner shall consent thereto in writing.

15.4 Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Period of Developer's Control, Declarant may unilaterally amend this Master Declaration for any other purpose; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner or Member hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner or Member.

15.5 To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Master Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Master Declaration or approval of the sale of Lots, Dwelling Units or Memberships, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, Dwelling Unit or Membership, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots or Dwelling Units and Memberships and all persons having an interest therein. It is the desire of Declarant to retain control of the MHOA and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, Declarant shall have the unilateral right to amend this Master Declaration to restore such control.

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

XVI. MISCELLANEOUS

16.1 Covenants to Run with Land. This Master Declaration and all of the covenants, provisions, and requirements hereof are intended to be and shall constitute covenants running with the land or equitable servitudes, and shall be binding upon and shall inure to the benefit of the parties to this Master Declaration and any other party which has, acquires, or comes to have any interest in the property or which occupies or uses the property, including Club Ivory, a Lot or Dwelling Unit, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. This Master Declaration and all of the covenants, provisions, and requirements hereof shall be binding upon each Member and Owner, all Lots, Dwelling Units and Townhouses. Each Owner and occupant, by virtue of Accepting a deed or other document of conveyance to, or the possession of any Dwelling Unit, Townhouse or Lot, or use of the property, hereby consents and agrees to be subject to and bound by this Master Declaration and all of the conditions, covenants, restrictions, easements, provisions and requirements hereof.

16.2 Partial Invalidity. The invalidity or unenforceability of any portion of the Master Declaration shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Master Declaration or the application thereof to any party to this Master Declaration, or circumstances should to any extent be invalid, the remainder of this Master Declaration or the application of such provision to any party to this Master Declaration, or circumstances other than those as to which a holding of invalidity is reached shall not be effected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Master Declaration shall be valid and enforceable to the fullest extent permitted by law.

16.3 Effective Dates and Duration. This Master Declaration and all of the provisions hereof (except any provisions which by their terms may cease to be effective at an earlier time) shall remain effective for a term of fifty (50) years, unless sooner terminated and extinguished by a written Termination of Master Declaration filed with the Washington County Recorder, and executed by all of the parties hereto. At the expiration of the initial term, the Master Declaration shall renew itself for additional ten (10) year periods unless terminated by the unanimous consent of all of the parties hereto.

16.4 Captions. The captions or headings which precede the paragraphs of this Master Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed.

16.5 Construction. Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders.

16.6 Governing Law. This Master Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

16.7 Enforcement and Attorneys Fees. In the event of a material violation of this document, the Manager, Board of Directors, or an aggrieved Owner may bring an action for injunctive relief or damages. If this Master Declaration is referred to an attorney for interpretation or enforcement, the prevailing party shall be entitled to recover his reasonable attorney's fees and costs, regardless of whether arbitration is commenced or a lawsuit is filed.

16.8 **Professional Manager.** The MHOA and each Neighborhood Association (including any club or recreational amenity if it requires separate management) must at all times be managed by a professional manager, who must be selected or approved by the MHOA and, during the Period of Developer's Control, the Developer; provided, however, the Board of Directors may delegate some of their management responsibilities to a professional manager or company, and they may employ general laborers, grounds-crew, maintenance personnel, bookkeeping, administrative and clerical workers as necessary to perform their management responsibilities. In the event of a conflict of opinion, the decision of the Developer shall be conclusive, final and binding.

[end of document]

IN WITNESS WHEREOF, the Developer has hereunto set his hand this 19th day of June, 2007.

DECLARANT:
STATE OF UTAH
SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

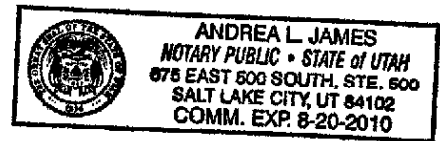
By: [Signature]
Name: Kevin S. Carter
Title: Director

ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF Salt Lake) ss

The foregoing instrument was acknowledged before me this 19th day of June, 2007 by Kevin S. Carter, the Director of the State of Utah School and Institutional Trust Lands Administration and said Kevin S. Carter duly acknowledged to me that said Administration executed the same.

[Signature]
NOTARY PUBLIC



APPROVED AS TO FORM:

[Signature]
Michelle E. McConkie
Special Assistant Attorney General

CONSENTED TO BY:

DEVELOPER:
IVORY SOUTHERN, LLC.

By: Colin Wright
Name: Colin Wright
Title: Southern Utah Area President and Managing Member

ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF WASHINGTON) ss

The foregoing instrument was acknowledged before me this 25 day of June, 2007 by Colin Wright, the Southern Utah Area President and Managing Member of IVORY SOUTHERN, LLC., a Utah limited liability company, by authority of a Resolution of the IVORY SOUTHERN, LLC (a copy of said Resolution is attached hereto) and said Colin Wright duly acknowledged to me that said IVORY SOUTHERN, LLC executed the same.

