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AFTER RECORDING PLEASE RETURN TO:  
Ivory Southern, LLC  
Colin H. Wright  
3143 South 840 East  
St. George, Utah 84790

**DOC # 20070004364**

Amended Restrictive Covenants 1 of 57  
Russell Shirts Washington County Recorder  
01/26/2007 08:24:56 After 5:125.0034 IVORY SOUTHERN LLC



NOTE TO RECORDER:  
RECORD ONLY AGAINST THE PROPERTY  
DESCRIBED IN EXHIBIT "A"

9-5-3-7-11 ci

**AMENDED AND RESTATED  
MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND  
RESERVATION OF EASEMENTS**

**FOR HIDDEN VALLEY AT ST. GEORGE**

**a Planned Mixed Residential Use Development**

*This Applies to All Phases of the Estates, Villages and*

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

*Consisting*

**RECITALS:**

- A. Declarant is the owner of the real property described on Exhibit "A" attached hereto (the "Tract").
- B. Declarant desires to submit the Tract, together with all buildings and improvements now or hereafter constructed on the Tract, and all easements and rights appurtenant thereto to the Master Declaration.
- C. Declarant is recording concurrently herewith the amended and restated record of survey map with respect to the Tract (the "Plat").
- D. Declarant intends that Developer construct the Common Area, Lots and Units (as defined in the Master Declaration) shown on the Plat.
- E. Declarant desires to designate Developer as a "Builder" and "Developer" under the Declaration.

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F. Hidden Valley at St. George is a planned mixed residential use development comprised of several Neighborhoods functioning under this MASTER DECLARATION.

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

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

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

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

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

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

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

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

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

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

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

O. The Declarant hereby declares that the Tract and all of the Neighborhoods shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of enhancing and protecting the value, attractiveness and desirability of the Neighborhoods, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Neighborhoods or any portion thereof. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Neighborhoods and shall be binding upon all persons having or acquiring any right, title, or interest in the Neighborhoods, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Neighborhoods and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by Declarant, Developer, the Hidden Valley at St. George Homeowners Association (the "Master Association" or "MHOA"), and/or each Owner, and their respective heirs, executors, administrators, successors and assigns.

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

#### AGREEMENT:

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

#### I. DEFINITIONS

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

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

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

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

1.4 The term **Board of Directors** shall mean and refer to the Board of Directors of the MHOA, appointed or elected in accordance with this MASTER DECLARATION and the Bylaws.

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

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

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

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

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

1.10 The term **Covenant to Share Costs** shall mean and refer to any contract, agreement, MASTER DECLARATION of easements, licenses and/or covenant to share costs executed by the Developer or MHOA and recorded in the Office of the County Recorder which creates easements for the benefit of the MHOA, Owners and Members, subject to such Covenant to Share Costs, and/or which obligates the MHOA to share the costs of maintaining certain real, personal or mixed property described therein.

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

1.12 The term **Delegate** shall mean and refer to the voting representative of each Member of the MHOA.

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

1.14 The term **Developer** shall mean and include Ivory Southern, LLC and any Person or Persons who might acquire title from it to all or some of the unsold Lots or Units through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where, any person purchases all, or some of the remaining Lots or Units in a sale in the nature of a bulk sale. The person acquiring any of such property from the Declarant shall be considered a Developer with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this MASTER DECLARATION and any Supplemental Declaration applicable to the property, provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant, or its successor in interest, and the new Developer with respect to such property.

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

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

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

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

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

1.20 The term **Individual Assessments** shall mean and refer to an assessment levied by the MHOA against an Owner for all expenses, costs, charges and attorney's fees resulting from the act or omission of such Owner or Guest or resulting from corrective action taken by the MHOA against the Owner or the Owner's Guest, excepting the Owner's failure to pay any Assessment. Individual Assessments shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner or Guest, including:

1.20.1 The act or negligence of any Guest shall be deemed to be the act or negligence of the Owner responsible for the Guest.

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

1.20.3 The cost to satisfy any expense to any other Owner or Owners or to the MHOA due to any intentional or negligent act or omission of such Owner or Guest, or resulting from the breach by such Owner or Guest of any provisions of the MASTER DECLARATION, the Bylaws and any rules and regulations of the MHOA; and

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

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

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

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

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

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

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

1.26 The term **Master Association** or **MHOA** shall mean and refer to the Hidden Valley at St. George Homeowners Association. The MHOA shall own all Common Area and Facilities, Exclusive Common Area and Facilities, and Limited Common Area.

