

When Recorded Return to:

CW The Park, LLC  
1222 W. Legacy Crossings Blvd., Suite 6  
Centerville, UT 84014

*CT-116033-CAF*  
*TIN 10-003-0035*  
**MASTER DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS, AND  
RESERVATION OF EASEMENTS**

**FOR  
THE PARK**

**LAYTON, UTAH**

**THIS MASTER DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS IN  
ARTICLE XX, AND IMPORTANT CONFLICT AND LITIGATION AVOIDANCE AND  
RESOLUTION PROVISIONS, AND MEDIATION AND ARBITRATION REQUIREMENTS IN  
ARTICLE XXI.**

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This MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR THE PARK ("Master Declaration") is effective when recorded in the office of the Davis County Recorder by CW The Park, LLC, a Utah limited liability company ("Declarant").

## RECITALS

- A. Declarant is the owner and developer of certain real property located in Layton, Utah more particularly described on Exhibit A hereto (the "Property"). The Property has been or will be developed as a master planned mixed residential housing development with distinct neighborhood village areas.
- B. The development of the Property and construction of all improvements thereon shall be performed in accordance with the Development Agreement for The Park, as the same may be amended.
- C. Declarant hereby establishes and adopts this Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for The Park to establish a governance structure and standards and procedures for the development, expansion, administration, maintenance, and preservation of THE PARK as a master-planned community.
- D. The Project is a residential mixed housing master-planned community which includes multiple types of housing and recreational amenities. An integral part of the development of the Project is the formation of a master community association, as a Utah nonprofit corporation, to own, operate and maintain various common areas, common elements, and community improvements, and to administer and enforce the Governing Documents consistent with the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act. The terms, covenants, conditions, restrictions, easements, rights, privileges, and obligations set forth herein and in the Governing Documents ("Restrictions") are established for the mutual benefit and burden of the Master Association, present and future Owners, Occupants, Lenders, and others acquiring any interest in the Project.
- E. Portions of the Project may be developed as attached residences, or as particular neighborhoods with additional special covenants, conditions and restrictions and/or may include Benefitted Common Area specific to such a neighborhood. The Declarant, in its discretion, has or may form community sub-associations to govern and enforce such additional covenants, conditions, and restrictions; however, nothing in this instrument shall require the creation of a community sub-association. The powers, authority, and jurisdiction of any such sub-association shall be subordinate to that of the Master Association.
- F. This Master Declaration is intended and shall run with the land and shall be binding upon the Declarant, and the Owners and their respective successors and assigns, and any other Person that now, or hereafter, has any legal, equitable, or beneficial interest in any portion of the Project. By taking title to a Unit, an Owner joins in and accepts the intent, purpose, and objectives of the Master Declaration and agrees to be bound by it, and acknowledges the benefits received from its existence and from the Declarant's development of the Project and accepts the burdens and responsibilities that accompany these benefits.
- G. Capitalized terms in this Master Declaration are defined in Article I herein, or in other sections of this Master Declaration.

## DECLARATION

**NOW, THEREFORE**, for the reasons recited above and subject to the Restrictions set forth below, the Declarant hereby adopts this Master Declaration. The Recitals above are incorporated into and are a part of this Master Declaration.

### ARTICLE I. DEFINITIONS

As used herein, unless the context otherwise requires:

1.1 **"Accessory Structure"** shall mean and refer to any detached, subordinate building or structure incidental to the primary residence constructed on the Lot and shall include any shed, shack, detached garage, or other outbuilding that is one hundred (100) square feet or larger.

1.2 **"Act"** shall mean and refer to the Utah Community Association Act codified beginning at §57- 8a-101, Utah Code Annotated ("Utah Code Ann."), as amended.

1.3 **"Additional Covenants"** shall mean and refer to any additional restrictions, conditions, or covenants imposed on a Unit or Owner as part of a Village Sub-Association or as part of a discrete Village within the Project. If the Additional Covenants are more restrictive than the provisions of this Master Declaration, the more restrictive provision shall control. The Master Association shall have standing and authority to enforce any such Additional Covenants. Additional Covenants shall, prior to being recorded, require the approval of the Declarant during the Declarant Control Period, and thereafter the Board, unless otherwise provided herein.

1.4 **"Allocated Interest"** shall mean and refer to the voting interests in the Master Association and liability for the Common Expenses which are allocated equally among the Units subject to provisions in Sections 6.2 and 20.6 herein. Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Master Declaration and other Governing Documents.

1.5 **"Articles"** shall mean and refer to the Articles of Incorporation for the Master Association, as amended from time to time.

1.6 **"Assessment"** shall mean and refer to any monetary charge imposed or levied on an Owner by the Master Association as provided for in this Master Declaration and shall include, without limitation, regular Assessments, special Assessments, Benefitted Common Area Assessments, and Service Area Assessments.