Linda L. Glasgow
NOTARY PUBLIC

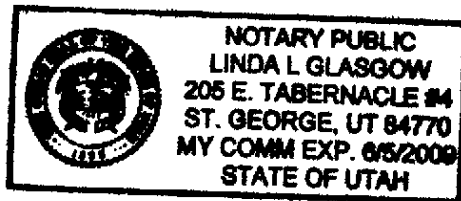


EXHIBIT A

**SUBDIVISIONS INCLUDED WITHIN HIDDEN VALLEY AT
ST. GEORGE:**

VILLAS AT HIDDEN VALLEY

BOUNDARY DESCRIPTION

BEGINNING AT A POINT LOCATED S 88°51'13" E ALONG THE SECTION LINE 1539.65 FEET AND SOUTH 183.58 FEET FROM THE NORTH QUARTER CORNER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN. SAID POINT BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF PRICE HILLS DRIVE AND ALSO BEING A POINT ON A 1633.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THE CENTER OF WHICH BEARS N 64°22'15" E; RUNNING THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 14°28'37" A DISTANCE OF 412.61 FEET; THENCE S 37°30'21" E ALONG SAID RIGHT OF WAY LINE 29.04 FEET TO A POINT ON THE BOUNDARY OF DESERT HILLS SUBDIVISION PHASE 1-A, ACCORDING TO THE OFFICIAL PLAT THEREOF. RECORDS OF WASHINGTON COUNTY, SAID POINT BEING ON A 30.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT. THE CENTER OF WHICH BEARS S 43°50'17" W; THENCE SOUTHEASTERLY AND SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND SAID DESERT HILLS BOUNDARY THROUGH A CENTRAL ANGLE OF 93°01'41" A DISTANCE OF 48.71 FEET; THENCE CONTINUING ALONG SAID DESERT HILLS BOUNDARY THE FOLLOWIING TWO (2) COURSES, S 46°51'58" W 237.84 FEET TO THE POINT OF A 429.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°57'22" A DISTANCE: OF 104.50 FEET; THENCE N 57°03'51" W 105.77 FEET; THENCE N 78°38'07" W 104.76 FEET; THENCE N 35°03'49" W 58.51 FEET; THENCE N 9°52'33" E 426.54 FEET; THENCE N 44°05'32" E 66.66 FEET; THENCE N 60°02'16" E 121.47 FEET TO THE POINT OF BEGINNING.

CONTAINS 4.19 ACRES.

PARCEL NO. SG-5-3-7-1101

**EXHIBIT A
CONTINUED**

CASITAS AT HIDDEN VALLEY

BOUNDARY DESCRIPTION

BEGINNING AT A POINT N 88°51'13"W 1215.45 FEET ALONG THE SECTION UNE FROM THE NORTHEAST CORNER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE S 23°58'48" E 33.87 FEET TO A POINT ON A 30.00 FOOT, NON-TANGENT, RADIUS CURVE TO THE RIGHT, THE RADIUS POINT BEARS S 23°58'48" E; THENCE SOUTHEASTERLY 47.12 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" TO THE POINT OF TANGENCY AND TO THE WESTERLY RIGHT OF WAY LINE OF "PRICE HILLS DRIVE", ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF WASHINGTON COUNTY; THENCE S23°58'48"E 106.25 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF A 1633.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHEASTERLY 47.01 FEET ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 1°38'57"; THENCE S60°02'16"W 121.47 FEET; THENCE S44°05'32"W 66.66 FEET; THENCE S9°52'33"W 360.87 FEET TO A POINT ON AN 80.00 FOOT, NON-TANGENT, RADIUS CURVE TO THE LEFT, THE RADIUS POINT BEARS S26°35'06"W; THENCE SOUTHWESTERLY 168.37 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 120°35'00" TO THE POINT OF TANGENCY; THENCE S3°59'54"E 183.93 FEET; THENCE S3°11'25"W 21.46 FEET; THENCE S37°12'22"W 43.31 FEET; THENCE S68°37'20"W 296.98 FEET TO THE POINT OF A 230.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 79.42 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19°47'00"; THENCE N22°38'18"W 25.54 FEET; THENCE S66°01'04"W 30.01 FEET; THENCE N22°38'18"W 795.22 FEET; THENCE N66°00'27"E 816.45 FEET; THENCE N70°55'55"E 169.36 FEET; THENCE S23°58'48"E 46.13 FEET TO THE POINT OF BEGINNING.

CONTAINS 14.70 ACRES.

