

**MASTER DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**  
**FOR**  
**AMBER MEADOWS SUBDIVISION**

JUNE 30, 1999

ENT 42163:2000 PG 1 of 14  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2000 May 30 1:18 PM FEE 55.00 BY SB  
RECORDED FOR AMBER MEADOWS DEVELOPMEN

**ARTICLE I - RECITALS**

WHEREAS, the undersigned (hereafter "Grantors") are the owners of certain land in Highland City, Utah County, Utah, more particularly described as follows (hereafter "Property" or collectively "Subdivision"):

Lots 1 through and including Lot 19 AMBER MEADOWS SUBDIVISION Plat A, according to the official plat thereof filed in Book \_\_\_\_\_ of Plats at pages \_\_\_\_\_ and \_\_\_\_\_ records of Utah County, Utah.

*ENTRY Number 42163 YEAR 2000*

WHEREAS, the Grantors desire to subject the Property to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitude herein set forth to (I) insure the enhancement and preservation of property values, (ii) provide for the proper design, development, improvement and use of the Property by the Grantors and all other persons or entities who may subsequently acquire an interest in the Property and (iii) create a residential development of high quality;

**ARTICLE II. - DECLARATION**

The Grantors hereby declare that the Property and each lot, tract or parcel thereof (hereafter called "Lot," unless specified to the contrary), is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitude (hereafter collectively called "covenants and restrictions"), all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The covenants and restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot therein; shall inure to the benefit of every Lot in the Subdivision and any interest therein; and shall inure to the benefit of and be binding upon the Grantors and each Owner, and each successor in interest of each, and may be enforced by a Grantor or by any Owner or otherwise as hereafter provided.

Notwithstanding the foregoing, no provision of this Master Declaration shall be construed or enforced to prevent or limit the Grantors' rights to complete development of the Property in accordance with the plan therefor as the same exists or may be modified from time to time by a Grantor nor prevent normal construction activities during the construction of Improvements upon any Lot in the Subdivision. No development or construction activities shall be deemed to constitute a nuisance or violation of this Master Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Master Declaration may be granted by the Architectural Control Committee provided that such waiver shall be for a reasonable period of time. Any such waiver need not be recorded and shall not constitute an amendment of this Master Declaration.

In the event of any conflicts between the provisions of this Master Declaration and the requirements of the applicable ordinances of Highland City, Utah, the more restrictive shall control.

### ARTICLE III. - DEFINITIONS

As used in this Master Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

ACC: The Architectural Control Committee for the Subdivision.

ACC Rules/ACC Standards: Such rules or standards promulgated by the ACC as authorized herein.

Building: A structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

Development: The project to be undertaken by the Grantors resulting in the improvement of the Subdivision, including landscaping, amenities, construction of roadways, utility services and other improvements.

Grantors: The undersigned owners of the land comprising the Subdivision.

Improvements: All structures and appurtenances thereto of all kinds and types, including but not limited to, Buildings, roads, driveways, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs and lighting. Improvements shall not include those items which are located totally on the interior of a Building and cannot be readily observed when outside thereof.

Initial Construction: The first construction of permanent Improvements on a Lot following the sale of that Lot by a Grantor to an Owner, and intended for residential occupancy.

Lot: A portion of the Property which is a legally described tract or parcel of land within the Subdivision or which is designated as a Lot on any recorded subdivision plat relating to the Property.

Master Declaration: This instrument as it may be amended from time to time.

Mortgage: Any mortgage or deed of trust or other hypothecation of land located in the Subdivision to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in this Master Declaration shall be limited to a "first Mortgage," including a "first Deed of Trust," on a Lot in the Subdivision.

Mortgagee: The holder of a Mortgage or the beneficiary under a Deed of Trust, including an assignee(s) thereof, which Mortgage or Deed of Trust encumbers a Lot in the Subdivision owned by an Owner. Unless otherwise specifically provided, the reference to a "Mortgagee" in this Master Declaration shall be limited to a holder of a first Mortgage, including a beneficiary under a first Deed of Trust on a Lot.

Occupant: Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Building or Improvement on a Lot whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities, including the Grantors, holding fee simple title to a Lot in the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any Mortgagee (of any priority) or other security holder provided said

Mortgagee or other security holder is in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through such Mortgagee or other security holder by purchase at foreclosure sale or otherwise.

Plat: A final subdivision plat covering any real property in the Subdivision, as recorded in the office of the County Recorder, Utah County, Utah, as the same may be amended by duly recorded amendments thereto.

The Subdivision: The whole of the Property (referred to herein as "Property").