1.7 **"Benefitted Common Area"** shall mean and refer to any real property and improvements designated by the Declarant in a Supplemental Declaration or Plat or in another recorded instrument (which designation is made in the sole and absolute discretion of the Declarant) as Benefitted Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Benefitted Common Area Assessments attributable thereto, to one or more but less than all the Units within the Project and which is or will be conveyed to the Master Association or as to which the Master Association will be granted the rights and obligations for primarily the benefit of a particular Village or Villages within the Project. The Supplemental Declaration, Plat or other recorded instrument establishing the Benefitted Common Area shall identify the Units or Villages assigned to that Benefitted Common Area and shall further identify whether the purpose of the Benefitted Common Area is for exclusive use of the Owners and Occupants of the assigned Units or Villages and payment of the Benefitted Common Area Assessments, or only for the purposes of paying the Benefitted Common Area Assessments attributable thereto. By way of illustration and not limitation, Benefitted Common Area might include such things as a shared private alley to access particular Units within a Village, Village- specific monuments or signage, a clubhouse, pool, or other amenity for the exclusive use and enjoyment by the Owners and Occupants of Units within a particular village.

1.8 **"Benefitted Common Area Assessments"** shall mean and refer to assessments levied against the Units or Village assigned to a Benefitted Common Area, which may include amounts for reserves for capital repairs and replacements.

1.9 **"Benefitted Common Area Expenses"** shall mean and refer to the estimated and actual expenses which the Master Association incurs or expects to incur to operate, maintain, repair, and replace a particular Benefitted Common Area, which may include amounts for reserves for capital repairs and replacements.

1.10 **"Board of Directors"** or **"Board"** shall mean and refer to the body with primary authority to manage the affairs of the Master Association.

1.11 **"Bylaws"** shall mean and refer to the Bylaws of the Master Association and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.

1.12 **"City"** shall mean and refer to Layton City, a political subdivision of the State of Utah, located in Davis County, Utah.

1.13 **"Common Area and Facilities"** shall mean and refer to the real and personal property for the common use and enjoyment of the Owners not dedicated to the City or property of a Village Sub-Association, or designated as Benefitted Common Area, and, specifically, shall include, but not be limited to, the following: (a) all Common Area and Facilities designated as such the Plat, including any area designated as open space not dedicated to the City; (b) the Entry Monument; (c) the Recreational Amenities, if any; (d) all utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use and for the Common Area; (e) any fence or wall on common property; (f) any roadway, lane, alley or cul-de-sacs within the Project not dedicated to the City or property of a Village Sub-Association or designated as Benefitted Common Area; (g) and all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use, reserved for the exclusive use and enjoyment of the Owners and their respective family members, tenants, guests, and invitees, the and all other parts of the Project outside of the Units not dedicated to the City or the public or which are necessary or convenient to the Project's existence, maintenance, and safety, or normally in common use. In accordance with the Plat, the Common Area and Facilities shall be owned by the Master Association.

1.14 **"Common Expenses"** shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair, and replacement of the Common Area and Facilities which is maintained by the Master Association; (b) management and administration of the Master Association, including, but not limited to, compensation paid by the Master Association to managers, accountants, attorneys, consultants, and employees; (c) extermination, security, landscape maintenance, and other services; (d) insurance and bonds required or allowed by this Master Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Master Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Master Association arising from the operation of the Master Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

1.15 **"Community-Wide Standards"** shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Project or initially established by the Declarant consistent with the requirements of the Development Agreement and/or standards described in this Master Declaration, Design Guidelines, or Rules. The Community-Wide Standards may or may not be set forth in writing.

1.16 **"Declarant"** shall mean and refer to CW The Park, LLC, a Utah limited liability company, and their respective affiliates, successors, and assigns.

1.17 **"Declarant Control Period"** shall mean and refer to the period of time commencing with the recording date of this Master Declaration and expiring the date the Declarant executes and records a written waiver of its rights to control. The Declarant will not issue a written waiver of its right to control until the construction of the "Amenity", as defined in the Development Agreement, is completed.

1.18 **"Design Guidelines"** shall mean and refer to The Park Design Guidelines established for the Project, as amended.

1.19 **"Design Review Board"** shall mean and refer to the body responsible for review and approval of home and landscaping plans, construction and installation of the improvements identified therein in conformance with the requirements of the Design Guidelines.

1.20 **"Development Agreement"** shall mean and refer to the Development Agreement for The Park for the development of the Project, if any, as amended.

1.21 **"Director"** shall mean and refer to an individual member of the Board of Directors.

1.22 **"Entry Monuments"** shall mean and refer to any and all entry monument and markers and adjacent landscaped common area constructed at the entrances to the Project.

1.23 **"Governing Documents"** shall mean and refer to this Master Declaration, the Plat, the Articles, the Bylaws, the Rules, the Design Guidelines, and any other written instrument by which the Declarant or Master Association may exercise power or manage, maintain, or otherwise affect the Project.

