

**AMENDED DECLARATION OF COVENANTS CONDITIONS AND
RESTRICTIONS OF MESA PALMS TOWNHOMES,
A PLANNED UNIT DEVELOPMENT**

THIS IS AN AMENDED DECLARATION of Covenants, Conditions and Restrictions which establishes a planned unit development known as Mesa Palms Townhomes.

RECITALS

Southern Dixie Development Inc. and Bodell Construction Company, ("Declarant") are the owners of certain real property (the "properties") in St. George, Washington County, Utah, which is more particularly described below.

Declarant will convey the properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth.

It is the desire and intention of Declarant to sell and convey lots to various purchasers, and to convey common area to an Association in which the townhome owners will be members.

Declarant desires to exercise its right to unilaterally amend the Declaration of Covenants, Conditions and Restrictions of Mesa Palms Townhomes as provided by Article XII, Section 4 thereof, which Declaration is recorded on the records of the Washington County Recorder's Office as entry 00445751, in book 0761, at pages 0729-0746.

NOW THEREFORE, as provided in Article XII, Section 4 of the Declaration of Covenants Conditions and Restrictions above-described, Declarant amends said Declaration in its entirety as follows:

DECLARATION

Declarant hereby declares that all of the properties described below shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Map recorded concurrently. This is for the purpose of protecting the value and desirability of the properties. This Declaration and the Map shall be construed as covenants of equitable servitude, shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of

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each owner thereof.

In addition to the provisions of this AMENDED DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS, the administration of the Home Owners Association and the property shall be governed by Articles of Incorporation and Bylaws of Mesa Palms Homeowners Association (the "Association"). The Declarant shall make available to owners, lenders and mortgagees copies of the Declaration, Articles of Incorporation and Bylaws of the Association and any other books, records, rules and regulations, as well as copies of an annual financial statement, if any is prepared, upon request.

The Properties are located in St. George, Washington County, Utah, and are all of Mesa Palms Homes Phases I, II, and III, according to the Official Plat thereof on file with the Washington County Recorder, which lies within the boundaries of property more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

ARTICLE I--DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1. Declaration means this instrument, and any amendments.

Section 2. Plat or Map means the subdivision plat recorded herewith entitled "Mesa Palms Homes Phases I, II and III", consisting of one sheet, prepared and certified by Lloyd Reid Pope, a Utah Registered Land Surveyor or any replacements thereof, or additions thereto.

Section 3. Property or Properties means that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration.

Section 4. Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners, excluding the areas that are "Public Streets".

Section 5. Limited Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant. Limited Common Area is subject to rights of the Association set forth in this Declaration. Limited Common Area does not include any areas that are "Public Streets".

Section 6. Lot. Each lot is owned in fee simple by the owner. However, area within the surveyed lot boundaries but outside the originally constructed townhome walls, although not deeded by the Declarant to the Association as limited common area, shall be treated as limited common area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a lot larger than the townhome is to allow flexibility in the original townhome construction. After the initial construction on a lot, subsequent construction, if any, on that lot must nevertheless conform to the location, size, and appearance of the originally constructed townhome.

Section 7. Townhome means a detached single family dwelling, with or without walls or roofs in common with other single family dwelling lots. "Townhome" includes fee title to the real property lying directly beneath the single family dwelling, within lot boundary lines. "Family" to mean persons related by blood or marriage, by legal adoption, or by operation of law.

Section 8. Owner means the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each lot, the group of those parties shall be treated as one "owner".

Section 9. Association means Mesa Palms Homeowners Association, its successors and assigns.

Section 10. Member means every person or entity who holds membership in the Association. Every Member is an owner, and every owner is a member.

Section 11. Trustees means the governing body of the Association.

Section 12. Declarant means Mesa Palms Development, Ltd., and the Declarant's heirs, successors and assigns.

Section 13. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary".

ARTICLE II--PROPERTY RIGHTS

Section 1. Title to the Common Area The Declarant will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common area in good repair and condition at all times and to operate the common area at its own expense in accordance with high standards.

Section 2. Owners' Easements of Enjoyment Every owner has a right and easement of use and enjoyment in and to the common area. This easement is appurtenant to and passes with the title to every lot, subject to:

- (a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service or recreational storage, or parking facility situated upon the common area. No fees shall be charged for parking specifically designated on the plat as appurtenant to a lot.
- (b) The right of the Association to limit the number of guests of members using the common area.
- (c) The right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (d) The right of the Association to enter into agreements or leases which provide for use of the common areas and facilities by a similar Association in consideration for use of the common areas and facilities of the other Association, or for cash consideration.
- (e) With the approval of all the holders of first mortgage liens on lots, and owner approval as provided below, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless (1) all owners consent in writing to the dedication of sale or transfer or (2) an instrument has been signed by two-thirds (2/3) of the members of both classes, agreeing to such dedication, sale, or transfer and the legislative body of St. George approves the Plat change that is necessitated by the dedication, sale, or transfer, at a public hearing held in accordance with Utah Code Ann. 10-9-801 et. seq. (1953, as amended).
- (f) The right of the Association to seek to abandon, petition, subdivide, encumber, sale, or transfer the Common Areas owned, directly or indirectly, by the

Homeowners Association for the benefit of the Lots. The granting of an Easement for public utilities or other public services consistent with the intended use of the Common Area is not a transfer within the meaning of this clause. No such abandonment, petition, subdivision, encumbrance, sale, or transfer shall be effective unless (1) all owners consent in writing to such abandonment, petition, subdivision, encumbrance, sale or transfer or (2) an instrument has been signed by two-thirds (2/3) of the members of both classes and the legislative body of the City of St. George approves the Plat change necessitated by the abandonment, petition, subdivision, encumbrance, sale, or transfer at a public hearing held in accordance with Utah Code Ann. 10-9-801 et. seq. (1953, as amended).

- (g) The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.
- (h) The terms and conditions of this Declaration.
- (i) The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the common area.
- (j) The provisions of Article X herein.

