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Restrictive Page 1 of 33  
Russell Shirts Washington County Recorder  
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WHEN RECORDED, MAIL TO:

Rio de Sión  
c/o Riverwood Hollow, LLC  
2167 Jacob Street  
Santa Clara, Utah 84765

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND PROTECTIVE COVENANTS

OF

*Rio de Sion*™

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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND PROTECTIVE COVENANTS**

**OF  
RIO DE SIÓN™**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND PROTECTIVE COVENANTS (the "Declaration") is executed this 5 day of June, 2006 by Riverwood Hollow, LLC (the "Declarant") to establish a planned development for single family homes to be known as "Rio de Sión".

*RECITALS*

A. Declarant owns the following described property (the "Property") located in Washington County, State of Utah, to-wit:

**SEE LEGAL DESCRIPTION ATTACHED TO THIS DECLARATION AS EXHIBIT "A" AND INCORPORATED INTO THIS DECLARATION BY THIS REFERENCE**

B. The Declarant desires to subdivide the Property and to develop on the Property a branded southwest rustic style residential community. Declarant intends to develop the community with improvements consistent with the special aspects of the natural setting. This Declaration establishes a comprehensive plan which is designed to enhance the quality of all future planning, architecture, development, and land use at Rio de Sión and creates predictability in terms of future development. The intent of this Declaration is to create a developmental culture of high quality. Its purpose is to preserve, continue, and maintain the character of the community which is Rio de Sión and its special landscape and environment. It is, therefore, the objective of this Declaration to institutionalize a procedure for the accomplishment of these mutually shared goals for the benefit of the community as a whole.

C. All Owners of Property at Rio de Sión benefit from this Declaration. Tangible, particularized benefits include the increased desirability of property subject to high planning and construction standards and the assurances and predictability that arise from a comprehensive plan of development of high quality. Each Owner, in the use and enjoyment of such Owner's Property, realizes these benefits.

In addition, there are intangible benefits which accrue to each Owner and to the public at large in that the development plan seeks to preserve and protect the rare quality of the landscape and the environment of Rio de Sión. All parties benefit directly and indirectly from this Declaration and from its plan for orderly, planned, and controlled development.

All Owners benefit not only from the development which will be permitted in accordance with the standards and requirements which are part of this Declaration, but they also benefit from that which will not be permitted. Each Owner agrees that the restrictions set forth in this Declaration exist to preserve and protect the common good and the overall character and image

of the Rio de Sión community and its development plan. Accordingly, this Declaration specifically empowers the ACC, as defined in section 5.1, to approve and to disapprove proposals using both subjective and objective factors as appropriate in order to achieve the goals of this Declaration and the resulting mutually enjoyed benefits.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant establishes the following covenants, conditions, easements and protective covenants.

**1. Definitions.** As used in this Declaration, the following capitalized terms shall have the meanings set forth:

1.1. "Additional Amenities" is defined in Section 11.2.

1.2. "Assessment" means the charges assessed with respect to each Lot and Owner pursuant to Section 10.

1.3. "Architectural Control Committee" or "ACC" is defined in Section 5.1.

1.4. "Architectural Design Guidelines" is defined in Section 7.1.

1.5. "Association" means Rio de Sión Owners Association, Inc., a Utah non-profit corporation, its successors and assigns.

1.6. "Budget" means a budget for the operation of the Association and the maintenance and repair of the Common Area to be promulgated in accordance with Section 10.6.

1.7. "Common Area" means that portion of the Property shown on the Plat as common areas including, without limitation, common area around the Virgin River, landscaping along Los Entrada Drive, the entry features constructed on the Property and any fencing around the perimeter of the Property. Common Area is dedicated to the common use and enjoyment of the Owners in accordance with the terms and conditions set forth in this Declaration and shall be owned by the Association.

1.8. "Declarant" means Riverwood Hollow, LLC and any Person which the Declarant designates in a recorded document to be its successor.

1.9. "Declaration" means this instrument and any amendments from time to time pursuant to Section 12.2.

1.10. "Development Phase" means the period of time that commences upon the date of this Declaration and continues until the first to occur of:

a. The first day Declarant ceases to own at least one (1) Lot for a consecutive period of twenty-four (24) months; or

b. The date Declarant records a notice in the Official Records of Washington, County, Utah terminating the Development Phase.

1.11. "Easement Areas" means the area along the boundaries of each Lot, as indicated on the Plat, which is subject to the easements pursuant to Section 2.2, for installation, operation and maintenance of utilities and drainage lines, pipes and similar facilities.

1.12. "Family" means, with respect to a designated Owner or Resident, natural Persons related to such Owner or Resident by blood or marriage, by legal adoption or by operation of law.

1.13. "Fence and Trail Easement" means an easement approximately fifteen (15) foot wide along the rear of Lots 6,7,9 and 10 for a walking trail and fence/wall, together with the right of ingress and egress by maintenance vehicles and personnel solely employed or contracted with the Declarant and/or the Association for the inspection, maintenance, repair, and ground/refuse clearing of the Common Area (Open Space) as delineated on the Plat. The Fence and Trail Easement shall include an additional fifteen (15) foot wide temporary construction easement abutting the Fence and Trail Easement for the initial construction of the fence and from time to time thereafter for the inspection, maintenance, repair and reconstruction of the same.

1.14. "Final Approval" is defined in Section 5.5.

1.15. "Governmental Authorities" means all governmental or quasi-governmental units, commissions, councils, boards, agencies, districts, staffs or similar bodies.

1.16. "Governmental Requirements" means all statutes, ordinances, regulations, rules, requirements, policy statements, regulations similar pronouncements and laws established by Governmental Authorities.

1.17. "Home" means a detached single family dwelling or structure designed and used for occupancy by a single family and located on a Lot.

1.18. "Lot" means a separately numbered and individually described tract of land shown and labeled on the Plat as a Lot.

1.19. "Member" means any Person who holds membership in the Association. As set forth in Section 9, every Owner is a Class A Member, and the Declarant is a Class B Member.

1.20. "Members" means the aggregate of all of the Persons who are a Member.

1.21. "Mortgage" means a mortgage, deed of trust or other security agreement which constitutes a lien against a Lot and which secures the obligation to repay a loan or advance.

1.22. "Mortgagee" means a mortgagee, beneficiary, secured party or other Person whose loan or advance is secured by a Mortgage.

1.23. "Owner" means the entity, Person or group of Persons owning fee simple title to any Lot. Regardless of the number of Persons participating in ownership of each Lot, the group of those Persons shall be treated as one "Owner." Notwithstanding any interpretation of law, "Owner" shall not include a Mortgagee unless and until such Mortgagee acquires fee simple title to the Lot at a foreclosure sale, trustee's sale or by deed-in-lieu of foreclosure.

1.24. "Person" means a natural person or a legal entity.

1.25. "Pioneer Home Museum" means a historic rock structure with historic significance located in the Common Area of the subdivision and maintained by the Association.

1.26. "Plat" means the subdivision plat recorded in connection with this Declaration titled "Rio de Sion" consisting of one sheet, prepared and certified by James A. Raines, a Utah Registered Land Surveyor, or any replacements thereof, or additions thereto.

1.27. "Property" means that certain real property described on Exhibit "A" and such additional property as may hereafter be subjected to this Declaration pursuant to Section 12.3.

1.28. "Resident" means a Person who occupies a Home on a long term basis who is not an Owner. Typically, a Resident will be a tenant of an Owner.

1.29. "Roads" means all streets and rights-of-way for vehicular passage, and all curbs, gutters, sidewalks and similar improvements located in or adjacent to such streets, all as set forth on the Plat.

1.30. "Rules" are defined in Section 3.4.

1.31. "Setback Areas" means the areas on each Lot that are described in Section 7.4. The Setback Areas on Lots 6 through 10 shall be adjusted based upon the Fence and Trail Easement, whereby the boundary of the Fence and Trail Easement shall be treated as if it were the boundary line of the Lot for purposes of determining the Setback Areas on such Lot.