1.24 **"Lender"** shall mean and refer to a holder of a first mortgage or deed of trust on a Unit.

1.25 **"Lot"** shall mean and refer to an individual lot created on the Plat on which an attached or detached single-family dwelling is or will be constructed and is included within the definition of Unit below. More than one Lot is referred to herein as "Lots."

1.26 **"Manager"** shall mean and refer to the Person or Persons engaged by the Board of Directors to manage the affairs of the Master Association and Project.

1.27 **"Master Association"** shall mean and refer to The Park Master Association, Inc., the membership of which shall include and be comprised of each Owner in the Project, and its successors or assigns. The Master Association shall be incorporated as a Utah nonprofit corporation. Notwithstanding the foregoing, if the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, "Master Association" as used in this Master Declaration shall refer to that entity or group.

1.28 **"Master Declaration"** shall mean and refer to this Master Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for The Park, and all valid supplements and/or amendments to this Master Declaration.

1.29 **"Occupant"** shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Unit within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.

1.30 **"Owner"** shall mean and refer to the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Davis County Recorder. The term "Owner" shall not include a mortgagee or trustee or beneficiary under a deed of trust unless and until such party acquires title to a Unit pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term "Owner" also shall not include the Declarant. More than one Owner is referred to herein as "Owners".

1.31 **"Person"** shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, governmental subdivision or agency, or any other legal entity. More than one Person is referred to herein as "Persons."

1.32 **"Plat"** shall mean and refer to the record of survey map or maps for The Park and any portions thereof, recorded with the Davis County Recorder, and all recorded amendments and supplements thereto.

1.33 **"Proceeding"** shall mean and refer to a lawsuit, arbitration, mediation, or an administrative or governmental proceeding.

1.34 **"Project"** shall mean and refer to The Park master planned development and all structures and improvements thereon including the Units and the Common Area and Facilities. The Project shall include any additional land made subject to the Master Declaration at such time the Supplemental Declaration and plat map for the additional land is recorded.

1.35 **"Property"** as previously defined herein, shall include the real property made subject to this Master Declaration and all easements and rights appurtenant thereto.

1.36 **"Recreational Amenities"** shall mean and refer to any and all of the recreational improvements, if any, constructed in the Project which may include, without obligation, designated open space, a swimming pool, a splash pad, clubhouse, and a fire pit terrace which shall be owned and maintained by the Master Association for the exclusive use and benefit of Owners and Occupants in the Project and which shall be subject to further Rules regarding use and fees, consistent with the Act.

1.37 **"Restrictions"** shall mean and refer to any one or all of the terms, covenants, conditions, restrictions, easements, rights, privileges, and obligations set forth in the Governing Documents.

1.38 **"Rules"** shall mean and refer to the rules and regulations and policies adopted by the Master Association.

1.39 **"Service Area"** shall mean and refer to a group of Units designated as a separate Service Area pursuant to this Master Declaration for the purpose of receiving services or benefits from the Master Association which are not provided to all Units within the Project. A Service Area may be comprised of more than one type of dwelling and may include noncontiguous Units. A Service Area may or may not correspond to a particular Village. A Unit may be assigned to more than one Service Area.

1.40 **"Service Area Assessments"** shall mean and refer to assessments levied against the Units in a particular Service Area to pay for Service Area Expenses.

1.41 **"Service Area Expenses"** shall mean and refer to the estimated and actual expenses which the Master Association incurs or expects to incur for the benefit of Units within a particular Service Area, which may include amounts for reserves for capital repairs and replacements.

1.42 **"Subdivision"** shall mean and refer to The Park development, including all Units, Common Area and Facilities, and other property within the Project as shown on the Plat covering the entire Property.

1.43 **"Subdivision Improvements"** shall mean and refer to all improvements that have or will be constructed or installed within the Subdivision not part of any Unit that are necessary to provide public road access and/or utility service to the Units, and includes such other and further construction or installations required to comply with any requirement of the Development Agreement.

1.44 **"Supplemental Declaration"** shall mean and refer to any amendment or supplement to this Master Declaration to annex additional land into the Project and subject such additional land to the covenants, conditions and restrictions contained in the Master Declaration. A Supplemental Declaration shall also mean and refer to any recorded instrument designating Benefitted Common Area and assigning Units or a Village or Villages thereto. A Supplemental Declaration may also include Additional Covenants applicable only to the annexed land or Benefitted Common Area or Service Area.

1.45 **"Unit"** shall mean and refer to a subdivided Unit, within the Subdivision depicted as a separately identified parcel on the Plat or a survey, which may be independently owned and conveyed

and is zoned or otherwise intended for development, use, and occupancy as a residential unit. The term "Unit" refers to land, if any, which is part of a Unit, including the Lot, as well as to any structures or other improvements on the Unit. In the case of a building or other structure containing multiple residential dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land shall be considered a single Unit until a subdivision plat or survey is recorded subdividing it into more than one Unit. The term "Unit" does not include Common Area and Facilities, common property of any Village Sub-Association, Benefitted Common Area, or property dedicated to the City or the public.