1.27 The term **MASTER DECLARATION** shall mean and refer to this MASTER DECLARATION of Covenants, Conditions and Restrictions, and Reservation of Easements.

1.28 The term **Master Operating Expenses** shall mean and refer to the common expenses of maintaining, repairing, replacing, and operating the Common Area and Facilities of the Neighborhoods and administering the MHOA.

1.29 The term **Plat** shall mean and refer to the Plat Map or Maps showing property subjected to this MASTER DECLARATION, and any amendments or supplements thereto.

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

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

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

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

1.34 The term **Neighborhood Association** shall mean and refer to an association of property owners having jurisdiction, in whole or in part, over a specific Neighborhood concurrent with, but subordinate to, the MHOA.

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

1.36 The term **Par Value** shall mean the number of dollars or points assigned to each Unit or Lot by a Declaration. The statement of value may not be considered to reflect or control the sales prices or fair market value of any property, and no opinion, appraisal, or fair market transaction at a different figure may affect the par value of any property, or any undivided interest in the Common Area and Facilities, voting rights in the Association, liability for Common Expenses, or the rights to Common Profits, assigned on the basis thereof.

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

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

1.39 The term **Project** shall mean and refer to the Neighborhoods, Lots, Units, Common Area and Facilities, Exclusive Common Area and Facilities, and all improvements submitted to this MASTER DECLARATION.

1.40 The term **Neighborhoods** shall mean and refer to the Project.

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

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

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

1.44 The term **Single Family** shall mean each Lot or Unit shall be occupied only by a single family, to wit: No one shall be entitled to reside in a residence constructed on a Lot unless he or she is a member of the immediate family therein residing, or are authorized



oster children or wards. No boarding houses or other group housing for unrelated people of any kind is allowed regardless of the method or structure of the occupancy arrangement.

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

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

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

1.48 The term **Total Votes of the MHOA** shall mean and refer to the total number of votes appertaining to all Lots, Units or Developer's interests, as described in Section 3.2.

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

1.50 The term **Unit** shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part of parts of floors in a building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit.

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

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

## II. INCIDENTS OF OWNERSHIP

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

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

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

2.4 **Description and Ownership of Common Area and Facilities.** The Common Area and Facilities shall mean and include all of the Property not privately owned or dedicated to the City. The Common Area and Facilities is designated on the Plat. Exclusive Common Area and Facilities and Limited Common Area are also designated on the Plat.

2.5 **Description of Limited Common Area and Facilities.** Limited Common Area and Facilities shall mean a portion of the Common Area and Facilities reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, decks, balconies, foyers, storage closets, hot tubs, patios, attics, and other areas as indicated by the MASTER DECLARATION or the Plat to be for the exclusive use of one or more but fewer than all of the Lots or Units. Mechanical systems or utility closets serving only the certain Lots or Units shall be Limited Common Area and Facilities with respect to the Lots or Units which they serve. The Limited Common Area and Facilities shall be those areas designated as such on the Plat or in this MASTER DECLARATION. The use and occupancy of designated Limited Common Area and Facilities shall be reserved to the Lots or Units to which such Limited Common Area is adjacent, unless otherwise shown on the Plat or as specified in this MASTER DECLARATION. Owners may not reallocate Limited Common Area and Facilities between or among Lots or Units in which they have an interest.

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

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

**2.8 Activity Cards.**

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

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

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

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

**2.8.5 Assignment of Rights.** Except as may otherwise be expressly provided herein, the right to an Activity Card is based upon ownership of a Lot or Unit in good standing. If, and so long as, a Lot or Unit is occupied solely by Persons other than the Owner, pursuant to a lease or other agreement, then (1) the Owner shall not be entitled to receive an Activity Card, and (2) the right of any occupant to receive an Activity Card shall depend on his or her good standing, which shall mean compliance with the MASTER DECLARATION, Bylaws and rules and regulations of the Association, including without limitation being not more than sixty (60) days in arrears on any Assessments. Any Owner who leases or otherwise transfers occupancy of his Lot shall provide the Association with immediate written notice thereof and shall surrender to the Association his previously issued Activity Card. If the Owner or the Owner's guests and invitees also desire to utilize the

Common Area and Facilities, including Exclusive Common Area and Facilities, then the Owner shall pay an additional charge in an amount determined by the Board of Directors.

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

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

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

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

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

**2.9.4 Modifications to Property.** Notwithstanding anything to the contrary contained in this MASTER DECLARATION, Developer may unilaterally, in its sole discretion make such alterations, changes or modifications to any property, Lot or Unit owned by

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

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

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

**2.10 Area of Application.** This MASTER DECLARATION shall apply to all of the Neighborhoods.

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

**2.11.1 Annexation.** Expand the application of this MASTER DECLARATION in order to annex additional land, Common Area and Facilities, Exclusive Common Area and Facilities, Limited Common Area, Units, or Lots, provided that such lands are included within that State of Utah Development Lease Number 754 by and between Declarant and Developer.