Section 3. Limited Common Area A lot owner is entitled to the exclusive use of the limited common area adjacent and appurtenant thereto, if any, and to exclusive use of the parking area, if any, designated with his lot number on the plat. The Association, through its Trustees, may adopt rules and regulations concerning use of the limited common area. Limited common area is subject to the rights of the Association set forth in this Declaration.

Section 4. Delegation of Use An owner is deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is a non-resident shall have any such delegable right of enjoyment. Damage caused to the common area and recreational facilities by a member or his delegates, shall create a debt to the Association which shall be added to the members annual assessment as more fully provided in Article IV.

Section 5. Rules The Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Trustees.

ARTICLE III--MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership Every owner is a member of the Association. The term "owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation - unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from lot ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

Section 2. Voting Rights The Association has two classes of voting membership:

CLASS A. Class A members are all members with the exception of the Declarant, as defined in the Declaration. Class A members are entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote of such a lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

CLASS B. The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each Lot owned. The Class B membership will cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier:

- (a) the expiration of seven (7) years subsequent to the first lot conveyance to a purchaser; or
- (b) the surrender of Class B membership status by the express written action of the Declarant

In the case of expansion (as provided under the Declaration) which occurs while the Declarant has Class B membership, the Declarant's memberships appurtenant to the lots in the expansion area shall be Class B memberships.

ARTICLE IV--FINANCES AND OPERATIONS

Section 1. Creation of the Lien and Personal Obligation of Assessments The Declarant and each subsequent owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) additional assessments; (4) any other amount or assessment levied or charged by the Association or Board

of Trustees pursuant to this Declaration, and (5) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 2. Purpose of Assessments The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties, (b) for the improvement and maintenance of properties services, and facilities devoted to this purpose and (c) for any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration, the Bylaws, or the Articles of Incorporation. The assessments must provide for, but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide at the discretion of the Trustees, for the payment of other charges including, without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges.

Section 3. Maximum Annual Assessment Until January 1 following recording of this Declaration, the maximum annual assessment shall be One Thousand Five Hundred Dollars (\$1,500.00) per lot. This amount shall be the basis of calculation for future maximum annual assessments.

- (a) From and after the date referred to above the maximum annual assessment shall be increased each year by five percent (5%) above the maximum assessment for the previous year, without a vote of the membership.
- (b) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements
In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of each class of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 5. Additional Assessments In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5 Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 of this Article IV shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Notwithstanding, no meeting is required for City mandated assessments.

Section 7. Uniform Rate of Assessment: Periodic Assessment Both annual and special assessments must be fixed at a uniform rate for all lots; provided, however, that assessments shall not accrue against the Declarant so long as the Declarant has Class B membership. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgagees.

Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Trustees determine.

Section 8. Date of Commencement of Annual Assessments: Due Dates The annual assessment provided for herein shall commence

to accrue on the first day of the month following conveyance of a lot in the development. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Trustees as to the amount of said assessment, the first annual assessment shall be an amount equal to 90% of the maximum annual assessment provided above.

At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. This notice shall not be a pre-requisite to validity of the assessment.

The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

The Trustees shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 9. Effect of Non-Payment of Assessment-Remedies of the Association Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine appropriate) until paid. In addition, the Trustees may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment.

The Trustees may, in the name of the Association, (a) bring an action at law against the owner personally obligated to pay any such delinquent assessment: without waiving the lien of assessment, or (b) may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the lot from time to time after commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental

income or the reasonable rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the lot of an owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or by abandonment of his lot.

Section 10. Subordination of the Lien to Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a lot or owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

Section 11. Books, Records and Audit The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by lot owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A lot owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

ARTICLE V--INSURANCE

Section 1. Casualty Insurance on Insurable Common Area The Trustees shall keep insurable improvements and fixtures of the common area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the common

area shall be written in the name of and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Trustees may elect to obtain and continue in effect, on behalf of all owners, adequate blanket casualty and fire insurance in such form as the Trustees deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Townhomes including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Townhomes shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the owners.

Section 2. Replacement or Repair of Property In the event of damage to or destruction of any part of the common area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such lot owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the Townhomes, the Association shall repair or replace the same to the extent of the insurance proceeds available.

In the event of damage or destruction by fire or other casualty to any portion of development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each owner for this purpose.

Section 3. Liability Insurance The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the common areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim

of an owner because of negligent acts of the Association or other owners.

Section 4. Fidelity Insurance The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. In procuring fidelity insurance the Trustees shall seek a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (i) three months operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee".

Section 5. Annual review of Policies All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed.

ARTICLE VI--ARCHITECTURAL CONTROL & DEVELOPMENT STANDARDS

Section 1. Establishment of Architectural Control Committee: No activity regulated by Architectural Control Committee shall be commenced, nor shall any exterior addition or change or alteration to any lot or townhome be made, until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this article will be deemed to have been made.

Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners, neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of townhomes and lots, and the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

The Declarant shall not be required to comply with the

provisions of this paragraph in the initial construction of the properties.

Section 1.2 All construction on any lot shall be made in accordance with and pursuant to the "authorized plans" of the development which shall be maintained by the Declarant.

Section 2. Design Review and Approval Process.

Section 2.1. Plan Review.

A. **Construction Requiring Review:** All proposed layout and design of new improvements to any lot, or additions to, remodeling of, or other improvements to already developed lots, will require review and approval by the Committee. Construction includes, but is not limited to buildings, landscaping, swimming pools and decks, grading, exterior lighting, fences or walls, recreation facilities and any other site development which physically or visually affects or impacts adjoining Lots or properties.

B. **Plan Requirements:** All plans and specifications for site development and structures shall be submitted in accordance with the content and time limitations set forth below. All plans and specifications for development and improvements shall be prepared by licensed (if licensing is required by federal, state, county or city regulations) or otherwise qualified land planners, architects, landscape architects, professional engineers, or other designers approved by the Committee. It is recommended that a team of qualified professionals be used in the preparation of any development plans.

