IN THE FOURTH DISTRICT COURT, PROVO DEPARTMENT
UTAH COUNTY, STATE OF UTAH

WILLOW SPRINGS CONDOMINIUM OWNER'S ASSOCIATION, INC., a Utah Non-Profit Corporation; ROCK CREEK CONDOMINIUM ASSOCIATION, a Utah Non-Profit Corporation; and COLD SPRINGS AT RED HAWK RANCH HOMEOWNERS SUB-ASSOCIATION, INC., a Utah Non-Profit Corporation, Plaintiffs, v. THE RANCHES, L.C., a Utah Limited Liability Company; and THE RANCHES AT EAGLE MOUNTAIN MASTER HOMEOWNER'S ASSOCIATION, INC., a Utah Non-Profit Corporation, Defendants.	**RULING AND ORDER GRANTING IN PART JUDGEMENT IN FAVOR OF PLAINTIFFS** Case No. 130400686 Discovery Tier: 3 Judge Derek P. Pullan

Trial in the matter was held before this Court on December 12, 14, 15, and 16, 2016 with counsel present for the Plaintiffs Willow Springs Condominium Owner's Association, Inc. ("Willow Springs"), Rock Creek Condominium Association ("Rock Creek"), and Cold Springs at Red Hawk Ranch Homeowners Sub-Association, Inc. ("Cold Springs") (collectively, the

"Plaintiffs") and Defendant The Ranches at Eagle Mountain Master Homeowner's Association, Inc. ("the Master Association").[1]

The Court having heard the evidence presented at trial and considered the testimony of witnesses hereby makes the following:

RULING

FINDINGS OF FACT[2]

I. The Parties

1. Defendant The Ranches, L.C. ("the Developer") is an expired Utah Limited Liability Company, which owned and developed a larger master-planned community called The Ranches.

2. Willow Springs and Rock Creek are condominium owners associations located within The Ranches. Both are Utah non-profit corporations with principal places of business in Utah County, Utah.

3. Cold Springs is a homeowners association also located in The Ranches. It is a Utah non-profit corporation with its principal place of business in Utah County, Utah.

4. The Master Association is the homeowner's association for The Ranches. It is a Utah Non-Profit Corporation with its principal place of business in Utah County, Utah.

---

[1] The Ranches, L.C. was properly served and failed to timely respond to Plaintiffs' Complaint. Plaintiffs filed for a Default Judgment and the clerk signed the Default Certificate on September 11, 2013.

[2] In its Ruling and Order: Granting in Part Plaintiffs' Motion for Partial Summary Judgment (Quiet Title) and Denying Plaintiffs' Motion for Partial Summary Judgment (Equitable Defenses), dated May 10, 2016 ("May 10th Ruling"), this Court previously ordered that certain facts were undisputed and established for purposes of trial. In addition, the Court's ruling on the Motion to Reconsider on November 28, 2016 ("Nov. 28th Ruling") amended some of the facts previously established for trial as set forth in the Court's May 10th Ruling. The facts established for trial relevant to this decision are identified by a paragraph number preceded by either "ED" for facts established from Plaintiffs' Third Motion for Partial Summary Judgment (Equitable Defenses) or "QT" for facts established from Plaintiffs' First Motion for Partial Summary Judgment (Quiet Title).

5. *QT 1, ED 1: The Master Association was incorporated in 1997 as The Cedar Pass Estates Homeowners' Association, Inc. In 1998, it changed its name to The Ranches at Eagle Mountain Master Homeowner's Association, Inc.*

II. Master Plan for The Ranches

6. Prior to 1998, the Developer acquired a large tract of land in what would become the City of Eagle Mountain ("the City").

7. The Developer sought approval from the City to develop the land into a master-planned community called The Ranches.

8. Although the land was not zoned for high-density housing, the City approved The Ranches based on the master plan, which included parks, parkways, trails, and other open spaces. The Developer and the City entered into a development agreement memorializing their obligations to each other in relation to The Ranches ("the Development Agreement"). Exhibit 216.

9. The City required the Developer to submit (1) plans, (2) covenants, conditions, and restrictions, and (3) design guidelines as a condition of development approval.

10. The Ranches consisted of more than 6,100 residential units. But for the Master Plan, Plaintiffs' high-density subdivisions would not exist today.

11. The Master Plan contemplated the construction of different neighborhoods within The Ranches and permitted a variety of housing types, including condominiums, town homes, and single-family residences.

12. *ED 4: The Developer did not subdivide Plaintiffs' projects into lots that were then sold to individual owners.*

13. This was so because the Developer was not itself in the business of building homes. Rather, it sold land within The Ranches to commercial builders who in turn subdivided that land into lots and condominiums for sale.

14. The Master Plan included areas not owned by the Developer. For example, different entities owned Cedar Pass Ranch and North Ranch, but both of these developments were nevertheless included within the Master Plan.

III. Marketing and Sales Within The Ranches

15. The Developer invested significant resources to brand, promote, and advertise The Ranches. These efforts included purchasing freeway billboards, sponsoring sporting events, and engaging in radio and print advertising. Commercial builders within The Ranches helped pay for these marketing efforts.

16. The Developer established a large sales trailer at The Ranches where potential buyers could obtain information ("the Sales Center").

17. The Master Plan for The Ranches is depicted on page 3 of Exhibit 244. This map was the centerpiece of the Sales Center from 1998 to 2004 during which time numerous homes were sold within The Ranches.

18. Scot Hazard began working with the Developer in 1996. Hazard was responsible for sales and marketing. He confirmed the collaborative marketing arrangement between the Developer and commercial builders within The Ranches. Marketing drove potential buyers to the Sales Center and sales personnel would "stay neutral after that," providing information as requested and referring buyers to sales centers within specific neighborhoods as requested.

19. Hazard was the lead sales person in the Sales Center. He testified that both promotional materials and sales personnel informed potential buyers that the amenities within The Ranches—the parks, parkways, trails, and open space—would be paid for through a master homeowner's association with authority to impose assessments on homeowners.

20. *ED 32: At least as early as 1998, the Developer had prepared a draft declaration of covenants, conditions, and restrictions.*

21. *ED 33: Drafts of the Community Declaration for The Ranches at Eagle Mountain, dated September 1, 1998, and 1999 were produced in discovery.*

22. *ED 34: The Draft Declaration states that the real property constituting the "First Subdivision" and the "Annexable Area" for the [Master Association] is described on Exhibits A and B thereof, respectively.*

23. However, the 1998 and 1999 Draft Declarations[3] do not contain a legal description of the "Project Area" or "Annexable Area" as the Draft Declarations do not include an Exhibit A or Exhibit B.

24. It is impossible to identify from the face of the Draft Declarations which land was actually intended to be identified as the Project Area or Annexable Land in the Draft Declarations.

25. *ED 43: Mr. Brodsky—the owner of Hamlet Homes and developer of Cold Springs at Red Hawk L.L.C.—does not recall which version of the Master Association's declaration he received prior to the 2004 Declaration being recorded.*

---

[3] The 1998 and 1999 versions of the Community Declaration for The Ranches at Eagle Mountain are collectively referred to herein as the "Draft Declarations." These Draft Declarations were introduced at trial as Exhibits 33 and 34, respectively.

26. The First Amended and Restated Community Declaration for The Ranches at Eagle Mountain Master Homeowner's Association, Inc. ("the 2004 Declaration") was recorded on June 8, 2004.

27. Neither Brian Haskell (an employee of the Developer responsible for finance and accounting) nor Scott Kirkland (the principal owner of the Developer) knows which version of the Declaration—the 1998 Draft Declaration, the 1999 Draft Declaration, or some other version—was used or relied upon prior to June 8, 2004 when the 2004 Declaration was recorded.

28. Hazard testified that a copy of "the most current version" of a declaration of covenants, conditions, and restrictions was provided to potential buyers at the Sales Center. But Hazard could not say whether it was the 1998 Draft Declaration, the 1999 Draft Declaration, or some other version provided to him by the Developer.

29. Hazard testified that the declaration was "a living document" which could be updated as the Developer revised the vision of The Ranches, and amended to "adapt to changing market conditions."

30. Hazard testified that he did not learn that the declaration was not recorded until 2004, but—surprisingly—expressed his opinion that the declaration did not need to be recorded because it was referenced in other documents.

31. Nobody knows for certain if owners purchasing in the project from 1998 to June 8, 2004 were provided with the 1998 Draft Declaration, the 1999 Draft Declaration, or some other version.

IV. The Master Association's Boundaries

32. *QT 2, ED 2: Prior to beginning development within the Ranches, [the Developer] either owned or had options or purchase contracts on all the land within the [Master Association's] boundaries.*

33. When the Master Plan was adopted in 1998, *[the Developer acquired the right to develop] approximately 6,100 units.*

34. However, the Developer never owned nor took title to all of the land included within The Ranches Master Plan. Different entities owned land in Cedar Pass Ranch and North Ranch.

35. As explained, the Master Plan contemplated the creation of a master homeowners association responsible for maintaining amenities and with authority to impose assessments.

36. Multiple separate community associations were formed in The Ranches including Cedar Pass Ranch, North Ranch, and Meadow Ranch. The areas governed by these associations are depicted as part of the Master Plan for The Ranches. *See* Exhibit 244, Map on page 3.

37. Meadow Ranch was originally a development of The Ranches, L.C. and a sub-association of the Master Association based on the original recorded documents for the Meadow Ranch subdivision in 1999 and 2001. Exhibits 344–45.

38. But Meadow Ranch was subsequently removed by Scott Kirkland without any vote of the members of the Master Association and after many lots and parcels had been sold in The Ranches.

39. The 2004 Declaration included a legal description of land it encumbered. That legal description did not include Cedar Pass Ranch, North Ranch, or Meadow Ranch.

40. Although the Master Association has recorded documents over various additional portions of the Master Plan area and areas outside of it since 2004, it has never recorded any documents with a legal description including Cedar Pass Ranch, North Ranch, or Meadow Ranch.

41. Cedar Pass Ranch, North Ranch, and Meadow Ranch have their own governing documents completely separate from the Master Association.

42. The owners in North Ranch elected to dissolve the homeowners association within North Ranch.

43. Meadow Ranch dissolved its homeowners association in 2007.

44. Thus, the area claimed by the Master Association as subject to its jurisdiction is just one part of The Ranches Master Plan.

V. Development of Willow Springs, Cold Springs, and Rock Creek

45. *ED 77: Plaintiffs' Declarations were recorded prior to the recording of the 2004 Declaration.*

46. All, or at least the vast majority, of the homeowner deeds produced in evidence in this case do not contain an express reference to any declarations recorded by the Master Association. Exhibits 211–13.

A. Willow Springs Development

47. *ED 37: The Willow Springs Declaration does not reference the Master Association or an obligation for Willow Springs or its members to pay assessments to the Master Association.*

48. *ED 38: Summit [Development & Management, LLC] ("Summit") sold at least 72 units, the entire Phase 1, within Willow Springs to individual homeowners before the Master Association recorded the Notice of Continuing Obligation for Willow Springs.*

49. *ED 5: On August 16, 2000, Zane Powell, on behalf of Summit, executed the plat for Willow Springs, Phase 1, certifying that Summit Development was the sole owner of fee simple title of Willow Springs Phase 1.*

50. *ED 6: On August 22, 2000, the plat for Willow Springs, Phase 1 was recorded in the office of the Utah County Recorder.*

51. *QT 4, ED 7: The initial Declaration of Covenants, Conditions and Restrictions of the Willow Springs Condominiums was recorded with the Utah County Recorder on August 22, 2000.*

52. *ED 8: The Willow Springs Declaration was executed by the Willow Springs Declarant, Summit, and recites that Summit is the owner of the land covered by the Willow Springs Declaration.*

53. *ED 9: At the latest, beginning on January 22, 2001, Summit sold Units in Phase 1 for separate occupancy.*

54. *ED 10: On March 27, 2001, Zane Powell, on behalf of Summit, executed the plat for Willow Springs, Phase 2, certifying that Summit was the sole owner of fee simple title of Willow Springs Phase 2.*

55. *ED 11: On April 11, 2001, the plat for Willow Springs, Phase 2 was recorded in the office of the Utah County Recorder.*

56. *ED 12: At the latest, beginning on November 15, 2002, Summit sold Units in Phase 2 for separate occupancy.*

57. *ED 13: On November 13, 2002, Zane Powell, on behalf of Summit, executed the plat for Willow Springs, Phase 3, certifying that Summit was the sole owner of fee simple title of Willow Springs Phase 3.*

58. *ED 14: On January 3, 2003, the plat for Willow Springs, Phase 3 was recorded in the office of the Utah County Recorder.*

59. *ED 15: At the latest, beginning on May 13, 2003, Summit sold Units in Phase 3 for separate occupancy.*

60. *ED 16: On August 29, 2006, Heath Johnston, on behalf of Summit, executed the plat for Willow Springs, Phase 4, certifying that Summit was the sole owner of fee simple title of Willow Springs Phase 4.*

61. *ED 17: On April 4, 2007, the plat for Willow Springs, Phase 4 was recorded in the office of the Utah County Recorder.*

62. *ED 18: At the latest, beginning on May 30, 2007, Summit sold Units in Phase 4 for separate occupancy.*

B. Cold Springs Development

63. Unlike the Willow Springs Declaration and the Rock Creek Declaration, the Cold Springs Declaration states that Cold Springs is "a portion of a larger project area known as The Ranches. The property is bound by the Community Declaration for The Ranches Community Association, Inc." In fact, it expressly refers to the Cold Springs association as a "sub-association." Exhibit 51.

64. *ED 42: While the Cold Springs Declaration does make reference to the Master Association, it does not state that Cold Springs or its members are required to pay assessments to the Master Association.*

65. *ED 41: The Cold Springs Declaration states that its members must pay assessments to Cold Springs and any "[a]dditional assessments may be fixed against any Lot only as provided for in this [Cold Springs] Declaration."*

66. *ED 40: Cold Springs at Red Hawk L.L.C. conveyed title to property within Cold Springs to individual homeowners before the Master Association recorded the Notice of Continuing Obligation for Cold Springs.*

67. *ED 19: On June 18, 2001, Hamlet Homes, on behalf of Cold Springs at Red Hawk Ranch L.L.C., executed the plat for Cold Springs at Red Hawk Ranch Phase 1, certifying that Cold Springs at Red Hawk Ranch L.L.C. was the owner of the property in Cold Springs Phase 1.*

68. *ED 20: On August 10, 2001, the plat for Cold Springs at Red Hawk Ranch Phase 1 was recorded in the office of the Utah County Recorder.*

69. *ED 21: The Cold Springs at Red Hawk Ranch Homeowner's Sub-Association, Inc. Supplemental Declaration of Covenants, Conditions and Restrictions ("Cold Springs Declaration") was recorded with the Utah County Recorder on August 10, 2001.*

70. *ED 22: At the latest, beginning on November 4, 2002, Cold Springs at Red Hawk Ranch L.L.C. sold Units in Phase 1 for separate occupancy.*

71. *ED 23: On December 2, 2002, Cold Springs at Red Hawk Ranch L.L.C. and Guaranty Bank executed the plat for Cold Springs at Red Hawk Ranch Phase 2, certifying that*

Cold Springs at Red Hawk Ranch L.L.C. and Guaranty Bank were the owners of the property in Cold Springs Phase 2.