**2.11.2 Neighborhoods.** Add, withdraw or merge Neighborhoods and Directors; and

**2.11.3 Withdraw Land.** Withdraw land from this MASTER DECLARATION.

A written supplement to this MASTER DECLARATION duly recorded shall be necessary and sufficient to expand the application of this MASTER DECLARATION.

**2.12 Bylaws.** The initial Bylaws of the Association shall be adopted by the initial Board of Directors.

**2.13 Sub-associations.** The Board of Directors has the right to require any Neighborhood or group of Neighborhoods to form a sub-association which shall assist, but be subordinate to the MHOA. Membership in such a sub-association will be mandatory and all members of the Neighborhood will automatically become a member of the sub-association.

### III. VOTING

3.1 **Directors by Neighborhood and at Large.** Subject to the Developer's right to control the Board of Directors during the Period of Developer Control, the MHOA shall have at least three (3) Directors and not more than seven (7) Directors. The Board of Directors is not obligated, but may elect to establish a districting form of elections to the Board by assigning each Neighborhood a specific number of Directors to be elected from each Neighborhood, provided that at least one (1) but not more than three (3) Directors may be elected at large. If a districting form of electing directors is not established then all Directors will be elected at large.

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

### IV. EASEMENTS

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

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

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

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

4.5 **Encroachments.** If any part of the Common Area and Facilities or Exclusive Common Area or Facilities encroaches or shall hereafter encroach upon a Lot or Unit or Lots or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot or Unit encroaches or shall hereafter encroach upon the Common Area and Facilities, or upon an adjoining Lot or Unit or Lots or Units, an

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

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

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

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

**4.9 Construction Easements.** The Declarant hereby grants to Developer and its affiliates and assigns a temporary construction easement over the Common Area and Facilities and Exclusive Common Area and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Lots, Units, Common Area and Facilities, Limited Common Area and Exclusive Common Area and Facilities. The Owners of Lots and Units do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Lots, Units and the Common Area and Facilities, and Exclusive Common Area and Facilities until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Developer shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners of Lots, Units and Common Area and Facilities and Exclusive Common Area and Facilities in the Project. Developer's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

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

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

**4.12 Parking.** While occupying a Lot or Unit or using the Clubhouse, if any, all Owners and Members are entitled to use the parking areas designated as Common Area and Facilities, except those in the designated Exclusive Common Area or reserved or assigned to a particular Lot, Unit or Neighborhood, subject to and in accordance with the rules and regulations adopted by the MHOA.

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

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

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



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

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

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

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

## **V. NOTICES**

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

## **VI. INSURANCE**

**6.1 Insurance.** The Board of Directors may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to

maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners.

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

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

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

**6.2.3 Buildings and Units.** Property, fire and extended hazard coverage for all Buildings that contain more than one Unit, including any improvement which is a permanent part of a Building and is considered Common Area, Elements and Facilities;

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

**6.2.5 Fidelity Bond.** A fidelity bond.

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

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

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

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

**6.6 Insurance Obligation of Unit Owner.** The foregoing obligation and right of the Association to purchase insurance coverage **DOES NOT** preclude the right or negate

the obligation of each Owner to insure his own Lot and/or Unit for his benefit. **EACH OWNER SHALL OBTAIN AT LEAST THE FOLLOWING INSURANCE COVERAGE** (collectively, "Owner Policy"):

**6.6.1 Public Liability Insurance. PUBLIC LIABILITY COVERAGE FOR HIS LOT AND/OR UNIT. THE LIMITS OF HIS PUBLIC LIABILITY INSURANCE POLICY SHALL BE IN AN AMOUNT NOT LESS THAN \$500,000.00 FOR BODILY INJURY, DEATH, AND PROPERTY DAMAGE.**

**6.6.2 Coverage "A" Building (as that term is defined by the standard homeowners insurance policy) A COVERAGE "A" BUILDING POLICY IN THE AMOUNT OF AT LEAST \$100,000.00;**