1.46 **"Village"** or **"Villages"** shall mean and refer to one or more of the distinct neighborhood communities which are or may be developed within the Project based on location and/or type of dwelling (e.g., Townhomes) and may include Benefitted Common Area.

1.47 **"Village Sub-Association"** or **"Village Sub-Associations"** shall mean and refer to one or more of the community sub-associations established for the governance of a particular Village within the Project.

## ARTICLE II. THE PROJECT

2.1 **Binding Effect of Governing Documents.** The Declarant hereby declares and Master Association hereby confirms that the Property is part of the Project and that the Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions, to the extent they are included in recorded documents, shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Master Association, the Declarant, and each Owner, including his/her heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every Restriction in the Governing Documents.

2.2 **Nature of the Project.** The Project is a mixed-use residential development, which may be developed and constructed in phases. The Project, when completed, may include residential Units, open space, and Recreational Amenities. The Project may or may not include one or more active-adult communities subject to the Housing for Older Persons Act of 1995, 24 CFR Part 100. The Project is not a cooperative and is not a condominium.

2.3 **Project Name.** The Project is named "The Park." Notwithstanding, the name commonly used by the Master Association, a Village Sub-Association, or others for the Project may be different than the name identified in this Master Declaration and on the Plat. All Village Sub-Association names shall be approved in advance by the Declarant.

2.4 **Modifying or Changing the Name of the Project.** The name of the Project may be modified or changed pursuant to a lawful amendment to this Master Declaration and in accordance with applicable land use management codes.

2.5 **Registered Agent.** The registered agent of the Master Association shall be as provided for in entity filings of the Master Association with the State of Utah Department of Commerce, Division of Corporations and Commercial Code.

2.6 **Expansion/Contraction of Project.** The Project may be expanded or contracted by the Declarant at any time in its sole discretion. Additional land, whether or not directly adjacent to the Project, may be developed and made part of the Project and subject to this Master Declaration by recording of a Supplemental Declaration or similar instrument, together with a plat map for the subject property.



## **ARTICLE III. DESCRIPTION OF UNITS, COMMON AREA AND FACILITIES, AND ALLOCATED INTERESTS**

### **3.1 The Unit.**

a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.

b) Subject to further specification in a Supplemental Declaration, including, without limitation, a Village declaration or Village Sub-Association's declaration, each Unit generally consists of all structures on or within the boundary of the Unit, including, but not limited to all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures, and, in all walls shared with or abutting another Unit, the Unit shall extend to the center of the wall, which shall form the boundary of the Units sharing that wall. Subject to dividing lines between Units, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Unit is part of the Unit if it: (i) is part of and an integral part of the Unit structure (such as bay windows, pop-outs, eaves, etc., not to include fences, or other appurtenant structures that merely connect to the Unit structure), or (ii) was constructed as part of the original construction of the Unit.

c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit or located beyond the vertical boundaries of the Unit but designated and designed to serve only that Unit, shall be part of the Unit.

d) Unless otherwise specified in a Village Sub-Association's governing documents, a Unit developed as part of a multi-family housing product shall include all exterior and interior doors, door jams, windows, window sills, window frames and all components therein, and garage doors, in or on the boundary of any Unit are part of the Unit. Skylights, if any, and all installations related thereto are part of the Unit.

e) Variances between the Plat and as-built construction. The original construction shall be the controlling dimension for any Unit. The original construction shall be the first installation of foundations, framing, wallboard, and the like. If the Board of Directors, in its sole discretion, determines that the then-current construction varies from the original as-built construction, then the Master Association, at the expense of the Master Association or the Owner, in the Board of Directors discretion, may require that the current construction be made to comply with the original construction. In exercising its discretion to decide who pays to return an alteration/modification to the original construction, the Board of Directors shall consider: (i) whether the Owner caused the nonconforming construction; (ii) whether the Owner sought or obtained Board of Directors approval for any nonconforming construction regardless of whether any such approval was valid or not; (iii) whether other Owners engaged in similar nonconforming construction; (iv) the overall culpability of the Owner as it relates to the nonconforming construction; and (v) the reason for the nonconforming construction.

### **3.2 Limited Common Area.**

a) **Specific Identification of Limited Common Areas.** The Limited Common Area of a Unit, if any, shall consist of areas identified on the Plat as limited common area or limited common ownership that is spatially associated with that Unit.

b) **No Severance of Limited Common Area.** The right to the exclusive use of the Limited Common Area shall be appurtenant to the respective Unit where so identified and may not be severed from the ownership of the Unit.