PARCEL NO. SG-5-3-7-1101

**EXHIBIT A
CONTINUED**

ESTATES AT HIDDEN VALLEY

BOUNDARY DESCRIPTION

BEGINNING AT A POINT S 88°51'13" E 498.45 FEET ALONG THE NORTH LINE OF SECTION 18 AND SOUTH 363.66 FEET FROM THE NORTH 1/4 CORNER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE & MERIDIAN, RUNNING THENCE S 22°38'18" E 795.22 FEET ALONG THE PROPOSED CENTERLINE OF xxxxxxxx; THENCE S 66°00'22" W 211.22 FEET TO THE POINT OF A 825.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE 120.00 FEET THROUGH A CENTRAL ANGLE OF 8°20'01"; THENCE S 57°40'26" W 360.04 FEET TO THE POINT OF A 775.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 31.57 FEET THROUGH A CENTRAL ANGLE OF 2°20'03"; THENCE N 30°14'50" W 89.24 FEET; THENCE S 64°34'11" W 67.96 FEET; THENCE N 25°25'49" W 63.34 FEET; THENCE N 42°13'28" W 232.49 FEET; THENCE N 47°46'32" E 5.81 FEET; THENCE N 42°13'28" W 85.00 FEET; THENCE N 47°46'32" E 8.60 FEET; THENCE N 42°13'28" W 88.00 FEET TO THE POINT OF A 875.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT WHOSE RADIUS BEARS N 37°28'56" W; THENCE ALONG THE ARC OF SAID CURVE 8.93 FEET THROUGH A CENTRAL ANGLE OF 0°35'06"; THENCE N 37°22'28" W 330.90 FEET; THENCE N 66°00'27" E 1014.85 FEET TO THE POINT OF BEGINNING.

CONTAINS 16.74 ACRES

PARCEL NO. SG-5-3-7-1101

EXHIBIT B

Beginning at the Southwesterly most corner of US lot 12, Section 7, Township 43 South, Range 15 West, Salt Lake Base and Meridian, said point being located S 88°51'13" E along the section line 1280.54 feet from the South 1/4 corner of said Section 7, and running thence N 58°55'47" E along the Northwesterly line of said Lot 12, 193.80 feet; thence S 23°58'48" E to and along that parcel as described in entry number 907610 in the Records of Washington County 254.69 feet to the point of a 1600.00 foot radius curve to the left; thence along the arc of said curve and said parcel through a central angle of 16°07'34" a distance of 450.33 feet; thence S 40°06'22" E along said parcel 27.61 feet to a point on the Westerly boundary of Desert Hills Subdivision; thence continuing along the boundary of said Desert Hills Subdivision the following seventeen (17) courses, S 47°34'45" W 34.35 feet to a point on a 30.00 foot radius non-tangent curve to the right, the center of which bears S 43°50'17" W; thence Southeasterly and Southwesterly along the arc of said curve through a central angle of 93°01'41" a distance of 48.71 feet; thence S 46°51'58" W 237.84 feet to the point of a 429.00 foot radius curve to the left; thence along the arc of said curve through a central angle of 16°37'39" a distance of 124.50 feet; thence S 87°58'10" W 148.89 feet; thence N 78°10'16" W 93.39 feet; thence S 3°44'58" E 249.26 feet; thence S 61°50'59" E 190.14 feet; thence S 1°10'21" E 267.46 feet to the point of a 2442.00 foot radius curve to the right; thence along the arc of said curve through a central angle of 8°14'22" a distance of 351.17 feet; thence N 80°22'46" W 117.57 feet ; thence S 9°37'14" W 367.14 feet; thence S 32°15'04" W 122.28 feet; thence S 79°17'00" W 279.39 feet; thence S 6°18'11" E 239.00 feet; thence S 25°10'55" E 156.72 feet; thence S 9°19'20" W 245.83 feet; thence leaving said subdivision S 6°21'28" W 839.87 feet; thence S 77°22'21" W 3554.83 feet; thence N 88°32'22" W 439.98 feet to a point on the Easterly line of Section 13, Township 43 South, Range 16 West, Salt Lake Base and Meridian; thence N 1°15'11" E along the section line 650.60 feet to the South 1/16 corner of said Section 13; thence N 88°45'06" W along the 1/16 line 1321.56 feet to the Southeast 1/16 corner of said Section 13; thence N 1°15'24" E along the 1/16 line 1169.62 feet to a point on the Northwesterly boundary of that parcel as described in entry number 644932 in the Records of Washington County; thence N 56°53'27" E along said boundary 1600.72 feet to a point on the Easterly line of said Section 13, said point also being on the Southerly boundary of that parcel as described in entry number 642028 in the Records of Washington County; thence along said boundary the following three (3) courses, N 56°53'27" E 530.39 feet; thence N 81°07'00" E 604.88 feet; thence N 66°00'27" E 3485.32 feet to the point of beginning.

Contains 364.47 acres.

EXHIBIT C
BYLAWS OF THE
HIDDEN VALLEY AT ST. GEORGE
HOMEOWNERS ASSOCIATION, INC.

THESE BYLAWS, for THE HIDDEN VALLEY AT ST. GEORGE HOMEOWNERS ASSOCIATION, INC., a Utah non-profit corporation, are hereby adopted as the official Bylaws of said Association.

ARTICLE I. DEFINITIONS

The following terms used in these Bylaws shall be defined as follows:

1.1 **Articles.** The Articles of Incorporation of The Hidden Valley at St. George Homeowners Association, Inc., a Utah non-profit corporation, including any amendments thereto duly adopted.