**6.6.3 EACH OWNER SHOULD PURCHASE INDIVIDUAL PROPERTY, FIRE AND EXTENDED COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT, WHICH SHOULD BE AN AMOUNT SUFFICIENT TO REPAIR ANY DAMAGE TO HIS LOT AND/OR UNIT. TO WIT: For use herein the insurance required shall cover at least the Lot and Unit, including the interior boundaries of the Unit which are defined as follows: The horizontal boundaries extend to the intersection with the vertical boundaries. Each Unit's lower boundary shall be a plane coinciding with the top of the concrete slab below the Unit's floor and each Unit's upper boundary shall be a plane coinciding with the top of the Unit's ceiling. The vertical boundaries extend to the intersection with each other and with the horizontal boundaries. Each Unit's vertical boundaries shall be its perimeter walls. This includes by way of illustration but not limitation the sheetrock, drywall or plaster, windows and window frames; doors, stairwell; appliances; mechanical equipment and appurtenances located within any one unit or located outside said unit but designated and designed to serve only that unit; plumbing including all pipes, wires, conduits, or other public utility lines or installations constituting a part of the unit and serving only that unit including sewer, water main that enters the property and pipes within the home; electrical receptacles and outlets, air conditioning and compressors and other air cooling apparatus, boilers, water heaters and water softeners; cabinets, fixtures, lighting, sinks, tubs, counters, countertops and islands, hardware; all decorated (affixed) interiors and surfaces of interior structural walls, floor coverings, ceilings and trim, consisting of wallpaper, paint, wood floors, carpeting and tile; patio porch, or deck, along with any covering of said patio, porch or deck; interior of garage, storage and any other areas which shall pass with the title to the Unit with which is associated and any Limited Common Area and facilities that are reserved for the use of the individual Unit. EACH OWNER IS ENCOURAGED TO SPEAK WITH HIS INDEPENDENT INSURANCE AGENT BEFORE DETERMINING THE AMOUNT OF HIS OWNER POLICY.**

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

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

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

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

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

6.6.8 **Name Association as “Additional Insured.”** Each Owner Policy shall name the Association as an “Additional Insured.”

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

6.7 **Owner’s Default.** If an Owner fails to obtain his Owner Policy or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to purchase the required insurance and treat the cost as an Individual Expense. Anything to the contrary notwithstanding, if an Owner fails to obtain his required Owner Policy, then he shall be personally responsible to pay any deductible on the Master Association Policy as well as any and all costs, up the minimum amount of coverage, incurred for repairs of or to the building as defined in Subsections 6.6.2 and 6.6.3 above.

6.9 **Payment of Deductible.** It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the Association Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose Lot and/or Unit the causal

event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Unit Owner shall be responsible for the deductible. It is the intent of the Declarant to obtain property, fire and extended hazard insurance with a \$5,000.00 deductible. This amount may be increased or decreased unilaterally by the Board of Directors upon a written recommendation for its insurance agent without amending the Declaration. Each Owner is encouraged to purchase insurance to cover the cost of the deductible.

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

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

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

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

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

**6.6 Primary Coverage.** It is the intent of the Declarant that the Owner's Coverage A - Building provide **PRIMARY** coverage and that the Association Master Policy provide **SECONDARY** coverage.

## VII. MAINTENANCE

**7.1 Operation and Maintenance of Common Area.** The MHOA shall have the power, authority, right, and duty to operate, maintain, keep, and replace all Common Area and Facilities and Exclusive Common Area and Facilities not separately maintained by a Neighborhood Association in a state of good repair and condition.

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

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

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

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

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

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

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

**7.8 Maintenance of Detached Townhouses or Units.**

**7.8.1 Maintenance Obligations of Owners.** It shall be the duty of each Owner of a detached Townhouse or Unit, at his sole cost and expense to maintain, repair, replace and restore all improvements located on his Lot or structures built by the Owner on the Limited Common Area, and to ensure that the Lot itself is maintained in a neat, sanitary and attractive condition. If any Owner shall permit any improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive or to otherwise violate this MASTER DECLARATION, the Board of Directors shall have the right to seek any remedies at law or in equity which it may have. In addition, the Board or Directors shall have the right, but not the duty, to enter upon such Owner's Lot to perform such emergency and non-emergency repairs or maintenance as the Board of Directors deems appropriate and to charge the cost thereof to the Owner. Said cost shall be an Individual Assessment enforceable as set forth in this MASTER DECLARATION. For non-emergency repairs or maintenance the Owner shall be entitled to Notice and right to hearing.