#### ARTICLE IV. - PURPOSE

The Property is hereby made subject to the covenants and restrictions contained in this Master Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Property for the purpose of:

- (a) Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Improvements.
- (b) The prevention of the erection in the Subdivision of Improvements of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.
- © Encouraging and insuring the erection of quality and attractive Improvements appropriately located within the Property to assure visual quality and harmonious appearance and function.
- (d) Securing and maintaining proper set-backs from streets and open areas in the Subdivision and adequate free spaces between Improvements.
- (e) The integration of development of the different Lots by setting common general standards consistent with the ACC Rules/ACC Standards existing from time to time.
- (f) Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

As used hereafter, "Project Objectives" shall mean the foregoing specified purposes.

#### ARTICLE V. - PERMITTED USES AND PERFORMANCE STANDARDS

**SECTION 5.01. Use.** Unless otherwise specified in a Supplemental Declaration covering a particular Lot(s) or parcel(s), Lots shall be used only for residential purposes and such uses as are customarily incidental thereto.

**SECTION 5.02. Buildings.** Except as otherwise designated on the master plan for the Subdivision, or unless otherwise specified for a particular Lot, tract or parcel in a Supplemental Declaration, no Lot shall be improved except with one (1) dwelling unit. Each dwelling unit shall have an attached or fully enclosed garage adequate for a minimum of two (2) standard size automobiles. No carports or parking pads shall be allowed. Unless otherwise specified in a Supplemental declaration recorded after the date of this Master Declaration, the initial cost of the Lot and the initial improvements located thereon shall be not less than \$250,000.00 based on June 1999 costs, adjusted for subsequent years in accordance with reasonable increases in Lot prices and construction costs for residential

dwelling units. Square footage shall not be less than 2,000 square feet for a single story residence, nor less than 2,600 square feet, (with a minimum of 1,800 square feet on 1st floor), for a two story residence.

Remodeling or adding on to the dwelling unit or garage so as to materially alter the appearance or profile thereof, or changing the use of the garage to other than automobile parking is prohibited.

**SECTION 5.03. Approval of Use and Plans.** No Improvements shall be built, constructed, erected, placed or materially altered within the Property unless and until the plans, specifications and site plan therefor have been reviewed in advance and approved by the ACC in accordance with the provisions of Article X, below. Two sets of building, fencing, landscaping plans are to be submitted to the ACC for approval.

**SECTION 5.04. Prohibited Buildings/Uses.** No trailer or other vehicle, tent, shack, garage, mobile home, accessory building or out building shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Property by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

**SECTION 5.05. Set-Backs.** No building or other structure (exclusive of fences and similar structures approved by the ACC) shall be located on a lot nearer to a lot line than the more restrictive of the following: (I) thirty feet (30') from the front lot line; thirty feet (30') from the rear lot line and side streets; and fifteen feet (15') from the side yard line or (ii) the set-backs required by the applicable ordinances of Highland City, Utah, whichever is more restrictive

**SECTION 5.06. Antennae.** No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot without the prior approval in writing by the ACC.

**SECTION 5.07. Easements.** There is hereby reserved for the use and benefit of the Grantors and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant and their successors and assigns, for the purposes incident to such use, development and maintenance of the Property, the following easements:

- (a) For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded subdivision plat(s) for the Subdivision.
- (b) Any additional easements, if any, as shown and designated on the recorded subdivision plat for the Subdivision. The easement areas (excluding any equipment or appurtenances owned by the Grantors or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.

No Improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

**SECTION 5.08. Lighting.** All exterior lights and interior lights reflecting outside shall not be placed in any manner which shall cause glare or excessive light spillage on a neighboring Lot or into the sky and shall be in accordance with the ACC Rules/ACC Standards.

**SECTION 5.09. Animals.** Domestic animals may be kept on the lots subject to Highland City ordinances governing the same.

**SECTION 5.10. Septic Tanks/Cesspools.** No septic tanks and/or cesspools shall be allowed within the Subdivision.

**SECTION 5.11. Grading and Drainage.** A site plan indicating the proposed grading and drainage of a Lot must be approved by the ACC before any construction is initiated. Lot grading shall be kept to a minimum and Buildings are to be located for preservation of the existing grade(s) and any grade(s), berms or swales should be an integral part of the grading design. Subject to the requirements of any governmental entity having jurisdiction thereof, water may drain or flow into adjacent streets but shall not be allowed to drain or flow upon, across or under adjoining Lots or Common Areas, unless an express written easement for such purpose exists.