1.32. "Walking Bridge" means a pedestrian bridge over the Virgin River from the Rio de Sion subdivision to Main Street in the Town of Virgin. The Walking Bridge is to be maintained by the Association. Notwithstanding the foregoing, Declarant shall have the right in its sole discretion to remove the Walking Bridge. In such an event, the terms and provisions of this Declaration pertaining to the Walking Bridge shall no longer be applicable.

1.33. "Trustees" means the governing body of the Association, which shall be constituted in the manner set forth in Section 10.2.

1.34. "Work" is defined in Section 5.1.

**2. Grant.**

2.1. Plat. Declarant hereby includes all of the Property in the Plat of Rio de Sión Subdivision and divides the Property into Lots and Common Area, as shown on the Plat.

2.2. Easement Areas. Declarant grants and creates the easement in the Easement Areas on each Lot as set forth on the Plat. Except to the extent as set forth in Section 4.3(b) with respect to a single Home constructed on more than one (1) Lot, the easements indicated on said Plat are hereby perpetually reserved for public utilities and for any other uses as designated on the Plat or set forth in this Declaration.

2.3. Declaration Binding on Successors; Runs with Land. Declarant further declares that all of the Property is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the limitations, restrictions, covenants, conditions, easements and protective covenants set forth in this Declaration. Each grantee or purchaser of a Lot shall take his or her interest in the Lot subject to all of the terms of this Declaration. All limitations, restrictions, covenants, conditions, easements and protective covenants set forth in this Declaration run with the land.

**3. Common Area.**

3.1. Title to Common Area. Prior to the conveyance of the first Lot to any other Person, but subject to this Declaration and all easements and rights-of-way of record, the Declarant will convey fee simple title to the Common Area to the Association. By accepting the deed to the Common Area, the Association covenants to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and first-class condition in accordance with the standards governing communities in Washington County, Utah, and at all times, and to operate the Common Area at the expense of the Association.

3.2. Rights of Owners to Use Common Area. Every Owner has a right and easement of use and enjoyment in and to the Common Area.

3.3. Delegation of Use. An Owner may delegate his or her right of use and enjoyment to the Common Area and facilities located thereon to the members of his or her Family who reside in the Home located on the Lot and to a Resident and such Resident's Family who reside in the Home located on the Lot.

3.4. Rules. The Trustees shall have the authority to promulgate rules and regulations, from time to time, for the governance of the Property and Persons within the Property including the use of the Common Area (the "Rules"). The Trustees may modify the Rules at any time. The Rules of the Association shall be compiled and copies shall be made available to the Owners for inspection and copying.

3.5. Owner's Rights to Common Area Run With Land; Certain Restrictions on Rights. The rights and easements granted to each Owner pursuant to this Section are appurtenant to and pass with title to the Lot owned by such Owner and shall be subject to:

a. The right of the Association to charge reasonable admission, use, service and other fees for the use of any service or facility provided by the Association or located upon the Common Area.

b. The right of the Association to limit the number of guests or invitees of Members using the Common Area at any time and from time to time.

c. The right of the Association to suspend the voting rights and/or common utility service of a Member:

(1) For any period during which any Assessment or portion thereof against his or her Lot remains unpaid; and

(2) For any period not to exceed sixty (60) days for any infraction of the published Rules.

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. The right of the Association with the approval of sixty-seven percent (67%) of each class of Owners, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any Person.

f. The right of the Association to grant easements across the Common Area and Easement Areas for public utilities or other public purposes consistent with the intended use of the Common Area or Easement Areas.

g. The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure or to remove any encumbrances existing or claimed to be existing with respect to the Common Area.

h. The terms and conditions of this Declaration.

i. The right of the Association to adopt and enforce the Rules.

3.6. Installation of Certain Improvements to Common Areas. Developer shall install the following improvements:

a. The trail along the Virgin River with trail head and gravel parking area.

b. The storm water drainage system required by Virgin City to be developed and installed in connection with the subdivision and development of the Lots.



3.7. Care and Maintenance of the Common Areas. The Association shall be responsible for care and maintenance of the Common Areas. Without limiting the foregoing, the Association shall maintain and repair:

- a. The trail, trail head and Walking Bridge.
- b. Pioneer Home, museum sign and structure, entry landscaping and fence.
- c. The walking trail that may be installed within the Fence and trail easement. The fence and any gates on the Fence and Trail Easement will be treated like a boundary fence with the Owner of the Lot maintaining and repairing the side of the fence and gate facing the Lot and the Association maintaining and repairing the side of the fence and gate facing the Fence and Trail Easement. The cost to replace or reconstruct the fence and gate after the initial construction thereof shall be equally shared by the Association and the Owner of the applicable Lot.

3.8. Damage to Common Areas. Notwithstanding the provisions of Section 3.7, any damage to the Common Areas or to any personal property owned by the Association caused by any Owner and/or their agents, guests or invitees must be repaired by the Owner as soon as possible after such damage is discovered. In the event of failure of the Owner to make required repairs, the Association may make such repairs and the responsible Owner shall be obligated to pay the Association the amount of the cost of repair plus interest at the reasonable rate established from time to time by the Association as part of the Rules. Any amount owed to the Association as a result of the repair of the damage to the Common Area and facilities shall be an Assessment charged solely to the Lot Owner causing the damage.

**4. Use Restrictions.**

4.1. Lots and Homes Limited to Residential Use. Each Lot shall be used only for the purpose of constructing a Home, and the occupancy of the Home by one (1) Family for residential purposes and for no other purposes. No professional, business or commercial use shall be made of any Lot or any Home located thereon; provided, however, that the restrictions contained in this Section shall not be construed in such a manner as to prohibit an Owner or Resident from:

- a. Maintaining a personal professional library, office or study in his or her Home for his or her own use;
- b. Keeping personal business or professional records or accounts in his or her Home; or
- c. Handling personal, business or professional telephone calls, electronic communication or correspondence from his or her Home.

Nothing herein shall prevent Declarant from maintaining a development office nor prevent Declarant or any home builder from operating model homes on the Property.

4.2. Rental Use. An Owner may lease or rent a Home to a Resident for occupancy by such Resident and the members of his or her Family. The initial term on such lease or rental agreement shall not be less than six (6) months, but may thereafter be extended on a month-to-month basis. An Owner shall provide written notice to the Association of any lease or rental of the Home located on his or her Lot, which notice shall state the name of the Resident and the term of the lease or rental agreement. No Home shall be rented on a daily, weekly or monthly basis. Except for occasional overnight guests of the Owner or a Resident who do not pay for accommodations, no Home shall be occupied by more than one (1) Family at any time.

4.3. Lot Size:

a. The area of each Lot as established by the Plat constitutes the minimum size of such Lot, and no Person shall further subdivide such Lot.

b. Adjacent Lots may be combined for construction of one (1) single family Home constructed across the common boundary line of such Lots, subject to approval from the Town of Virgin. In the event the Town of Virgin requires a consolidation of the Lots, the Owner, at his/her sole cost and expense, shall be responsible for any plat or other instrument required by the Town. In the event of such consolidation of adjacent Lots, all easements and rights of the Association, its Members, other Owners, and third Persons (including, without limitation, Governmental Authorities and utility companies) in the boundary areas between such Lots that had been exercised or used prior to construction of the single family Home on the adjacent Lots shall remain in place, shall be enforceable and may be used in perpetuity by the beneficiaries of such easements and rights, and their successors and assigns. However, all easements and other rights in the boundary area between such Lots which had not been exercised or used prior to construction of the Home may not thereafter be exercised, and each use of the Easement Areas that is abandoned for more than six (6) months may not thereafter be resumed. For purposes of levying Assessments and voting, adjacent Lots upon which one (1) Home is located shall continue to be treated as separate Lots; provided, upon written request of the Owner of the adjacent Lots, the Lots upon which a single Home is located may be combined into one (1) Lot for purposes of this Declaration, in which event, the combined Lots shall thereafter be assessed as one (1) Lot and the Owner thereof shall have only one (1) Class A Membership interest and one (1) vote on account of the Ownership of such Adjacent Lots.