72. *ED 24: On February 3, 2003, the plat for Cold Springs at Red Hawk Ranch Phase 2 was recorded in the office of the Utah County Recorder.*

73. *ED 25: At the latest, beginning on October 17, 2003, Cold Springs at Red Hawk Ranch sold Units in Phase 2 for separate occupancy.*

C. Rock Creek Development

74. *ED 47: The Rock Creek Declaration does not reference the Master Association or an obligation for Rock Creek or its members to pay assessments to the Master Association.*

75. *ED 48: Sundance Homes, LLC sold at least 14 units within Rock Creek to individual homeowners before the Master Association recorded the Notice of Continuing Obligation for Rock Creek.*

76. *ED 26: On October 14, 2002, DG Development and Investment, Inc. et al. executed the plat for Rock Creek, Phase 1, certifying that they were the sole owners of fee simple title of Rock Creek, Phase 1.*

77. *ED 27: On November 5, 2002, the plat for Rock Creek, Phase 1 was recorded in the office of the Utah County Recorder.*

78. *ED 28: The [Rock Creek Declaration] was recorded with the Utah County Recorder on November 5, 2002.*

79. *ED 29: On December 6, 2002, D.G. Development & Investments, Inc. conveyed the property located in Rock Creek Phase 1 to Rock Creek Development Company, L.L.C.*

80. *ED 30: On March 3, 2003, Rock Creek Development Company, LLC, conveyed property within the Rock Creek Phase 1 to Sundance Homes, LLC.*

81. *ED 31: At the latest, beginning on June 5, 2003, Sundance Homes, LLC sold Units in Phase 1 for separate occupancy.*

VI. Origin of the 2004 Declaration

82. *ED 50: Sometime in 2003, a group of homeowners approached the Developer asking to be more involved in the community. Scott Kirkland and this group of homeowners organized a committee ("the Committee") to start reviewing how [this could be done].*

83. *ED 53: The Committee consisted of between seven and ten homeowners.*

84. At this time, some homeowners expressed to the Master Association's Board the desire to secede from the Master Association.

85. *ED 66: The Master Association Board Meeting Minutes for February 10, 2003 state:*

> *The committee is to be given the assignment to investigate and make recommendations to change the HOA structure. The structure will accommodate the needs of the homeowners and developer. This committee will present their recommendations to the Board of Trustees, and if accepted, a homeowner's vote will be organized to ratify and implement the changes.*

86. *ED 52: From at least October, 2003 until April, 2004 the Committee, Brian Haskell, Scott Kirkland, and attorneys participated in "the formulation, the adjustment, the amendment of any of the provisions within that declaration to create" the 2004 Declaration "that was eventually recorded."*

87. Brian Haskell—a former Board member and present owner of Sage Management, the entity now managing the Master Association—testified that the Master Association sent a

letter to its members informing them about the Committee and its intent to amend the original declaration.

88. This testimony lacks credibility because no owner testified at trial that they received the notice, and the Master Association did not introduce the written notice into evidence.

89. *ED 68: Between the Draft Declarations and the 2004 Declaration, "there were a lot of changes that were made." A summary of the changes to the declaration was prepared and reviewed by the Master Association's Board when deciding to approve the changes and subsequently record the 2004 Declaration.*

90. *ED 60: The Declarant-appointed Board [of the Master Association] that was in place voted on and adopted the changes made to the declaration prior to recording it as the 2004 Declaration.*

VII. Recording the 2004 Declaration

91. *Mr. Burdick was the first homeowner member elected to the Board of Trustees [of the Master Association]. Mr. Burdick never worked for the [Developer]. [The Developer] knew about the proposed amendments to the 2004 Declaration and directed the Master Association to record it via Burdick, who signed it as the acting President of the [Master Association].*

92. *ED 54, QT 14: On June 1, 2004, the Master Association executed the "First Amended and Restated Community Declaration for The Ranches at Eagle Mountain Master Homeowner's Association, Inc."*

93. *QT 16: Daniel T. Burdick signed the 2004 Declaration on behalf of the Master [Association].*

94. *QT 20, ED 58: The Developer did not sign the 2004 Declaration as it was signed by the [Master Association].*

95. *QT 21: The 2004 Declaration was recorded on June 8, 2004.*

96. While titled "*First Amended* and *Restated* Community Declaration," the 2004 Declaration was neither of these things. No declaration had been recorded, so there was nothing to amend or restate.

97. *ED 63: Section 11.3 of [the Draft Declarations] states, "any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members of the Community Association holding at least seventy-five percent (75%) of the voting power of the Community Association present in person or by proxy at duly constituted meetings of the Delegate Districts."*

98. *QT 24: The Master Association did not obtain written consent of the owners of the property within Plaintiff's projects to record the 2004 Declaration.*

99. The Master Association did not obtain the consent of any other owners whose property was encumbered by the 2004 Declaration.

100. The Master Association did not comply with the amendment provisions in the 1998 or 1999 Draft Declarations with regard to the changes in the 2004 Declaration.

101. *ED 44: Mr. Brodsky of Cold Springs at Red Hawk L.L.C. does not recall consenting to the recordation of any declaration by the Master Association after Cold Springs at Red Hawk L.L.C. took title to the Cold Springs property.*

102. *ED 64: Prior to the 2004 Declaration being recorded, the Master Association's Board passed a motion relating to amending the declaration, which motion stated that delegates "no longer [have] a vote, they must bring in each vote from their district and each vote would count."*

103. *ED 56: The 2004 Declaration recites: "Declarant is the owner of certain parcels of land in the incorporated area of Eagle Mountain, Utah, containing approximately 6,100 units, known as The Ranches."* This was a false statement.

104. *ED 57: [The Developer] did not own approximately 6,100 units in [the Master Association's boundaries] as of the date that the 2004 Declaration was recorded.*

105. At the time the 2004 Declaration was recorded, the Developer owned only a small portion of the Project Area and Annexable Area as that area was defined by Exhibits A and B of the 2004 Declaration.

106. That small amount of property owned by the Developer is identified on Exhibit 202 in the electronic maps prepared by Plaintiffs' expert witness, Matt Liapis. Exhibit 202, Red Layer, "*The Ranches LC 2004.*" This area constitutes some amount of land less than 5% of the total land area within the 2004 Declaration legal description.

107. *QT 23: At the time the 2004 Declaration was recorded, the Master [Association] did not own any property within Plaintiffs' [associations].*

VIII. Who Knew About the Failure to Record an Original Declaration and When

108. By 2001, the Master Association, the Developer and its principals had actual knowledge that no declaration had been recorded against land in The Ranches.

109. In 2001, Scott Kirkland and Brian Haskell were both serving on the Board of the Master Association. Kirkland was the primary principal of the Developer and Haskell was an essential employee.

110. Kirkland testified that he could not remember what created the need for something to be recorded in 2001 independent of the Declaration, but it could have been that they recorded the first Notices of Continuing Obligation "in lieu" of the Declaration to give notice to purchasers and title companies that the Developer intended some Declaration to be applicable to that property upon which the notices were recorded.

111. Haskell's testimony was that the first and subsequent Notices of Continuing Obligation were recorded because the Master Association was not receiving calls from title companies about the transfer of land within the Master Association's boundaries.

112. The Court does not find Haskell's testimony on this point credible. If a declaration had been recorded, title companies would have been on notice of the Master Association's existence, its geographic jurisdiction, and its assessment authority. If anything, the absence of calls from title companies should have suggested to the Master Association that in fact no declaration was on title in the first instance.

113. The best explanation for the Notices of Continuing Obligation is the one posited by Kirkland. By 2001 the Master Association and the Developer knew no declaration had been recorded. The Master Association recorded the notices of continuing obligation in a misguided attempt to remedy this serious problem.

114. *ED 61:* Surprisingly, *[t]he Master Association did not perceive the failure to record a declaration prior to the 2004 declaration "as a critical flaw, only a procedural requirement that needed to take place."*

115. Brian Haskell testified that the Notices of Continuing Obligation were prepared after consultation with title companies, the Developer's lawyers, and the Developer's business people.

116. Haskell further testified that notwithstanding the involvement of title companies, lawyers, and the Developer's business people, neither he nor the Developer's employees were notified or discovered that a Declaration had not been recorded until early 2004.

117. The Court does not find this testimony credible. The Developer, Kirkland, and Haskell are sophisticated real estate developers. They acted on the advice of legal counsel. Before October 2001, the Developer's loans were coming due. At that time, the Developer concluded that "the best situation for The Ranches community was if the properties within The Ranches could transfer to the control of our lenders or investors." And in fact foreclosures commenced. Exhibit 242.

118. The Master Association claims that notwithstanding the commencement of foreclosure proceedings it remained ignorant of the Developer's failure to record a declaration. The Court finds this claim implausible.

119. At no time did the Developer or the Master Association notify owners within the Master Association's boundaries of the failure to record a declaration, or the actual reason for recording the Notices of Continuing Obligation.

120. The Court finds that the Notices of Continuing Obligation and similar notices were recorded intentionally by Defendant with knowledge that no underlying declaration was recorded.

121. In light of the fact that they were obtaining legal advice, which they declined to testify about at trial, and their relative business and real estate sophistication, Haskell and Kirkland knew or should have known that the failure to record a declaration before the sale of property within The Ranches would render the declaration unenforceable or at serious risk of being declared unenforceable.

122. According to Kirkland, at least hundreds and likely thousands of individual building lots had already been sold at the time Defendant recorded the 2004 Declaration.

123. At any time after the Master Association or its agents became aware of the failure to record a declaration, they could have obtained the consent of every owner upon which a declaration would have been recorded, or could have filed an action to determine the rights of the Master Association with regard to those owners and properties.

124. Instead, the Master Association recorded the Notices of Continuing Obligation and later the 2004 Declaration against developed residential units and undeveloped land that neither the Developer nor the Master Association owned.

IX. What Owners Knew About the Master Association

125. Homeowners who purchased residential units and lots in The Ranches prior to June 8, 2004 did so without record notice of the Master Association.

126. The Sales Center and the neighborhood sales centers routinely informed buyers that the amenities in The Ranches would be maintained and paid for through a master homeowner's association.

127. The Master Association did not collect assessments directly from owners in Willow Springs or Rock Creek until 2004 and in Cold Springs until 2006. Before then, these owners paid the Master Association's assessment through their respective sub-associations.

128. From 2004 to 2013, the Master Association collected assessments from owners in Willow Springs, Rock Creek, and Cold Springs.

129. Based on calculations made through 2013, the Master Association had been paid 105.38% of the total assessments (including pre-payments) owed by members of Willow Springs.

130. Based on calculations made through 2013, the Master Association had been paid 88.76% of the total assessments owed by members of Rock Creek.

131. Based on calculations made through 2013, the Master Association had been paid 98.60% of the total assessments owed by members of Cold Springs.

132. From 2003 to 2016, the Master Association regularly communicated with owners within the Master Association's boundaries through a newsletter. These newsletters identify the Master Association as the sending entity. Exhibits 77–90.

133. From 2001 through 2016, the Master Association held Board Meetings to conduct the business of the Master Association. Exhibits 3–30.

134. On these facts, the Court finds by a preponderance of the evidence that owners who purchased property in The Ranches prior to June 8, 2004 had a general understanding that (1) they were buying property in a master-planned community called The Ranches; (2) the

amenities in The Ranches would be maintained and paid for through a master association; and (3) as owners of property within The Ranches, they would be members of the master association and obligated to pay their proportionate share of assessments.

135. Depending on the date of purchase, some owners who purchased property in The Ranches after June 8, 2004 would have had record notice of the 2004 Declaration, and one or more of its amendments. These owners would have had constructive knowledge that their property was subject to the Master Association and its assessment authority.

X. The Plaintiffs Learn About Their Causes of Actions

136. *ED 117: Plaintiffs had concerns about the manner in which the Master Association adopted and recorded the 2010 Amendment.*

137. *ED 118: In 2012, during the process of [investigating those concerns], Plaintiffs learned for the first time of the irregularities concerning the voting, adoption, and recording of the 2004 Declaration and the amendments thereto which form the basis of Plaintiffs' claims.*

138. The Master Association presented no evidence proving that prior to late 2012 any owners within the Plaintiffs' associations were aware of any alleged error or defect related to the Master Association's recording of documents on their property, or any claim or legal right to avoid the payment of assessments based on those errors or defects.

139. By late 2012, the Plaintiffs' associations refused to comply with or acknowledge any legal right arising from the 2010 Declaration.

XI. Evolution of the Declaration from 1998 to 2010

140. There has been no "one" consistent version of the Master Association's Declaration distributed or applied to the owners over time.

141. Of the six known versions of the Declaration either distributed to owners purchasing property or recorded against the property, each is materially different from all of the others.[4]

A. The 1998 and 1999 Draft Declarations

142. Nobody knows if owners purchasing in the project from 1998 to the June 8, 2004 were provided with the 1998 Draft Declaration, the 1999 Draft Declaration, or some other Draft version of the Declaration.

143. The 1998 draft Declaration is the earliest dated Declaration. It may be that this version was provided to some purchasers of property in The Ranches, although it is impossible to know for sure or for how long. Exhibit 33.

144. The 1999 Draft Declaration likely superseded the 1998 Draft Declaration and may have been handed out at the Sales Center from 1999 to 2004, but nobody knows for sure or for how long. Exhibit 34.

145. *ED 43: Mr. Brodsky of Cold Springs does not recall which version of [the Master Association's] declaration he received prior to the 2004 Declaration being recorded.*

146. The developer of Willow Springs, Heath Johnston, could not identify which version of the Master Association's Draft Declarations he gave to owners purchasing in Willow Springs prior to 2004.

147. The Draft Declarations do not contain a legal description of the "Project Area" or "Annexable Area" as the Draft Declarations do not include an Exhibit A or Exhibit B.

---

[4] There are no material differences between the 2005 Amendment and the 2006 Amendment.

148. The 1998 and 1999 versions of the Master Association's Declaration do not reference any particular design guidelines, leaving instead a blank for the reference in Section 2.22 and a reference to design guidelines that were to be recorded but never were.

149. It is impossible to identify from the face of the Draft Declarations which land was actually intended to be identified as the Project Area or Annexable Land as those terms are defined in the Draft Declarations.

150. There are material changes between the 1998 and 1999 versions of the Draft Declaration. Exhibit 337. These include: (1) Section 3.2 was modified to remove the limitation on the Declarant's right to add property to the project only if the Declarant was showing reasonable progress in the Development of the Privately Owned sites or with approval of the delegates, and (2) Section 8.24 was modified to exempt the Declarant from the payment of assessments under any circumstances whereas the original language obligated the developer to pay assessments at up to 75% of the required assessment rate unless the financial stability of the community association was jeopardized.

B. The 2004 Amended Declaration

151. The changes to the Draft Declarations to create the 2004 Declaration were material. Exhibit 338.

152. The following are examples of the material changes made to the Draft Declarations to create the 2004 Declaration:

a) In section 2.22, for the first time a specific document is identified as the "Design Guidelines." Additionally, the recording requirement of those guidelines is

removed. A new provision allowing the board of trustees to amend the guidelines is inserted for the first time.

b) Section 3.2 eliminates the requirement that the Declarant "demonstrate reasonable progress in the development of Privately Owned Sites" to bring additional annexable land into the project, or (in the alternative) obtain the vote of the delegates representing two thirds of the voting power of the Community Association to do so.

c) Section 4.1 changes the vote required for the Declarant to add land to the annexable area from a vote of the delegates to a vote of the board of trustees.

d) Section 8.8 was modified to change the calculation of assessments for Sub-Associations.

e) Section 8.27 was modified to allow the board of directors to increase assessments during the year without the approval of the delegates, when approval of the delegates was previously required.

f) Section 11.4 was modified to change the voting for amendments to the Declaration required by Government Mortgage Agencies.

g) For the first time, a legal description was inserted as Exhibits A and B, identifying the Project Area and the Annexable Area.

h) Bylaws section 3.4 was changed to provide that the Declarant may retain super majority voting rights for five instead of three years after creation of a delegate district.

i) Bylaws section 4.9 was changed to increase the quorum for delegate district meetings in delegate districts without a sub association from 25% to 66%.

j) Bylaws section 4.11 was changed to increase the voting requirement (two thirds instead of a majority) to pass matters in delegate districts without a sub association and to provide a quorum of a majority for electing delegates or trustees.

k) Bylaws Section 6.7 was changed to increase the quorum from 51% to 66% for delegate meetings and to remove the provision that provided if a quorum was not met, the quorum would be 25% at the next meeting.

l) Bylaws Section 7.4 was changed to provide for seven directors instead of five.

m) Bylaws Section 7.5 was changed to make the board positions two year terms instead of all of the directors being elected each year by the delegates.

n) Bylaws Section 11.2 was changed to provide that board members were entitled to a waiver of assessments, which they were not before.

153. As stated above, the 2004 Declaration was never voted on by owners of the Master Association.

154. The legal description of the 2004 Declaration did not include (1) all the areas depicted in the Master Plan map displayed at the Sales Center; or (2) the Meadow Ranch area despite the original recorded documents for Meadow Ranch expressly stating that it was to be part of the Master Association. Exhibits 35, 244, 343–44.