C. **Application Response Time:** After proper submission of all of said plans and documents in accordance with the provisions herein, the Committee's approval or disapproval of said plans and documents shall be given in writing to the applicant within a reasonable time. The Committee will not consider for action any submission which it deems incomplete.

D. **Plan Submittal Procedures:** Two copies of plans and other documents as described below shall be delivered with a completed application form as set forth in Exhibit "B" to:

Mesa Palms Townhomes Homeowners Association
Architectural Control Committee

It is recommended that the applicant and his designers arrange for a preview meeting with a member of the Committee, prior to submittal. A meeting may be scheduled by contacting the Committee at the above address.

E. **Standards of Review:** The Committee shall review the design of each submission for the design's commitment to overall community development and adherence to the Development Standards. The Committee will evaluate the plans for a sense of residential scale and harmony and visual compatibility to the prestige of the community. Such review shall include, without limitations, architectural styles, size, materials, colors, window placement, the relationship of the building to the site and to neighboring residences building locations, grading and drainage design, landscape design, streetscape image, proposed special site features and the impact to surrounding parcels. More specific requirements are detailed throughout this document.

F. **Architectural Control Committee Meetings:** Committee meetings are open to other Owners in the same neighborhood. Owners may review proposed plans prior to Committee meetings. It is the responsibility of each Owner to make himself/herself aware of proposed new construction and to offer his/her opinions to the Committee.

G. **Liability of Committee Representatives:** Provided that Committee representatives act in good faith and with due diligence, neither the Committee or any representatives thereof shall be liable

to any Owner or any other person for any damage, loss or prejudice suffered or claimed on account of the review of any plans, specifications or materials. The review and delivery of a form of approval or disapproval is not to be considered an opinion as to whether or not the plans, specifications, or materials are defective or whether the construction methods or performance of work proposed therein is defective or whether the facts therein are correct or meet the City of St. George's building codes.

H. Amendment: These Development Standards may be amended by the affirmative vote of three (3) Committee Representatives.

I. Prevalence of Declaration: In the event of any conflict between the provisions of these Development Standards and the Declaration, the Declaration shall prevail.

J. Fees: The Committee shall have the right to require of the applicant payment of reasonable and uniform fees to the Association for review of proposed plans, specifications and other materials.

K. Miscellaneous: All items submitted shall become the property of the Committee. Changes to approved plans shall be re-submitted to the Committee for approval.

Section 2.2

Submittals:

A. Submittal #1-Application Form and Preliminary Plans: The application form in Exhibit "B" and all preliminary plans shall be submitted to the Architectural Control Committee for approval prior to the submission for review of final working drawings. All preliminary plans shall be drawn to an appropriate scale with the following information clearly indicated on all drawings submitted:

Owner's name
Sheet Title
Scale and North arrow
Prepared By: Entity that prepared the plan(s)

Date the drawings were completed
and/or modified

1. Site Plan: Overall layout showing a boundary, driveway, utility easements, setbacks, building location, entries to buildings, walks, swimming pools, tennis courts, courtyards, decks, satellite antennae, walls, sculpture, air conditioning unit pads, sidewalk and curb and any and all other site elements. The plan shall indicate percentage of gross building coverage.
2. Grading Plan: Grading and drainage concept with proposed high points, flow lines and low points shall be indicated. Existing and proposed contours shall be indicated at a consistent contour interval to clearly show the proposed grading concepts. All walls and drainage structures shall be clearly identified.
3. Landscape Plan: A plan showing planting and amenity development including pools, walls, courtyards, walks, trees, shrubs, ground cover and grass and a plant palette shall be submitted.
Plan must indicate all improvements proposed for the entire lot.
4. Architectural Floor Plans: Plans for any and all buildings shall be included. All rooms shall be labeled including balconies, decks, atriums, garages and storage buildings. The square footage of total living area, of total building area and overall dimensions shall be indicated.
5. Exterior Architectural Elevations: Sketch elevations shall be prepared to show overall architectural character, style, and scale as well as design of character details. All four exterior elevations with dimensions, materials, colors, textures, and the lines of typical natural and finished grades shall be indicated. Color chips or samples of all materials

preliminary plan submittal.

5. Exterior Elevations: Architectural style submissions shall include elevations with colors, materials and finishes indicated.

6. Roof Plan: Finalized version of information from preliminary plan submittal.

7. Other: The Committee may request samples of materials if, in the Committee Representatives' opinion drawings and specifications do not provide enough information or are not clear.

Section 2.3

Administration:

A. Prosecution of Work After Approval: After approval of the submittal by the Committee, the construction, alteration or other work described therein shall be commenced and completed in accordance with the rules set forth in the Declaration. The Committee Representatives have the right to enter the Lot or premises to inspect the project for compliance with the Standards at any time prior to occupancy, without advance notice to the Owner nor fear of trespass and liability. Subsequent to occupancy, the Committee Representatives have the right to enter the Lot during daytime hours with prior notification to the Lot Owner and/or resident.

B. Violations: Construction deemed by the Committee to be in violation of approved drawings and of the Standards shall be corrected as instructed by the Committee within fourteen days of written notice to the Owner of such Violation. Failure to correct such unapproved or unauthorized construction within the fourteen-day time frame automatically gives the Committee, and its authorized agents, the unrestricted right to enter the premises and take whatever action is necessary for the removal of the violation. The cost of such abatement or removal shall be a

shall be submitted.

6. Roof Plan: A roof plan shall be drawn to scale, showing pitch, valleys, hip, materials, and colors. Color samples of the roof materials shall be submitted.

Note: Items 1, 2 and/or 3 above may be combined if the information is clearly represented.

B. Submittal #2-Construction Drawings: Two copies of these drawings are to be submitted for review only after approval of preliminary plans has been granted in writing. A copy of the Committee's approval letter shall be submitted with these documents. All final Construction Drawings shall be drawn to scale and shall include all of the drawings noted in Submittal #1 with additional details, sections and other materials that are required for building permits.