1.2 **Assessments.** Payments required of Members of this Association as assessments as defined and required under the Master Declaration.

1.3 **Association.** The Hidden Valley at St. George Homeowners Association, Inc., a Utah non-profit corporation.

1.4 **Board.** The duly elected and qualified Board of Directors of the Association as set forth in the Master Declaration and these Bylaws.

1.5 **Bylaws.** These Bylaws of the Association including any amendments thereto duly adopted.

1.6 **Common Area.** All real property which is subject to the Master Declaration hereafter defined in which the Association owns an interest or controls and which is held or controlled for common use and enjoyment of all of its Members, including any improvements thereon. Unless a different meaning is necessarily implied in the use of the term "Common Area," it shall also include any other areas or improvements in or outside of the Association which, if any, pursuant to the provisions of the Master Declaration, are either required or permitted to be maintained by the Association.

1.7 **Corporation.** As used herein, the term "Corporation" shall refer to The Hidden Valley at St. George Homeowners Association, a non-profit entity organized under the laws of the State of Utah.

1.8 Hidden Valley at St. George Development. That certain residential subdivision(s) in Washington County, Utah, which is subdivided, platted, and improved under the name "Hidden Valley at St. George," including any additional real property annexed as a part thereof. A reference herein to "Hidden Valley," "Property" or "Subdivision" shall mean the Hidden Valley at St. George Development which is subject to the Master Declaration.

1.9 Lot. A portion of the Hidden Valley at St. George Development which is subject to the Master Declaration hereafter defined and as set forth the record of survey map as a "lot," and subject to Assessment by the Association, and the Owner of which is a Member of the Association.

1.10 Master Declaration. The Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Hidden Valley at St. George recorded herewith in the records of Washington County, Utah. As used herein, "Master Declaration" is the same as the "Restrictive Covenants" defined in the Articles.

1.11 Member. Any person(s) who is an Owner of a Lot within the Hidden Valley at St. George Development which is subject to assessment and restrictions by the Association.

1.12 Owner. A person or persons or other legal entity or entities, including the Grantor, holding fee simple title to any Lot, which Lot is subject to Assessment by the Association, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any holder of a Mortgage or beneficiary under a Deed of Trust or other security holder in actual possession of any Lot as a result of foreclosure or otherwise, and any person taking title through such security holder, by purchase at foreclosure sale or otherwise.

ARTICLE II. MEETING OF MEMBERS

2.1. Place of Meeting. The Board of Directors may designate any place within the State of Utah as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. A Waiver of Notice signed by all Members entitled to vote at any such meeting may designate any place within the State of Utah as the place for the holding of such meeting. If no such designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the Corporation in the State of Utah.

2.2 Annual Meeting. After turnover of administrative control to the members, the annual meeting of the membership (for the election of directors and for the transaction of such other business as may properly come before the members) shall be held each year. Each annual meeting shall be held on or near the same month, place and time as the previous year unless all members are properly notified otherwise. In any event, all Members shall be given notice of all meetings as provided for below.

2.3 Waiver. Notice of all meetings of Members shall be given to all Members

entitled to vote at such meetings in the manner provided herein, but such notice may be waived either before or after the holding of a meeting.

2.4 Notice of Annual Meeting. At least ten (10) days prior to the date of an annual meeting, written notice stating the place, day and hour of the meeting shall either personally or by mail, by or at the direction of the President or the Secretary or the officer or other persons calling the meeting, to each Member who, thirty (30) days prior to the date of said annual meeting appears of record in the books of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his/her address as it appears on the membership books of the Association or to such other last known address of which the Association may have notice, with postage thereon.

2.5 Deferred Annual Meeting. If for any reason the annual meeting of the Members be not held as herein provided, such annual meeting shall be called by the President, or by the Board, as soon as it is convenient. In the event the Board fails to call the annual meeting, any Member may make a demand in writing by registered mail addressed to an officer of the Association that such meeting be held within a reasonable time. If the annual meeting is not called within sixty (60) days following such written demand, any Member may compel the holding of such annual meeting by legal action directed against the Board as provided by law.

2.6 Special Meetings. Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, by the Board of Directors or by the Members holding not less than twenty percent (20%) of the votes entitled to be cast at such meeting.

2.7 Notice of Meeting. Written notice stating the place, day and hour of a meeting of Members and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall, unless otherwise prescribed by statute, be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President or the Secretary or the officer or other persons calling the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his/her address as it appears on the membership books of the Corporation or to such other last known address of which the Corporation may have notice, with postage thereon.

2.8 Quorum. The Members of the Association entitled to vote, represented in person or by proxy, shall constitute a quorum at any annual or special meeting of Membership. The vote of the majority of the votes entitled to be cast by the Members present, or represented by proxy at a meeting at which a quorum is present shall be the act of the Members, unless the vote of a greater number is otherwise required by the Articles of Incorporation, these Bylaws, the Amended and Restated Master Declaration or by law.