4.4. Care and Maintenance of Lot and Home. The Owner of each Lot shall keep the same free from rubbish, litter and noxious weeds. All Homes and other permitted structures, landscaping and improvements shall be maintained in good condition and repair at all times in a manner that, in the judgment of the Trustees, does not detract from the appearance of the Lot or the Home located thereon, or adversely impact the value, appearance or use of any other Lot or Home. Each Owner shall be responsible for maintenance of his or her Lot. In the event any Owner fails to perform required maintenance, the Trustees shall have the right to cause all required maintenance to be performed on the Lot and Home, and the cost of said maintenance,

plus interest at the reasonable rate established from time to time by the Association as part of the Rules, shall be added to and become part of the Assessment to which such Lot is subject.

4.5. Easement For Maintenance of Adjoining Lot. An Easement Area on each Lot may be used by the Owner of each Lot adjacent to the Easement Area to construct, maintain or repair the Home and other improvements upon an adjacent Lot; provided, however, that:

- a. Any such entry shall be made only with prior notice, at reasonable times and with as little inconvenience as possible to the Owner of the entered Lot;
- b. Any damage caused by such entry shall be repaired at the expense of the Owner on whose Lot such construction, maintenance or repair work was being performed, and
- c. In no event shall the right created by this Section 4.5 be deemed to permit entry into the interior portion of any Home or to damage any part of any Home.

4.6. Restrictions Applicable to Easement Areas and Setback Areas. No building or other structure shall be built or maintained within the Setback Areas. No improvement, planting or other material shall be placed or permitted to remain within the Easement Areas which may damage or interfere with the installation, maintenance or replacement of utilities in the Easement Areas, change the direction or flow of drainage channels in the Easement Areas, or obstruct or retard the flow of water through drainage channels in the Easement Areas. The Easement Areas on each Lot and all improvements in such Easement Areas shall be maintained continuously by the Owner of the Lot at his or her cost and expense, except for those improvements for which a public authority or utility company is responsible, or for those improvements which the Association agrees to maintain and include in the Budget. The Owner of each Lot shall, from time to time as may be reasonably required, grant additional rights over, across, on, under and upon the Easement Areas for such additional utilities and communication information services as may be provided from time to time by a public authority, public or private utility company or the Association. Given the rapid change in the nature and types of utility and communication services, this provision shall be construed liberally to facilitate the access of all Owners to available utilities, communication, media and information services.

4.7. No Hazardous Activities. No activities shall be conducted or improvements constructed on the Property which are or might be unsafe or hazardous to any Person or to any other real or personal property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

4.8. Motorbikes. All motorcycles, trail bikes, three-wheel powered devices, automobiles, and two- or four-wheel drive recreational type vehicles, such as an all-terrain vehicle (ATV), are to be operated only by a natural Person with a valid driver's license and only on established Roads. Such vehicles are specifically prohibited from all other portions of the Property, including the equestrian and walking trail along the Virgin River, and are to be used on

said Roads only for ingress, egress, and access purposes and not for recreational purposes. The Association shall have absolute and sole discretion to make Rules governing the use of any type of vehicle within the Property and may prohibit entirely the use of trail bikes, three-wheel power devices and ATV-type vehicles.

4.9. Weed Control. Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and plants (including those which constitute a fire hazard) on his or her Lot so as to minimize weeds, fire and other hazards to surrounding Lots, Homes and other surrounding properties, and shall otherwise comply with any applicable Governmental Requirements pertaining to the removal and/or control of such noxious weeds and fire hazards. Noxious weeds shall mean and refer to those plants which are injurious to crops, livestock, land, or the public health or which constitute a fire hazard.

4.10. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, part or portion of the Property, nor shall anything be done thereon which may be or may become an annoyance to adjoining Lots or other surrounding properties. No outdoor clothes drying or storage of any articles which are visible from any public street shall be permitted. No clutter, debris, or other such materials shall be permitted which are visible from any public street. No Lot shall be used in a manner which shall endanger the health or disturb the reasonable enjoyment of any other Owner or Resident.

4.11. Safe Condition. Without limiting any other provision of this Declaration, each Owner shall maintain and keep his or her Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the safety or reasonable enjoyment of other Owners of their respective Lots.

4.12. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon, in or under the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon, in or under the Property.

4.13. Agricultural Activities. On Lots smaller than one (1) acre; dogs, cats or other domesticated household pets, two (2) or less in total number, may be kept in a Home constructed on a Lot; provided, no pets may be kept, bred, or maintained for sale or for any commercial purpose. All permitted pets shall be strictly controlled and kept pursuant to all applicable laws and ordinances and shall be on a leash or inside an approved Fence when outside the Owner's Home. No other animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, part or portion of the Property. On Lots greater than one (1) acre; the Town of Virgin Domestic Farm Animals regulations shall be enforced. (See section 17-7-3, Town of Virgin Uniform Zoning Ordinance)

4.14. Garbage and Refuse Disposal. No Lot, part or portion of the Property shall be used or maintained as dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste as produced within the Property shall be kept only in sanitary containers inside a structure except when placed for collection. There shall be no outside refuse storage. No rubbish, trash, papers, junk or debris shall be burned upon the

Property except that trash may be burned in accordance with applicable Governmental Requirements inside Homes that are properly equipped with inside incinerator units.

4.15. Water Supply. Each Home shall be connected to and use the municipal culinary water supply. No individual culinary water supply system or well shall be used or permitted to be used on any Lot, part or portion of the Property.

4.16. Sewage Disposal. Each Home shall be connected to and use an individual septic tank. Each Owner is responsible for upkeep and maintenance of said septic system.

4.17. RVs, Boats, and Vehicles.

a. No boats, trailers, buses, motor homes, campers, recreational vehicles, or other similar vehicles, shall be parked or stored upon any Lot. No vehicles shall be parked overnight on any Roads or Driveways for more than three (3) consecutive days. Also, Trailers, motor homes, and trucks over 9,000 pounds GAW are not allowed to be parked or stored within the subdivision.

b. Motor vehicles of any type that are inoperable shall not be permitted to remain upon any Lot or Road. In the event an inoperable motor vehicle remains upon any Lot or Road for a period exceeding thirty (30) days, the Declarant, Association or any other Lot Owner residing within the Property may remove the inoperable motor vehicle after providing a ten (10) day written notice to the Owner of the Lot on which the inoperable vehicle is located. The cost of such removal shall attach to the vehicle and the Lot on which the vehicle is or was located as a valid lien in favor of the Persons, entities, or Persons accomplishing such removal. For the purpose of this Section, an inoperable motor vehicle shall mean any motor vehicle that is unable to operate in a normal manner upon the streets under its own power, or any vehicle that is required to be licensed or registered and that is not licensed or registered for a period of six (6) weeks or more.

4.18. Business and Sales Activities. Notwithstanding any provisions to the contrary contained in this Declaration but subject to Governmental Requirements, it shall be expressly permissible for Declarant, or its written designee, 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 Homes and the sale of Lots during the Development Phase. Such activities may be conducted upon such portion of the Property, including the Common Area and any Lots owned by Declarant or its affiliates, as Declarant deems necessary or desirable, 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 Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of any Lots owned by Declarant or its affiliates or any party of the Common Area and facilities thereon, including any Easement Areas or Common Area buildings, without charge during the Development Phase.

4.19. Fence and Trail Easement. Lots 6 through 10 are subject to a Fence and Trail Easement along the rear of the Lot. The Owner of Lots 6 through 10 shall not install, place or

construct any improvements, structures, or landscaping within the Fence and Trail Easement. From and after the initial construction of the fence, the Owner of Lots 6 through 10 may install and place landscaping within the Fence and Trail Easements to the fence as it may be located within the Fence and Trail Easement subject to the terms and conditions of this Declaration. If the Association needs to inspect, maintain, repair, or replace the fence, the Association shall not be responsible to repair or restore any landscaping placed near the fence that may be damaged or disturbed in the exercise or performance of the Association's rights or work.