C. The 2005 Amended Declaration

155. The changes to the 2004 Declaration in the 2005 amendment were material. Exhibit 339.

156. *ED 90: The 2005 Bylaw Amendment states "Section 5.7 title [sic] "Vacancies in Delegates" shall be amended to add the following provision: In the event that a vacancy occurs because a Delegate District did not meet quorum requirements at an annual meeting of the Members to elect a Delegate, the Board of Trustees, by unanimous vote, can appoint a Delegate for said Delegate District."*

157. Section 7.6 of the Bylaws was amended to provide that if a Board member misses three meetings that person may be removed by a vote of the Board, except for Board members appointed by Declarant.

158. The 2005 Amendment was recorded against less than half of the Project Area identified in the 2004 Declaration. Exhibit 202, Green Layer, *"The Ranches Amendment 2005."*

159. The 2005 Amendment was not recorded against the Plats for Willow Springs Phase 4 and Rock Creek Phase 2.

160. Even if purchasers in the Plaintiffs' associations had received copies of the 2005 Amendment, some owners would have never received it because it was never recorded against their units.

161. The 2005 Amendment was never voted on by owners and the amendment provisions of the 2004 Declaration were not complied with.

162. The 2005 Amendment has been determined by this Court to be invalid.

D. The 2006 Amended Declaration

163. The changes to the 2005 Amendment in the 2006 Amendment were not material. Exhibit 339.

164. The 2006 Amendment was recorded against less than half of the Project Area identified in the 2004 Declaration, and slightly more land than the 2005 Amendment. Exhibit 202, Blue Layer, *"The Ranches Amendment 2006."*

165. The 2006 Amendment was not recorded against the Plats for Willow Springs Phase 4 and Rock Creek Phase 2.

166. Even if purchasers in the Plaintiffs' associations had received copies of the 2006 Amendment, some owners would have never received it because it was never recorded against their units.

167. The 2006 Amendment was never voted on by owners and the amendment provisions of the 2004 Declaration were not complied with.

168. The 2006 Amendment has been determined by this Court to be invalid.

E. The 2010 Amended Declaration

169. The 2010 changes to the 2006 Amendment were material. Exhibit 339.

170. The 2010 Amended Declaration rewrote provisions of the 2006 Amendment related to voting, assessments, meetings, and basic rights of the owners.

171. The 2010 Amended Declaration was recorded against property never included in The Ranches project as set forth in the Master Plan or in any prior legal description of the Project Area as set forth in the 2004 Declaration, the 2005 Amendment, or the 2006 Amendment.

172. The 2010 Amendment was recorded without approval of either the Declarant or of any owner of this additional property.

173. The 2010 Amended Declaration was never voted on by owners.

174. The 2010 Amended Declaration has been determined by this Court to be invalid.

XII. The Master Association Fails to Comply With Material Provisions Of All Versions of The Declaration

A. Failure to Comply with Annexation Provisions

175. As to Plaintiffs' subdivisions, the Master Association failed to comply with the annexation provisions in any version of the Declaration.

176. *ED 71: Section 1.2 of the 2004 Declaration states:*

Section 1.2 Purposes of Declaration

Property which becomes subject to this Community Declaration in the manner hereinafter provided shall be referred to as the Community Association Area.

177. *ED 72: Section 1.3 of the 2004 Declaration states:*

Declarant, for itself, its successors and assigns, hereby declares that all property which becomes subject to this Community Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this Community Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Community Declaration, for the duration thereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Project Area.

178. *ED 73: Section 2.2 of the 2004 Declaration states:*

"Annexable Area" shall mean all of the real property described on Exhibit "B" attached hereto, all or any portion of which may from time to time be made subject to this Community Declaration pursuant to the provisions of Section 3.2 of this Community Declaration.

179. *ED 74: Section 2.14 of the 2004 Declaration states:*

"Community Association Area" shall mean any real property which hereafter becomes subject to this Community Declaration by the execution and recording of a Supplemental Declaration as provided in Section 3.3 [sic] of this Community Declaration.

180. *ED 75: Section 3.1 of the 2004 Declaration states:*

Declarant may, but shall in no way be required to, from time to time, unilaterally, add to the Community Association Area all or any portion of the Annex able Area.

181. *ED 76: Section 3.5 of the 2004 Declaration states:*

Real property ("Annexed Property") within the Annexable Area, as defined above, may, from time to time, become part of the Community Association Area and subject to this Community Declaration effective upon the Recordation in the office of the Recorder of Utah County, Utah, of a supplemental Declaration meeting the requirements hereinafter set forth. A Supplemental Declaration (a) shall be executed and acknowledged by the owner of the Annexed Property described therein; (b) shall, if the Annexed Property is not then owned by Declarant, contain the executed and acknowledged written consent of Declarant for so long as Declarant owns any property in the Project Area and has the power to annex additional property to the Community Association Area; (c) shall contain an adequate legal description of the Annexed Property; (d) shall contain a reference to this Community Declaration which shall state its date, its date of Recordation and the book and page of the Records of the Recorder of Utah County, Utah, where this Community Declaration is Recorded; (e) shall state the land classification (residential, commercial, industrial or otherwise) of the Annexed Property; (f) shall designate the assessment Area or Assessment Areas covered by the Supplemental Declaration; (g) shall contain a statement that the Annexed Property is declared to be part of the Community Association Area under this Community Declaration and that the Annexed Property shall be subject to this Community Declaration; (h) shall state whether the Owners of any Privately Owned Sites therein or other Persons shall be authorized to use any Recreation Cost Center; (i) shall designate in which Delegate District the Annexed Property is located; and (j) shall provide that Sites therein shall be subject to the jurisdiction of a Sub-Association or shall not be subject to the jurisdiction of a Sub-Association.

(emphasis added).

182. "Project Area" and "Annexable Area" as defined in Exhibits A and B of the 2004 Declaration are the same area.

183. All versions of the Declaration, including the unrecorded 1998 and 1999 Draft Declarations, the 2004 Declaration, 2005 Amendment, 2006 Amendment, and 2010 Amendment contain substantially the same annexation language.

184. *ED 78: The Willow Springs Declaration and Rock Creek Declaration do not:*

(1) Contain any reference to the 2004 Declaration, its date, its date of recordation, the book and page of the Records of the Recorder of Utah County, Utah, where the 2004 Declaration is recorded;

(2) Designate the Assessment Area or Assessment Areas covered by the Supplemental Declaration;

(3) Contain a statement that the project is declared to be part of the Community Association Area under the 2004 Declaration and that the project shall be subject to the 2004 Declaration; or

(4) Designate in which Delegate District the project is located.

185. *ED 79: The Declaration for Cold Springs does not contain any reference to the date of recordation, or the book and page of the Records of the Recorder of Utah County, Utah, where the 2004 Declaration or any other declaration is recorded.*

186. *QT 25, ED 70: Following the recording of the 2004 Declaration, no Supplemental Declarations were ever recorded for Plaintiffs' projects annexing them into the [Master Association].*

187. Plaintiffs' subdivisions have never been "annexed" into the Master Association consistent with any version of the Declaration.

188. The 2010 Amendment was recorded with a different legal description than the 2004 Declaration and included additional areas that were not previously defined as additional annexable land. Exhibit 202, Cf. Yellow Layer, *"The Ranches Annexable Area 2004"* and Lime Green Layer, *"The Ranches Legal Description 2010."*

189. Some of the land added was never included in The Ranches Master Plan at any time.

190. No Owners of the additional land signed the 2010 Amended Declaration.

191. The additional land added in the 2010 Amended Declaration is not identified in the Annexable Area of the 2004 Declaration, the 2005 Amendment, or the 2006 Amendment.

192. None of the 1998, 1999, 2004, 2005, 2006 Declarations permit the expansion of the Project beyond the identified Annexable Area except by the Developer, who did not sign or approve anything related to the 2010 Amended Declaration.

193. The Developer's principal, Kirkland, never gave permission as the declarant to add the annexable land into the Master Association.

194. Kirkland testified that after 2001, he was personally involved in developing additional parcels of land, "but there was never any really serious effort, that I remember, to annex them into The Ranches Master Plan."

B. Failure to Comply with Provisions Related to Election of Delegates and Board Members

195. *ED 137: The Declarant made the decision about the Delegate Districts with "a map using the master plan as the basis for establishing those delegate districts."*

196. *ED 138: The Master Association discussed the formation of Delegate Districts at a Board Meeting held on October 2, 2003. The minutes of this meeting state:*

> *Voting for Association Board/Delegates – How will it happen? – Brian explained the process stating that first we need to establish the delegate districts, have the delegates voted in by the members (homeowners), and then have the delegates vote for the board. Brian brought everyone's attention to the chart they were given with the delegate districts he was suggesting.*

197. *ED 139: Section 4.4 of the Draft Declaration and 2004 Declaration states "In the event that there shall not be created a Sub-Association for any portion of the Annexed Property (as defined in Section 3.3 hereof), then the Delegate Districts shall be established by Declarant by the Recordation of one or more Supplemental Declarations or other written instruments signed by Declarant" and shall contain "legal descriptions of the portion of the Annexed Property which shall be or become part of a Delegate District and a statement that such real property described therein shall be or become part of a designated Delegate District for purposes of this Community Declaration."*

198. *ED 140: The [Master Association] is not aware of any Supplemental Declarations that have been recorded or signed that identify the delegate districts.*

199. *ED 81: Section 4.1 of the 2004 Declaration states "Delegates shall be elected by Owners within each Delegate District, acting in their capacity as Members of the Community Association."*

200. *ED 82: Section 4.5 of the 2004 Declaration states "Each Member shall have the right to cast votes for the election of the Delegate to the Community Association to exercise the voting power of the Delegate District in which the Member's Privately Owned Site is located."*

201. *ED 83: Section 3.3 of the Bylaws state "Each Member shall have the right to cast votes for the election of the Delegate to the Community Association to exercise the voting power of the Delegate District in which the Member's Privately Owned Site is located."*

202. *ED 84: Section 5.7 of the Bylaws attached as Exhibit C to the 2004 Declaration states "Any vacancy occurring in the office of a Delegate shall, unless filled in accordance with Section 5.5 [governing removal and election of successor Delegates by vote of a majority of members present at a meeting], be filled at a special meeting, called for such purpose, of Members of the Delegate District represented by such Delegate."*

203. *ED 100: Since 2004 or 2005, when a quorum of members of a district is not present at the annual meeting to elect delegates, the Board appoints the delegate for that district, although the Board, without fail, has appointed the delegate selected by whatever district members attend the annual meeting, if any.*

204. *ED 101: Mr. Haskell testified that if delegates had to be elected by the members in the district, the Master Association would not be able to continue in governance because it would never have a quorum in place to be able to elect those delegates.*

205. *ED 99: The Master Association is unaware of any instance, from 2005 to present, where any Delegate District achieved a quorum at the annual meeting of members to vote in that district's Delegate.*

206. *ED 102: The Master Association understands that the purpose of the Board appointing Delegates "is to provide for the continued governance of the community in an orderly manner, given the fact that we have minimal participation by homeowners in the voting process."*

207. *ED 103: The Delegates vote to select the members of the Master Association Board.*

208. The Master Association concedes that it has never followed the voting requirements to elect Delegates or to elect the Master Association Board.

C. Failure to Comply with Amendment Requirements for 2004, 2005, 2006, and 2010 Declarations

209. *ED 86: Section 11.3 of the 2004 Declaration provides: "any provision, covenant, condition, restriction or equitable servitude contained in this Community Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members of the Community association holding at least seventy-five percent (75%) of the voting power of the Community Association present in person or by proxy at duly constituted meetings of the Delegate Districts."*

210. The 2004 Declaration defines the term "Member" as a "Person, or if more than one, all Persons collectively, who constitute the Owner of a Privately Owned Site."

211. *ED 87: The 2004 Declaration also requires that the "approval of any such amendment or repeal shall be evidenced by the certification by the Delegates from the appropriate Delegate Districts to the Board of Trustees . . . of the votes of Members in the Delegate District" ("Certification of Member Votes").*

212. The 2004 Declaration further provides: "Unless at least seventy-five (75%) of the First Mortgagees (based upon one vote for each Mortgage owned) of Privately Owned Sites in the Community Association have given their written approval, neither the Community Association nor any Member shall ... (f) amend any material provision of this Community Declaration, the Articles of Incorporation or Bylaws."

213. The 2004 Declaration defines the term "Mortgagee" as "a mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such Mortgagee."

214. The 2004 Declaration defines "Delegate" as "the natural person selected by Members within a Delegate District pursuant to Section 4.5 hereof to represent such Delegate District and to cast votes on behalf of Members as provided in this Community Declaration."

215. Every version of the Declaration up to the 2010 amendment, including the unrecorded 1998 and 1999 Draft Declarations, has substantially the same amendment requirements as the 2004 Declaration.

216. To the extent that the 2004 Declaration constituted an amendment to the Draft Declarations, the Master Association failed to comply with these amendment procedures.

217. *ED 94: The [Master Association's] June 2005 Newsletter states that once the [Master Association's] attorney "puts the legal touch and blessing to" the proposed 2005 Amendments, "[w]e will then have a special meeting for public comments, and finally a Delegate Meeting to vote in the changes"*

218. *ED 95: In its August 2005 Newsletter, the [Master Association] announced an "open forum style meeting" on August 24th to discuss possible amendments to the Declaration and Bylaws and stated "[t]hese are important topics so we encourage you to attend and voice your opinions. If you're not able to attend please send written opinions to [the Manager's email address]."*

219. *ED 104: On November 16, 2005, the [Master Association] held a Delegate Meeting to vote on the 2005 Amendments to the Declaration and Bylaws. Four Delegates were present and voted on the amendments on behalf of 12 of the 15 Delegate Districts.*

220. *ED 105: The [Master Association] does not recall any specific meetings or elections with Members within the Districts to vote on the 2005 Amendments and does not know whether the Delegates had any underlying votes of any District Members before voting on the 2005 Amendments.*

221. *ED 88: On December 5, 2005 the [2005 Amendment] was recorded with the Utah County Recorder.*

222. *ED 96: The Master Association has produced no Certification of Member Votes relative to the 2005 Amendment.*

223. *ED 106: On August 2, 2006, the Delegates met to vote on an Amendment to the Declaration.*

224. *ED 107: The [Master Association] instructed the Delegates to either hold meetings or go door to door to find out the specific desire of the Members relative to an issue to be voted on.*

225. *ED 108: The [Master Association] is not aware of any meetings that occurred at the District level to vote on the 2006 Amendment.*

226. *ED 109: The [Master Association] has not produced a Certification of Member Votes relative to the 2006 Amendments.*

227. *ED 110: In a November 12, 2009 letter to homeowners in The Ranches boundaries, the [Master Association] notified the homeowners that the Declaration had been*

revised, provided a link to the original and revised Declaration on the [Master Association's] website, and stated "Please review and compare the documents online. If you have any questions, please contact your specific Delegate to let him or her know your opinions on these changes before the Delegate meeting on December 15th, 2009."

228. *ED 111: The [Master Association] suspects that this letter is the extent to which owner votes or input was solicited for this amendment.*

229. *ED 112: The [Master Association's] December 2009 Newsletter provides a summary of the proposed changes in the Second Amended and Restated Community Declaration for The Ranches at Eagle Mountain Master Homeowner's Association, Inc. (the "2010 Amendment"), indicating "[w]e are excited to finally be able to bring these changes before the Delegates for a vote" and stating "[t]here is a Delegate meeting scheduled on Dec 15th to put the matter to vote. Please contact your Delegate to let them know your opinions on the new changes before the meeting. They will be voting in your behalf."*

230. *ED 113: On December 15, 2009, the Delegates met to vote on the 2010 Amendment. At that meeting, via ballot and absentee ballot, all but one of the Delegates cast 100% of their votes in favor of the Amendment.*

231. *ED 114: The [Master Association] does not know if the Delegates held any meetings or obtained any Member votes prior to voting on the 2010 Amendment.*

232. *ED 115: The [Master Association] has not produced a Certification of Member Votes relative to the 2010 Amendment.*

233. *ED 116, 160: On July 29, 2010, the [Master Association] recorded the 2010 Amendment with the Utah County Recorder's office and against the properties within the Plaintiffs' subdivisions.*

D. Failure to Comply with Assessment Requirements

(1) Assessment Scheme

234. *Section 5.12 of the 2004 Declaration, trial exhibit 35, provides:*

Section 5.12 Duty to Levy and Collect Assessments
The Community Association shall levy and collect Assessments as elsewhere provided in this Community Declaration.