2.9 Members Entitled to Vote. The Members entitled to receive notice of and to vote at any meeting of the Members shall be determined from the Association's records at the time notice is mailed but not earlier than ten (10) days prior to the last day notice may properly be mailed.

2.10 Temporary Adjournment. An annual or special meeting of the Members may adjourn from time to time without new notice being given until the business is completed. The fact of and reason for such adjournment shall be recorded in the minutes of proceedings of the meeting.

2.11 Officers of a Meeting of Members. The presiding officer at a meeting of the Members shall be the President of the Association, or in his/her absence the Vice-President, or in the absence of both the President and the Vice-president, a chairman elected by the Members present at the meeting. The Secretary of the Association, or in his/her absence, any person appointed by the presiding officer of the meeting, shall act as Secretary of a meeting of Members.

2.12 Voting Rights. Each Member of the Association holding a Class A membership shall be entitled to one (1) vote in person or by proxy for each Lot owned by said Member. Each Member of the Association holding a Class B membership shall be entitled to three (3) votes for each Lot owned by said Member. Except in cases in which it is otherwise provided by statute, the Articles of Incorporation, the Master Declaration, or these Bylaws, a majority of the total votes cast by each class of membership shall be required for the election and for the passage of any measure.

2.13 Voting by Certain Members.

(a) A membership standing in the name of another corporation may be voted by such officer, agent or proxy as the Bylaws of such corporation may prescribe or, in the absence of such provision, as the Board of Directors of such other corporation may determine.

(b) A membership held by an administrator, executor, guardian or conservator may be voted by such person, either in person or by proxy, without a transfer of the membership into the name of said person.

(c) A membership standing in the name of a trustee may be voted by said trustee, either in person or by proxy.

(d) A membership in the name of a receiver may be voted by such receiver, and a membership held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the receiver's name if authority to do so be contained in the appropriate order of the court by which such receiver was appointed.

(e) A Member whose membership is pledged shall be entitled to vote such membership until the membership has been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the membership so transferred.

2.14 Proxies.

(a) A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary or designee in accordance with procedures adopted by resolution of the Board of

Directors.

(b) No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution.

(c) No proxy shall be valid if it purports to be revocable without notice.

(d) An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association or to the Board of Directors if a vote is being conducted by written ballot in lieu of a meeting pursuant to Section 2.16 below.

(e) Every proxy shall automatically cease upon sale of the Lot.

2.15 Action Without a Meeting. Any action which, under any provisions of the Articles of Incorporation or these Bylaws may be taken at a meeting of the members, may be taken without a meeting if authorized by a written instrument signed by all of the Members who would be entitled to notice of a meeting for such purposes. Whenever a certificate in respect to any such action is required by law to be filed in the office of the Washington County Recorder or in the office of the Secretary of State of Utah, the officer signing the same shall therein state that the action was authorized in the manner aforesaid.

2.16 Action By Written Ballot In Lieu of a Meeting.

(a) Action By Written Ballot. At the discretion of the Board of Directors, any action, except election or removal of directors, that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner that is entitled to vote on the matter not less than twenty (20) days prior to the date on which the ballots must be received by the Association in order to be counted.

(b) Form and Effect of Ballot

(i) The written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(ii) A written ballot may not be revoked.

(c) Information Required in Ballot Solicitations. All solicitations for votes by written ballot must:

(i) State the number of responses needed to meet any applicable quorum requirements and the total percentage of votes needed for approval.

(ii) Specify the period during which the Association will accept written ballots for counting, which period shall end on the earliest of the following unless the vote is pursuant to the secrecy procedure described in Subsection (d) of this section:

(1) The date on which the Association has received a sufficient number of approving ballots to pass the proposal;

(2) The date on which the Association has received a sufficient number of disapproving ballots to render the proposal impossible of passage; or

(3) A date certain on which all ballots must be returned to be counted.

(d) Secrecy Procedure. The Board of Directors may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by:

(i) A secrecy envelope;

(ii) A return identification envelope to be signed by the owner;
and

(iii) Instructions for marking and returning the ballot.

(e) Determination of Vote. The outcome of a vote by written ballot in lieu of a meeting shall be determined by the Board of Directors within forty-eight (48) hours of the deadline for return of ballots, or in the event the ballot return date is postponed, within forty-eight (48) hours of the postponed date. Matters that may be voted on by written ballot shall be deemed approved or rejected as follows:

(i) If approval of a proposed action would otherwise require a meeting at which a certain quorum must be present and at which a certain percentage of total votes cast is required to authorize the action, the proposal will be deemed to be approved when the date for return of ballots has passed, a quorum of owners has voted and the required percentage of approving votes has been received. Otherwise, the proposal shall be deemed to be rejected.