**SECTION 5.12. Commercial Use Prohibited.** No Lot shall be used for commercial or business activity, provided, however, that the Grantors or persons authorized by the Grantors may use a Lot(s) for development and sales activities relating to the Subdivision, model homes or real estate sales. As used herein, "commercial or business activity" shall not include the rental by an Owner of a Lot and the Improvements thereon for residential purposes or the incidental use of a Lot and the Improvements thereon by an occupant for purposes incidental to a commercial or business activity shall not be a use in violation of this Section, provided that employees, customers, clients, patrons and similar persons related to such commercial or business activity are not present on the Lot on a regular basis.

**SECTION 5.13. Maintenance.** The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- (a) Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition.
- (b) All damage to any Improvements shall be repaired as promptly as is reasonably possible.
- (c) A Building which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals. Vacant Buildings and unimproved Lots shall not be exempt from the provisions of this Master Declaration.
- (d) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- (e) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- (f) Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Master Declaration.

- (g) In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the City of Highland, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the City of Highland for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a lien for all costs and expenses incurred by the City in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.
- (h) Each Owner shall maintain the city-owned right-of-way area known as the "planter strip" between Owner's front property line and the back of curb, if such planter strip exists, as Owner's property in accordance with this Master Declaration.

**SECTION 5.14. Mining and Drilling.** No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, steam, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth; provided that the Grantors may, by permit, grant, license or easement, allow the drilling for and the extraction of water for use on the Lot.

**SECTION 5.15. Boats, Campers and Other Vehicle.** Storage of trailers, mobile homes, trucks larger than standard pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles is prohibited within the Subdivision and at no time shall any of said vehicles or equipment be parked or stored on a public or private right-of-way within the Subdivision. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles and other vehicles (hereafter "automobiles"). No other use of a garage which prohibits or limits the use of a garage for the parking or storage of the number of automobiles for which it is designed shall be permitted. The Owner shall provide sufficient garage space or other enclosed parking approved by the ACC for all automobiles used by the Occupants of a Lot, which automobiles shall be kept within the garage, and the parking thereof in the driveway on the Lot or in a public right-of-way within the Subdivision, other than for temporary purposes (as determined by the ACC), is prohibited. No inoperative vehicle shall be parked or stored at any time on a Lot unless wholly within an enclosed structure. A minimum of two (2) off-street parking spaces for automobiles shall be provided on each Lot.

**SECTION 5.16. Garage Doors.** Garage doors shall be closed except when open for a temporary purpose.

**SECTION 5.17. Exterior Materials and Colors.** All exterior materials and colors shall be selected and used which are approved by the ACC and which are compatible with other Buildings on the Lot and on neighboring Lots to the end that all such Buildings will present a unified and coordinated appearance. All exterior finishes and/or colors shall be earthtone, including subtle blue and gray tones, as approved by the ACC. The exterior of each house shall be covered by not less than 60% brick or stone. Roofs shall be wood shake, tile, architectural shingles, or other materials selected from ACC approved shingles, and no gravel roofs shall be permitted.

**SECTION 5.18. Vehicles.** The use of all vehicles, including but not limited to automobiles, trucks, bicycles and motorcycles, shall be subject to ACC rules, which may prohibit or limit the use thereof within the Subdivision, provide parking regulations and other rules regulating the same.

**SECTION 5.19. External Energy Devices.** No energy producing devices including, but not limited to, generators of any kind shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for

solar energy devices (as described below), heat pumps or similar appliances shown on the plans approved by the ACC.

**SECTION 5.20. Mailboxes.** No free-standing mailbox shall be constructed or installed on any Lot without the prior written approval of the plans therefor by the ACC.

**SECTION 5.21. Signs.** No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder and the name of the institution providing financing therefor may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign in the Subdivision shall be permitted, provided the same is approved by the ACC prior to installation.

**SECTION 5.22. Subdividing.** No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the ACC; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the ACC therefor. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

**SECTION 5.23. Renting.** At least eighty percent (80%) of the dwelling units in the Subdivision must be owner-occupied. Owner-occupied shall mean that the owner or owners of record or the immediate family of the same (lawful spouse, father, mother, child or children, brother(s) or sister(s)) reside in and designate the dwelling unit as their primary residence. No more than twenty percent (20%) of the dwellings in the Subdivision shall be "rental units", or non-owner-occupied dwellings. The ACC shall control the quota of rentals on a first-come, first-serve basis by maintaining a list of owners renting and owners wishing to rent their units. When the rental quota is not filled, the ACC shall notify the first owner on the list of the opportunity to rent his or her unit. Owners shall have thirty (30) days after legal notice to notify the ACC of their intention to rent their unit before the opportunity is passed to the next owner on the wait list.