235. *Section 2.12 of the 2004 Declaration provides:*

Section 2.12 Common Assessment
"Common Assessment" shall mean the assessments made for the purpose of covering the portion of the annual costs of operating the Community Association, including expenses incurred in connection with any authorized function of the Community Association, which are to be paid by each Owner to the Community Association for purposes provided herein and charged to such Owner and to the Privately Owned Site of such Owner. Each Common Assessment includes an Administrative Functions Common Assessment ("AFCA") and may or may not include a Recreation Functions Common Assessment ("RFCA") or a Public Functions Common Assessment ("PFCA"), or both, as further provided in Section 8.8 of this Community Declaration.

236. Section 8.8 of the 2004 Declaration provides:

Section 8.8 Common Assessments
For each calendar year, the Community Association shall levy Common Assessments against Owners of the Privately Owned Sites. The Common Assessments shall include: (a) the AFCAs; (b) any RFCAs necessary for any Recreation Cost Center; and (c) the PFCAs when, if ever, the Community Association assumes any Public Functions. Each Owner shall be obligated to pay the common Assessments levied against, and allocated to, such Owner and the Privately Owned Site of such Owner as hereinafter more particularly set forth. To the extent that a Sub-Association levies its own assessments to satisfy needs that would have been paid for by the Common Assessment, that Sub-Association shall receive a credit which shall be offset against the Common Assessment levied against the Owners of Residential Sites in the Sub-Association. The amount of the credit shall be equal to the amount of the Common Assessment that did not need to be expended due to the Sub-Association's own efforts, unless the Board of Trustees, in its sole discretion, deems another method of calculation to be appropriate.

237. Section 2.40 of the Declaration provides:

Section 2.40 Owner
"Owner" shall mean the Person, including Declarant, or if more than one, all Persons collectively, who hold fee simple title of record to a Privately Owned Site, including sellers and including buyers under executory contracts of sale and excluding buyers thereunder. The Owner of a Privately Owned Site developed as rental apartments shall be the Owner for purposes of this Community Declaration, and not the lessees or tenants thereof.

238. *ED 120: Section 8.9 of the 2004 Declaration states the Administrative Functions Common Assessments ("AFCAs") "shall be computed by multiplying the total amount to be raised by AFCAs for that year, as shown in the Community Association budget for that year, by a percentage (rounded to the nearest one-tenth of one percent (0.1 %)), derived from a fraction, the numerator of which is one (1) and the denominator which is the total number of Privately Owned Sites (i.e., AFCA Units) in the Community Association Area as of the first day of that calendar year."*

239. Section 8.12 of the 2004 Declaration provides:

Section 8.12 Apportionment of Public Functions Common Assessments
If the Community Association ever assumes any Public Functions, the amount of the PFCA's for any year, payable by an Owner for a Privately Owned Site, shall be computed by multiplying the total amount to be raised by PFCA's for that year, as shown in the Community Association Budget for that year by a percentage (rounded to the nearest one-tenth of one percent (0.1%) derived from a fraction, the numerator of which shall be the Imputed Market Value ("IMV"), as defined below, of the Privately Owned Site and the denominator of which is the aggregate of all imputed Market Values of all Privately Owned Sites in the Community Association Area as of the first day of that calendar year.

240. Section 2.44 of the Declaration provides:

Section 2.44 Public Functions
"Public Functions" shall mean providing public services commonly associated with municipal or other local governments, including, without limitation, providing security protection, fire protection, animal control, vegetation control, insect and pest control, television service, parking facilities, public transportation facilities, hospitals, cultural and educational facilities, drainage facilities, trash and solid waste disposal services, and utility services. The foregoing list shall not be deemed to be representative by Declarant of services or facilities which will be available for use of the Owners.

241. Section 8.13 through 8.18 of the 2004 Declaration provides how to determine the imputed Market Value for purposes of the Public Functions Common Assessments.

242. The 1998, 1999, 2004, 2005, and 2006 versions of the Declaration all contain substantially the same assessment provisions as outlined above.

243. The Master Association provides public functions, as that term is defined in the Declaration, in that it provides landscaping and other maintenance services over city owned parkways, parks, and trails. These are services commonly associated with municipal or other local governments.

(2) Arbitrary and Non-Compliant Residential Assessments

244. *ED 122: The initial amount of assessments levied by the [Master Association] against non-sub-association properties was $30 per month based on an opinion of what the market would bear.*

245. *ED 127: The [Master Association] did not determine the amount that sub-associations, or members of such sub-associations, would pay by mathematically calculating amounts based on a budget. When asked how these amounts were determined, the [Master Association] responded as follows:*

> *It was basically a flip of a coin. It was pretty much a -- we don't feel that we are the beneficiaries of $30 a month. Therefore, we believe we should pay something less than $30 a month. We might have arm wrestled, we might have -- I don't think there was a scientific conclusion. We comprised at a number of $15*
> ....

246. *ED 126: From the moment the Master Association began assessing Plaintiffs and/or Plaintiffs' members, the assessment amount for sub-associations like Plaintiffs was $15.00 per month.*

247. *ED 178: The purpose of assessing the Plaintiffs' associations, and neighborhoods with their own associations, less than those subdivisions within the [Master Association's] boundaries without their own associations is that "each sub-association would be maintaining areas within their boundaries of their association that a regular subdivision would have received benefit from within theirs being paid by the [Master Association]. So in other words, within a subdivision that is not a sub-association, they have pocket parks, parks and other landscaped areas within their area that are maintained by the [Master Association]. The sub-associations did not, and so they were essentially being given a break to compensate them for that differential, but still have them paying a portion of the parkways."*

248. *ED 128: Even though the Draft Declaration did not include any provision for Plaintiffs to pay lower assessments, it was decided in July 2001 to charge the lower amount because homeowners were moving into Cold Springs and certain amenities were not installed. The lower rate of $15.00 per month was approved until further notice.*

249. *ED 129: In roughly 2008 or 2009, the amount assessed by the [Master Association] to Plaintiffs' members changed to $15.50 per month.*

250. *ED 130: The [Master Association's] April 2005 Newsletter states: "Starting January 1, 2005, all sub-association fees to the [Master Association] are $15.00 instead of $16.00 like it has been in the past."*

251. *ED 131: The [Master Association] does not recall the Plaintiffs' members' assessments being raised to $16.00 or when or why that would have happened.*

252. *ED 132: As part of the 2010 Amendment, the Plaintiffs' members' assessments were raised to $17.00 (45% of the full assessment amount).*

253. The residential assessments have never been imposed consistent with the requirements of the 1998, 1999, 2004, 2005, or 2006 versions of the Declaration.

(3) Non-Compliant Failure to Assess Commercial Property

254. *ED 133: Section 8.8 of the Draft Declaration and 2004 Declaration states, "For each calendar year, the Community Association shall levy Common Assessments against Owners of the Privately Owned Sites."*

255. *ED 134: Section 2.10 of the Draft Declaration and 2004 Declaration states: "'Commercial Site' shall mean a Privately Owned Site within the Community Association Area which is designated in a Supplemental Declaration covering that Site for commercial uses."*

256. Accordingly, under the 2004 Declaration owners of commercial property were to be assessed Common Assessments just like any other owner within the Master Association.

257. The Master Association adopted a "policy" of not charging commercial assessments because it wanted to create an incentive for commercial business to locate in The Ranches.

258. *ED 135: Commercial sites and churches within the [Master Association's] boundaries have not been assessed any assessments.*

259. The Master Association's policy of not charging commercial assessments is inconsistent with the express requirements of the Declaration.

(4) Non-Compliant Individual Exceptions to Assessments

260. *ED 144: Section 8.40 of the Draft Declaration and 2004 Declaration states:*

Section 8.40 No Offsets

All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reductions thereof shall be permitted for any reason including,

without limitation, any claim that the Community Association or the Board of Trustees is not properly exercising its duties and powers under this Community Declaration.

261. *ED 141: Section 11.2 of the Bylaws attached to the Draft Declaration states, in part:*

11.2 Compensation of Officers, Directors and Delegates

No Director or Delegate shall have the right to receive any compensation from the Community association for serving as such Director or Delegate except for reimbursement of expenses as may be approved by resolution of disinterested members of the Board of Directors.

262. The Declaration does not authorize the waiver of assessments for any individual owner in exchange for service on a Board or for any other reason.

263. *ED 142: On October 2, 2003, [the Master Association's] Board approved an action to waive assessments for the Board of Trustees.*

264. *ED 145: [The Master Association], on at least two occasions, approved monthly fee waivers for actively participating board members and delegates.*

265. *ED 146: During the pendency of this action, in August 2013, [the Master Association] approved waiving 50% of the District Delegates' monthly assessments for each month, for the subsequent six months, that each Delegate attended the monthly Board meeting.*

266. *ED 147: [The Master Association] has approved waiving, discounting, or offsetting assessments for owners. Minutes of the Master Association's Board Meeting, dated June 15, 2005 state:*

Motion made by Bobby to implement the following incentive program:

1. Good Neighbor – lots are submitted on a quarterly basis and the board will select 3 winners to receive 3 months HOA fee credit and sign placed in their yard that says Good Neighbor Winner.

2. Early Bird Drawing – Entry slip placed in newsletter to be filled out and sent in with HOA fees. Slips received on or before the 1st of each month will be entered into drawing for 1 month HOA fee credit. 3 winners selected each month.
2nd by Brian, passed unanimously.

267. *ED 148: The Master Association's July 2005 Newsletter states:*

INCENTIVE PROGRAMS

Some suggested an incentive program to recognize members that are taking an active part in improving the community. The Board is listening and so here are 2 new incentive programs to recognize and reward those members that make the extra effort.

Yard of the Month!

This program is to recognize those exceptionally tended yards. Please call the office with the address of yours or a neighbors [sic] yard. Of all those submitted, the board will select 3 winners each month. The winners will receive a months [sic] credit to their account, a sign placed in their yard stating "Yard of the Month Winner" and will be recognized in the newsletter. Winners must be current on fees and have no violations.

Early Bird Drawing!

This program is to recognize the many members that pay on time and keep a zero balance. Just fill out the form below each month and include it with your payment . . . it's that easy. Three winners will be drawn each month and receive a months [sic] credit to their account and recognized in the newsletter. If you have already paid in advance, still fill out the entry form below and mail or drop into the HOA drop box. Winners must be current on fees and have no violations.

268. *ED 149: The Master Association's August 2005 Newsletter announced the first 3 winners of the Yard of the Month program.*

269. *ED 150: As of June 18, 2014, the Master Association still gives winners of the Yard of the Month a one-month credit on their assessments.*

270. *ED 151: In November 2004, the [Master Association's] Board implemented a policy of waiving assessments for any active military homeowners in the [Master Association's] boundaries for the time period that they are deployed away from home. This waiver would have to be renewed each year if deployment exceeded one year.*

271. *ED 152: In April 2006, the Board approved a 50% reduction in assessments to any homeowner that is active military.*

272. *ED 153: On at least 5 occasions between 2004 and 2010, the [Master Association's] Board has waived assessments for particular homeowners in the [Master Association's] boundaries due to hardship or other reasons.*

273. *ED 154: Two of these instances of waiving a homeowner's assessments occurred after the Board's adoption of a resolution stating the Board would not authorize the waiver of any assessments to individuals.*

274. *ED 155: On June 10, 2010, the Board adopted a resolution that the Board would not authorize donations or waivers of any assessments for charity to any individual or organization and, effective January 1, 2011, the Master Association would no longer offer assessment reductions to members of the military.*

XIII. Benefits Provided By the Master Association

275. *ED 180: The Plaintiffs' associations "have their own boards, have their own rules, they maintain all the property, common area, within the boundaries of their associations." The Plaintiffs take care of all enforcement of the Plaintiffs' respective CC&Rs and governing documents.*

276. *ED 198: The [Master Association] does not pay any water bills or take care of any garbage collection [in Plaintiffs' associations].*

277. The Plaintiffs pay entirely for the maintenance of their own pools, clubhouses, playgrounds, and open space within their associations.

278. The Master Association's administrative functions and responsibilities include conducting meetings, taking minutes, collecting current and past-due assessments, providing design review to ensure that new developments conform to design guidelines, determining maintenance priorities, taking enforcement actions, maintaining contracts, and corresponding with members through newsletters and direct mail, among other things.

279. The Master Association maintains (1) the parkways and parkway improvements (i.e. trails, pergolas, benches) located within the Master Association's boundaries, but outside of Plaintiffs' subdivisions; (2) parks located within the Master Association's boundaries but outside of a sub-association's subdivision; (3) The Ranches entrance monuments; and (4) subdivision-specific entrance monuments.

280. The parkways consist of roughly 1.5-1.6 million square feet of land.

281. *ED 187: The parkways consist of grass and landscaping in the center of the two main roadways through the [Master Association's] boundaries and a trail system. The parkways make up roughly half of the open space within the [Defendant's] boundaries.*

282. The parkways, trails, and parks and other areas in The Ranches were dedicated to the City as a condition of development approval. These areas are owned by the City today. *See* Exhibit 202, Green Layer, *"The Ranches Parks 2016"* and Gray Layer, *"Eagle Mountain City Ownership 2016."*

283. These dedicated parkways, trails, and parks can be used by any member of the public whether they reside in The Ranches or not.

284. As stated, the Developer and the City entered into a Development Agreement at the time The Ranches received development approval. Under the terms of the Development Agreement, the Developer was responsible to maintain the parkways, trails, and parks in The Ranches for five years from the date of acceptance. After that, maintenance of these areas would be turned over to the City. Exhibit 202, *Development Agreement.*

285. When the City took over maintenance of the parkways, trails, and parks, the Master Association became concerned about the level and quality of service the City was providing.

286. Over a period of years, the Master Association negotiated with the City to reclaim responsibility for maintaining the parkways, trails, and parks. This effort culminated in the Maintenance Agreement, dated October 16, 2017. Exhibit 135.

287. Under the terms of the Maintenance Agreement, the Master Association is obligated to maintain at its sole expense all asphalt trails and gravel horse trails, two-rail fencing that is not privately owned, the front entrance signs, street sign posts, medians, shoulders, trails, open space and parks (with the exception of Nolan Park). Exhibit 135, ¶¶ 1, 1.a.

288. The City agreed to make repairs to the road, light fixtures, cement curbs, and sidewalks, and certain plumbing fixtures. Exhibit 135, ¶ 1.b.

289. The Maintenance Agreement can be terminated by either party with 60-days' written notice. Exhibit 135, ¶ 13.

290. *ED 188: About 50% to 60% of the trails within the [Master Association's] boundaries are located in the parkways. These areas*—and all other publicly-owned areas in The Ranches and identified in the Maintenance Agreement—*would still be maintained by the City had the Master Association not requested that the City turn over . . . maintenance to the [Master Association].*

291. At the expense of owners in the Master Association, the Master Association has provided design review to ensure that new development in The Ranches conforms to the Design Guidelines.

292. However, design review services need not be provided at the expense of the owners in the Master Association. The Master Association could contract with a third-party to provide design review and pass on all review costs to the new developer seeking approval. In fact, this is a common practice where homeowners associations are tasked with design review.

293. Ifo Pili, the City administrator, testified that if the citizens of Eagle Mountain—a majority of which reside in The Ranches—want a higher level of parkway, trail, or park maintenance, they could just ask city officials to establish that higher level of maintenance.

294. Pili further testified that the City does a good job maintaining City open space and parks.

295. The Master Association has failed to maintain the main entrance monument to The Ranches. In a recent request for funding from the City, the Master Association described the entrance monument as an "eye sore." Witnesses testified that the entrance monument has been in this condition for at least several years.

296. The Court finds that the design guidelines for The Ranches could be adopted and enforced by the City. In fact, at trial, the City Administrator could not identify any provisions of the design guidelines more restrictive than those in the City's development code, with the exception of fence-color requirements.