1. Site Plan: Shall include all of the required information illustrated in the preliminary drawings with finalized, revised-where-requested information. This includes screen walls, retaining walls, trellises, walkways, patios and courtyards, sculpture and other non-organic landscape elements.

2. Grading Plan: This shall include all final grades and elevations around the lots and proposed buildings, drainage patterns, walks, walls, drainage structures and other site features.

3. Final Landscape Plan: Shall indicate all plantings including trees, shrubs and ground covers for the entire development. A materials schedule shall indicate proposed size and quantity of all materials. All plant materials, irrigation systems, accent lighting and other physical features shall be indicated.

4. Architectural Floor Plans: Finalized version of information from

binding obligation on the Owner of the project.

C. Building Permits: Copies of all building permits and certificates of occupancy shall be submitted to the Committee upon receipt of such by the Owner.

D. Recordation of Notice: Upon approval of final submittal, the Committee shall, upon written request from the applicable Owner, provide such Owner with a statement of approval in a form appropriate for recordation. The Committee may also record a notice to reflect the fact that any work which has not been approved or that any approval previously given has been revoked.

E. Rule Making Authority: The Committee adopts these Development Standards for the purpose of interpreting, applying, supplementing and implementing the provisions of the Declaration pertaining to the design of buildings and other improvements. A copy of these Development Standards as from time to time adopted, amended or repealed, certified by a Representative of the Committee, shall be maintained in the clubhouse of the Association and shall be available for inspection during normal business hours by any developer, Owner or prospective Owner, or any architect or agent of any such Owner or prospective Owner. It shall be the responsibility of any Owner or prospective Owner, or architect or agent of any such Owner or prospective Owner to inform themselves as to any and all such changes of these Development Standards.

F. Liability of Committee Representatives: Provided that Committee Representatives act in good faith and with due diligence, neither the Committee nor any Representative thereof shall be liable to any Owner or any other person for any damage, loss or prejudice suffered or claimed on account of the review of any plans, specifications or materials. The review and delivery of a form of approval or disapproval is not to be considered an

opinion as to whether or not the plans are defective or suitable for any purpose, or whether the construction methods or performance of the work proposed therein is defective or suitable for any purpose, or whether the facts therein are correct or meet the City of St. George Building Codes, or an opinion or determination as to any matter whatsoever except for the issue of whether the submittal is approved or disapproved by the Committee.

G. Professional Advice: The Committee may employ the services of an architect, land planner, landscape architect or engineer to render professional advice and may charge the cost for services of such a professional to the Owner applicant, but only after the Owner has been informed in advance that such compensation shall be so charged.

Section 3.0 SITE DEVELOPMENT STANDARDS

Section 3.1 General:

A. These planning and design standards are intended to provide a high level of quality in the design of the residential site and to ensure a consistency of design throughout the neighborhood.

Section 3.2 Setbacks:

- A. Front:** The residence and any other structure (including walls and fences which front onto the street) must be set back at least 18 feet for a garage and 8 feet for any other structure from the front property line or as required by the Committee, unless the residence or other structure is located on a Public Street which under St. George City ordinances requires a setback of twenty-five (25) feet. The Committee may require a greater setback based on the depth of a particular lot.
- B. Side Yard:** The residence and any other structure must be at least 5 feet away from the side property line.

C. Rear Yard: The residence must be at least 10 feet from the rear property line or as required by the Committee. All ancillary structures such as storage sheds, garages, pool equipment buildings, satellite antennae must be located in the building envelope, not in the setback area.

D. Bulk Plane: The maximum height of any structure at the front setback line shall be 15 feet with a sloping bulk plane of 1 foot horizontal to each one and one-half foot vertical to a maximum height of 24 feet.

Section 3.3 Parking and Driveways:

A. Parking: Each Lot must have at least four off-street parking spaces, two of which must be in a two-car garage (see Section 5: Architectural Standards). Street parking is limited to visitor parking only. Residents shall not park on the streets. All lot owner vehicles must be housed in a garage space. Garage doors shall be closed at all times when not in active use.

B. Driveways: Along the front property line (and, also, along the side property line for corner Lots) driveways must be located at least twelve feet away from the side property lines. At the front property line, the width of the driveway cannot exceed 24 feet. Once inside the lot, the driveway and any driveway apron may expand to 28 feet. Driveways shall not eliminate the common area sidewalk which shall be continuous as installed by the developer nor expand into any limited common area.

C. Corner Lot Driveways: In addition to the above requirement, driveways on corner lots may not be located within 15 feet of the "curb return" at any corner. This is defined as the location at which the curve of the corner meets the straight line of the street.

Section 3.4 Sculpture and Landscape Ornaments:

A. Statues, mirrored glass balls, birdbaths and other like landscape elements are not permitted in front yard areas unless they are part of and enclosed within a front courtyard or patio area and approved by the Committee. Vertically mounted stand-alone flagpoles, totem poles and other similar elements are not permitted. Flagpoles which are mounted at an angle on the side of the residence may not exceed six feet in length and must be removed when not in use.

B. If fountains are built in individual residential lots, they should be in scale with the residence and water conserving (e.g., recirculating). All fountain plans must be approved by the Committee.

Section 3.5

Satellite Antennae:

A. Satellite antennae may be installed in Lots but must not be located in the rear setback area of the Lot. It also must be screened by walls, plant materials or both. These must be as high as the antennae itself. The Antennae may not exceed the height of a six-foot wall and its color must correspond to the residential exterior scheme or be earth tone brown.

Section 3.6

Service and Utility Elements:

A. Utility boxes, ground mounted air conditioners, and other service or utility oriented elements shall be screened either by approved walls, fences, plants or a cover which blends with the architecture of the residence.

Section 3.7

Landscape Lighting:

A. Owners are encouraged to use exterior or landscape lighting to enhance their residence and yard. However, only indirect, low level lighting is permitted. No lighting which causes glare, discomfort or disrupts the visual environment of neighboring residences and yards is permitted. Any lights mounted higher than six feet off the ground must be pointed

downward and away from neighboring residences. (For exterior lighting pertaining to residences, please see Section 5: Architectural Standards).