**5. Architectural Control Committee.**

5.1. Architectural Control Committee. A committee (the "Architectural Control Committee" or "ACC") shall be established to Finally Approve all aspects of the excavation, construction or remodeling of any building, structure or improvement on the Property. Prior to the commencement of any excavation, construction or remodeling of any building or structure or of any addition to any building or structure, or modification of the natural topography of any Lot, or installation of fences, walls or landscaping elements (all of the foregoing being referred to in this Declaration as the "Work"), Approval of the ACC is required in accordance with the provisions of this Section 5.

5.2. Number of Members of Architectural Control Committee; Manner of Appointment. The ACC shall consist of three (3) Persons. Until the end of the Development Phase, Declarant may appoint all three (3) Persons to be the ACC. After the end of the Development Phase and after it is turned over to the Residents, the ACC shall consist of the Trustees of the Association or of three (3) Persons appointed by the Trustees.

5.3. Meetings of Architectural Control Committee. The ACC shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties, may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which minutes shall be open for inspection upon request. The ACC shall, by a majority of the votes of the Members, elect one of its Members as chairman and one of its Members as secretary and the duties of each will be such as usually appertain to such offices. Notice of meetings shall be given to Members who have made application to the ACC for approval of plans and specifications.

5.4. Compensation; Reimbursement of Expenses. Unless authorized by resolution of the Trustees, the members of the ACC shall not receive any compensation for services rendered. Such members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Committee function or duty. Professional consultants (including Persons affiliated with Declarant) retained by the ACC shall be paid such compensation as the ACC determines. The ACC may charge reasonable, non-discriminatory fees to review plans and specifications.

5.5. Plans and Specifications. Plans shall be submitted according to the Preliminary Submittal Requirements as outlined in the Architectural Design Guidelines. The building plans and specifications shall be filed with the ACC, together with a site plan of the Lot showing proposed grading, landscaping (including the landscape plan required by Section 7.22 and all

lighting, indicating the exact part of the building site which the improvements will cover, with such fee as the ACC may determine from time to time, and an application and such supporting material, such as samples of building materials, as the ACC deems necessary or appropriate. No Work shall commence unless and until the ACC shall endorse on both sets of such plans its written approval that such plans are in compliance with the covenants set forth in this Declaration and with the standards established in this Declaration or by the ACC (the "Final Approval"). The second set of such plans shall be filed as a permanent record with the ACC. The design review process shall be followed as outlined in the Architectural Design Guidelines.

5.6. Standards Governing Final Approval. The ACC shall have the right to refuse to grant Final Approval to any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property. The ACC shall promulgate and maintain the Architectural Design Guidelines for guidance in approving or disapproving plans and specifications pursuant to this Section. *A \$3500.00 non-refundable and a \$6500.00 refundable fee shall be submitted before Final Approval of plans. The refundable fee shall be refunded upon completion of the Home in accordance to the Architectural Design Guidelines.*

5.7. Failure of Architectural Control Committee to Approve. In the event the ACC fails to Finally Approve in writing any such plans and specifications within sixty (60) days after the submission thereof to the ACC, then the ACC shall be deemed to have not approved the plans and specifications.

5.8. Limitation on Claims. The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinance are the sole responsibility of the Lot Owner and the Lot Owner's designer, architect, or contractor. The ACC's review and Final Approval of plans shall in no way be concerned with structural or mechanical integrity or soundness of any improvements.

5.9. Final Approval Does Not Constitute Waiver. The Final Approval of the ACC of any plans and specifications for any Work shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications subsequently submitted.

5.10. Declarant Exempt. The Declarant shall be exempt from the provisions, restrictions, and requirements of this Declaration, relating to marketing, signage, sales and other such commercial activities, as the same exists or as it may be amended, supplemented, or replaced in accordance with other provisions of the Declaration.

## 6. Compliance With Governmental Requirements.

6.1. Permits and Approvals Required. No living unit, accessory or addition to a living unit, other structure or building shall be constructed or maintained, and no grading or removal of

natural vegetation or change in natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a Lot until all required permits or approvals therefor are obtained from Governmental Authorities following submission to the appropriate governmental entity of such information as it may require. Final Approval of the ACC shall not constitute any assurance that required permits or approvals can be obtained from Governmental Authorities.

6.2. Approval of Governmental Authorities Not Binding on Architectural Control Committee. The granting of a permit or approval by any Governmental Authority with respect to any matter shall not bind or otherwise affect the power of the ACC to refuse to approve any such matter.

6.3. Soils and Foundation. It is recommended that the Owner obtain a soils test and recommendation regarding the foundation for the Home to be located on the Lot from a Utah registered engineer prior to commencing any construction of a Home on the Lot. The ACC requires that the Owner obtain a soils test and recommendation on foundation prior to the Final Approval. Furthermore, the ACC may condition Final Approval on the Owner following the recommendations set forth in the soils test and foundation recommendation.

7. Design Restrictions.

7.1. Purpose and Intent. In order to promote a harmonious community development and protect the character of the neighborhood, the guidelines set forth below in this Section, together with the Architectural Design Guidelines any additional guidelines hereafter established by the ACC, are applicable to the Property (the "Architectural Design Guidelines"). The intent of the Architectural Design Guidelines is to seek to insure that Homes, landscaping and other improvements on each Lot are in harmony with the natural surroundings of the Property and prevailing architecture of the created environment of the Property. The Architectural Design Guidelines allow design latitude and flexibility, while ensuring that the value of the Property and of each Lot and Home will be enhanced throughout the control of site planning, architecture and landscape elements. The Architectural Design Guidelines serve as an evaluative aid to Owners, builders, Declarants, design professionals, City staff, the Planning Commission, City Council and the ACC in the design review of individual, private and public developments within the Property. The Town of Virgin Zoning Regulations will apply for any area of design not addressed in the Architectural Design Guidelines.

7.2. Permitted Structures. The only buildings or structures permitted to be erected, placed or permitted to be located on any Lot within the subdivision shall be:

a. A Home placed within the building Setback Areas on each Lot. The Home shall accommodate the natural grade and building up an unnatural pad will not be permitted. The Home shall not exceed the height requirements described in Section 7.5 and must include an enclosed private garage for not less than two (2) or more than six (6) cars or other vehicles; and

b. With the Final Approval of the ACC, a pool house adjacent to a functioning outdoor swimming pool, not to exceed two hundred (200) square feet in floor



space. The height of the pool house shall not exceed twelve (12) feet above grade. The pool house shall be constructed in accordance with applicable Governmental Requirements including, without limitation, zoning and building ordinances of Virgin Utah in effect from time to time. The pool house shall be constructed of the same materials that are used on the exterior of the Home.

c. No carports or partially enclosed garages shall be permitted on a Lot. Stables, sheds, tool buildings or other outbuildings shall be permitted on a Lot, must comply with requirements in Sections 7.7, 7.8 and 7.10, and the Architectural Design Guidelines, and shall not to exceed eighteen (18) feet above grade. No structure shall be permitted in 100 year flood plain, except for those structures permitted by the ACC.

7.3. Minimum Area. The minimum total square footage of living area on the ground floor of a Home located within the building envelope and foundation for any single-story Home constructed on any Lot within the subdivision shall be not less than 2,500 square feet, exclusive of porches, balconies, patios and garages. No Home or other permitted structure constructed on any Lot shall exceed (1) story in height from grade, except for Lots 1-3 and 59-65, determined in the manner described in Section 7(e). Each Home may have a basement.

7.4. Setback Areas. The following constitute the minimum Setback Areas on each Lot. All measurements shall be made from each point on the applicable Lot boundary line to the nearest point on the foundation, porch, deck or other extension of any building or structure, whichever is nearer to such Lot line.