297. Enforcement of covenants, conditions, and restrictions by a master homeowner's association can increase the value of a master-planned community over time. However, there was no evidence that the Master Association's work had in fact contributed to increased property values in The Ranches.

XIV. Injury or Injustice If Equitable Servitude Is Not Imposed

298. If an equitable servitude is not imposed and Plaintiffs are permitted to secede from the Master Association, the costs of ongoing maintenance, design review, and enforcement will be distributed among fewer members.

299. However, the Master Association need not incur these costs.

300. The Maintenance Agreement can be terminated with 60-days' written notice. This would end the Master Association's obligation to maintain publicly-owned areas in The Ranches. The City would then be responsible to maintain these public areas in the same way the City maintains any other public road and park—through taxpayer dollars.

301. Members of the Master Association do not have the exclusive right to use parks located within The Ranches. Rather, the parks are publicly owned and can be used by any member of the public. In relation to parks, the only thing members of the Association receive in exchange for the payment of assessments is control over the level of maintenance provided, which level of service may conceivably exceed that offered by the City.

302. Because a majority of City residents live in The Ranches, a higher level of maintenance for City parks and open space in The Ranches can be obtained by political means.

303. If an equitable servitude were not imposed, design review for new development in The Ranches could still be performed. The City could adopt design standards for development within The Ranches consistent with those now being enforced by the Master Association. Costs of design review could then be paid entirely by the person seeking development approval.

304. Finally, enforcement of covenants, conditions, and restrictions could be performed by the City, especially where the restrictions applied to The Ranches are largely consistent with the City's existing development code.

XV. Facts Relating to Damages

305. There are 312 units in Willow Springs.

306. There are 180 units in Rock Creek.

307. There are 117 residential lots in Cold Springs.

308. There are a total of 609 individual residential lots and units in Plaintiffs' associations.

A. Unjust Enrichment

309. In the four years prior to the filing of the complaint, members of the Plaintiffs' associations have been the beneficiaries of the Master Association's services. These services included administration, maintenance of parkways, trails, and parks, design review, assessment collection, and covenant enforcement.

310. While Plaintiffs take issue with the quality and the necessity of these services, they have nonetheless received benefits in exchange for the payment of their assessments.

B. Amounts Paid Since the Filing of the Complaint

311. Some of Plaintiffs' members continued paying assessments in the amount of $17 per month per lot or unit to the Master Association from the date the Plaintiffs filed the complaint until trial.

312. Part of these payments has been held in escrow as ordered by the Court pending a final ruling in this case.

313. The Master Association concedes that these payments are to be returned to Plaintiffs if Plaintiffs prevail on the Master Association's equitable defenses.

C. Wrongful Liens

314. *QT 28: On October 2, 2012, Plaintiffs' counsel sent a letter to the Master [Association]'s counsel informing [the Master Association] that the 2004 Declaration was recorded without consent of property owners within Plaintiffs' projects. [Plaintiffs demanded that] the Master [Association] record whatever documents [were] necessary to confirm the invalidity of the 2004 Declaration and remove all documents recorded by the Master [Association] from title to all properties within Plaintiffs' projects.*

315. On September 30, 2016, Plaintiffs sent a renewed demand letter to the Master Association asking for the release of all documents recorded by the Master Association against properties owned by Plaintiffs' members. The demand letter was emailed to the Master Association's counsel on the date of the letter. Exhibit 274.

316. The Master Association did not release or cancel any of the documents recorded by the Master Association against properties within Plaintiffs' subdivisions within ten days from the date of either the October 2, 2012 demand or the September 30, 2016 demand.

(1) Willow Springs Phase 1: 2001 Notice of Continuing Obligation

317. *ED 36, QT 7: On December 4, 2001, the [Master Association] caused to be recorded a document titled "Notice of Continuing Obligation" on Phase 1 of Willow Springs Condominiums. The document states that the [Master Association] claims a continuing obligation, including the obligation to pay assessments to the [Master Association], upon Willow Springs pursuant to the Willow Springs Declaration.*

318. *ED 49: QT 8: The [Master Association] cannot provide any evidence that it obtained the written consent of the homeowners in Willow Springs . . . to record [this document].*

319. The Willow Springs Phase 1: 2001 Notice of Continuing Obligation is Trial Exhibit 41.

320. Exhibit 41 was recorded against seventy-two (72) parcels in the Willow Springs Condominiums Phase 1 project. Exhibit 201 at 8.

321. The Court has previously ruled that Exhibit 41 is a wrongful lien.

322. The Master Association recorded Exhibit 41 knowing that the lien was wrongful for the following reasons:

a) It states obligations to the Master Homeowners Association by citing to a Willow Springs recorded document that does not in any way provide for or infer any such obligation.

b) It states obligations to the Master Association that did not exist as no declaration had been recorded at the time.

c) The Master Association knew that no declaration had been recorded at the time this document was recorded.

d) This document serves no purpose other than to claim rights that were not available in any recorded document.

323. After two requests to remove the notice in 2012 and 2016, the Master Association refused to release it within the statutory required time period.

(2) Cold Springs Phase 1: 2001 Notice of Continuing Obligation

324. *QT 9, ED 39: [On] December 4, 2001, the Master HOA caused to be recorded a document titled "Notice of Continuing Obligation" on Phase 1 of Cold Springs. The document states that the Master HOA claims a continuing obligation upon Cold Springs pursuant to the Cold Springs Declaration.*

325. *QT 10: The [Master Association] cannot provide any evidence that it obtained the written consent of homeowners in Cold Springs to record [this document].*

326. The Cold Springs Phase 1: 2001 Notice of Continuing Obligation is Trial Exhibit 40.

327. Exhibit 40 was recorded against sixty-three (63) parcels in the Cold Springs at Red Hawk Ranch Phase 1 project. Exhibit 201 at 8.

328. The Court has previously determined Exhibit 40 is a wrongful lien.

329. Unlike the Willow Springs and Rock Creek Declarations, the Cold Springs Declaration states that Cold Springs is "a portion of a larger project area known as The Ranches. The property is bound by the Community Declaration for The Ranches Community Association, Inc." Exhibit 51.

330. In fact, the Cold Springs Declaration expressly refers to the Cold Springs association as a "sub-association." Exhibit 51.

331. The Master Association recorded Exhibit 40 knowing that the lien was wrongful for the following reasons:

a) It states obligations to the Master Association that did not exist as no declaration had been recorded at the time.

b) The Master Association knew that no declaration had been recorded at the time this document was recorded.

c) This document serves no purpose other than to claim rights that were not available in any recorded document.

332. After two requests to remove the notice in 2012 and 2016, the Master Association refused to release it within the statutory required time period.

(3) Willow Springs Phase 2: 2001 Notice of Continuing Obligation

333. On December 4, 2001, the Master Association recorded a document titled "Notice of Continuing Obligation" on Phase 2 of Willow Springs.

334. The Master Association did not provide any evidence that it obtained the written consent of homeowners in Willow Springs to record this document.

335. The Willow Springs Phase 2: Notice of Continuing Obligation is Trial Exhibit 42.

336. Exhibit 42 was recorded against ninety-seven (97) parcels in the Willow Springs Condominiums Phase 2 project. Exhibit 201 at 8.

337. This Court has previously ruled that Exhibit 42 is a wrongful lien.

338. The Master Association recorded Exhibit 42 knowing the lien was wrongful for the following reasons:

a) It states obligations to the Master Association by citing to a Willow Springs recorded document that does not in any way provide for or infer any such obligation.

b) It states obligations to the Master Association that did not exist as no declaration had been recorded at the time.

c) The Master Association knew that no declaration had been recorded at the time this document was recorded.

d) This document serves no purpose other than to claim rights that were not available in any recorded document.

339. After two requests to remove the notice in 2012 and 2016, the Master Association refused to release it within the statutory required time period.

(4) Rock Creek Phase 1: 2004 Notice of Continuing Obligation

340. *ED 46: On January 7, 2004, the [Master Association] caused to be recorded a document titled "Notice of Continuing Obligation" on Phase 1 of Rock Creek. The document states that the [Master Association] claims a continuing obligation upon Rock Creek pursuant to the Rock Creek Declaration.*

341. *QT 12: The [Master Association] cannot provide any evidence that it obtained the written consent of homeowners in Rock Creek to record [this document].*

342. The Rock Creek Phase 1: 2004 Notice of Continuing Obligation is Trial Exhibit 44.

343. Exhibit 44 was recorded against ninety-eight (98) parcels in the Rock Creek Condominiums Phase 1 project. Exhibit 201 at 8.

344. The Court has previously ruled that Exhibit 44 is a wrongful lien.

345. The Master Association recorded Exhibit 44 knowing that the lien was wrongful for the following reasons:

a) It states obligations to the Master Association by citing to a Rock Creek recorded document that does not in any way provide for or infer any such obligation.

b) It states obligations to the Master Association that did not exist as no declaration had been recorded at the time.

c) The Master Association knew that the declaration for The Ranches Master Association had not been recorded at the time this document was recorded.

d) This document serves no purpose other than to claim rights that were not available in any recorded document.

346. After two requests to remove the notice in 2012 and 2016, the Master Association refused to release it within the statutory required time period.

(5) Willow Springs Phase 3: 2004 Notice of Lien

347. On October 25, 2004, the Master Association recorded a Notice of Continuing Lien (the "2004 Notice of Lien").

348. The 2004 Notice of Lien is Trial Exhibit 43.

349. Exhibit 43 was recorded against seventy-three (73) parcels in the Willow Springs Condominiums Phase 3 project. Exhibit 201 at 8.

350. Exhibit 43 references the Willow Springs Declaration supplement which provides no authority for the lien.

351. Exhibit 43 purports to claim a right to collect assessments, penalties, administrative assessments, and interest pursuant to the Willow Springs Declaration, Supplement. This document does not authorize the Master Association to do these things.

352. Exhibit 43 purports to (1) require owners selling their property to obtain a "Certificate of Good Standing" from the Master Association prior to the sale; and (2) to impose liability on purchasers or title companies who fails to do so.

353. There is no authority for the Master Association to do this in the Willow Springs Declaration, in any version of the Master Association's recorded or unrecorded Declarations, or in any statute.

354. The Master Association recorded Exhibit 43 knowing that the lien was wrongful, for the following additional reasons:

a) It states obligations to the Master Association by citing to a Willow Springs recorded document that does not in any way provide for or infer any such obligation.

b) The document serves no purpose other than to claim rights that were not available to the Master Association under any recorded document.

355. After two requests to remove the notice in 2012 and 2016, the Master Association refused to release it within the statutory required time period.

(6) Rock Creek Phase 1: 2006 Notice of HOA

356. On November 2, 2006, the Master Association recorded a Notice of Homeowners Association and Assessment Obligation (the "2006 Notice of HOA").

357. This document is Trial Exhibit 45.

358. Exhibit 45 was recorded against ninety-eight (98) parcels in the Rock Creek Condominiums Phase 1 project. Exhibit 201 at 8.

359. The Master Association recorded Exhibit 45 knowing the 2006 Notice was wrongful for the following reason:

a) The document refers to "transfer fees" and lien rights to collect the same.

b) No version of the Declaration grants the Master Association authority to collect transfer fees or to lien the property of owners who fail to pay these fees.

360. Otherwise, Exhibit 45 merely restates that properties are subject to the 2004 Declaration recorded more than a year earlier.

361. After two requests to remove the notice in 2012 and 2016, the Master Association refused to release it within the statutory required time period.

(7) 2010 Notice of Existence

362. *QT 26: On October 26, 2010 the Master [Association] recorded a document titled "Notice to Sellers, Buyers, and Title Companies of the Existence of The Ranches at Eagle Mountain Master Homeowner's Association, Inc." against Plaintiffs' projects stating that property within the [Master Association's] boundaries was subject to the [Master Association].*

363. *QT 27: The Master [Association] cannot provide any evidence that it obtained written consent of the owners of property within Plaintiffs' projects to record [this document].*

364. This notice is Trial Exhibit 46.

365. Exhibit 46 was recorded against six-hundred and nineteen (619)[5] parcels in the Cold Springs at Red Hawk Ranch, Willow Springs Condominiums, and Rock Creek Condominiums projects. Exhibit 201 at 8.

366. Exhibit 46 admonishes purchasers of property to obtain a certificate of good standing from the Master Association, and requires the purchaser to affirm that he has received and read Exhibit 46 to sellers, buyers, and title companies, and acknowledge this by signature.

367. No version of the Declaration or other recorded document authorizes the Master Association to do these things.

368. The Court has previously held Exhibit 46 is a wrongful lien.

369. The Master Association recorded Exhibit 46 knowing the lien was wrongful because the 2010 Notice states material obligations to the Master Association that do not exist in any recorded document.

370. After requests to remove the notice in 2012 and 2016, the Master Association refused to release it within the statutory required time period.

PRE-TRIAL CONCLUSIONS OF LAW

The following conclusions of law were made prior to trial following motions for summary judgment. These pre-trial conclusions are italicized in the paragraphs below.

[5] The Master Association recorded Exhibit 46 against the 609 individual residential lots and units in Plaintiffs' associations and against 4 common areas in Cold Springs, 3 common areas in Willow Springs, and 3 common areas in Rock Creek.

I. The 2004 Declaration Is Not a Wrongful Lien

For the reasons set out in the May 10, 2016 Ruling and Order, the Court concludes that the 2004 Declaration is not a wrongful lien. (Ruling and Order: Granting in Part Plaintiffs' Motion for Partial Summary Judgment (Quiet Title) And Denying Plaintiffs' Motion for Partial Summary Judgment (Equitable Defenses), entered on May 10, 2016, at pp. 5–9).

II. Plaintiffs' Properties Did Not Become Subject to the 2004 Declaration, and the 2004 Declaration is Void and Cannot Give Rise to Enforceable Servitudes

For the reasons stated in section II of [Memorandum in Support of Plaintiffs' First Motion for Partial Summary Judgment (Quiet Title) ("Plaintiffs' Memo")], the Court concludes that Plaintiffs' properties did not become subject to the 2004 Declaration. The property in Plaintiffs' projects never became part of the Community Association Area in the manner provided for in the 2004 Declaration. (Ruling and Order: Granting in Part Plaintiffs' Motion for Partial Summary Judgment (Quiet Title) And Denying Plaintiffs' Motion for Partial Summary Judgment (Equitable Defenses), entered on May 10, 2016, at p. 10).

Because the 2004 Declaration was never signed by the declarant and because the declarant at the time of recordation did not own the property against which it was recorded and did not seek the consent of the owners, the 2004 Declaration was void and could not give rise to enforceable servitudes as a matter of law. (Ruling and Order: Granting in Part Plaintiffs' Motion for Partial Summary Judgment (Quiet Title) And Denying Plaintiffs' Motion for Partial Summary Judgment (Equitable Defenses), entered on May 10, 2016, at p. 11).

III. The Notices of Continuing Obligation and 2010 Notice of Existence Are Wrongful Liens

The notices of continuing obligation ... are not expressly authorized by state or federal statute. They were recorded against the Plaintiffs' properties well before the 2004 Declaration was recorded in June 2004. The notices of continuing obligation were not "authorized by or contained in an order or judgment of a court of competent jurisdiction" nor were they "signed or authorized pursuant to a document signed by the owner[s] of the real property" against which they were recorded. Utah Code § 38-9-102(12). Therefore, the notices of continuing obligation are wrongful liens.

Arguably, the 2010 notice of existence does nothing more than reiterate the fact that the Plaintiffs' properties are subject to the 2004 Declaration which – as a matter of law – does not constitute a wrongful lien. Therefore, the 2010 notice could not itself constitute a wrongful lien. However, a more careful reading of the 2010 notice of existence demonstrates that the document is not so benign.

The 2010 notice provides that the "Seller, Buyer, or Title Company involved in [the sale of any property within the [Master Association] must contact the community manager with the name and mailing address of the purchaser." Plaintiffs' Memo, Exhibit H, ¶ 2. It goes on to state that a Certificate of Good Standing should be obtained from the [Master Association] "indicating that all outstanding assessments have been paid and that the property is in compliance with the provisions of the [2004 Declaration] and other governing documents of the [Master Association]." Plaintiffs' Memo, Exhibit H, ¶ 3. Finally, the 2010 notice of existence requires the buyers to sign certifying that they have "received and read" the notice, and title companies "shall return a copy of [the] executed notice" to the [Master Association]. Plaintiffs' Memo, Exhibit H, ¶¶ 4–5.