Section 3.8

Walls:

A. **General:** Yard walls and/or fences shall be of stucco or stone, shall substantially conform in style and construction to the entrance walls of the Project, shall be of a color which blends with the exterior of the structure on the lot, and shall be approved by the Architectural Control Committee. No chain link, wire, or wood fences will be permitted. The Architectural Control Committee will consider approval of aesthetically compatible fences or walls which are not more than six (6) feet in height, are located on the side lot line of a lot or on the perimeter of a patio or open porch and do not extend beyond the front or rear yard setback lines. Walls or fences are intended to enhance the privacy of the residents of such lot, and do not unreasonably interfere with the line of sight towards the view from any neighboring lot. Where a fence or wall is located along an interior property line separating two lots and there is a difference in grade of the two lots, the fence or wall may be erected or allowed only maximum height permitted from the grade of the lowest lot. Fences may not be bermed for the purpose of increasing allowable height. General rules of law and written agreements shall apply to yard walls and fences in relation to maintenance, repair, and liability for negligent acts and omissions.

Section 3.9

Site Grading:

A. **Intent:** Grading operations are intended to establish compatible relationships along streets and between lots, units and adjacent parcels, and to respect the existing topography with grading techniques that are safe, aesthetic and provide suitable soil stabilization. The Declarant is providing a building site

responsive to the overall topographic and drainage conditions of the area but which may be modified to fit individual needs.

B. Existing Soil Conditions: Due to the often spotty nature of soil and rock conditions in the St. George area, each Owner shall conduct his own soil test and analysis.

C. Building Pad Height: Building pad elevations shall relate to the street at the front of the Lot, providing a smooth physical transition from sidewalk to residence. They shall not be made artificially or unnecessarily high to gain overall height for the structure. No steep or artificial mounding is permitted nor are the use of retaining walls over eighteen inches in the front of the Lot. The Committee is especially sensitive to this situation and shall carefully examine the Owner's site and grading plans for this condition.

In general, the design of the residence shall conform to the topography of the Lot. No substantial changes shall be made to the rough grading of the Lot completed by the Developer.

D. Grading: Grading design shall:

1. Minimize soil instability by providing adequate vegetative cover.
2. Reflect the recommended procedures as outlined in current soil reports for the area.
3. Ensure adequate site drainage.
4. Ensure that drainage is directed away from the inside (or backside) of all walls.

E. Grading should result in a graceful re-contouring of the Lot rather than harsh geometric slopes, banks and pads. Where graded slopes meet natural terrain, there should be a smooth, gradual transition. Turf areas should not exceed a 4:1 slope and should have a minimum 1.5% slope for proper drainage unless detention is desired. Shrubbery and ground cover area

and mountain vistas are preserved for as many Lots as possible, lot owners shall maintain their lot to preserve such vistas.

- B. Development: Each owner of a Lot upon which such easements exist shall identify the easement on the proposed Lot Site Plan and Landscape Plan. Development within such easements shall be in compliance with the Standards for these easements.

Section 3.12 Restricted Public Utility and Drainage Easement. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear ten (10) feet of each lot. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority of utility company is responsible.

Section 3.13 Nuisance. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No clothes drying or storage of any articles which are unsightly in the opinion of the Architectural Control Committee will be permitted unless in enclosed areas designed for such purposes. No Unit owner shall conduct any activity on his or her property which is or may become unsafe or hazardous to any person or property.

Section 3.14 Garbage and Refuse Disposal. Trash, garbage or other waste shall not be kept on a lot, or common areas or Limited Common Areas except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each lot and its abutting street are to be kept free of trash, weeds and other refuse by the lot owner. No unsightly materials or other objects are to be stored on any in view of the general public.

Section 4.0 LANDSCAPE DEVELOPMENT STANDARDS

Section 4.1 General:

- A. Definition and Expectations: The landscape of the properties is more than just the front yards of individual lots, it is the total visual image of the

should not exceed a 3:1 slope and should have a minimum 1.5% slope.

F. Grading and drainage shall conform to the overlot grading diagram on file. Irrigation nuisance water shall be directed to outfall in the established swales. Lot owners are encouraged to minimize the discharge of storm water and irrigation runoff from the Lot through the use of ponding areas within the landscape of the Lot.

Section 3.10 Signage:

A. General: No signs, billboards or other similar graphic/verbal messages shall be permitted on any of the lots except as allowed below.

B. Addresses: Street addresses are expected under the provisions of Section 5.2I of these Guidelines.

C. Temporary Signs: Signs intended for special occasions or temporary activities must be approved by the Committee prior to installation and a specific time frame for their existence will be part of any approval; this includes the construction and Lot sale signs below.

D. Construction Signs: One sign per Lot installed in/on a Lot during construction and which advertises the builders and contractors, shall be permitted only during construction and must be removed upon substantial completion of the project. These signs cannot exceed 4'x4' in size nor be six feet off the ground.

E. For Sale Signs and Lot Ownership Signs: These are signs that advertise the Lot (and residence) for sale or, prior to construction, list the number of the Lot and/or the Owner's name. These signs cannot exceed a 2'x3' sign face nor be four feet off the ground.

Section 3.11 View Easements:

A. General: To assure that golf course, city

property. It is the public face, the place where the visual quality of the property is established. There are no other views which have more impact on the property than its appearance from the street and the views of the golf course. To ensure continuity of this image and the improved property values and perception that it brings, each townhome must contribute its part in creating the total picture. The following is intended to provide minimum standards for creating this type of landscape.

B. Hardscape: Hard surfaces such as walks, driveways, patios, decks and courtyards shall be designed integral to the residence and surrounding landscape. Large, unbroken smooth surfaces should be avoided. The integration of textured surfaces such as brick, tile, stone, textured concrete, etc. is encouraged. Asphalt is not a permitted surface. Large areas of colored rock or gravel are not permitted. Rock and boulder groupings buried to look like natural outcroppings, cobblestone and bark mulch are permitted but may not comprise more than ten percent of the landscape visible from the street.