3.3 **Allocated Interest of Each Unit in the Votes of the Master Association.** The Owners of each Unit shall be entitled to vote their Allocated Interest for all matters related to the Master Association that Owners are permitted or required to vote or approve, subject to the rights reserved to the Declarant during the Declarant Control Period as set forth in Article XX herein. Each Unit shall have an equal Allocated Interest. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Allocated Interest.

3.4 **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Master Association. If any conflict exists between the Plat and this Master Declaration, the Plat shall control except to the extent provided for on the Plat or as otherwise provided by the application of controlling law.

3.5 **Village Sub-Association Units and Voting.** As further described in Section 10.17 below, it is anticipated that one (1) Village Sub-Association (expected to be called "The Park Townhomes") will be created and used and operated as a townhome-style residential rental project containing sixty-six (66) residences. Each of these sixty-six (66) residences shall be a "Unit" under this Master Declaration even though they may not, due to their rental nature, be platted or assigned parcel numbers on an individual residence basis. Accordingly, this Village Sub-Association shall have a vote for and pay Assessments on each of the sixty-six (66) residences.

## **ARTICLE IV. MASTER ASSOCIATION GOVERNANCE AND ORGANIZATION**

4.1 **Organization of Master Association.** The Master Association shall serve as the organizational body for all Owners.

4.2 **Legal Organization.** The Master Association shall be organized as a Utah non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Master Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Master Declaration and the Bylaws or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Master Association, through the Board, shall adopt, to the extent possible and subject to any then-existing legal requirements, documents consistent with the terms of the Master Declaration and Bylaws.

4.3 **Membership.** Membership in the Master Association at all times shall be comprised exclusively of the Owners. Each Owner shall be a member of the Master Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held. Membership in the Master Association is mandatory.

### **4.4 Availability of Documents.**

(a) Except as otherwise permitted by law, the Association shall make available to the Owners copies of the Governing Documents and the corporate records, meeting minutes, books, and financial statements related to the operations of the Association consistent with the requirements of the Act and the Utah Revised Nonprofit Corporation Act.

(b) Subject to any legal requirements otherwise, the Association shall make available to Lenders and insurers of any Lender, copies of the Governing Documents and copies of

corporate records, meeting minutes, books, and financial statements related to the operations of the Association as may be required by the Act and the Utah Revised Nonprofit Corporation Act.

(c) Notwithstanding anything to the contrary in this Section 4.4, the Association may redact from any document produced for inspection or copying any information subject to attorney-client privilege and any other information that the Board, in good faith, determines would reveal sensitive personal or financial information of an Owner or agent of the Association, including, without limitation, bank account numbers or social security numbers.

**4.5 Board of Directors.** The governing body of the Master Association shall be the Board of Directors selected pursuant to the Bylaws, subject to Article XX herein. Except as otherwise provided in this Master Declaration, Bylaws, or the Articles, the Board, in all instances except those explicitly reserved to the Owners, shall act on behalf of the Master Association. Any reference to an act, right, or obligation of the Master Association in the Governing Documents may only be exerted or complied with through an action of the Board of Directors. Except as may be specifically provided in the Master Declaration, Bylaws, Articles, or by applicable law, no Owner or group of Owners other than the Board of Directors may direct the actions of the Master Association. During the Declarant Control Period, the Declarant shall have the exclusive right and authority to control, appoint, and/or remove Directors.

**4.6 Director Qualifications.** Except as provided herein and in Section 20.2, to serve on the Board of Directors, a Person must be an Owner current on the payment of Assessments, and, if a natural individual, over the age of eighteen years old. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principle, shareholder, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Board of Directors. No two (2) Directors may reside in the same Unit, be the spouse of one another, or be business partners if the business is related to their ownership of a Unit(s). Additional Director qualifications may be contained within the Bylaws, as well as the election, number, and term limits of Directors. The foregoing Board of Director limitations and qualifications shall not apply during the Declarant Control Period.

**4.7 Limitation on Authority of Owners, Directors, Officers, and the Board of Directors.**

(a) Except as provided in the Master Declaration, in the Bylaws, or in the Design Guidelines, neither any individual Director nor any individual Owner shall have authority to or is authorized to act on behalf of the Master Association to:

- (i) amend or terminate any Governing Document;
- (ii) elect or remove Directors;
- (iii) establish or change the qualifications, powers and duties, requirements, or terms of Directors or of the Board of Directors; or
- (iv) authorize or agree to any deviation or exception from the Restrictions, except as provided by the Act or other applicable law.

**4.8 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents.** No one may rely upon any authorization (from the Board of Directors or anyone else) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Project to verify that anything that the Master Association does, does not do, or authorizes related to the Project or the Master Association is in compliance with the terms of the Governing Documents.

**4.9 Registration with the State.** In compliance with Utah Code Ann. § 57-8a-105, the Master Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required under the Act.