(ii) If approval of a proposed action otherwise would require a meeting at which a specified percentage of owners must authorize the action, the proposal shall be deemed to be approved when the percentage of total votes cast in favor of the proposal equals or exceeds such required percentage. The proposal shall be deemed to be rejected when the number of votes cast in opposition renders approval impossible or when both the date for return of ballots has passed and such required percentage has not been met.

(iii) Except as provided in Subsection (e)(iv) of this section, votes may be counted from time to time before the final return date to determine whether the proposal has passed or failed by the votes already cast on the date they are entered.

(iv) Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

(f) Owner Notification of Ballot Results. Each Owner shall be notified within thirty (30) days after the ballots have been counted, by mail or other delivery of written notice, of the results of the ballot meeting or that a quorum of ballots was not returned.

2.17 Absentee Ballots. Members entitled to vote may vote by absentee ballot. For all matters that require a vote of the membership, the Board shall distribute "absentee ballots" to those who have specifically requested such a ballot. In addition, the Board may distribute absentee ballots to all members for any matter to be voted upon. The absentee ballot shall be the same ballot used by those who vote in person at a regular or special meeting, except for statements that the ballot being used is an absentee ballot. Absentee ballots may be received up until the time any such meeting begins. A member may not vote in person at a meeting if they have already submitted an absentee ballot.

2.18 Order of Business. At all meetings of Members, the following order of business shall be observed, so far as consistent with the purposes of the meeting:

- (a) Reading of notice and proof of call of meeting (or unanimous waiver thereof).
- (b) Reports of officers, if any.
- (c) Reports of committees, if any.
- (d) Unfinished business.
- (e) New business.
- (f) Election of directors.
- (g) Miscellaneous.

2.19 Elections; Voting. As set forth in the Master Declaration, at each election for the persons to serve on the Board of Directors of the Association, every Member entitled to vote at such election shall have the right to one vote on each matter or issue, in person or by proxy, for each vote to which such Member is entitled. Cumulative voting is not allowed. For the purpose of electing directors, the majority of the total of all votes combined in Class A and Class B memberships (if there exists any Class B membership) shall be required to elect a person and the election of such person by each Class of Members shall not be required.

2.20 Records. Records of the proceedings of meetings of Members shall be kept at the registered office of the Association.

ARTICLE III. BOARD OF DIRECTORS

3.1 Number of Directors. The business of the Association shall be managed by a Board of Directors comprised of at least three (3) but no more than seven (7)

persons, all of whom shall be required to be a Member of the Association.

3.2 Elections-Term of Office. Each director so elected shall hold office for the term elected and until his/her successor is elected and qualified.

Election to the Board of Directors shall be by secret written ballot or by verbalized acclamation if moved upon, seconded and voted on by a majority of those in attendance in person or by proxy. At such election each Member, or his proxy, may cast one vote for each vacancy for each Class A or Class B Membership to which he is entitled. Cumulative voting is not allowed. The person(s) receiving the largest number of votes shall be elected.

3.3 Vacancies. Vacancies in the Board of Directors shall be deemed to exist upon the death, resignation or removal from office of a director, or if the Members increase the number of directors and fail to elect the full number of authorized directors.

Vacancies in the Board of Directors shall be filled by a majority of the remaining directors, though they constitute less than a quorum of a full Board of Directors and such appointed Directors shall hold office for the unexpired term. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his/her term of office.

3.4 Meetings.

(a) Regular meetings of the Board of Directors shall be held as determined by the Board of Directors. Members are entitled to attend Board meetings. The Board may adopt of schedule of meetings, to be provided to requesting Owners.

(b) Within (10) days following each annual meeting of Members of the Association, the Board of Directors shall hold a regular meeting for the purpose of organization., election of officers and the transaction of such other business as may properly come before the meeting. No formal notice of such meeting need be given.

(c) Special meetings of the Board of Directors of the Association may be called for any purpose at any time by the President or by the Vice-President or by any two directors.

(d) Notice of any special meeting shall be given at least three (3) days prior to the time set for such meeting by written notice delivered personally or mailed to each director at his/her business address or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the notice is delivered to the telegraph company. Any director may waiver notice of any meeting. The attendance of a director to a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of the business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of

Directors need be specified in the notice or waiver of notice of such meeting. Notice of the time and place of holding an adjourned meeting of the Board of Directors need not be given to absent directors if the time and place be fixed at the meeting adjourned.

3.5. Quorum. A majority of the duly elected and qualified Directors comprising the Board of Directors as fixed by the Master Declaration and Bylaws shall be necessary to constitute a quorum at all meetings of the Board of Directors for the transaction of business, except to adjourn as hereinafter provided, and the actions and decisions of a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act or acts of the Board of Directors. Provided, however, that if all of the directors shall approve the proceedings of a meeting of the Board of Directors by execution of that approval in the minutes or other records of the meeting, such meeting shall be legal regardless of the manner in which it was called, or the number of directors present.

3.6 Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if, prior to such action, a written consent thereto is signed by all members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board or committee.