C. Plant Materials: Plant materials provide shade, windbreaks, accent and screening to create the landscape. Where structures are present, plants should complement the style and scale of architecture. The Declarant expects Owners to select plants which are hardy to the St. George area and which can withstand the extremes of climate, soil conditions and wind experienced in this area.

D. Irrigation: All planting must have permanent automatic irrigation to ensure its viability. Irrigation systems should be designed to segregate turf areas from shrub areas. Water conserving designs are encouraged.

E. Designer: It is recommended that all landscape design be done by a licensed landscape architect.

F. Installation: Lot Owners must install plant materials in a manner generally acceptable to the horticultural practice of the area and in a manner which will maximize chances of survival. Landscape installation of all areas visible from the street must be completed within four months of obtaining a Certificate of Occupancy for the residence.

G. Maintenance: Lot Owners are expected to maintain their landscapes in top condition at all times. This requirement includes weekly lawn mowing, pruning trees and shrubs, fertilizing, watering, removal of dead plants or part of plants, replacement of plants and overseeing of lawn areas and removal of all debris.

Section 4.2

Planting Design:

A. Design Concept: In the front yard areas of each Lot, the landscape should blend plants and architecture so that the plants and building seem to be one. Plantings in masses and adjacent to buildings will produce a recognizable theme to neighborhood streetscapes, yet diversity along the street. The planting of widely dispersed individual trees between buildings and the street (e.g., in the middle of the front yards) creates a disjointed streetscape and is not permitted. View easements must be maintained for the benefit of the Lot Owners. Plant materials within these easements shall not exceed six (6) feet. The use of shrubbery offers a great deal of flexibility and creativity and can be used to express individual character. The many design elements of shrubs such as form, foliage color, texture, size and flower can help achieve individuality. The use of annual colors is also encouraged as an accent to the streetscape.

B. Safety: Plant material must be so located as to ensure safe traffic sight lines and visibility of signage. In addition, hazards to pedestrians or traffic created

by plant litter must be minimized.

C. Quality and Size: The minimum size of all trees shall be 15 gallon. All trees shall be nursery grown, free of disease, of good habit and representing the best qualities of their species.

D. Coverage and Quantity: The front yards of all residences shall have not more than 20% coverage of non-living, non-organic material desert-type landscaping, exclusive of driveways and sidewalks. Grass, massed shrubbery and ground cover beds are encouraged; bare soil is not permitted.

Section 5.0

ARCHITECTURAL STANDARDS

Section 5.1

General:

A. The following standards are established to promote a continuity of building style throughout the development.

Section 5.2

Architectural Standards:

A. Style:

1. The individuality of a residence and its site may be expressed but cannot adversely affect the overall community composition. The design and use of such smaller detail elements as court walls, entry walks, hardware, lighting fixtures, planting, doors, address plaques and window treatments will help establish individual identity while still reinforcing the larger architectural theme.

2. Architectural styles must comply with the "authorized plans" for the development. Declarant will make available the "authorized plans" which must be used for the construction of a residence on each lot in the Development.

B. Form and Scale: The bulk and mass of the building shall be proportional. No residence shall be higher than one story

but may include a basement and a main level. The design of the residence should be broken down into smaller elements to provide for a human scale.

C. **Garage:** All residences must have a two-car garage which is enclosed and attached to the residence. Carports are not a substitute for a garage where enclosed on three sides and made an integral part of the principal residence. Sidefacing garages are preferred and encouraged.

D. **Size:** No residence shall be higher than one story or twenty-four feet to the top of the ridge line on the roof (exclusive of chimneys and vent stacks) as measured from the average finish grade at the front of the house. There will be a minimum size for all residences (exclusive of garage, servants' quarters, pool houses or any accessory building). The minimum size shall be 1100 square feet.

E. **Materials:** All building materials should relate to the native building palette of the Southwest. These materials include exterior approved white plaster (stucco) and tile roof shingles. Aluminum and metal products are specifically prohibited as the primary building material. Accent elements of tile, clay, glass, fiberglass (by special permission of the Committee) and metal trim are permitted.

F. **Roof Design:**

1. Residential structures must have a minimum of 6/12 pitch roofs and no flat roofs are permitted.

2. With the exception of normal exhaust fans, vents and pipes, and chimneys, nothing is permitted to break the visual lines of the roof. All solar collectors must be designed and built integral to the roof and may not protrude above it. Air conditioners, heaters, swamp coolers, TV and radio antennas, flagpoles, satellite and radar antennae and other such mechanical implements are not

permitted on the roof.

3. Roof material must be of tile material and must be approved by the Architectural Control Committee.

G. Color: All exterior tile colors must be approved by the Architectural Control Committee.

H. Lighting: Low level and subtle lighting of facades and front yard landscapes is encouraged. The lighting of address plaques and numbers is especially important. No lighting, however, shall produce glare or intrude into adjoining lots or lots across the street. See the requirements of Section 4.3 Lighting.

I. Addresses: All residences shall prominently display their address numbers so that they can be easily read (both at night and in the day) by persons in the street. Numbers which are at least 3" tall shall be installed on the front of the house.

Section 6.0

CONSTRUCTION PROCEDURES

Section 6.1

General:

A. Proper care shall be exercised to protect the public health, safety and welfare during all phases of construction. All materials shall be stored in a manner that is not objectionable to public view.

Section 6.2

Nuisance Control:

A. No operation or activity shall create any of the following effects to the extent that they are permanent or are detectable without the use of instruments at any location outside of the lot upon which the operation or activity is conducted:

1. change of air temperature or humidity
2. dust, other airborne particulate matter or debris
3. noxious odor
4. glare from lighting or reflective materials
5. disruption of television or radio reception

6. excessively loud noises for long periods of time

The Committee may enact strict procedures, temporary or permanent, at any time, to ensure noise and dust/debris abatement measures are taken by Owners and their contractors.

- B. No construction activity shall be allowed between the hours of 7:00 p.m. and 6:00 a.m.