**SECTION 5.24. Fences.** No fence, wall, hedge, high planting, obstruction or other visual or privacy barrier (hereafter collectively "fence") of any kind shall be constructed on a Lot unless the plans and specifications therefor, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the construction or installation. It is the intent of the Grantors to create an open, spacious and landscaped appearance throughout the Subdivision, and all decisions with respect to fences shall be governed accordingly. All fences constructed on a Lot shall be in compliance with the applicable ordinances of Highland City, Utah.

All fences barriers constructed on a Lot shall be subject to the following restrictions:

- (a) Fences shall not project beyond the setback of the principal Building on the Lot. No fence higher than six feet (6') shall be allowed without the prior approval of the ACC.
- (b) All fences shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.
- © No fence shall interfere with the use and enjoyment of any easement reserved in this Master

Declaration or shown on the recorded subdivision plat of the Property.

- (d) No fence shall be allowed which would unreasonably interfere with the use and enjoyment of neighboring Lots and streets, and shall not be allowed if the same constitute an undesirable, noxious or nuisance effect upon neighboring Lots.
- (e) All fences constructed or installed on the interior of a Lot, e.g. dog runs, swimming pool, etc., which are visible from an adjoining Lot or from a street within the Subdivision shall be subject to prior approval by the ACC.

**SECTION 5.25. Landscaping.** The following provisions shall govern the landscaping of Lots within the Subdivision:

- (a) The owner shall prepare a landscape plan and shall submit two (2) copies of the same to the ACC as provided in Article X, below. The ACC shall approve said landscape plan prior to the installation and/or construction of landscaping on a Lot. Landscaping of a Lot shall be in accordance with the approved plan.
- (b) A desire for an open, spacious and green growing appearance will control the decisions of the ACC. The ACC shall consider overall design features of the improvements to be constructed on the Lot is reviewing and approving or disapproving the landscape plan.
- The minimum landscaping requirements shall be as follows:
  - (I) Innovative landscape design, including sculptured planting areas, berms or other features with screening or bordering of foundations, fences (if any), curbs and other similar elements of the improvements on the Lot.
  - (ii) The initial landscaping shall include, as a minimum, the following: Sod or green seed in the front, side and rear yards; three (3) trees of a species selected by Grantors or the ACC at least two inch (2") caliper in the front yard and two (2) flowering trees, of at least one & one half inch ( $\frac{1}{2}$ ") caliper in the back yard; three (3) - eight (8) gallon plants and five (5) - one (1) gallon plants in the front yard.
  - (iii) The front yard shall be irrigated with an automatic underground sprinkler system. It is strongly encouraged that the side and rear yards also be irrigated by an automatic underground sprinkler system.
- (d) Additional landscaping may be required in addition to the above minimum requirements if the ACC in its discretion, reasonably determines necessary or desired to achieve project objectives.
- (e) All required landscaping on a Lot shall be installed within six (6) months after the earlier of the following: (I) substantial completion of the Building on the Lot, or (ii) occupancy of the Building by an Occupant, with a reasonable extension for weather.

**SECTION 5.26. Adoption of ACC Rules/ACC Standards.** The Grantors, or in the event of the Grantors' failure to do so, the ACC, shall have the power to promulgate ACC Rules/ACC Standards relating to the planning, construction, alteration, modification, removal or destruction of Improvements within the Property deemed necessary

or desirable by the Grantors, or the ACC, as the case may be, to carry out the purposes of this Master Declaration. All ACC Rules/ACC Standards shall be consistent with the provisions of this Master Declaration.

**SECTION 5.27 Exemption of Grantors.** Nothing herein contained shall limit the right of the Grantors to subdivide or re-subdivide any Lot or portion of the Property or to grant licenses, reservations, rights-of-way or easements with respect to Common Areas to utility companies, public agencies or others; or to complete excavation, grading and Development to or on any Lot or other portion of the Property owned or controlled by the Grantors, or to alter the foregoing and its Development plans and designs, or construct additional Improvements as the Grantors deem advisable in the course of Development of the Subdivision. This Master Declaration shall not limit the right of the Grantors at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. The Grantors need not seek or obtain ACC approval of any Improvements constructed or placed within the Property by a Grantor in connection with the Development of the Subdivision, but this exemption shall not apply to a Building(s) constructed by a Grantor on a Lot owned by a Grantor. The Grantors shall be entitled to the non-exclusive use, without charge, of any Common Area within the Subdivision in connection with the marketing of the Lots therein.