Lots over 1 acre:      Front: No building shall be located nearer to the front Lot line than thirty (30) feet.  
                                 Rear: No building shall be located nearer to the rear Lot line than twenty-five (25) feet.  
                                 Side: No building shall be located nearer to the side Lot line than fifteen (15) feet.

Lots under 1 acre:      Front: No building shall be located nearer to the front Lot line than twenty-five (25) feet.  
                                 Rear: No building shall be located nearer to the rear Lot line than twenty (20) feet.  
                                 Side: No building shall be located nearer to the side Lot line than fifteen (15) feet.

7.5. Building Height. Maximum building height for a pitched roof mass shall be nineteen (19) feet as measured from highest natural grade to that mass. Hip or gable roofs are not to exceed 4/12 pitch. Minimal flat roof areas may be considered on a case by case basis, but shall not exceed more that 15% of total roof area. Lots 1-3 and 59-65 may have a maximum

building height of twenty-six (26) feet above grade. Minimum building heights on exterior walls shall be nine (9) feet. The building height shall be followed as outlined in the Architectural Design Guidelines.

7.6. Architectural Style. The architectural style of a Home shall be subject to the approval of the ACC which may, at its discretion, exclude designs that contrast with the prevailing architecture of the Homes located on the Property or with the natural environment. To provide guidance to Owners, the ACC has established a description of permitted architectural styles, which shall be maintained in the records of the Association and shall become part of the Architectural Design Guidelines. All elevations and facades of each Home shall be consistent with the intended architectural style of the Home and carried around all four (4) elevations and facades of the structure.

7.7. Facades. Facades of each Home shall be adobe or synthetic sand finished stucco with accents of stone, natural, slate, rough-cut timber or such other material as approved by the ACC.

7.8. Roof Materials. Roof material shall be limited to authentic mud set clay C tiles or rusted or weathered matte finished metal roofs as approved by the ACC. Colors shall be subdued earth tones to complement the natural surroundings selected from or in harmony with approved samples, or in such other colors as may be Finally Approved by the ACC.

7.9. Sheet Metal. All sheet metal, including, without limitation, flashing, vents and pipes, must be colored or painted to match the material to which they are attached or from which they project. No reflective exterior surfaces or materials shall be used or permitted

7.10. Doors and Windows. All windows and doors shall be recessed a minimum of 6" from the glass/door surface to the exterior surface of the wall. The character of window and door selections shall complement the character of the Home, and shall not, in the judgment of the ACC, appear contemporary. No vinyl windows will be allowed. Doors and windows shall be approved by the ACC and shall follow the Architectural Design Guidelines.

7.11. Colors. Base building colors shall be in subdued earth tones to complement and harmonize with the natural surroundings and shall conform to or be in harmony with approved samples. The use of the color must be used on window trim, shutters and doors. The ACC will require actual samples or color boards of all adobe, stone, stucco, roofing materials and other materials prior to approval.

7.12. Prohibited structures. Dome Structures, log Homes and earth or berm Homes are not allowed. No trailer, bus, basement, outhouse, tent, shack, garage, or accessory building shall be used at any time as a residence either temporarily or permanently. No old or second-hand structures or Homes shall be moved onto any of said Lots nor shall any such structures be erected or placed on the Lots at any time. It is the Declarant's intention that all Homes and other permitted structures to be erected within the subdivision be of new construction materials, using good quality, workmanship, and materials.

7.13. Driveways and Parking. A driveway shall be located on each Lot which shall be of sufficient size (excluding sidewalk areas) to park not less than two (2) vehicles per Lot. Each driveway on a Lot shall be constructed out of tumbled brick, colored concrete, decorative gravel, stone, or interlocking pavers. Cinders, sand, asphalt or dirt shall not be permitted for driveway material in the front and side yard area of any Lot. The driveway in the front and side yard areas of each Lot shall be in a color which blends with the exterior of the structure located on each Lot. Driveway material must be approved by the ACC.

7.14. Covered Patio, Courtyards & Porches. A minimum of twenty-five percent (25%) of the total square footage of the house must be built as covered patio, courtyard and covered porches. Building materials shall be approved by the ACC and comply with Sections 7.7, 7.8 and 7.10.

7.15. Fences; Walls and Sight Obstructions.

a. Fences, walls and other barriers shall comply with the provisions of Section 7.10 and the Architectural Design Guidelines, and shall be subject to the Final Approval of the ACC. Fences and walls shall be natural stone, rammed earth, stucco, adobe, iron, split rail, ocotillo or sequoia ribs.

b. No structure, fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the grade of the Roads shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points forty (40) feet from the intersection of the street lines, or in the case of a rounded party corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. NO tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sight lines.

c. No fence, wall, hedge, shrub or other structure shall be placed along any front property line of a Lot. No fences shall be constructed in the front Setback Area of a Lot. Home Owners may construct walls in the rear and along the side property lines, but they may not exceed beyond the frontage of the Home; provided a stepped down fence may be constructed along the side boundaries of a Lot with the consent of the ACC, which consent may be withheld at its sole discretion.

d. No fence, wall, hedge, tree, plant, shrub or foliage shall be planted, kept or maintained in such manner as, in the opinion of the ACC, shall create a serious potential hazard or an aesthetically unpleasant appearance to the other Residents of the area.

e. Fences and walls must harmonize with color of the Natural surroundings and may not exceed six (6) feet in height above grade on the highest side. Each Owner may construct walls in the rear and along side Lot lines, but such walls shall not extend beyond the front of the Home. Walls shall not exceed six (6) feet above grade. If such a

wall encloses a pool, additional required height may only be in wrought iron as Finally Approved by the ACC.

7.16. **Retaining Walls.** Retaining walls are restricted to a maximum height of five (5) feet in height above grade, unless otherwise Finally Approved by the ACC. In the event Final Approval is given for a retaining wall higher than five (5) feet in height above grade, the retaining wall must be tiered and landscaping must be installed to screen the retaining wall. Retaining walls shall be made out of natural stone. No walls shall be constructed on retaining walls.

7.17. **Lights.** Light used to illuminate garages, patios, parking areas or for any other purposes must be low level (each fixture with a maximum of one 60 watts or less bulb) and shall be so arranged and shielded as to reflect light away from adjacent Homes and away from the vision of passing motorists. Pendant fixtures shall be limited to kitchen bars and dining area. No upward shining lights are permitted. Very low level outdoor illumination may be used for particular landscape features (such as trees and rock formations). No exposed bulbs, brass or white fixtures are permitted. Exterior Home lights are to be placed under the eaves of the Home thus preserving the night sky. One light under the eaves of the Home is to illuminate the Home's street number. Exterior lighting shall be approved by the ACC and shall follow the Architectural Design Guidelines.

7.18. **Antennas.** Antennas, dishes or similar devices for radio and television, or devices for the reception or transmission of radio, microwaves or other similar signals are restricted to the attic or interior of the Home. It is mandatory that all Homes be pre-wired for cable reception. Satellite dish antennas shall be allowed provided they are located in such areas as may be designated by the ACC and are painted to match the color of the Home on which they are located. In no event shall satellite dishes exceed twenty (20) inches in diameter or width. All antennas and satellite dishes must be located to minimize visibility from neighboring Lots, and in all events the location of antennas and satellite dishes must be approved by the ACC.

7.19. **Equipment.** Air conditioning, heating equipment, and soft water tanks must be screened from view with screen walls matching house material finish and color so as not to be visible from the neighboring property, or from the streets of the development and shall be insulated for sound attenuation. Air conditioning units are not permitted on roofs or through windows.

7.20. **Utility Facilities.** All utility lines, conduits, pipes and similar transmission facilities shall be underground. Except as required by Governmental Requirements, utility meters, propane tank, and similar facilities shall be placed in as inconspicuous a location as possible out of sight of the public. Locations of meters are to be shown on the plans, and meters should be screened from view from neighboring property. Exposed piping shall be painted to match exterior colors of the Home. The area immediately around the meters shall be cleared to allow for access. Electric meters, switches, or circuit breaker boxes are not to be located in the same enclosure with the gas meter and regulator. Enclosures for gas meters and regulators are to be vented in compliance with the Uniform Building Code. All Homes must be pre-wired for cable services.