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

**7.9 Party Walls.**

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

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

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

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

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

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

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

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

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

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



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

**8.3 Grant of Powers.** Except as otherwise provided in Section 9.2 or elsewhere herein, the Board of Directors shall have all the powers, duties and responsibilities as are now or may hereafter be provided by this MASTER DECLARATION and the Bylaws, including but not limited to the following:

**8.3.1 Rules and Regulations.** To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Lots and Units.

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

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

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

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

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

**8.3.7 Neighborhood Assessments.** To assess and collect Neighborhood Assessments and Individual Assessments.

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

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

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

**8.3.11 Litigation.** To bring, prosecute and settle litigation for the MHOA and the Project.

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

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

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

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

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

**8.3.17 Budgets.** To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

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

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

**8.3.20 Delegation of Committees.** Subject to the limitations of applicable law, the Board of Directors may delegate to a committee, a Neighborhood Association,

Common Area Manager by written agreement all or some of the foregoing powers, duties and responsibilities.

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

**8.5 Limitation of Liability.** When a member of the Board of Directors is sued for liability for actions undertaken in his or her role as a member of the Board of Directors, the MHOA shall indemnify him or her for losses or claims under such terms as are set forth in the Bylaws.

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

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

## IX. ASSESSMENTS

### 9. Master Assessments.

9.1 **Obligation of Members of Master Association.** Each Member of the Master Association shall pay to the MHOA its share of the Master Operating Expenses.

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

### 9.3 Neighborhood Assessments and Individual Assessments.

9.3.1 **Neighborhood Assessments.** The Board of Directors may elect to incorporate into the billing for the Master Assessment any Neighborhood Assessment. Any Neighborhood Association may elect to have its Assessment incorporated into the Master Assessment.

9.3.2 **Individual Assessments.** The MHOA may levy Individual Assessments against a particular Owner of a Lot, Townhouse or Unit to pay the costs directly attributable to, or reimbursable by, that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this MASTER DECLARATION, plus interest, an administration fee of fifteen percent (15%) of the total cost of the corrective action, and attorney's fees. Fines and penalties levied by the Board of Directors pursuant to this MASTER DECLARATION and the Rules and Regulations may be assessed as an Individual Assessment. Individual Assessments may only be levied upon the vote of the Board of Directors after notice to the Member and an opportunity for a hearing. In addition to the foregoing, if a street lamp is located on a Lot or directly adjacent to a Lot and not on Common Area, then the electricity used to operate the street lamp will be the responsibility of such Lot Owner and will be an Individual Assessment which may be included in the Master Assessment of the Lot Owner.

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

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

9.6 **Budget.** The MHOA shall prepare and furnish to each Member an operating budget for the MHOA for the coming calendar year at least thirty (30) days prior to the beginning of each year. The MHOA shall also prepare and furnish to each Member subject to a Neighborhood Assessment an operating budget for the Exclusive Common Area and

Facilities and/or maintenance, repair and replacement of the exterior elements of attached Townhouses or Units for the coming calendar year at least thirty (30) days prior to the beginning of each year.

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

**9.8 Payment.** Neighborhood Assessments, Master Assessments and each Member's share of the Master Operating Expenses shall be payable in twelve (12) equal monthly installments. Monthly invoices for each Member will be prepared by the MHOA. Payment of the Assessments must be made to the MHOA within on the first day of each month. A late fee of \$15.00 or 5% of the monthly installment due, whichever is greater, may be assessed on all payments not received by the fifteen day of the month. Default interest at the rate of 1.5% per month may be charged on the outstanding balance on all delinquent accounts. The MHOA may elect to accelerate the entire Annual Master Assessment in the event of default.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9.12.12 Providing Notice.** The Board of Directors shall provide notice by first class mail to all Owners or Members of any Special Master Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

**9.12.13 Payment by Developer.** To the extent permitted by law, Developer may pay the MHOA an amount less than its proportionate share of Operating Common Expenses or other permitted Master Assessments for which it owes, provided Developer has executed a subsidy agreement requiring Developer to pay monies which are sufficient, together with the Master Assessments paid by all other Owners, to enable the MHOA to timely pay all of the Operating Common Expenses. Any subsidy agreement shall require

Developer to pay its full proportionate share of all reserves for replacement and capital improvements assessed against the Lots, Townhouses or Units which it owns.

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

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

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

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

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

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

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

- (i) tax and special assessment liens on the Lot, Unit or Membership in favor of any assessing unit or special improvement district; and
- (ii) encumbrances on the interest of the Owner or Member recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in



deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the State of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code, as amended from time to time.

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

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

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

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

9.12.25 **Appointment of Trustee.** The MHOA and each Owner hereby appoints James R. Blakesley, its attorney and his successors and/or assigns, as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code.