3.7 Adjournment. A quorum of the directors may adjourn any director's meeting to meet again at a stated day and hour; provided that in the absence of a quorum, a majority of the directors present at the meeting, either general or special, may adjourn from time to time until a quorum shall be present and prior to the time fixed for the next regular meeting of the Board of Directors.

3.8 Compensation. Directors shall not receive any stated salary for their services as directors but the expenses incurred in the performance of their duties may be allowed. Nothing herein contained shall be construed to preclude any director from serving the Association in any other capacity as an officer, agent, employee or otherwise and receiving compensation therefor.

3.9 Removal. A member of the Board of Directors, or the entire Board of Directors may be removed, with or without cause, by a vote of a majority of the Members then entitled to vote at any election of directors. If less than the entire Board is to be removed, no one of the directors may be removed if the votes cast against his/her removal would be sufficient to elect him/her or then cumulatively voted at an election of the entire Board of Directors. The removal of a director, or the entire Board of Directors, in the manner prescribed in this Section may occur at any special meeting of the Members called for that purpose.

3.10 Presumption of Assent. A director of the Association who is present at a meeting of the Board of Directors at which action on any Association matters is taken shall be presumed to have assented to the action taken unless his/her dissent shall be entered in the minutes of the meeting or unless such director shall file written dissent to such action with the person acting as secretary of the meeting

before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

3.11 Powers. The property, business and affairs of the Association shall be controlled and managed by a Board of Directors and it shall have all lawful powers necessary or convenient to carry out the same unless prohibited by law, the Articles of Incorporation, these Bylaws or the Master Declaration.

ARTICLE IV. OFFICERS

4.1 Authorized Officers. The officers of the Association shall be a President, a Secretary and a Treasurer, which shall be elected by the Board of Directors as provided in Section 4.3 of this Article. At its discretion, the Board of Directors may elect one or more Vice-Presidents, a general manager and such other officers and agents as may be necessary for the business of the Association and specify the duties, authority and compensation of each.

4.2 Combining Offices. Any two (2) or more of the offices may be combined in one person except President and Secretary; and any officer of the Association may also be manager.

4.3 Election of Officers. The officers of the Association, except those appointed in accordance with Section 4.4 of this Article, shall be chosen by the Board of Directors annually at their meeting following the annual meeting of the Members. Each officer shall hold office for one (1) year or until such officer's successor shall have been duly elected and shall have qualified or until such his/her death or until he/she shall resign or shall have been removed in the manner provided in Section 4.5 of this Article.

4.4 Filling Vacancies. A vacancy in any office from whatever cause may be filled at any regular or special meeting of the Board of directors for the unexpired portion of the term.

4.5 Removal. Any officer or agent of the Association may be removed by action of the Board of Directors at any meeting thereof by a majority vote of the directors in office.

4.6 Resignation. The resignation of any officer or agent of the Association shall become effective by written notice to the Board of Directors, President or Secretary at the time therein specified, without acceptance by the Board, of Directors.

4.7 Powers and Duties of Officers.

(a) President. The President (i) shall be the chief officer of the Association generally supervising the performance of all business policies adopted and approved by the Board of Directors; (ii) shall be the general managing officer of the operations of the Association; (iii) shall preside at all meetings of Members and the Board of Directors; (iv) shall be responsible for long-term planning of financial policies of the Association and periodically shall report and recommend financial policies and programs to the Board of

Directors; (v) may sign, with attestation by the Secretary, certificates of membership in the Association and with or without attestation any deeds, mortgages, bonds, notes, contracts or other instruments which the Board of Directors has authorized to be executed. The President shall perform those duties and have and exercise that authority and responsibility customarily incident to the office of president of a corporation of the nature of this one and, furthermore, shall perform those special duties and functions delegated to the President by the Board of Directors.

(b) Vice-President. In the absence of the President or in the event of the President's death, inability or refusal to act, the Vice-president (or in the event there be more than one Vice-president, the Vice-Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President and when so acting shall have all the powers of and be subject to all restrictions upon the President. The Vice-president shall be direction responsible to the President and shall have such authority and perform such duties as shall be assigned to him/her by the President or by the Board of Directors.

(c) Secretary. The Secretary shall: (i) keep the minutes of the proceedings of the Members and of the Board of Directors in one or more books provided for that purpose; (ii) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (iii) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents, the execution of which, on behalf of the Association, under its seal is authorized and directed by the Board of Directors; (iv) keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; (v) sign with the President, or Vice-president, certificates of membership in the Association, the issuance of which shall have been authorized by resolution of the Board of Directors; (vi) have general charge of the membership book of the Association; and (vii) in general perform all duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him/her by the President or by the Board of Directors. In the event a vacancy exists in the office of Vice-president, the Secretary shall have the power and duties specified in Section 4.7(b) of this Article IV.