## **ARTICLE VI. - ARCHITECTURAL CONTROL COMMITTEE**

**SECTION 6.01. Members of the Committee.** The Architectural Control Committee shall be comprised of at least three (3) persons, all of whom shall be appointed as directed below. A member of the ACC 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 ACC may be removed at any time, with or without cause.

**SECTION 6.02. Appointment.** So long as the Grantors own any Lot or parcel within the Property, the Grantors shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the majority vote of voting Owners.

The ACC 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 ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

**SECTION 6.03. Compensation.** The members of the ACC shall not receive any compensation for services rendered, but shall be reimbursed for actual expenses incurred by them in the performance of their duties hereunder.

**SECTION 6.04. Non-Liability.** Neither the ACC, or any member thereof, or the Grantors or any partner, officer, employee, agent, successor or assign thereof, shall be liable to any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC 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 ACC 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 ACC, or any member thereof, or the Grantors or any officer, partner, employee, agent, successor or assign thereof to recover such damages.

**SECTION 6.05. 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 ACC.

**SECTION 6.06. Variances.** The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Master Declaration, the ACC Rules/ACC Standards, or any prior approval when, in the sole discretion of the ACC, 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 ACC.

If a variance is granted as provided herein, no violation of this Master Declaration, ACC Rules/ACC 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 ACC Rules/ACC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

The ACC 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 ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the applicable ordinances of Highland City, Utah.

**SECTION 6.07. Application.** To request ACC 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 ACC 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 ACC:

- (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.
- (b) Building Plan. A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof, to be used.
- © 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.
- (d) Evidence of Cost. Such evidence of the cost of the Improvements as shall be satisfactory to the ACC to assure compliance with the requirements of Section 5.02 of this Master Declaration.

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

**SECTION 6.08. Decision.** In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC 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 ACC, the ACC shall render its decision with respect to an application within thirty (30) days after the receipt of a properly submitted application. The decision of the ACC can be in the form of an approval, a conditional approval or denial. The decision of the ACC shall be in writing, signed by a member of the ACC, 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.

**SECTION 6.09. Inspection and Complaints.** The ACC 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 therefrom or is violating this Master Declaration or the ACC Rules/ACC Standards or the approved plans and specifications.

The ACC 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 ACC Rules/ACC Standards. In the event the ACC receives such a complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise.

Should the ACC determine that there has been a 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 ACC determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant.

**SECTION 6.10. Hearing.** An Owner submitting an application under Section 11.07, above, 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 ACC for the purpose of presenting facts and information to the ACC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner (and Complainant) as evidenced by the records of the ACC. The hearing shall be held within ten (10) days following receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC members. A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC 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 ACC 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(s) to advise the ACC 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 11.12, below.

**SECTION 6.11. Appeal.** Either an Owner or a Complainant shall have the right to appeal to the City planning and zoning administrator a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 11.10, 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 has participated in the ACC hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the City planning and zoning ("City") administrator within ten (10) days from the date of the decision by the ACC. 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 ACC. The failure of an Owner or Complainant to appeal a decision of the ACC 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 City planning and zoning administrator 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 City because of the unavailability of the planning and zoning administrator. 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 ACC.

The City planning and zoning administrator may require the Owner or Complainant to provide additional information to facilitate the City's decision and the failure of such party to comply promptly with such a request shall entitle the City to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal.

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

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the City shall retire to deliberate and shall reconvene at a time and place determined by the City, at which time the City 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 ACC members shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed.

If the City 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 City and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the City constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the ACC. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 11.12, below. A decision of the City of an appeal shall be final and shall not be subject to reconsideration or further appeal.

**SECTION 6.12. Enforcement.** The ACC shall be authorized to 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 ACC Rules/ACC Standards or the approved plans and specifications.

The ACC 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 ACC shall have the sole discretion to commence such proceedings.

The authority of the ACC 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 ACC.

In the event the ACC shall prevail in any such legal or equitable proceedings, all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the ACC by the Owner against whom said proceedings are filed.

## **ARTICLE VII- MISCELLANEOUS**

**SECTION 7.01. Non-Waiver.** The failure of the Grantors or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Master Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

**SECTION 7.02. Acceptance.** Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Master Declaration and agrees to be bound by the same.

**SECTION 7.03. Notices.** Any notice permitted or required to be delivered as provided in this Master Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

**SECTION 7.04. Interpretation.** The provisions of this Master Declaration and any Supplemental Declaration shall be liberally construed to effectuate the Project Objectives set forth in Article IV, above, and shall be construed and governed by the laws of the State of Utah. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

**SECTION 7.05. Severability.** Notwithstanding the provisions of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