7.21. Mailboxes. Post Office boxes are available at the Town of Virgin Post Office.

7.22. 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 ACC.

7.23. Maintenance and Landscaping.

a. Landscaping on each Lot shall be completed in accordance with the landscape plan as outlined in the Architectural Design Guidelines. Plans shall be submitted to and approved by the ACC prior to construction of the Home. It is recommended that Lawn be used only in rear yards and natural looking landscaping be used in the front yards. Front landscaping of the Home must be completed upon issuance of a certificate of occupancy by the Town of Virgin.

b. Each Owner shall be responsible for the maintenance of his or her Lot. In the event that any Owner fails to perform this maintenance in a manner so as not to detract from the appearance of the Lot or affect adversely the value or use of any Lot, the Trustees of the Homeowners Association shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the Assessment to which such Lot is subject.

c. Any portion of the Lot not used for Homes, other permitted structures, driveways, walks, or other site improvements shall be landscaped or left in its natural state. The front yard landscaping shall have a maximum of twenty-five percent (25%) lawn with no minimum lawn area being required. If the rear yard is walled on all sides, the rear landscaping shall be at the discretion of the Owner. The remaining area of each Lot shall be left in its natural state or enhanced with additional desert plantings.

d. No palm trees shall be planted on any Lot.

7.24. Planting and Gardening. No planting, gardening or landscaping shall be installed or modified, and no fences, hedges or walls shall be erected or maintained upon any Lot except such as are installed in accordance with the initial construction of the buildings located thereon or as Finally Approved by the ACC.

7.25. Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Each Lot Owner is responsible to see that no nuisance or damage is created by flow of drainage water to any Lot or surrounding property.

7.26. Lateral and Subadjacent Support and Drainage. Each Owner shall be responsible for any damage to adjacent Lots proximately caused by such Owner's activities which affect the lateral or subadjacent support, or both, of adjacent Lots. Owners shall be responsible for all damage proximately caused by drainage from their Lot(s) to adjacent Lots.

7.27. Signs. 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, planned, or permitted to remain on any Lot or any portion of the Property. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the Development Phase or by the Association in furtherance of its powers and purposes set forth in this Declaration and in its Articles of Incorporation, Bylaws and Rules, as the same may be amended from time to time.

**8. Construction and Contractor Provisions.**

8.1. Purpose. In order to promote a harmonious community development and protect the character of the neighborhood, the guidelines set forth in this Section 8 are applicable to construction activities on the Property.

8.2. Completion of Construction. The construction of any Home on any Lot shall be continuously and diligently pursued from and after the commencement of such construction, and in any event shall be substantially completed within twelve (12) months after such commencement. Any other permitted structure shall be constructed in such time as is reasonably prescribed by the ACC in connection with the Final Approval of such structure.

8.3. Building Materials Storage. No Lot or portion of the Property shall be used or maintained as a storage for building materials except during a construction phase. Once a Home is occupied or made available for sale all building materials shall be removed or stored inside a Home or accessory building out of public sight.

8.4. Landscaping. Front landscaping on a Lot shall be complete upon issuance of the Certificate of Occupancy by the Town of Virgin.

8.5. Damages. Any damage to existing improvements (such as, without limitation, curbs, gutters, streets and concrete sidewalks) by an Owner and/or his or her contractor or their agents must be repaired by such Owner within thirty (30) days after such damage is discovered, and the expense of such repair shall be borne by such Owner.

8.6. Maintenance of Lot During Construction. Contractors or subcontractors must provide on-site dumpsters and porta-john during construction and are required to clean up on a reasonable basis to maintain a clean work site during construction. Dirt or mud from the construction site or elsewhere, dispersed, directly or indirectly, on the public streets within the Property must be cleaned up within three (3) business days by the contractor or subcontractor as Owner/builder.

8.7. **Contractor Restrictions.** To insure compliance with the other provisions of this Declaration including, without limitation, the Architectural Guidelines and the requirements of this Section 8, all Lots shall be subject to the covenant and restriction set forth in this Section 8.7. The covenant and restriction shall run with the land and be binding on each successor Owner of each Lot. Declarant may enforce the covenant and restriction by specific performance.

8.8. **Construction by Owner.** No Owner shall construct a Home without using a licensed general contractor that is approved by the ACC. The purpose of this provision is to insure compliance with all Finally Approved plans and to insure continuity in the subdivision.

**9. Membership in Association: Voting Rights.**

9.1. **Membership.** Every Owner of a Lot shall be a Member of the Association. 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.

9.2. **Voting Rights.** The Association shall have two (2) classes of voting Members:

a. **Class A Members.** Class A Members are all Members with the exception of the Declarant. Except as set forth in Section 4.3.b, Class A Members are entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an interest in any Lot, the group of such Persons shall constitute one (1) Class A Member with one (1) vote. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. A vote cast at any Association meeting by any Person owning an interest in a Lot, 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 Person owning an interest in the same Lot. In the event an objection is made, the vote is involved shall not be counted for any purpose except to determine whether a quorum exists.

b. **Class B Members.** The Class B Member is the Declarant.

**10. Operation of Association; Budgets; Assessments.**

10.1. **Creation of Association.** The Association exists as a nonprofit corporation organized under the Utah Revised Nonprofit Corporation Act, Chapter 6(a) of Title 16 of the Utah Code of 1953, as amended. The Association is governed by Articles of Incorporation, Bylaws, and this Declaration. A copy of the Bylaws are attached hereto and Exhibit "B." In the event of any conflict between the Articles of Incorporation, the Bylaws and/or this Declaration, the documents will govern in the following order: this Declaration, the Articles and the Bylaws.

10.2. **Trustees.** There shall be three (3) Trustees of the Association. During the Development Phase the Class B Member shall appoint all three (3) Trustees. After the end of the Development Phase a majority of the Owners of Lots shall elect and appoint the Trustees, which

shall thereafter be vested with the powers described in this Declaration and shall have jurisdiction over all the Property subject to these restrictions, covenants and conditions.

10.3. Books, Records and Audits. The Association shall maintain current copies of this Declaration, its Articles and Bylaws, the Rules, minutes of the meetings of the ACC and other similar documents, as well as its own minutes, books, records and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers and grantors 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.

10.4. Creation of Lien; Personal Obligation for Assessment. The Declarant and each subsequent Owner of any Lot by acceptance of a deed or conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay the Assessments imposed by the Association and interest thereon including, without limitation, costs of collection and a reasonable attorney's fee, as provided in this Declaration. All such Assessments and other amounts shall be:

- a. A charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or amount is charged; and
- b. The personal obligation of: (i) the Person who was the Owner of such Lot at the time when the Assessment fell due; and (ii) successors-in-title who took title to such Lot when Assessments were due and payable.

In the event a Lot is owned by more than one (1) Person, each such Person shall be jointly and severally liable to pay such Assessment.

10.5. Purpose of Assessments. The Assessments levied by the Association shall be used by the Association for the improvement, maintenance, repair and preservation of the Common Area. The Assessments must provide for but are not limited to: the payment of taxes on the Common Areas and insurance maintained by the Association; the payment of the cost of repairing, replacing and maintaining the Common Areas; the payment of administrative expenses of the Association; insurance deductible; the establishment of a reserve account for repair, maintenance and replacement of the improvements to the Common Areas which must be replaced on a periodic basis; and other amounts required that the Trustees shall determine to be necessary to meet the primary purposes of the Association.