The 2004 Declaration does not authorize the [Master] Association to impose any of these requirements on owners, potential buyers, or title companies involved in the sale of property within the [Master] Association's boundaries. The 2004 Declaration authorizes the [Master] Association to lien property to collect unpaid assessments, but it does not permit the [Master] Association to record a document identifying the mere possibility of "outstanding assessments and obligations." Plaintiffs' Memo, Exhibit G, ¶ 8.36–38; Exhibit H, ¶ 3.

The 2004 Declaration provides that upon written request any "Member and any Person with, or intending to acquire, any right, title or interest in [the] Privately Owned Site of such Member" may obtain from the [Master Association] an estoppel certificate. Plaintiffs' Memo, Exhibit G, ¶ 8.39. The certificate is a "written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid [with respect to the Site and the Owner] and settling for the amount of any Assessment levied against such Site which is not yet due and payable." Id. However, nothing in the 2004 Declaration makes obtaining an estoppel certificate mandatory, nor is the [Master Association] authorized to require certification from potential buyers and title companies.

Because the 2010 notice of existence imposes requirements and duties outside the scope of the [Master Association]'s governing documents, the 2010 notice is not a lien expressly authorized by statute. The 2010 notice is not "authorized by or contained in an order or judgment of a court of competent jurisdiction" nor is it "signed or authorized pursuant to a document signed by the owner[s] of the real property" against which it was recorded. Utah Code § 38-9-102(12). Therefore, the 2010 notice of existence is a wrongful lien. (Ruling and Order: Granting in Part Plaintiffs' Motion for Partial Summary Judgment (Quiet Title) And

Denying Plaintiffs' Motion for Partial Summary Judgment (Equitable Defenses), entered on May 10, 2016, at pp. 7–9).

IV. Delegates Do Not Have Discretion to Vote on Amendments

Section 4.6 of the declaration provides: "It will be conclusively presumed for all purposes of community association business that any delegate casting votes on behalf of the members owning privately owned sites in his delegate district will have acted with the authority and consent of all such members."

The meaning of a conclusive presumption has been persuasively analyzed by the Utah Supreme Court in Davis vs. Provo City Corporation, 2008 UT 59, 193 P.3d 86. Commentators examining conclusive presumptions have stated that a conclusive or irrebuttable presumption is not a presumption at all; it is a substantive rule of law directing the proof of certain basic facts conclusively. . . . Most often presumptions operate to give an opening advantage as to the burden of proof--an advantage that can be lost by a showing of contrary facts by the opposing side. But in the case of a conclusive presumption there is no opportunity for rebuttal. The decision to make a presumption conclusive rests upon grounds of expediency or policies so compelling in character as to override the generally fundamental requirement that questions of fact must be resolved according to the proof. When parties include a conclusive presumption in a contract they are stating that the objective promoted by the conclusive presumption is of greater importance than the opportunity to present facts challenging the presumed fact. [Again], conclusive presumptions are intended to create finality. [They] further the goal of having an unassailable final decision over the goal of permitting relief to parties who may have been harmed by procedural flaws.

Here, Section 4.6 of the declaration creates a conclusive presumption for all purposes of community association business that any time a delegate casts a vote on behalf of the members owning privately owned sites in his delegate district, that delegate has acted with the authority and consent of all such members. With respect to the amendments, the Court concludes that delegates do not cast votes to approve amendments such that the conclusive presumption would be implicated .... (Order Granting in Part and Denying in Part Plaintiffs' Second Motion for Partial Summary Judgment, entered on October 27, 2015, at pp. 3–4).

For the reasons stated in Plaintiffs' papers, the Court concludes as a matter of law that delegates do not have discretion to vote on amendments to the declaration. Amendments are treated differently under the declaration. They require that members vote on proposed amendments by delegate districts. Delegate discretion is eliminated. Delegates merely certify to the Board of the [Master Association] the member votes in their respective districts. (Order Granting in Part and Denying in Part Plaintiffs' Second Motion for Partial Summary Judgment, entered on October 27, 2015, at p. 3).

V. The Bylaw Allowing Defendant's Board to Appoint Delegates is Invalid

As a matter of law, bylaws that conflict with the declaration, including the bylaw allowing for the Master Association's Board to appoint delegates, are invalid. The declaration controls. (Order Granting in Part and Denying in Part Plaintiffs' Second Motion for Partial Summary Judgment, entered on October 27, 2015, at p. 3).

VI. Plaintiffs' Quiet Title Action is Not Subject to Any Statute of Limitation

Plaintiffs' action to quiet an existing title against an adverse claim is not subject to any statute of limitations. (Order Granting in Part and Denying in Part Plaintiffs' Second Motion for Partial Summary Judgment, entered on October 27, 2015, at p. 3).

[Cold Springs] has associational standing to maintain its claims and causes of action. (Order Denying Plaintiffs' First Motion for Partial Summary Judgment, entered October 27, 2015, at pp. 2–3).

VII. Utah Law Does Not Distinguish Between Servitudes and Easements, and Utah's 20 Year Prescriptive Period Controls

Utah's prescriptive period is twenty (20) years. The earliest the period would have begun to run is the date the Master Association was incorporated in 1997. The prescriptive period would not have run until 2017. Plaintiffs commenced this action in 2013, four years before the prescriptive period would have ended.

Defendant contends that the twenty (20) year prescriptive period governs easements not servitudes and that in the absence of a statute the seven year period for adverse possession should control.

In [this Court's view], Utah law does not distinguish between servitudes and easements. An easement is a kind of servitude imposed on land. As a matter of law, the twenty (20) year prescriptive period controls. (Court's Oral Ruling on Plaintiffs' Motion for Partial Summary Judgment on Defendant's Equitable Theory of Implied Equitable Servitude by Prescription, November 28, 2016).

VIII. The Other Sub-Associations and Their Members Are Not Necessary Parties

In their Quiet Title action, Plaintiffs' contend that they are not members of the [Master Association] and are not subject to the [Master Association]'s covenants, conditions and restrictions. In their wrongful lien claim, Plaintiffs contend that the... 2004 covenants, conditions and restrictions and later recorded documents constitute wrongful liens. They seek a judgment for assessments wrongfully imposed and collected. The [Master Association] asserts equitable defenses to these claims, arguing that Plaintiffs, and by implication all sub-associations and their members, are, as a matter of law or equity, members of the [Master Association] and therefore subject to assessment.

[This issue is governed by Rule 19 of the Utah Rules of Civil Procedure]. Applying the Rule 19 standard to these facts, the other members [of the Master Association] and the City are subject to service of process. Their joinder would not deprive the Court of subject matter jurisdiction.

The other members do claim an interest relating to the subject matter of this action. Specifically, the other members and Plaintiffs are grantees of land that according to the [Master Association] was intended for development under a general scheme or plan. As such, the other members and Plaintiffs have [an] interest in the properties of each other and have the right to enforce against each other any equitable servitude that would be imposed in this case.

The effect of Plaintiff's Quiet Title action to disclaim membership in the Association and unencumber Plaintiff's property from the covenants, conditions and restrictions, including assessments, would be to reduce the number of owners responsible for the cost of the [Master Association]'s work. If Plaintiffs prevailed, the cost of the [Master Association]'s services would

be spread over fewer members and any judgment for assessments unlawfully collected would be paid by the remaining members. The equitable defenses put forth by the [Master Association], in my view, protect these interests of the sub-associations and their members, specifically the interest in enforcing the covenants against Plaintiffs and the interest in not dividing the cost of the [Master Association]'s work by a fewer number of members. The equitable defenses raised by the [Master Association] protect those claims, such that as a practical matter, those interests are not impaired or impeded by moving forward in the absence of the sub-associations.

However, each sub-association may also bring claims similar to those raised by Plaintiffs and seek to secede from membership in the [Master Association]. But I'm not persuaded that those claims would be impaired or impeded by litigating this action in the absence of the sub-associations. Any sub-association could bring that claim in the future and without meaningful limitation by a decision rendered as to the Plaintiffs in this action.

For those reasons, the Court concludes that the sub-associations and their members are not so situated that the disposition of this case in their absence would as a practical matter impair or impede their ability to protect their interests. Finally, the Court is not persuaded the disposition, in the absence of the sub-associations, would leave the [Master Association] subject to substantial risk of incurring double, multiple or inconsistent obligations. . . . Plaintiffs' claims and the [Master Association]'s defenses do not exist in a vacuum, but Rule 19 does not require joinder. For those reasons, the Court denies the Motion for Joinder of Necessary Parties .... (Court's oral ruling at hearing held on September 7, 2016, on Defendant's Motion for Joinder of Necessary Parties).

POST-TRIAL CONCLUSIONS OF LAW

The Plaintiff associations desire to "dissolve the political bands that have connected them" to the Master Association and to "assume among the powers of the earth, [a] separate and equal station." It is in this action that Plaintiffs have set forth the "causes which impel them to the separation." *The Declaration of Independence* (July 4, 1776).

Plaintiffs contend that their properties are not subject to (1) the 2004 Declaration, and any of its amendments; (2) the Notices of Continuing Obligation, (3) the 2004 Notice of Continuing Lien, (4) the 2006 Notice of Homeowners Association and Assessment Obligation, and (5) the 2010 Notice of Existence. Plaintiffs ask the Court to quiet title to their properties free from these encumbrances.

Plaintiffs seek to recover the assessments paid to the Master Association in the four years preceding commencement of this action. They contend that the Master Association has provided no meaningful benefit in exchange for assessments paid. Therefore, the Master Association has been unjustly enriched.

Finally, Plaintiffs seek to recover damages and attorney's fees under the wrongful lien statute. Utah Code § 38-9-203.

The Master Association seeks to preserve the union. It contends that Plaintiffs' properties are lawfully encumbered by an equitable servitude in favor of the Master Association. This argument rests on the following equitable defenses: (1) servitudes implied from a general plan; (2) servitudes created by estoppel; (3) equitable estoppel; (4) ratification; and (5) contract implied in fact.

Plaintiffs' success or failure turns on the viability of the Master Association's equitable defenses. Therefore, the Court will address those defenses first. The Court will then turn to Plaintiffs' claims for unjust enrichment, quiet title and wrongful lien.

I. The Master Association's Equitable Defenses

A. Servitude Implied from a General Plan

Restrictive covenants and servitudes must generally be "embodied in a written instrument bearing the covenantor's signature." *Dansie v. Hi-Country Estates Homeowners Ass'n.*, 1999 UT 62, ¶ 25, 987 P.2d 30 (citing *9 Richard R. Powell on Real Property*, § 60.03 (1998)). This is a "long-standing [and] well-accepted" requirement of the law. *Id.*

Equity recognizes exceptions to this general rule. In some instances, servitudes can arise by implication, such as "from the language of a deed or lease or from the conduct of the parties." *Id.* (quoting *St. Benedict's Dev. Co. v. St. Benedict's Hosp.*, 811 P.2d 194, 198 (Utah 1991)). However, implied restrictive covenants and servitudes "are extreme" and "as a general rule, . . . not favored in the law." *Id.* To impose an equitable servitude by implication, "the support for it must be 'plain and unmistakable' or it must be 'necessary' as a matter of law." *Id.* (quoting 20 Am. Jur. 2d § 173).

A servitude can be implied from a general plan of development, although the test for doing this under Utah law is unclear. In *Dansie*, the Utah Supreme Court referenced the five-part test set forth in *3W Partners v. Bridges*, 651 A.2d 387, 389 (Me. 1994), but only because the homeowner's association relied on that case in support of its position. Under *3W Partners*, an equitable servitude can be imposed when:

> (1) a common owner subdivides property into a number of lots for sale; (2) the common owner has a "general scheme of development" for the property as a

> whole, in which the use of the property will be restricted; (3) the vast majority of subdivided lots contain restrictive covenants which reflect the general scheme; (4) the property against which application of an implied covenant is sought is part of the general scheme of development; and (5) the purchaser of the lot in question has notice, actual or constructive, of the restriction.

Id.

In *Dansie,* a homeowner's association sought to impose its covenants, conditions, and restrictions on an 80-acre parcel outside the association's subdivision. The Court declined to grant this relief, holding that several of the *3W Partners* factors had not been proved. A common owner had never subdivided Dansie's property into lots offered for sale. Dansie's property was never part of the subdivision or its general scheme of development. Finally, there was no "plain and unmistakable" language in the association's documents or Dansie's chain of title that imposed restrictive covenants against Dansie's property.

If the five-factor test in *Dansie* is the test in Utah for implying a servitude by general plan, then the Master Association's defense fails as a matter of law. Here, the Developer was not the common owner of all land within The Ranches Master Plan. The Developer was in the business of selling land, not subdividing land into lots for sale. Each Plaintiff association has covenants, conditions, and restrictions related to its specific neighborhood, but the vast majority of subdivided lots do not contain restrictive covenants which reflect the general scheme for development of The Ranches as a larger community.

Most importantly, the Court cannot conclude that purchasers in The Ranches were on notice of plain and unmistakable restrictions necessary to implement the Master Plan. The Draft Declarations were prepared in 1998 and 1999. Sales Center personnel may have provided these documents to some potential purchasers, but no one knows for sure. Between 1998 and June

2004 when the 2004 Declaration was recorded, the declaration for The Ranches was never set in stone. Rather, it was a "living document" amended to respond to the Developer's shifting vision and to changing market conditions. The best evidence of this evolution is the fact that the 2004 Declaration is materially different from the Draft Declarations that preceded it. In the end, no one knows how many versions of the draft declaration were created or to whom these documents may have been distributed.

The restrictions necessary to implement The Ranches general scheme never have been plain and unmistakable. Indeed, this uncertainty persisted through the end of trial. During closing argument, the Court pressed the Master Association to explain which version of the declaration—1998, 1999, 2004, 2005, 2006, or 2010—should be equitably imposed on Plaintiffs' properties. The Master Association responded that it "did not care" which version of the declaration the Court used to inform the decision, so long as some servitude was imposed that gave effect to the general plan.

It is arguable that the five-factor test referenced in *Dansie* has never been conclusively adopted. Assuming this is true, the Court looks to the Restatement on Property for guidance. Section 2.14 of the Restatement reads:

> **Servitudes Implied from General Plan**
> Unless the facts or circumstances indicate a contrary intent, conveyance of land pursuant to a general plan of development implies the creation of servitudes as follows:
> (1) **Implied Benefits:** Each lot included within the general plan is the implied beneficiary of all express and implied servitudes imposed to carry out the general plan.
> (2) **Implied Burdens:**
> (a) Language of condition that creates a restriction or other obligation, in order to implement the general plan, creates an implied servitude imposing the same restriction or other obligation.

> (b) A conveyance by a developer that imposes a servitude on the land conveyed to implement a general plan creates an implied reciprocal servitude burdening all the developer's remaining land included in the general plan, if injustice can be avoided only by implying the reciprocal servitude.

Restatement (Third) of Property § 2.14 (2000).

The comments to this section emphasize the distinction between finding a general plan for purposes of subsections (1) and (2)(a), as opposed to subsection (2)(b). Under sections (1) and (2)(a) "the creation of the restriction, or other servitude, has already been established. The only question is whether the benefit runs to the neighbors." Restatement (Third) Property § 2.14, Cmt. f (2000). In contrast, when the Court is asked to imply a servitude under section (2)(b) "the creation of the restriction, or other servitude, is in question." *Id.* Accordingly:

> Since the consequences of finding a general plan under subsections (1) and (2)(a) are not as severe, the standard of proof required to establish a general plan may be somewhat less strict than under subsection (2)(b).
>
> In the cases covered by the rule stated in subsection (2)(b), however, the question is whether a servitude should be established burdening land when there is not only no written instrument burdening that land with a servitude, but is not even an oral promise to burden it, or any express representation that it will be burdened with a servitude. If the existence of a general plan is established, the reciprocal servitude burdening all the land included in the plan area will be implied on the basis of implied representations by the developer. Since the consequences of finding the general plan will undercut the policies underlying the Statute of Frauds, and significantly reduce the value of the land in relation to its unrestricted state, clear and convincing evidence of the existence of the general plan is required to imply a reciprocal servitude under subsection (2)(b).