## **ARTICLE V. MASTER ASSOCIATION GENERAL RIGHTS AND RESPONSIBILITIES**

5.1 **Rights and Responsibilities of the Master Association.** The Master Association shall have the rights and responsibilities set forth in this Article V in addition to any others set forth in the Governing Documents or provided by law.

5.2 **Maintenance.** The Master Association shall make provisions and levy Assessments for completing all maintenance, repair, and replacement requirements and obligations of the Master Association. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area and Facilities or Service Area or Benefitted Common Area, consistent with the Development Agreement. The Master Association shall do all such other and further acts that the Board of Directors deems necessary to preserve and protect the Benefitted Common Area, Service Area, the Common Area and Facilities, and the Project, in accordance with the general purposes specified in this Master Declaration and the Community-Wide Standards. Nothing in the foregoing provisions of this Section 5.2, however, shall be construed to prevent the Master Association from taking on obligations of the City pursuant to a written agreement between the City and the Master Association. Notwithstanding anything in this Section 5.2 to the contrary, any Village Sub-Association shall be responsible to pay for the maintenance of the property which it owns; the property for which it is responsible to maintain, repair, and replace; or which its covenants designate as being for the benefit of the Village Sub-Association's members.

5.3 **Paying Expenses.** The Master Association shall provide for the payment of Master Association expenses.

5.4 **Setting and Collecting Assessments.** The Master Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.

5.5 **Adopting and Enforcing Rules.** The Master Association may adopt Rules for the regulation and operation of the Project. If Rules are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Documents and may include restrictions and regulations specific to any Benefitted Common Area and to any Service Area. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents so long as the Rules do not contradict the same. The Board of Directors' determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.

5.6 **Hiring Managers and Delegating Responsibilities.** The Master Association shall hire a Manager to assist the Board of Directors in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Board of Directors shall have the right to approve Master Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers and duties delegated to any Manager or other Person may be revoked by the Board of Directors at any time, with or without cause.

5.7 **Other Necessary Rights.** The Master Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.

5.8 **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Master Association may: (a) impose fines; (b) collect rents directly from tenants if Owners fail to pay Assessments; (c) suspend voting

rights; (d) suspend rights to utilize the Recreational Amenities and other Common Area and Facilities; and (e) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

**5.9 Discretion in Enforcement.**

(a) Subject to the discretion afforded in this Section, the Board of Directors uniformly and consistently shall enforce and implement the Restrictions in the Governing Documents.

(b) The Board of Directors shall use its business judgment to determine whether to exercise the Master Association's powers and authority granted herein and/or under the Act, including whether to (i) impose sanctions, (ii) pursue legal action for a violation of the Governing Documents, (iii) compromise a claim made by or against the Board of Directors or the Master Association.

(c) Consistent with Subsection (b) of this Section 5.9, the Master Association may not be required to take enforcement action if, after fair review and acting in good faith and without conflict of interest, the Board of Directors determines that under the particular circumstances: (i) the Master Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Master Association's resources; or (iv) it is otherwise not in the Master Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

(d) If the Board of Directors decides under Subsection (c) above to forego enforcement, the Master Association is not prevented from later taking enforcement action.

**5.10 Reserve Fund.** Subject to the exemptions in Section 20.16 herein, the Master Association shall maintain a reserve fund and shall obtain and update a reserve analysis as required in Article XVII of this Master Declaration.

**5.11 Establishing Hearing Procedures.** The Board of Directors shall have the authority to create a reasonable hearing process applicable in case the Master Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Board of Directors shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board of Directors may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (a) at least ten days' notice of the hearing to the affected Owners, and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

**5.12 Annual Meeting.** The Master Association shall arrange for and conduct an annual meeting of the Owners (except as otherwise allowed by law) as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Master Association as shall be properly requested pursuant to the Governing Documents or the law.

**5.13 Payoff Information Fees.** The Master Association is specifically authorized to establish a fee to provide payoff information related to the transfer, refinance, or closing of a Unit. The payoff fee shall be fifty dollars (\$50.00); however, the Board of Directors may increase or decrease the fee amount so long as it is consistent with the Act.