Section 6.3 Grading:

- A. Due to the often spotty nature of soil and rock conditions in the St. George area, each Owner shall conduct his own soil test and analysis prior to grading operations. Building pads shall relate in a positive manner to the street, allowing a smooth physical transition and shall not be made artificially high for the purpose of gaining height.

Section 6.4 Cleanliness:

- A. Because local winds frequently carry debris from construction sites, each Lot shall be kept free of trash, materials and waste which can be carried by the wind. The site shall be left in a neat and orderly condition at the close of each weekday. Scrap material and debris shall be disposed of in proper receptacles and such receptacles shall be collected and emptied prior to becoming over-filled. Hazardous debris and material shall be removed from the site each day. No hazardous material shall be stored on the site overnight. Weeds, debris and litter shall not be allowed to accumulate on-site.

Lot Owners and their contractors shall not store building materials or debris on vacant lots.

- B. No construction trailers or trailers for temporary living quarters shall be allowed on-site, nor shall owners nor their contractors allow their debris or

materials to remain on adjacent vacant lots if blown over by wind.

- C. There shall be a minimum of one port-a-potty available on location during construction.

Section 6.5

Contractors:

- A. All contractors shall be properly licensed and bonded with the City of St. George and the State of Utah and shall meet any other legal requirements.

Section 6.6

Responsibility:

- A. The Owner of each Lot has the direct responsibility for the control of his/her contractors and the actions of said contractors during any construction permitted after the initial construction of the townhouse structure. All liability for misappropriate and unlawful actions and activities in violation of these Development Standards caused by contractors shall rest with the Owner.
- B. The Declarant reserves the right to enforce these Standards and where necessary to retain the Lot owner's construction deposit to pay for damage to common areas and/or cleanup of adjacent lots and common areas.

ARTICLE VII--EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance by Owner Each owner shall be responsible for maintenance to the exterior of the townhome owned. The Trustees shall, however, in the default of the owner to perform maintenance which is the owner's responsibility, and after a two-thirds (2/3) vote, and after ten days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each townhome and lot and the limited common area adjacent and appurtenant thereto. The cost of such maintenance shall be assessed against the lot or townhome

Section 2.

Exterior Maintenance by Association

The

Association shall be responsible for maintenance upon the common area, the limited common area, and the area of any lot outside the walls of the townhome which is of the same character as surrounding common or limited common area. The Association shall maintain all landscaping. The cost of such maintenance shall be a common expense.

Section 3. Access at Reasonable Hours For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.

Section 4. Alteration of Certain Maintenance Duties by Rule The duty of maintenance for the area of a lot outside the walls of the townhome, and the limited common areas adjacent and appurtenant to the townhomes may be altered by Rule of the Association.

ARTICLE VIII--USE RESTRICTIONS

Section 1. Construction, Business and Sales Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of lots during the period of construction and sale of said lots and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 2. General Use Restrictions All of the properties which are subject to this declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the common property. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be moved from other locations to the properties. After the initial construction on a lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

Section 3. Signs: Commercial Activity Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or

nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 4. Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners or which shall in any way increase the rate of insurance.

Section 5. Animals No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except that dogs, cats 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 property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to lot owners. All pets must be kept in the lots or on a leash when in the common areas. This provision may be made more restrictive by Rule of the Association.

Section 6. Use of Common Area Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 7. Parking No motor vehicle which is inoperable shall be allowed within the Properties, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense. If parking spaces are designated on the plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the lot owner with the corresponding number. If parking areas are not designated on the

plat with lot numbers, the Trustees may assign vehicle parking space for each lot. Parking spaces within the Properties shall be used for parking of motor vehicles actually used by the owner or his immediate family or guests for personal use and not for commercial use, and for guest parking. Recreational vehicles, boats, travel trailers and similar property may not be parked within the Properties unless permitted by the rule of the Association.

Section 8. Planting and Gardening No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.

Section 9. External Apparatus No lot owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

Section 10. Exterior Television or Other Antennas No exterior radio or other antennas except one television antenna which shall not exceed four feet in height, per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Trustees.

Section 11. Garbage Removal All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 12. Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties of any lot.

Section 13. Interior Utilities All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

Section 14. Leases Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the

Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease.

ARTICLE IX--EXPANSION

Declarant reserves the right, at its sole election, to expand the Properties to include additional property, including but not limited to Mesa Palms Homes Phases IV and V which is included in the property description described at Exhibit "A", by unilateral action of Declarant without the consent of owners, for a period of seven (7) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

Expansion shall occur by the Declarant filing:

1. an additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration upon the filing of a Declaration of Annexation and
2. a Declaration of Annexation (after satisfying conditions hereafter stated) which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration.

Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings, architecturally compatible to the existing townhomes, similar to the townhomes already constructed, constructed out of similar materials, with similar lot size. The maximum number of lots to be added shall be 275. The Declarant shall have the sole discretion as to development of the common area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such common areas shall be owned by the Association.

The common area and limited common area in such expansion area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, prior to recordation of the Declaration of Annexation and the Association shall accept the deed to said areas. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of the property and facilities of the Association. If, at the time of the expansion, the Declarant has Class B ownership status, that status shall extend to all lots in the expansion area. Otherwise, owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each lot and

rights of an eligible person who has made an election under this Article, but who fails to make any payment required under this Article or to otherwise comply with this Article, may be declared forfeit by written notice if the default is not cured after 30 days written notice of the default is given. In the event such a forfeiture is made (and only in such event), the eligible person shall cease to have rights under this Article but shall remain liable for any obligations accrued prior to that time, including reasonable attorney's fees and interest at the legal rate incurred in legal action thereafter.

ARTICLE XI--EASEMENTS

Section 1. Encroachments Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of the same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities There is hereby created a blanket easement upon, across, over and under all of the properties for ingress and egress, limited to water, sewers, gas, telephone and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties in such a way as to unreasonably encroach upon or limit the use of the common area or limited common area or any structure thereon. In the initial exercise of easement rights under this section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without conflicting with the

(ii) expenses of maintaining a parking area, if any, around the recreational facilities.