Id. *See* Utah Code § 25-5-1 ("No estate or interest in real property . . . nor any trust or power over or concerning real property or in any manner relating thereto, shall be created . . . otherwise than by act or operation of law, or by deed, or conveyance in writing subscribed by the party creating . . . the same . . . .").

This is not a subsection (1) or a subsection (2)(a) case. The creation and terms of the servitude have not been established. Therefore, subsection (2)(b) provides the legal framework for decision.

The Master Association proved by clear and convincing evidence that The Ranches was created pursuant to a general plan of development. The Developer spent significant time and money developing and marketing The Ranches brand. The Developer entered into the Development Agreement with the City. A map of The Ranches and its various neighborhoods appeared prominently at the Sales Center. Clearly, purchasers knew they were buying lots in a planned community.

The Master Association contends that when the Developer sold the first community in The Ranches that land was burdened by a servitude to implement the general scheme of development. Therefore, all of the Developer's remaining land included in the general plan was encumbered by an implied reciprocal servitude. The Master Association contends that the implied servitude is necessary to avoid injustice to the thousands of landowners in The Ranches whose purchase expectations would otherwise by undermined.

The Master Association's case breaks down in its failure to identify what servitudes and restrictions were necessary to implement the general plan. As previously explained, the Draft Declarations were created in 1998 and 1999, but did not identify the land to which they were intended to apply. The Draft Declarations may have been distributed to potential buyers, but no one knows for sure. The declaration was a "living document" from 1998 to 2004, amended to respond to the Developer's shifting vision and to changing market conditions.

The 2004 Declaration was materially different from the Draft Declaration. It was the first declaration to identify the geographic boundary of The Ranches. The 2005 Amendment and 2006 Amendment were recorded against about one-half of the property encumbered by the 2004 Declaration. The 2010 Amendment was recorded against all the property encumbered by the 2004 Declaration, plus some more.

At trial, the Master Association never identified what specific provisions of which declaration were necessary to implement the general plan. When pressed on this question, the Master Association indicated that it did not care which declaration was used. Rather, it invited the Court to simply pick one version of the declaration, reform it as the Court deems appropriate, and then impose it on all properties within the Master Association's boundaries. The Court declines this invitation for two reasons.

First, the Master Association has not presented plain and unmistakable proof that an equitable servitude should be recognized or what its terms should be. From the evidence presented, the Court is unable to determine what servitudes in which of the six available declarations are necessary to implement the Master Plan for The Ranches. To conclude otherwise would be an exercise in speculation.

Second, the Master Association has failed to prove by clear and convincing evidence what properties were included within the Master Plan. The Map in the Sales Center included Cedar Pass Ranch and North Ranch in the Master Plan. The Developer owned neither of these developments. The Map included Meadow Ranch in the Master Plan. The Developer did own this development. However, the Developer unilaterally withdrew it from the Master Plan in 2001 without notice to or approval of property owners.

The 1998 and 1999 Draft Declarations never included a legal description. The 2004 Declaration was the first version of the declaration to identify the boundaries of the Master Plan and Master Association. However, those boundaries did not include Cedar Pass Ranch, North Ranch, or Meadow Ranch. The 2005 and 2006 Amendments were recorded against only half of the property encumbered by the 2004 Declaration. The 2010 Amendment was recorded against all of the land encumbered by the 2004 Declaration, plus additional land never included in the Master Plan.

The Court is not inclined to impose an implied equitable servitude—an "extreme remedy" generally disfavored in the law—when (1) the terms of the servitude necessary to implement the Master Plan are not clear and unmistakable; and (2) the land to be included within the Master Plan is so uncertain.

Finally, the Master Association has failed to prove that imposing an implied servitude is the only way by which injustice can be avoided. A servitude which maintained the Master Association's existence and authority is simply unnecessary to owners realizing their purchase expectations.

As will be explained later, for years the Master Association has disregarded express terms of the Declaration it now seeks to equitably impose. Some of this disregard arose out of desperation. Almost from the beginning, governance of the Master Association began to collapse under the weight of the Declaration's complexity and the general apathy of homeowners toward the Master Association's work. Imposing an equitable servitude consistent with any one of the Declarations would not avoid injustice, but rather mandate a governance structure that is admitted by all parties to be broken.

The Plaintiffs maintain the parks and common areas located within their respective sub-associations. They are responsible for enforcing their own respective covenants, conditions, and restrictions. These purchase expectations will continue to be realized if Plaintiffs are permitted to secede from the Master Association.

Under the Development Agreement, the Developer was only required to maintain trails, parks, and the parkway for five years. After that, maintenance of these areas would be turned over to the City. The Master Association altered this purchase expectation when it entered into the Maintenance Agreement which extended the Master Association's maintenance responsibilities. If no servitude is imposed, maintenance of the trails, parks, and parkway will again become the City's responsibility, consistent with the original purchase expectations of the Developer and property owners.

Lastly, any higher level of maintenance currently enjoyed by members of the Master Association can be obtained by petitioning the City for it. Members of The Ranches comprise a significant voting block within the City. They can obtain the desired level of service through political means. The City can provide enforcement of design guidelines and covenants, most of which are consistent with existing City ordinances.

The one thing property owners will lose if no equitable servitude is recognized is the ability to enforce against each other the reciprocal burdens arising from the Master Plan. However, a homeowner asserting this private cause of action would run headlong into the same factual and legal obstacles that have caused the Master Association's claims in this case to fail.

For all of these reasons, the Court declines to impose an equitable servitude implied by general plan.

B. Servitude by Estoppel and Equitable Estoppel

The Master Association contends that Plaintiffs are estopped from denying the existence of a servitude in this case. It cites to section 2.10 of the Restatement (Third) of Property which provides:

> If injustice can be avoided only by establishment of a servitude, the owner or occupier of land is estopped to deny the existence of a servitude burdening the land when . . . . the owner or occupier represented that the land was burdened by a servitude under circumstances in which it was reasonable to foresee that the person to whom the representation was made would substantially change position on the basis of that representation, and the person did substantially change position in reasonable reliance on that representation.

Restatement (Third) Property, Servitudes § 2.10 (2010).

The Master Association appears to advance two arguments under this theory, neither of which is persuasive. The Master Association argues that the Developer told potential buyers land in The Ranches was burdened by certain servitudes. The representations were made under circumstances in which it was reasonable to foresee that buyers would substantially change their position on the basis of the Developer's representations. And in fact buyers did change their positions by purchasing lots in The Ranches. Therefore, the Plaintiffs' associations are estopped from denying the existence of the servitudes.

The Master Association's reasoning is flawed. Under the doctrine of servitude by estoppel, the Developer who made representations about existing servitudes is estopped from denying their existence. While purchasers who relied on those representations might enforce the servitudes against the Developer, those purchasers are not themselves estopped from denying that the servitudes exist.

In the alternative, the Master Association appears to argue that Plaintiffs represented that they were members of the Master Association, or acted as if they were members. This occurred under circumstances in which it was reasonably foreseeable that the Master Association would substantially change its position in reliance on the Plaintiffs' statements or conduct. And in fact the Master Association did change its position. Therefore, the Plaintiffs are estopped from denying the existence of the servitudes which created the Master Association.

This alternative contention is also without merit. In this case, the Master Association has repeatedly represented to Plaintiffs that their properties were burdened by a servitude, not the other way round. The members in Willow Springs and Rock Creek have never represented to the Master Association that their properties were subject to the Declaration or its amendments. At best, these members accepted the Master Association's claim to authority and—under threat of lien—paid assessments when billed. Given the Master Association's knowledge that no declaration had been recorded in the first instance, the Master Association could not have reasonably relied on Plaintiffs' payment of assessments.

The Cold Springs Declaration recorded in August 2001 states that the Cold Springs development "is a portion of the lager project known as the Ranches." Exhibit 51. It acknowledges that "the property is bound by the Community Declaration for the Ranches Community Association, Inc." *Id.* However, in August 2001, no community declaration for the Master Association had been recorded and the Master Association knew it. Draft Declarations during this period were evolving. On these facts—even assuming the Cold Springs Declaration constituted a representation of membership in the Master Association—the Master Association's reliance on the representation was not reasonable.

Even if the Master Association could have reasonably relied on the payment of assessments or the language of the Cold Springs Declaration, the Master Association has failed to prove how it substantially changed its position in reliance on these representations. At best, the Master Association entered into the Maintenance Agreement with the City. Under that Agreement, the Master Association contracted to maintain certain trails, fencing, entrance signs, medians, open spaces, and parks within The Ranches. But with 60-days' notice, the Master Association can terminate the Maintenance Agreement without cause. The Maintenance Agreement does not amount to a substantial change in the Master Association's position.

In addition, the servitude by estoppel theory fails for the same reasons that a servitude cannot be implied by general plan. The nature and scope of the servitudes which the Developer disclosed to potential buyers in The Ranches are unclear. Prior to 2004, the declaration was a "living document" amended to accommodate the changing vision of the Developer and fluctuating market conditions. What land would be included in the Master Plan and burdened by the declaration was equally uncertain.

Finally, for the reasons already stated, recognizing a servitude is not the only means by which injustice can be avoided. Imposing a servitude consistent with any version of the declaration would not avoid injustice, but rather mandate a governance structure that has proven to be systemically unsustainable.

Closely related to the defense of servitude by estoppel is the defense of equitable estoppel. The Master Association contends that by accepting benefits provided by the Master Association over many years, Plaintiffs are estopped from denying the Master Association's existence or challenging its authority to impose assessments to fund those services. The Master

Association cites *Swan Creek Village Homeowners Ass'n. v. Warne*, 2006 UT 22, ¶ 35, 134 P.3d 1122, in support of this contention. The Court disagrees.

In *Swan Creek*, the homeowners association was created by a duly recorded declaration in the first instance. Here, the Master Association knew as early as 2001 that no declaration had been recorded and that the Master Association's assessment authority was on tenuous footing. It recorded the Notices of Continuing Obligation in a misguided attempt to correct this serious problem. Later, the Master Association recorded the 2004 Declaration, but did so without approval of owners within the Ranches and without following the amendment procedures set forth in the Draft Declarations. In the 2004 Declaration, the Master Association represented that the Developer owned 6,100 units in The Ranches, and that the 2004 Declaration was a "first amended" and "restated" declaration. None of this was true. On these facts, the Court cannot conclude that Plaintiffs' acceptance of services equitably estops Plaintiffs from challenging the servitudes which created the Master Association.

For these reasons, the Court finds the defenses of servitude by estoppel and equitable estoppel to be without merit. The Court declines to imply a servitude under either theory.

C. Ratification

The Master Association contends that for seventeen years Plaintiffs have acknowledged the Master Association's existence and authority. During this period, members of the Master Association—including Plaintiffs' members—have been cited by, billed by, and paid assessments to the Master Association. Therefore, Plaintiffs have ratified the Master Association's authority to act. In support of this claim, the Master Association relies on *Swan*

Creek Village Homeowners Ass'n. v. Warne, 2006 UT 22, 134 P.3d 1122. Again, the Court disagrees.

In *Swan Creek*, the homeowners association—a corporation—was involuntarily dissolved in 1986 for failing to file its annual report and failing to pay the filing fee. Two years later, members of the association incorporated a new association by the same name and using the same articles of incorporation. Pointing to the prior dissolution, Warne—a member of the association—challenged the authority of the new association to levy assessments.

Relying on equitable principles, the Court rejected Warne's challenge. The Court held that the association's "authority to impose assessments on Swan Creek lot owners pursuant to the terms of the [recorded] declaration has been repeatedly ratified by the lot owners over a period of many years." *Id.* at ¶ 31. Commenting on its equitable powers, the Court wrote:

> Our equitable powers extend to situations where their invocation is necessary to correct mistakes and oversights and to protect the public interest. In the spirit of this principle, we call on our equitable powers to affirm the HOA's authority to levy assessments here. Where property owners have treated an association as one with authority to govern and impose assessments *contemplated under the terms of a duly recorded governing declaration*, they ratify its authority to act. . . .
>
> In reaching this conclusion, we rely on the fact that the HOA has acted as a valid association for almost twenty years, during which time the lot owners have collectively accepted its management. Lot owners have paid their dues to the HOA, it has managed the property in Swan Creek, and no competing association has emerged. In fact, in 1994, only 24 of the 538 lot owners had not paid the $5,900 assessment levied by the HOA. *We also rely on the fact that the HOA's articles of incorporation and the Declaration were on file and had been on file for years* before . . . Warne acquired her lots. . . .
>
> Under these circumstances, and with this pattern of acquiescence by the lot owners, we exercise our equitable power to hold that the HOA possesses *the authority delegated to the homeowners association by the Declaration.*

Swan Creek, 2006 UT 22, ¶¶ 32, 38–39 (emphasis added).

Since 2006 when the Master Association began billing assessments directly to members, Plaintiffs' members have engaged in a pattern of acquiescence similar to that described in *Swan Creek*. For many years, the Master Association has billed Plaintiffs' members for monthly assessments and Plaintiffs' members have paid. The Master Association's average rate of assessment collection from Plaintiffs' members through 2013 is 97.58%.

However, what distinguishes *Swan Creek* from this case is the absence of a duly recorded declaration. As emphasized above, the existence of a recorded declaration—an express servitude—was critical to the Court's decision. In other words, in *Swan Creek* the existence and terms of the servitude itself were never in question.

Here, there was no recorded declaration in the first instance. The nature and scope of servitudes necessary to implement the Master Plain was uncertain. From 1998 to 2004, no "one" version of the declaration existed. The document was amended to respond to the Developer's changing vision and fluctuating market conditions.

Even the land to be burdened by the Declaration was unclear. The 2004 Declaration defined the geographic boundaries of the Master Association for the first time. The effective term of this document was short-lived. The Master Association illegally amended the 2004 Declaration in 2005, and again in 2006. These amendments were recorded against only one-half of the property encumbered by the 2004 Declaration. Another illegal amendment followed in 2010. The 2010 Amendment was recorded against the area encumbered by the 2004 Declaration, plus additional land that was never included in the Master Plan..

The Master Association has failed to prove the "plain and unmistakable" servitude which should be imposed or the land against which it should be recorded. The acquiescence of the

Plaintiffs' members to the Master Association's assessment authority cannot outweigh the speculative nature of the servitude the Master Association seeks to impose. Finally, for the reasons already stated, an equitable servitude is unnecessary to protect the public interest.

For these reasons, the Court concludes that the Master Association's equitable defense of ratification is without merit.

D. Contract Implied In Fact

The Master Association argues that its assessment authority is part of a contract implied in fact with Plaintiffs. It cites *Swan Creek* and *Evergreen Highlands Ass'n v. West*, 73 P.3d 1 (Colo. 2003) (citing *Spinnler Point Colony Ass'n, Inc. v. Nash,* 689 A.2d 1026, 1029 (Pa. Commw. Ct. 1997) ("[A] property owner who purchases property in a private residential development who has the right to travel the development roads and to access the waters of a lake is obligated to pay a proportionate share for repair, upkeep, and maintenance of the development's roads, facilities, and amenities.")).

Plaintiffs disagree. They argue that a contract implied in fact requires (1) a "meeting of the minds"—meaning "agreement on the essential terms of the contract," *Jones v. Mackey Price Thompson & Ostler*, 2015 UT 60, ¶¶ 31, 44, 355 P.3d 1000, and (2) proof "that an offer and acceptance were more probable than not," *Lebrecht v. Deep Blue Pools & Spas Inc.*, 2016 UT App. 110, ¶ 13, 374 P.3d 1064, 1069 (quoting *Sackler v. Savin*, 897 P.2d 1217, 1222 (Utah 1995)). In Plaintiffs' view, the Master Association bears the burden of proof on both elements and has failed to present sufficient proof of either.

At the outset, the Court notes that *Evergreen Highlands*—cited favorably by the Utah Supreme Court in *Swan Creek*—is distinguishable from the instant case. In *Evergreen*

Highlands, the subdivision plat was created and filed in 1972. The plat referenced the existence of the homeowners association. At the same time, protective covenants and restrictions for the subdivision were recorded. For more than 20 years, membership in the association and payment of assessments was voluntary. However, in 1995—consistent with the terms of the recorded covenants—seventy-five percent of the lot owners voted to amend the covenants to mandate both membership in the association and payment of assessments. The Court upheld the amendment against the challenge of a lot-owner who purchased his property in 1986.