**5.14 Reinvestment Fee Covenant upon Sale or Transfer of Unit.** The Board of Directors may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a

"Reinvestment Fee") as provided for in Utah Code Ann. §57-1-46 in an amount to be determined by the Board of Directors and allowed by law. For purposes of this Section 5.14, a transfer is any change in the ownership of the Unit as reflected in the records of the Davis County Recorder, regardless of whether it is pursuant to the sale of the Unit or not but shall not include any transfer between the Declarant and any affiliated entity or a builder the Declarant agrees to exempt, as determined solely by the Declarant ("Transfer"). The amount shall be established by the Board of Directors consistent with Utah Code Ann. §57-1-46 or in the Notice of Reinvestment Fee Covenant. The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code Ann. §57-1-46. The Master Association shall have authority to record any notice required by law to effectuate this provision. The Master Association shall have the authority to enact Rules that may include requirements for Owners to provide sales and transfer documents, and other procedural requirements and rules as the Board of Directors deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

**5.15 Village Sub-Association Responsibilities.** A Village Sub-Association shall be responsible for administering and enforcing the Additional Covenants, if any, applicable to that Village. A Village Sub-Association shall be responsible to make provisions for completing all maintenance, repair and replacement obligations as set forth in the Village Sub-Association's covenants in manner consistent with the Community-Wide Standards. Notwithstanding, in the event that a Village Sub-Association fails to meet some or all of its responsibilities, the Master Association, in its discretion, may assume such responsibilities, the costs for which shall be an expense of said Village Sub-Association. All Additional Covenants, and any amendments thereto, for a Village Sub-Association shall be pre-approved in writing by the Declarant during the Declarant Control Period. The Declarant has exclusive and sole discretion in approving or disapproving any or all portions of the Additional Covenants and other Village Sub-Association governing documents.

## **ARTICLE VI. BUDGET AND ASSESSMENTS**

**6.1 Purpose of Assessments.** Money collected by the Master Association shall be used for the purposes of promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Master Association.

### **6.2 Budget and Regular Assessment.**

(a) The Board of Directors is authorized and required to adopt a budget for the fiscal year prior to the beginning of each fiscal year. The Board of Directors may revise that budget from time to time as it deems appropriate.

(b) The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget also shall include an estimate of Benefitted Common Area Expenses for each Benefitted Common Area and Service Area Expenses for each Service Area and may include contingencies and other estimates as the Board of Directors deems appropriate.

(c) The Board of Directors shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by dividing the total budgeted amount for the Common Expense by the Allocated Interest for each Unit, subject to the Declarant rights in Section 20.6 herein.

(d) The Board of Directors shall determine the amount of Benefitted Common Area Assessments to be paid by the Owners of the Units assigned to each such Benefitted Common

Area by dividing the total budget amount for the each of the Benefitted Common Area Expenses by the number of Units assigned to each such Benefitted Common Area.

(e) The Board of Directors shall determine the amount of Service Area Assessments to be paid by the Owners within each Service Area by dividing the total budget amount for each Service Area Expenses by the number of Units assigned to each such Service Area.

(f) The Board of Directors shall present the adopted budget to the Owners at an annual or special Master Association meeting.

(g) If no new budget is prepared and adopted by the Board of Directors, the budget last adopted by the Board shall continue until a new budget is adopted.

6.3 **Payment of Assessments.** Unless otherwise established by the Board of Directors and communicated to each Owner, each Owner shall pay to the Master Association the Owner's regular Assessment, Benefitted Common Area Assessment and Service Area Assessment, as may be the case, annually or on such other quarterly or monthly installment basis as the Board of Directors or the Manager may determine. In the discretion of and at the request of the Board of Directors, Assessments payable to the Master Association may be collected and paid directly to the Master Association by a Village Sub-Association.

6.4 **Adjustments to Regular Assessments.** In the event the Board of Directors determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Board of Directors, each Owner thereafter shall pay to the Master Association the Owner's adjusted regular Assessment.

6.5 **Adjustments to Benefitted Common Area Assessments or Service Area Assessments.** In the event the Board of Directors determines that the estimate of total charges for the current year is, or will become, inadequate to meet Benefitted Common Area Expenses or Service Area Assessments, for any reason, the Board of Directors may then revise the appropriate budget and each Owner's share of the new budget total based on the Owner's proportional share of the Benefitted Common Area Expenses or the Service Area Expenses, as the case may be. Upon notice of the adjustment, and unless modified by the Board of Directors, each Owner thereafter shall pay to the Master Association the Owner's adjusted Benefitted Common Area Assessment or adjusted Service Area Assessment.

6.6 **Personal Obligation for Assessment.** Each Owner of a Unit, by acceptance of a deed or other instrument creating the ownership interest required to be an Owner as defined herein, hereby personally covenants and agrees with each other Owner and with the Master Association to pay to the Master Association the Assessments as provided for in the Governing Documents, including any Benefitted Common Area Assessments and Service Area Assessments. Any and all Assessments, together with such interest, collection charges, and attorneys' fees and costs authorized by the Governing Documents, shall be the personal obligation of the Owner of such Unit.

6.7 **Capital Improvements.** Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Board of Directors.

6.8 **Percentage Assessments.** Except as otherwise provided herein, and except for special Assessments to individual Units, Benefitted Common Area Assessments and Service Area Assessments, Assessments shall be allocated to Owners based on the Allocated Interest of each Unit.