10.6. Budgets; Permitted Increases in Assessments. The Association shall promulgate a Budget prospectively for each calendar year. Assessments may be billed monthly, quarterly or annually as the Association determines. The total amount of an Assessment to a Lot may be increased in any year to not more than one hundred and five percent (105%) of the total Assessment for the previous year (i.e., an increase of not more than five percent (5%)) without a vote or consent of the Members, and any Budget that results in Assessments within such limitation shall not require the approval of the Members. The Association may establish a



reserve fund for major expenses. The Association may increase the amount of the Assessments by more than five percent (5%) over the amount charged for the previous year with:

- a. Approval at a meeting duly called for the purpose of approving the Budget by more than fifty percent (50%) of the votes of Members present and voting, in person or by proxy.
- b. Written agreement of Members holding more than fifty percent (50%) of the votes in the Association; provided that if such approval is in writing, all signatures must be dated within a ninety (90) day period.

Failure to promulgate a Budget shall not constitute a waiver by the Association of the right to collect Assessments or a basis by any Member to refuse to pay Assessments.

10.7. Special Assessments for Capital Improvements. In addition to the annual Assessments, the Association may levy in any Assessment year special Assessments to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas. Special Assessments must have the approval of more than fifty percent (50%) of the votes of the Members voting at a meeting in person or by proxy, or by written agreement of Members holding more than fifty percent (50%) of the votes in the Association; provided that if such approval is in writing, all signatures must be dated within a ninety (90) day period.

10.8. Uniform Rate of Assessment; Periodic Assessment. Assessments must be fixed at a uniform rate for all Lots; provided, however, that Assessments shall not accrue against the Declarant or Lots owned by the Declarant.

10.9. Date of Commencement of Annual Assessments; Due Dates. The Assessment provided for in this Declaration shall commence to accrue on the first day of the month following conveyance to a purchaser. The first Assessment shall be adjusted according to the number of months remaining in the calendar year.

- a. 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. Delivery of notice shall not be a condition or requirement to validity of the Assessment.
- b. The Assessment due dates shall be established by the Trustees.
- c. The Trustees shall prepare a roster of the Lots and the Assessments applicable thereto at the same time that it shall fix the amount of the 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.
- d. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an office 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.

10.10. Effect of Non-Payment of Assessment; Remedies of Association.

a. 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 fifteen percent (15%) per annum (or such lesser rate as the Trustees shall set by resolution) until paid. In addition, a late fee of \$50.00 for each delinquent installment shall be imposed.

b. 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.

c. 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 such Association were beneficiary under a deed of trust. The Association may designate any Person qualified by law to serve as Trustee for purposes of power of such foreclosure.

d. The Trustees may, in the name of the Association, pursue one or more of the following remedies:

- (1) bring an action at law against the Owner personally obligated to pay any such delinquent Assessment without waiving the lien of Assessment;
- (2) foreclose the lien against the Lot 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;
- (3) restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Member as set forth in Section 3.5.c;
- (4) Pursue any other remedy available at law or equity.

e. The pursuit of one of the remedies set forth in Section 10.10.d shall not constitute an election of remedies and the Association may pursue more than one of the remedies simultaneously or, after pursuing one remedy, may abandon such remedy and instead pursue another remedy.

f. No Owner may avoid or otherwise escape liability for the Assessments provided for in this Declaration by non-use of the Common Areas or by abandonment of the Lot.

10.11. Subordination of Lien to Mortgages. The lien of the Assessments provided for in this Declaration shall be subordinate to the lien of any first Mortgage held by an institutional lender. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale 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 or she takes title or from the lien of such alter Assessments.

**11. Use of Amenities.**

11.1. Use of Río de Sión Facilities.

a. A Planned Development known as Río de Sión recreational facilities, possibly including, but not limited to, a pedestrian and equestrian trail, trail head and pioneer house.

b. The common facilities and amenities of Río de Sión may be available to Owners within Río de Sión and any additional subdivision so designated by Declarant upon:

(1) execution of a written agreement by the Owner of a Lot within Río de Sión.

(2) payment of Association fees.

c. The foregoing fees are subject to increase to maintain comparable value as to a base date of January 1, 2005, as determined by reference to the U.S. City Average Consumer Price Index for all Urban Consumers published by the U.S. Department of Labor, Bureau of Labor Statistics.

d. Each Owner so qualifying shall not be a Member of the Association, but shall have a Right to Use of Facilities under Sections 2.4 and 2.6 of this Declaration. The Owner may transfer the Right to Use of Facilities to any other Owner of a Lot or any additional subdivision so designated by the Declarant. Those possessing a Right to Use of Facilities shall not be subject to Assessments of any kind levied by the Río de Sión Owners Association.

11.2. Additional Amenities. The Declarant may develop additional parks, clubhouses, recreational or social facilities or other amenities (the "Additional Amenities") outside of the Property and may, at its sole discretion, make such Additional Amenities available to the Owners on such terms and conditions, and for such charges or payments, as Declarant may establish. Declarant reserves the right to amend this Declaration at any time without the consent of any Owner, Member or other Person to make such Additional Amenities available; provided, Developer may offer such Additional Amenities to any Owner or Member but may not force any Owner or Member to use such Additional Amenities or, unless such Owner or Member uses the Additional Amenities, to pay for any of the cost of the Additional Amenities.

**12. Duration; Enforcement; Amendment.**

12.1. Duration of Restrictions. The covenants and restrictions contained in this Declaration shall run with and bind the land for a period of fifty (50) years from the date this document is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment terminating this Declaration pursuant to Section 12.2.

12.2. Amendment. Until the end of the Development Phase, the covenants and restrictions contained in this Declaration may be modified, amended or repealed in whole or in part at any time and from time to time by the Declarant or his or her successor or assigns by recorded instrument. Upon completion of the Development Phase, the covenants and restrictions contained in this Declaration may be amended by a recorded instrument signed by no less than seventy-five percent (75%) of the votes of the Members of each class, provided that all signatures must be notarized and obtained within a one hundred eighty (180) day period.

12.3. Additional Property Annexation. Additional real property may be subjected to these covenants, conditions and restrictions by the Declarant. The Declarant shall indicate its intent to have such real property subject to this Declaration on the plat of such property, or by recording an additional set of covenants, and thereafter such additional property shall be considered as part of the Property in all respects, and Lots into which such additional property is subdivided shall constitute Lots under this Declaration. This right of the Declarant shall be assignable to one or more assignees.

12.4. Deannexation. Declarant shall have the right to release any portion of the Property subject to this Declaration and the jurisdiction of the Association upon filing a notice of such deannexation with the recorder's office of Washington County.

12.5. Notices. Any notice required under the provisions of this document to be sent to any Lot Owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Owner.

12.6. Construction and Severability. All of the restrictions, covenants and conditions contained in this Declaration shall be construed together. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall not affect the enforceability or applicability of any of the remaining restrictions, covenants or conditions, or part thereof.

12.7. Violation Constitutes Nuisance. Every act or omission whereby any restriction, covenant or condition in this document set forth is violated, in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Declarant, the Association, or a Lot Owner or Owners. Remedies hereunder shall be deemed cumulative and not exclusive.

12.8. Enforcement. Each and all of the restrictions, covenants and conditions contained in this Declaration is and are for the benefit of the Declarant, the Association and of the Lot Owner or Owners from time to time of any Lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every Lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of

equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Declarant, the Association, or a Lot Owner or Owners; provided, however, that no such breach shall affect or impair the lien of any bona fide Mortgage which shall have been given in good faith and for value, except that any subsequent Owner of said Lot, part or portion of the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. The ACC may levy a fine or penalty not to exceed fifty percent (50%) of the amount of the maximum annual Assessment against any Owner who fails to refrain from violation of these covenants or any of the Rules, after three (3) days written notice, and opportunity for hearing. A fine may be levied for each day of a continuing violation. All attorney's fees and costs incurred in any such action, and all expenses incurred and any fines levied, shall constitute a lien on such Lot Owner's Lot, and shall also be a personal obligation of said Lot Owner, enforceable at law, until such payment therefor is made.


12.9. Right to Enforce. The provisions contained in these covenants shall bind and inure to the benefit of and be enforceable by the Declarant, the Association or a Lot Owner or Owners, and each of their legal representatives, heirs, successors and assigns, and failure to enforce any of said restrictions, covenants, or conditions shall in no event be deemed a waiver of the right to do so thereafter.