But in the instant case, there was no recorded declaration from the outset. This critical fact and the uncertainty which flowed from it are fatal to the Master Association's defense of contract implied in fact. The Plaintiffs and the Master Association could not have reached a meeting of the minds on material terms.

As found above, the Master Plan for The Ranches as originally conceived and displayed in the Sales Center included both Cedar Pass Ranch and North Ranch, developments not owned by the Developer. It also included Meadow Ranch, an area later removed from the Master Plan by Scott Kirkland without the vote of any Master Association members. From 1998 to June 2004, there was no legal description of the Master Association boundaries. The legal description in the 2004 Declaration did not include Cedar Pass Ranch, North Ranch, or Meadow Ranch. Because the boundaries of the Ranches were fluid, no purchaser could have ascertained the "proportionate share" of expenses for which he or she would ultimately be responsible. There could have been no meeting of the minds as to this material term.

Moreover, the terms of the Declaration itself materially changed over time. For six years, the Board acted without the authority of any recorded declaration. The 2004 Declaration was recorded in June 2004. It was materially different from the Draft Declarations that preceded it. Illegal amendments followed in 2005, 2006, and 2010, each with material changes never approved by members of the Master Association.

A recorded declaration is the source of material terms—including governance structure, assessment authority and limitations, annexation, and the right to amend. This case does not involve a technical deficiency in a poorly drafted declaration, but rather the complete absence of a recorded declaration from the beginning. This uncertainty makes it improbable that Plaintiffs' members and the Master Association came to a meeting of the minds about material terms.

For these reasons, the Court concludes that the Master Association's equitable defense of contract implied in fact is without merit.

E. Unclean Hands

A party cannot "take advantage of its own wrongdoing or claim the benefit of its own fraud." *Goggin v. Goggin*, 2013 UT 16, ¶ 60, 299 P.3d 1079 (stating further that "he who seeks equity must do equity"). "The doctrine of unclean hands expresses the principle that a party who comes into equity for relief must show that his conduct has been fair, equitable, and honest as to the particular controversy in issue." *Goggin*, 2013 UT 16, ¶ 60 (internal quotations and citation omitted); *see also Jacobson v. Jacobson*, 557 P.2d 156, 157 (Utah 1976) ("[E]quity does not reward one who has engaged in fraud or deceit in the business under consideration . . . ."). Equity "'will grant relief only when fairness and good conscience so demand' . . . . [It] 'does not reward one who has engaged in fraud or deceit . . . but reserves its rewards for those who are

themselves acting in fairness and good conscience, or as is sometimes said, to those who have come into court with clean hands.'" *Goggin*, 2013 UT 16, ¶ 60 (citing *Jacobson*, 557 P.2d at 157).

Even if the Master Association had proved its equitable defenses, equity is unavailable to save it. The Master Association seeks to perpetuate its authority to govern and assess the Plaintiffs' members. Yet, the Master Association has repeatedly disregarded the governance structure and assessment authority prescribed in any version of the Declaration.

The Master Association did not properly annex Plaintiffs' subdivisions into the Project Area. The Developer unilaterally removed Meadow Ranch from The Ranches. In 2010, the Master Association expanded the Project Area without following the prescribed annexation procedures. The Master Association adopted amended Declarations in 2004, 2005, 2006, and 2010 without the consent of the owners. All this was contrary to the terms of any version of the Declaration.

The Master Association insists that the Plaintiffs have an obligation under each version of the Declaration to pay assessments. But the Master Association has failed to comply with the assessment provisions of every Declaration.. From 1998 to 2012, the Master Association ignored Declaration provisions defining how assessments must be calculated, preferring instead to arbitrarily impose an amount that "the market would bear." Contrary to express terms of the various Declarations, the Master Association failed to assess commercial property, and waived assessments to promote early payment, proper yard care, board member and delegate participation, and charitable ends.

The Master Association has consistently failed to comply with the voting and election requirements essential to its governance. In effect, the Master Association approved a system where board members appointed delegates who in turn elected board members. This was contrary to all versions of the Declaration until 2010.

Finally, the Master Association has engaged in deceitful conduct. The Developer and the Master Association knew as early as 2001 that no declaration had been recorded. This information was never communicated to the Master Association's members. Instead, the Master Association recorded without authority the Notices of Continuing Obligation. Later, the Developer and the Master Association recorded the 2004 Declaration against lots neither the Developer nor the Master Association owned. The 2004 Declaration bore this misleading title: "*First Amended* and *Restated* Community Declaration." In fact the 2004 Declaration was neither. The 2004 Declaration represented that the Developer owned 6,100 units in The Ranches. This also was not true. Later the Master Association recorded documents against Plaintiffs' properties stating obligations that did not exist under any version of the Declaration.

For these reasons, the Court concludes that the Master Association has unclean hands. It cannot seek to reclaim in equity, the very governance and assessment authority it has disregarded for years, nor can it benefit from its wrongful and deceitful conduct.

II. The Plaintiffs' Claims

A. Unjust Enrichment

Plaintiffs seek to recover the assessments paid to the Master Association in the four years preceding the commencement of this action. They contend that the Master Association has

provided no meaningful benefit in exchange for assessments paid. Therefore, the Master Association has been unjustly enriched.

The Court concludes that this claim is without merit. The Master Association has through the years provided trail, park, and parkway maintenance. It has enforced covenants against homeowners found to be in violation. It has provided design review. It has collected assessments. While the quality of these services and the necessity of the Master Association providing them may be in dispute, Plaintiffs have failed to prove by a preponderance of the evidence that they received no meaningful benefit.

B. Quiet Title

Having rejected the Master Association's claim for an equitable servitude, the Court quiets title in favor of the Plaintiffs and against the Master Association.

C. Wrongful Liens

A wrongful lien is a "lien, notice of interest, or encumbrance on an owner's interest in certain real property" which at the time of recording is not:

(a) expressly authorized by this chapter or another state or federal statute;

(b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or

(c) signed by or authorized pursuant to a document signed by the owner of the real property.

Utah Code Ann. § 38-9-102.

The Utah Wrongful Lien Act permits damages to be awarded to record interest holders whose properties are encumbered by a wrongful lien. The Act provides:

> (1) A lien claimant who records or causes a wrongful lien to be recorded in the office of the county recorder against real property is liable to a record interest holder for any actual damages proximately caused by the wrongful lien.
>
> (2) If the person in violation of Subsection (1) refuses to release or correct the wrongful lien within 10 days from the date of written request from a record interest holder of the real property delivered personally or mailed to the last-known address of the lien claimant, the person is liable to the record interest holder for $3,000 or for treble actual damages, whichever is greater, and for reasonable attorney's fees and costs.
>
> (3) A person is liable to the record owner of real property for $10,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who records or causes to be recorded a wrongful lien in the office of the county recorder against the real property, knowing or having reason to know that the document: (a) is a wrongful lien; (b) is groundless; or (c) contains a material misstatement or false claim.

Utah Code Ann. § 38-9-203.

For the reasons set forth in the Court's May 10th Ruling, the Master Association's 2001 Notices of Continuing Obligation recorded against Phases 1 & 2 of Willow Springs and Phase 1 of Cold Springs are wrongful liens. Exhibits 41–42. Likewise, the Notice of Continuing Obligation recorded in January 2004 against Phase 1 of Rock Creek and the 2010 Notice of Existence are also wrongful liens as stated in the Court's May 10th Ruling. Exhibits 44, 46.

Similar to the 2010 Notice of Existence, the 2004 Notice of Continuing Lien recorded against Phase 3 of Willow Springs is a wrongful lien. Exhibit 43. The 2004 Notice of Continuing lien imposes a requirement outside the scope of the 2004 Declaration and its amendments. Nothing in the Declarations permitted the Master Association to require a seller or buyer to obtain a certificate of good standing prior to the sale of real property within Phase 3 of Willow Springs. The 2004 Notice was not signed or authorized by owners in Phase 3 of Willow

Springs, authorized by a judgment, or authorized by statute. Therefore, the 2004 Notice of Continuing Lien constitutes a wrongful lien.

In essence, the 2006 Notice of Homeowners Association and Assessment Obligation recorded against Phase 1 of Rock Creek merely restated the existence of the 2004 Declaration, and its 2005 and 2006 amendments. The Court has already ruled that the 2004 Declaration itself was not a wrongful lien. Therefore, if the 2006 Notice did nothing more than reference the 2004 Declaration as amended, it would not constitute a wrongful lien.

However, the 2006 Notice does more. It references unspecified "transfer fees" and the authority to collect them by lien. No version of the Declaration grants the Master Association authority to impose transfer fees or lien the property of those who do not pay. This authority is not granted to the Master Association by statute or by a judgment. Therefore, the 2006 Notice of Homeowners Association and Assessment Obligation is a wrongful lien.

The Master Association refused to release or correct any of the wrongful liens within 10 days of receiving Plaintiffs' written request to do so. The Master Association is liable under Utah Code § 38-9-203(2) in the amount of $3,000.00 for each lot encumbered by a wrongful lien. This amounts to a judgment of $3,360,000.00 as follows:

(1) $189,000.00 is awarded to Cold Springs for the December 4, 2001 Notice of Continuing Obligation recorded against 63 lots in Phase 1 of Cold Springs;

(2) $216,000.00 is awarded to Willow Springs for the December 4, 2001 Notice of Continuing Obligation recorded against 72 units in Phase 1 of Willow Springs;

(3) $291,000.00 is awarded to Willow Springs for the December 4, 2001 Notice of Continuing Obligation recorded against 97 units in Phase 2 of Willow Springs;

(4) $219,000.00 is awarded to Willow Springs for the October 25, 2004 Notice of Continuing Lien recorded against 73 units in Phase 3 of Willow Springs;

(5) $294,000.00 is awarded to Rock Creek for the January 7, 2004 Notice of Continuing Obligation recorded against 98 units in Phase 1 of Rock Creek;

(6) $294,000.00 is awarded to Rock Creek for the November 2, 2006 Notice of Homeowners Association and Assessment Obligation recorded against 98 units in Phase 1 of Rock Creek.

(7) $1,857,000.00 is awarded to all Plaintiffs, for the October 26, 2010 Notice to Sellers, Buyers and Title Companies of the Existence of The Ranches at Eagle Mountain Master Homeowners Association recorded against 619 lots or units, according to their respective number of affected parcels.

For each wrongful lien, Plaintiffs seek an award of damages in the amount of $10,000 per lot pursuant to section 38-9-203(3) of the Utah Code. Plaintiffs contend that the Master Association knew or had reason to know that each of the following recorded documents were wrongful liens. The Court agrees. The Court will address each wrongful lien separately.

(1) $630,000.00 is awarded to Cold Springs for the December 4, 2001 Notice of Continuing Obligation recorded against 63 lots in Phase 1 of Cold Springs;

(2) $720,000.00 is awarded to Willow Springs for the December 4, 2001 Notice of Continuing Obligation recorded against 72 units in Phase 1 of Willow Springs;

(3) $970,000.00 is awarded to Willow Springs for the December 4, 2001 Notice of Continuing Obligation recorded against 97 units in Phase 2 of Willow Springs;

(4) $730,000.00 is awarded to Willow Springs for the October 25, 2004 Notice of Continuing Lien recorded against 73 units in Phase 3 of Willow Springs;

(5) $980,000.00 is awarded to Rock Creek for the January 7, 2004 Notice of Continuing Obligation recorded against 98 units in Phase 1 of Rock Creek;

(6) $980,000.00 is awarded to Rock Creek for the November 2, 2006 Notice of Homeowners Association and Assessment Obligation recorded against 98 units in Phase 1 of Rock Creek; and

(7) $6,190,000.00 is awarded to all Plaintiffs for the October 26, 2010 Notice to Sellers, Buyers and Title Companies of the Existence of The Ranches at Eagle Mountain Master Homeowners Association recorded against 619 lots or units, according to their respective number of affected parcels.

For these reasons, the Court awards additional damages in favor of Plaintiffs and against the Association in the amount of $10,570,000.

ORDER[6]

The Court HEREBY ORDERS that:

1. The Master Association's equitable defenses are without merit and dismissed with prejudice;

2. Title to the properties owned by Plaintiffs' members is quieted in favor of each property owner, and against the Master Association.

[6] In this case, motions to reconsider have been filed with some frequency. Given the significant judicial resources expended in researching the issues and writing this Ruling and Order, the Court urges the parties to exercise prudence in the filing of any motion to reconsider. Such motions will be viewed with robust skepticism.

3. The 2004 Declaration, and the 2005, 2006, and 2010 amendments thereto are legally unenforceable as to the Plaintiffs, and are not binding on the Plaintiffs' members;

4. All documents recorded by the Master Association on title to any Lot or Unit in the Plaintiffs' associations are hereby ordered unenforceable, void, and without binding effect, including the 2004 Declaration and all amendments thereto, and all notices recorded by the Master Association against any of the properties within Plaintiffs' associations.

5. Within 30 days from the date of this Ruling and Order, the Master Association shall disgorge and pay directly to Plaintiffs' associations the assessments paid by Plaintiffs' members after the filing of this action, including all assessments held in escrow, and any accrued interest thereon. The payment to each Plaintiff association shall include a complete accounting of the unit and owners associated with all amounts collected and disgorged.

6. The Plaintiff associations are each awarded judgments for wrongful lien in the amounts set forth above pursuant to sections 38-9-203(2) and 38-9-203(3) of the Utah Code.

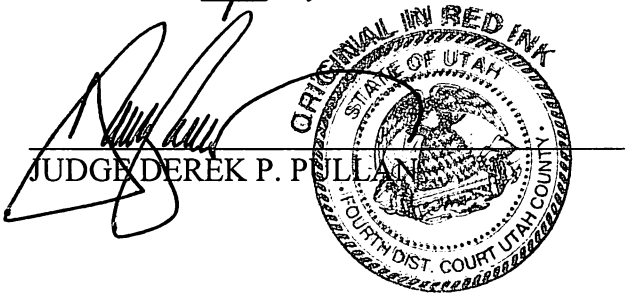
7. Plaintiffs' are awarded reasonable attorneys' fees to be determined by the Court after the filing of a fee affidavit by Plaintiffs' counsel. To the extent that the claims in this action are not inextricably intertwined, the Court orders Plaintiffs' counsel to allocate fees between the wrongful lien claims (for which there is a statutory basis to recover attorney's fees) and all other claims in the action.[7] The fee affidavit shall be filed with the Court within thirty (30) days of the date of this Order. Defendant shall have fourteen (14) days from the filing of that affidavit to file

[7] For example, Plaintiffs have spent significant time and resources attempting to prove their unjust enrichment claim. Plaintiffs argued the Master Association provided no meaningful benefit to them in exchange for assessments paid. At trial, Plaintiffs introduced countless photographs of mailboxes, garbage cans, garage doors, and elevations which they claimed violated the Declarations and design guidelines. However, the unjust enrichment claim is without merit. Attorney's fees incurred to pursue, discover, and prove this claim are not recoverable.

a response. Plaintiffs shall have seven (7) days from the filing of that response to file a reply. Either side may then submit the issue for decision.

8. Upon determination of the appropriate amount of attorney fees by the Court, Plaintiffs are instructed to prepare a final judgment and order consistent with this Order and the Order on attorney fees.

DATED this 4 day of March, 2017.



JUDGE DEREK P. PULLAN

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 130400686 by the method and on the date specified.

MANUAL EMAIL: AMY C BINNS-SHEWAN amy@morrissperry.com
MANUAL EMAIL: J R CONNELLY ryanconnelly@me.com
MANUAL EMAIL: GREGORY N HOOLE gregh@hooleking.com
MANUAL EMAIL: JOHN D MORRIS john@morrissperry.com
MANUAL EMAIL: BRANDON G MYERS brandon@morrissperry.com
MANUAL EMAIL: JOHN D RICHARDS III john@richardshoalaw.com
MANUAL EMAIL: QUINN A SPERRY Quinn@morrissperry.com
MANUAL EMAIL: MATTHEW J WINN mwinn@balljanik.com

Date: 03/06/2017

/s/ MYKEL DALLEY

Deputy Court Clerk