(d) Treasurer. The Treasurer shall (i) keep full and accurate account of the receipts and disbursements in books belonging to the Association and shall ensure the deposit of all monies and other valuable effects in the name and to the credit of the Association at such banks and depositories as may be designated by the Board, but shall not be personally liable for the safekeeping of any funds or securities so deposited pursuant to the order of the Board; (ii) disburse the funds of the Association as may be ordered by the Board, taking proper vouchers for such disbursements and shall render to the President and directors at the regular meetings of the Board and, whenever they may require, accounts of all transactions as Treasurer and of the financial condition of the Association; and (iii) perform the duties usually incident to the office of Treasurer and such other duties as may be prescribed by the Board of Directors or by the President and those duties set forth in the Master Declaration.

(e) Assistant Secretary-Assistant Treasurer. If and when elected, the Assistant Secretary or the Assistant Treasurer shall perform such duties and have such authority as prescribed by the President.

4.8. **Bonds.** The Board of Directors may, by resolution, require any or all of the officers of the Association to give a bond with sufficient surety, conditioned for the faithful performance of the duties of their respective offices.

4.9. **Salaries.** No salaries are to be paid to Board members or officers. All such officers, directors and committee members shall be reimbursed for costs actually incurred.

ARTICLE V. COMMITTEES

After the right of the Grantor to do so shall expire, the Board of Directors shall appoint an Architectural Control Committee, as provided in the Master Declaration. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

ARTICLE VI. CONTRACTS, LOANS, CHECKS AND DEPOSITS

6.1. **Contracts.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

6.2. **Loans.** No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authority may be general or confined to specific instances.

6.3. **Checks, Drafts, Etc.** All checks, drafts and other order for the payment of money, notes or other evidences of indebtedness issued in the name of the Association shall be signed by such officer or officers, employee or employees, or agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

6.4. **Deposits.** All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies and other depositories as the Board of Directors may select.

ARTICLE VII. ASSESSMENTS

The Association shall have the right to assess, levy and collect Assessments as provided in the Amended and Restated Master Declaration, which assessments may be enforced as provided in the said Amended and Restated Master Declaration.

ARTICLE VIII. AMENDMENTS

8.1 **Board of Directors.** These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board of Directors, or if so provided in the Articles of Incorporation, by the Members at any regular or special meeting.

8.2 **Conflict.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Master Declaration and these Bylaws, the Master Declaration shall control.

ARTICLE IX. GENERAL PROVISIONS

9.1 **Ownership Interest.** Except as may be specifically provided to the contrary in the Articles of Incorporation, these Bylaws or the Master Declaration with respect to the rights of the Class B membership, every Member shall have the same rights and interests in the Association and in the real and personal property owned by the Association and no Member can have or acquire a greater interest therein than any other Member.

9.2 **Suspension of Rights.** The rights of a Member may be suspended or withdrawn as more particularly provided in the Amended and Restated Master Declaration. The loss of such rights shall not relieve the Member from the Member's obligation to pay any of the Assessments properly levied by the Board. Restoration of full rights of membership must meet the conditions prescribed by the Board which may include payment of all amounts due the Association, execution and delivery of covenants and/or other security that future violations will not occur and any other terms and conditions reasonably imposed by the Board.

9.3. **Taxation of Real Property.** The Association and the Owners shall make every effort to have each Lot subjected to its own individual real property tax and the real property taxes relating to the Common Areas owned or under the control of the Association shall be assessed against said property and shall be the sole responsibility of the Association.

9.4. **Contracts.** The Association shall have the power to enter into any contracts and incur indebtedness on behalf of the Association, but shall be specifically limited by the limitations, if any, contained in the Articles of Incorporation, these Bylaws or the Master Declaration.

9.5. **Rules, Regulations and Standards.** The Board shall have the power to promulgate rules, regulations and standards for its own government, to aid and assist the Board and its committees in the carrying out of duties and to set standards of design, construction, maintenance in addition to establishing the rules of conduct of Owners and occupants and Members of the Association. Reasonable fines may also be levied to help ensure compliance of the covenants, rules and policies of the Association.

9.6. **Inspection of Records.** The Association shall keep at its registered office records of proceedings of the Members and of the Board of Directors. Each Member shall have the right to examine in person or by agent or attorney at any reasonable time or times during regular business, for any reasonable purpose, any and all of the books and records of the Association and to make extracts therefrom.

[end of document]

IN WITNESS WHEREOF, the Developer has hereunto set his hand this 25th
day of June, 2007.

DEVELOPER:
IVORY SOUTHERN, LLC.

By: *Colin Wright*
Name: Colin Wright
Title: Southern Utah Area President and Managing Member

ACKNOWLEDGMENT

STATE OF UTAH)
COUNTY OF WASHINGTON) ss

The foregoing instrument was acknowledged before me this 25 day of
June, 2007 by Colin Wright, the Southern Utah Area President and
Managing Member of IVORY SOUTHERN, LLC., a Utah limited liability company, by
authority of a Resolution of the IVORY SOUTHERN, LLC (a copy of said Resolution
is attached hereto) and said Colin Wright duly acknowledged to me that said IVORY
SOUTHERN, LLC executed the same.

Linda L. Glasgow