The eligible person's share shall be determined by multiplying such expenses by the number of eligible persons making the election to use the recreational facilities divided by the sum of the number of the eligible persons making the election, added to the number of townhomes which have been platted as a part of one or more phases of the Mesa Palms Townhomes Planned Unit Development;

(c) any special assessment which the Association levies against its members for improvements to the swimming pool and clubhouse, and other recreational facilities if constructed, in the same proportion as specified in Article X, Section 4(b); and

(d) any recreational facilities users fees established by the Trustees which apply equally to all members of the Association and all eligible persons.

Section 5. Right of Use Eligible persons who comply with all provisions of this Article shall have such rights of use of the recreational facilities of the Association as possessed by members of the Association, including any right to be accompanied by guests or any right to delegate the right of use to renters. Such right of assignment by eligible persons, however, shall not extend to friends who are not considered guests or renters. Such use by eligible persons shall be subject to this Declaration, and such rules as the Association shall promulgate governing the use of the recreational facilities.

The Association has the right to suspend or limit the rights of eligible persons who cease to comply with all provisions of this Article, the Declaration, and such rules and regulations as the Association shall promulgate in relation to use of the recreational facilities.

Section 6. Users Not Members Eligible persons who comply with this Article are not members of the Association and do not have voting rights in said Association.

Section 7. Default or Delinquency In the event an eligible person fails to make any payment required under this Article or to otherwise comply with this Article, the Association may bar said person and his family and guests from the recreational facilities until payment is made or compliance is obtained, and may institute suit against the eligible person to recover the amount due or to obtain compliance or to restrain from use of the recreational facilities, together with reasonable attorney's fees and interest at the legal rate. At the sole election of the Association, the

lot owner in any expansion area shall be equal to the liability of each lot and lot owner in the original properties.

ARTICLE X--USE OF RECREATIONAL FACILITIES

Section 1. Use Permitted The Association shall permit use of the recreational facilities, if any, within the properties. Lot owners in the Mesa Palms Estates Subdivision Phase I, and lot owners in Mesa Palms Estates Subdivision Phase II and any other additional subdivision lots included as part of any expansion referenced in Article IX herein, who have, in accordance with the provisions of the Protective Covenants for Mesa Palms Estate and this Article, have elected to make use of the Association's recreational facilities. Lot owners in the Mesa Palms Subdivision Phase I and Mesa Palms Subdivision Phase II and any other "expansion subdivisions", who make such election are deemed "eligible persons" to use the Association's recreational facilities.

Section 2. Recreational Facilities Recreational facilities referred to in this Article shall include, but may not be limited to, the clubhouse and swimming pool contained in the properties, if any.

Section 3. Election Required In order to be entitled to use the recreational facilities within the properties, eligible persons must file a recordable written election with the Association which refers to the land owned by the eligible person. The revocable written election shall be irrevocable for a period of one (1) year, but may be revoked after one (1) year upon thirty (30) days written notice to the Association. The written election shall terminate with a change in ownership of the land owned by the eligible person.

Section 4. Payment Required In order to be entitled to use the recreational facilities within the properties, eligible persons must pay:

(a) the fixed sum of Two Thousand Five Hundred Dollars (\$2,500.00) which will be used to offset initial construction and property costs in relation to the recreational facilities;

(b) a monthly installment evidencing a proportionate share of

(i) the expenses of operation of the swimming pool and clubhouse, and any other recreational facilities which may be built, including (without limitation) maintenance costs, replacement reserves, real property taxes, insurance and utility charges arising therefrom, and

terms hereof. An easement is expressly reserved to allow public utility companies to maintain and improve any and all public utilities and drainage systems that are installed in, upon, under or through the Property.

Section 3. Police, Fire and Ambulance Service An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

Section 4. Maintenance by Association An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot to perform the duties of maintenance and repair.

Section 5. Other Easements The easements provided for in this Article shall in no way affect any other recorded easement.

ARTICLE XII--GENERAL PROVISIONS

Section 1. Enforcement The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed 10% of the amount of the maximum annual assessment against any owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice.

Section 2. Severability All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection,

paragraph, sentence, clause or phrase.

Section 3. Duration The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4. Amendment The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the owners. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Notwithstanding the foregoing, the Declarant reserves the right for so long as he shall have Class B membership status, to unilaterally amend the Declarations.

Section 5. Notices Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 6. Gender and Grammar The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 7. Waivers No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 8. Topical Headings The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

ARTICLE XIII--ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

Exhibit "B"

MESA PALMS TOWNHOMES
ARCHITECTURAL CONTROL REVIEW APPLICATION

TO: MESA PALMS TOWNHOMES HOMEOWNERS ASSOCIATION
ARCHITECTURAL CONTROL COMMITTEE

PROJECT NAME: _____

FROM: _____
Applicant's Name

Applicant's Address

Telephone Number _____ Date _____

ARCHITECT _____

ENGINEER _____

LANDSCAPE ARCHITECT _____

GENERAL CONTRACTOR _____

EMERGENCY TELEPHONE NUMBER _____

REVIEW CRITERIA

Every application presented to the Architectural Control Committee is given careful review, with consideration given for the site and the requested amenities. Each submission is judged on its own merits. What may be acceptable for one submission may not apply to another submission. Approval of plans is based on many factors. One of the most important factors is the relationship to neighboring structures, sites, land uses, and general theme. The specific and general intent of the plans must conform to the Development Standards.

APPLICATION CONTENT

Any item requiring review and approval by the Architectural Control Committee must be submitted to the Committee. Two complete sets of plans and documents thereto must be submitted to and approved by the Architectural Control Committee prior to the start of construction. Please refer to Section 2.0 of the Development Standards. The application fee must accompany this application.

APPLICANT DECLARATION

The applicant hereby acknowledges that he has read the Development Standards and that the plans being submitted are in conformance with the Development Standards.

Applicant's Signature

Date