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

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

9.12.28 **Superiority of Lien.** The lien of the MHOA shall be superior to all other liens and encumbrances except liens and encumbrances recorded before recordation of this MASTER DECLARATION, a First Mortgage on a Lot, Unit or Membership as provided for herein and Master Assessments, liens and charges in favor of the state or any

political subdivision thereof, for taxes and other governmental Master Assessments or charges past due and unpaid on the Lot, Unit or Membership.

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

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

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

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

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

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

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

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

9.12.37 **Reserve Accounts.** The MHOA through the Board of Directors shall include in the Master Assessments amounts representing sums to be used for major Repairs, the replacement of or additions to capital items or improvements in the Project.

Said amounts shall be dedicated for the uses provided in this Section and shall be set up as reserve accounts for each Lot, Unit or Townhouse.

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

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

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

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

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

**9.12.43 Initial Working Capital Fund.** Each initial Owner of a Lot shall make the following initial contributions. Such amounts paid shall not be deemed to be advance payments of the Master or other Assessment, but shall be in addition thereto.

9.12.43.1 Each initial Owner in the Villas shall contribute \$500.00, which shall be apportioned as follows: \$300 to the Villa Neighborhood reserve account; \$100 to the operating account; \$50 to the MHOA reserve account; and \$50 to the MHOA operating account.

9.12.43.2 Each initial Owner in the Casitas shall contribute \$400.00, which shall be apportioned as follows: \$200 to the Casitas Neighborhood reserve account; \$100 to the operating account; \$50 to the MHOA reserve account; and \$50 to the MHOA operating account.

9.12.43.3 Each initial Owner in the Estates shall contribute \$100.00, which shall be apportioned as follows: \$50 to the MHOA reserve account; and \$50 to the MHOA operating account.

Developer expressly reserves the right to change the amount and allocations of the foregoing Working Capital contributions.

#### **K. INITIAL USE RESTRICTIONS**

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

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

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

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

**10.1.3 Signs.**

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

**10.1.3.2** For Villas and Casitas, for sale signs must be located in the front window of a Unit, must be professionally prepared, and may not exceed a total of 378 square inches.

**10.1.3.3** For Estate homes, for sale signs are permitted in the front yard so long as they do not exceed 378 square inches.

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

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

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

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

**10.1.8 Unauthorized Activity.** No noxious, offensive, illegal or unauthorized activity shall be carried on in or upon any part of the Project nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners. Normal construction activities shall not be considered to violate the terms and conditions of this Section and by accepting a deed to a Lot, Unit or Townhouse, an Owner or Member

acknowledges that noises, lights and odors common to recreational and commercial activities, as well as construction activities, may exist on or near the Property, at any time and from time to time.

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

10.1.10 **Signage.** No signs, flags or advertising devices of any nature, including, without limitation, for sale or for rent signs, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger, except as may be used by Developer as part of its sales program, except to advertise the Project, or except as otherwise approved by Developer or, after expiration of the Period of Developer's Control, the Board of Directors.

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

10.1.12 **Smoking.** No smoking is permitted within the Clubhouse or pool area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.1.24.1 The owner of record, as shown in the Office of the County Recorder of Salt Lake County, Utah; or

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

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

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

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



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

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

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

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

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

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

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

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

**10.1.31 Signage.** "For Rent" or "For Lease" signs are prohibited; provided, however, Owners of Estate Lots may place up to two for sale signs with less than 378 square inches each, one in their front yard and another in their window.

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

10.1.32.1 \$25,000.00 shall be paid to the MHOA if the Owner sells the Unit within the first year of ownership, unless such payment is waived by the Board based upon a hardship of the Owner.

10.1.32.2 No owner may own less than twenty-five percent (25%) of a Unit.

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

10.1.34 **Validity of MASTER DECLARATION.** It is intended that this MASTER DECLARATION alone, incorporating by reference the Bylaws, Articles, rules and regulations of the MHOA, shall govern all rights with respect to the use, possession, enjoyment, management and disposition of the Property. Accordingly, all rights with respect to the use, possession, enjoyment, management and disposition of the property which an Owner might otherwise have are hereby unconditionally and irrevocably subordinated to this MASTER DECLARATION for so long as this MASTER DECLARATION shall remain in effect.

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

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

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

**10.1.37.1 Parking Rules.** The parking rules and regulations adopted by the Management Committee from time to time:

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

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

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

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

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

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

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

**10.1.37.9 Access.** No motor vehicle shall be parked in such a

manner as to inhibit or block access to a Lot, garage, covered parking space, uncovered parking space, entrance, exit, or parking area.