12.10. Assignment of Power and Authority of Declarant. Any and all rights and power of the Declarant contained in this Declaration may be delegated, transferred or assigned.

IN WITNESS WHEREOF, the Declarant has hereunto executed this Declaration on the date first set forth above.

RIVERWOOD HOLLOW, LLC, a Utah limited liability company, by its Managers:

By:   
Denley Fowlke, Manager

By:   
David P. Whitehead, Manager

By:   
Michael Crews, Manager

### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego } ss.

On 5/3/06, before me, Gillian Meredith Grantham,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Michael D. Crews,  
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Gillian Meredith Grantham  
Signature of Notary Public

#### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

#### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

#### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_


RIGHT THUMBPRINT OF SIGNER

Top of thumb here

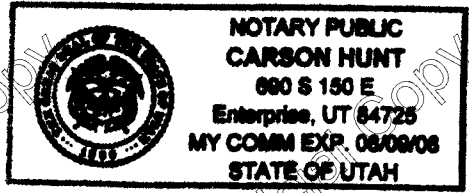
Signer Is Representing: \_\_\_\_\_

STATE OF UTAH )  
 ) : ss.  
COUNTY OF \_\_\_\_\_ )

On this 6<sup>th</sup> day of June, 2006, personally appeared before me Denley Fowlke, and David P. Whitehead, known or satisfactorily proved to me to be the Managers of Riverwood Hollow, a Utah limited liability company, who acknowledged to me that they signed the foregoing instrument as Managers for said corporation.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: ENTERPRISE, UT

My Commission Expires: 8/7/08



STATE OF UTAH )  
 ) : ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, personally appeared before me Michael Crews, known or satisfactorily proved to me to be the Manager of Riverwood Hollow, a Utah limited liability company, who acknowledged to me that they signed the foregoing instrument as Managers for said corporation.

My Commission Expires: \_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

*See attached  
all-purpose acknowledgment*

EXHIBIT A

Sec. 22, 23, 26 & 27, T41S, R12W, SLB+M

MARCH 7, 2006

**LEGAL DESCRIPTION  
PREPARED FOR  
RIO DE SION PHASE 1, 2 & 3**

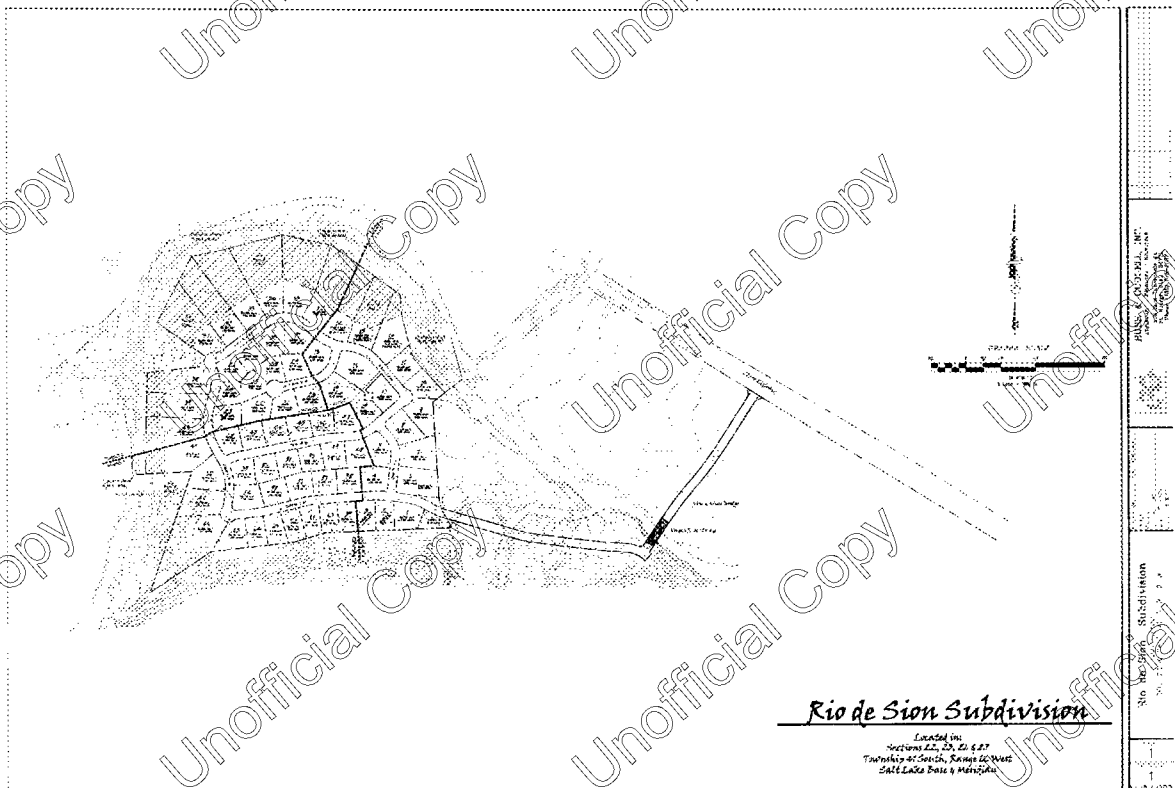
COMMENCING AT THE NORTHEAST CORNER OF SECTION 27, TOWNSHIP 41 SOUTH, RANGE 12 WEST, SALT LAKE BASE AND MERIDIAN, THENCE S 89°57'46" W 600.10 ALONG THE NORTH LINE OF SAID SECTION TO THE POINT OF BEGINNING; RUNNING THENCE N 1°58'36" W 238.40 FEET; THENCE S 87°07'30" W 70.10 FEET; THENCE N 4°57'27" W 192.17 FEET; THENCE S 88°16'15" W 238.55 FEET; THENCE N 1°43'45" W 66.00 FEET; THENCE N 81°16'15" E 305.93 FEET; THENCE N 7°56'16" E 196.06 FEET; THENCE N 11°59'54" W 52.00 FEET; THENCE N 31°00'06" E 574.20 FEET; THENCE N 0°00'06" E 64.17 FEET; THENCE S 89°59'54" E 322.62 FEET; THENCE S 89°55'56" E 200.13 FEET; THENCE S 89°56'04" E 448.12 FEET; THENCE S 49°00'42" E 169.74 FEET; THENCE S 49°06'04" E 386.32 FEET; THENCE S 34°51'04" E 273.24 FEET; THENCE S 15°06'08" E 338.53 FEET; THENCE S 51°53'41" W 216.25 FEET; THENCE S 03°22'23" E 542.66 FEET TO THE POINT OF A 200.00 FOOT RADIUS CURVE TO THE LEFT WITH A RADIUS BEARING OF S 89°16'09" E; THENCE 113.51 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32°31'09" TO THE POINT OF TANGENCY; THENCE S 29°11'46" E 92.12 FEET; THENCE S 87°38'34" W 543.66 FEET; THENCE S 87°36'38" W 184.13 FEET; THENCE S 73°37'42" W 196.58 FEET; THENCE S 83°13'39" W 479.90 FEET; THENCE S 55°41'27" W 428.33 FEET; THENCE N 19°00'00" E 745.16 FEET; THENCE S 87°00'00" W 343.12 FEET; THENCE N 1°58'36" W 143.74 FEET TO THE POINT OF BEGINNING.

CONTAINS 71.03 ACRES

JWD/jwd  
5-8147

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883434/01





Rio de Sion Subdivision

Located in  
Sections 22, 23, 24 & 27  
Township of Scotch, Range 10 West  
Salt Lake Base & Meridian

PLANS & CO. OF P.A., INC.  
REGISTERED PROFESSIONAL ARCHITECT  
1000 N. 1000 E. SUITE 100  
SALT LAKE CITY, UT 84143  
310 Rio de Sion Subdivision  
PLAT 890945/03

May 31, 2006  
890945/03