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

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

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

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

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

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

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

**10.1.41 Entry Monument.** If an Owner purchases a Lot which includes a common improvement, including by way of illustration but not limitation an Entry, Entry Monument, planter, planter box, planter strip, perimeter fence, wall, street light, exterior

lighting or other landscaping treatment of any kind, shall at his sole expense, maintain such common elements in good condition, and may not improve his property or place any plant, hedge, tree, bush, shrub or object, natural or artificial, behind, to the side or in front of such improvement or feature or so as to impair, obstruct, block or impede the view or purpose of the Entry, Entry Monument or other improvement, planter box, landscaping strip, or any such special landscaping feature.

## XI. TERMINATION

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

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

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

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

**11.5 Common Area and Facilities.** In the event of the dissolution of the MHOA, the MHOA Property shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Area and Facilities and improvements on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth herein. To the extent the foregoing is not possible, the Common Area and Facilities shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners as tenants in common.

### **XII. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION AGREEMENT TO AVOID COSTS OF LITIGATION**

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

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

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

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

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

**12.2.4 Enforcement Regarding Mortgage.** Any suit or enforcement action or exercise of any right or remedy under or in respect of any Mortgage, any indebtedness secured by such Mortgage or any other document or agreement executed in connection with such Mortgage or in respect of any right provided herein with respect to such Mortgage.

**12.3 Mandatory Procedures for All Other Claims.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") other than an Exempt Claim, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

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

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

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

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

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

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

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

**12.7 Arbitration Award.** This constitutes an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable Utah arbitration law. The arbitration award (the "Award") shall be final and

binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under Utah law.

## 12.8 Allocation of Costs of Resolving Claims.

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

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

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

## XIII. SECURITY

13. **Security.** The MHOA may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. Neither the MHOA, nor the Declarant nor the Developer shall in any way be considered insurers or guarantors of security within the Project, however, and neither the MHOA, nor the Declarant nor the Developer shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and his, her or its tenants, Guests and invitees acknowledge that the Declarant, the Developer, the MHOA and its Board of Directors do not represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner or his, her or its tenant, guest or invitee acknowledges and understands that the Declarant, the Developer, the Board of Directors and the MHOA are not insurers and that each Owner or his, her or its tenant, guest and invitee assumes all risks for loss or damage to persons or property within the



Project and further acknowledges that the Declarant, the Developer, the Board of Directors and the MHOA have made no representations or warranties nor has any Owner or his, her or its tenant, Guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

#### XIV. AMENDMENT

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

**14.2 Initial Declarant Right to Amend.** The Declarant alone may amend or terminate this MASTER DECLARATION prior to the closing of a sale of the first Lot, Unit or Townhouse.

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

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

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

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

## **XV. MISCELLANEOUS.**

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

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

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

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

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

**15.6 Governing Law.** This MASTER DECLARATION shall be governed by and construed in accordance with the laws of the State of Utah.

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

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

perform their management responsibilities. In the event of a conflict of opinion, the decision of the Developer shall be conclusive, final and binding.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand this 2<sup>nd</sup> day of January, 2007.

DECLARANT:  
STATE OF UTAH  
SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

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

APPROVED AS TO FORM:

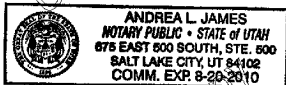
[Signature]  
Michelle E. McConkie, Special Assistant Attorney General

**ACKNOWLEDGMENT**

STATE OF UTAH  
COUNTY OF SALT LAKE )  
ss:

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of January, 2007 by Kevin S. Carter, the Director of the State of Utah School and Institutional Trust Lands Administration and said Kevin S. Carter duly acknowledged to me that said Administration executed the same.

[Signature]  
NOTARY PUBLIC  
Residing at: [Signature]  
My Commission Expires: 8-20-2010





**EXHIBIT "A"**

**LEGAL DESCRIPTION**

The land described in the foregoing document is located in Washington County, Utah and is described more particularly as follows:

## BOUNDARY DESCRIPTION

BEGINNING AT A POINT LOCATED S 88°51'13" E ALONG THE SECTION LINE 1539.65 FEET AND SOUTH 183.58 FEET FROM THE NORTH QUARTER CORNER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF PRICE HILLS DRIVE AND ALSO BEING A POINT ON A 1633.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, THE CENTER OF WHICH BEARS N 64°22'15" E; RUNNING THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 14°28'37" A DISTANCE OF 412.61 FEET; THENCE S 37°30'21" E ALONG SAID RIGHT OF WAY LINE 29.04 FEET TO A POINT ON THE BOUNDARY OF DESERT HILLS SUBDIVISION PHASE 1-A, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF WASHINGTON COUNTY, SAID POINT BEING ON A 30.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, THE CENTER OF WHICH BEARS S 43°50'17" W; THENCE SOUTHEASTERLY AND SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AND SAID DESERT HILLS BOUNDARY THROUGH A CENTRAL ANGLE OF 93°01'41" A DISTANCE OF 48.71 FEET; THENCE CONTINUING ALONG SAID DESERT HILLS BOUNDARY THE FOLLOWING TWO (2) COURSES, S 46°51'58" W 237.84 FEET TO THE POINT OF A 429.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13°57'22" A DISTANCE OF 104.50 FEET; THENCE N 57°03'51" W 105.77 FEET; THENCE N 78°38'07" W 104.76 FEET; THENCE N 35°03'49" W 58.51 FEET THENCE N 9°52'33" E 426.54 FEET; THENCE N 44°05'32" E 66.66 FEET; THENCE N 60°02'16" E 121.47 FEET TO THE POINT OF BEGINNING. CONTAINS 4.19 ACRES.

## BOUNDARY DESCRIPTION

BEGINNING AT A POINT N88°51'13"W 1215.45 FEET ALONG THE SECTION LINE FROM THE NORTHEAST CORNER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE S23°58'48"E 33.87 FEET TO A POINT ON A 30.00 FOOT, NON-TANGENT, RADIUS CURVE TO THE RIGHT, THE RADIUS POINT BEARS S23°58'48"E; THENCE SOUTHEASTERLY 47.12 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" TO THE POINT OF TANGENCY AND TO THE WESTERLY RIGHT OF WAY LINE OF "PRICE HILLS DRIVE", ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF WASHINGTON COUNTY; THENCE S23°58'48"E 106.25 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF A 1633.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHEASTERLY 47.01 FEET ALONG THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE THROUGH A CENTRAL ANGLE OF 1°38'57"; THENCE S60°02'16"W 121.47 FEET; THENCE S44°05'32"W 66.66 FEET; THENCE S9°52'33"W 360.87 FEET TO A POINT ON AN 80.00 FOOT, NON-TANGENT, RADIUS CURVE TO THE LEFT, THE RADIUS POINT BEARS S26°35'06"W; THENCE SOUTHWESTERLY 168.37 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 120°35'00" TO THE POINT OF TANGENCY; THENCE S3°59'54"E 183.93 FEET; THENCE S33°11'25"W 21.46 FEET; THENCE S37°12'22"W 43.31 FEET; THENCE S68°37'20"W 296.98 FEET TO THE POINT OF A 230.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 79.42 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19°47'00"; THENCE N22°38'18"W 25.54 FEET; THENCE S66°01'04"W 30.01 FEET; THENCE N22°38'18"W 795.22 FEET; THENCE N66°00'27"E 816.45 FEET; THENCE N70°55'55"E 169.36 FEET; THENCE S23°58'48"E 46.13 FEET TO THE POINT OF BEGINNING.  
CONTAINS 14.70 ACRES.



### BOUNDARY DESCRIPTION

BEGINNING AT A POINT S 88°51'13" E 498.45 FEET ALONG THE NORTH LINE OF SECTION 18 AND SOUTH 363.66 FEET FROM THE NORTH ¼ CORNER OF SECTION 18, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE & MERIDIAN, RUNNING THENCE S 22°38'18" E 795.22 FEET ALONG THE PROPOSED CENTERLINE OF xxxxxxxx; THENCE S 66°00'22" W 211.22 FEET TO THE POINT OF A 825.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE 120.00 FEET THROUGH A CENTRAL ANGLE OF 8°20'01"; THENCE S 57°40'26" W 360.04 FEET TO THE POINT OF A 775.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE 31.57 FEET THROUGH A CENTRAL ANGLE OF 2°20'03"; THENCE N 30°14'50" W 89.24 FEET; THENCE S 64°34'11" W 67.96 FEET; THENCE N 25°25'49" W 63.34 FEET; THENCE N 42°13'28" W 232.49 FEET; THENCE N 47°46'32" E 5.81 FEET; THENCE N 42°13'28" W 85.00 FEET; THENCE N 47°46'32" E 8.60 FEET; THENCE N 42°13'28" W 88.00 FEET TO THE POINT OF A 875.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT WHOSE RADIUS BEARS N 37°28'56" W; THENCE ALONG THE ARC OF SAID CURVE 8.93 FEET THROUGH A CENTRAL ANGLE OF 0°35'06"; THENCE N 37°22'28" W 330.90 FEET; THENCE N 66°00'27" E 1014.85 FEET TO THE POINT OF BEGINNING.

CONTAINS 16.74 ACRES