6.9 **Rules Regarding Billing and Collection Procedures.** The Board of Directors shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided

for in this Master Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Master Association to send a statement to an Owner (or as applicable a Village Sub-Association) or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner (or Village Sub-Association) of liability for any Assessment or charge under the Governing Documents.

6.10 **Certificate of Payment.** Consistent with the Act, the Master Association, within ten (10) business days after receipt of written demand, shall furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Master Association, a written statement or certificate, signed by an officer or authorized agent of the Master Association, setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. Each such certificate shall be conclusive in favor of a Person who relies on the written statement in good faith. The Board of Directors is authorized to charge a fee as provided in the Act for issuance of a certificate.

6.11 **Special Assessments.** Subject to any limitations in this Master Declaration for the particular type of expense, the Master Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Master Association (in lump sums or over a period of time), to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.

6.12 **Special Assessments to a Particular Unit or Units within a Particular Village.** Special Assessments may be levied by the Master Association against a particular Unit and its Owner or against Units within a particular Village and their respective Owners for:

- (a) Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;
- (b) Any other charge not included in a Benefitted Common Area Assessment or Service Area Assessment designated by the Board of Directors or the Manager as pertaining to the individual Unit or to Units within a particular Village consistent with the Governing Documents;
- (c) Nonpayment of a reinvestment fee;
- (d) Fines, late fees, collection charges, and interest; and
- (e) Attorneys' fees, costs and other expenses relating to any of the above.

6.13 **Acceptance of Materials or Services.** In the event the Master Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project or Benefitted Common Area or in a Service Area, which benefits an individual Unit, and which can be accepted or not by the Unit Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Unit, as may be determined by the Board of Directors, in its discretion.

6.14 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors, in its discretion, may apply the excess to reserves, credit the excess against future Assessments or refund the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Project, as the Board of Directors deems appropriate. The decision of the Board of Directors shall be binding and conclusive. In addition, the Master Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for



a prior year. In the event that amount budgeted for any Benefited Common Area or Service Area proves to be excessive in light of the actual Benefited Common Area Expenses or Service Area Expenses, the Board of Directors, in its discretion, shall either: (a) credit the excess against future Benefited Common Area Assessments for the particular Benefited Common Area with the excess, or (b) credit the excess against future Services Area Assessments for the particular Service Area that had an excess, as the case may be, or (c) refund the excess to the Owners of the Units assigned to the Benefited Common Area that had the excess or assigned to the Service Area that had an excess, as the case may be.

6.15 **No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Master Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board of Directors is not properly exercising its duties and power, a claim in the nature of offset or that the Master Association owes the Owner money, or that the Master Association is not complying with its obligations as provided for in the Governing Documents.

6.16 **How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

6.17 **Declarant's Exemption.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay any Assessments on any Units owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments.

## ARTICLE VII. NONPAYMENT OF ASSESSMENTS

7.1 **Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board of Directors may, at its option, invoke any or all of the remedies granted in this Article VII. The Master Association's choice of one remedy shall not prejudice or constitute a waiver of the Master Association's right to exercise any other remedy. Each Owner, by taking title to a Unit, vests in the Master Association, or its assigns, the right and authority to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

7.2 **Collection Charges and Interest.** If the Master Association, through the Board of Directors, does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: Assessments shall be delinquent if they are not paid within ten (10) days from the date that they became due. Delinquent Assessments may be charged a thirty-five dollar (\$35.00) late fee each month until the Owner's account (including all collection charges, costs, and attorneys' fees) is paid in full. Interest may also accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Delinquent accounts may be turned over by the Master Association to attorneys or to a collection company and additional collection charges and attorneys' fees and costs may be added to the amounts owed. Late fees may be charged, as directed by the Board of Directors, on any unpaid balance.

7.3 **Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments.** To the extent permitted by law, the Owner and any future Owners of a Unit are jointly and severally liable for all Assessments related to that Unit accruing prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred title to the Unit to another Owner; provided, however, that the recording of a deed to a Person that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation imposed by this Section 7.3 is separate and distinct from any lien rights associated with the Unit.

7.4 **Lien.** The Master Association has a lien on each Unit for all Assessments, which include, but are not limited to, late fees, interest, collection charges, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Master Declaration and shall have priority over all encumbrances recorded after this Master Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Master Association provides otherwise in the notice of Assessment. The Master Association also has a lien on each Unit for all fines imposed against an Owner by the Master Association as provided by the Act. The Master Association's lien shall have priority over each other lien and encumbrance on a Unit except only: (i) a lien or encumbrance recorded before this Master Declaration is recorded; (ii) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Master Association; and (iii) a lien for real estate taxes or governmental assessments or charges against the Unit. The Master Association may, but need not, record a notice of lien on a Unit.

7.5 **Action at Law.** The Master Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay the same. Any attorneys' fees and costs incurred in such action shall be assessed against the delinquent Owner and the Owner's Unit and added to the amount in delinquency (plus judgment interest and collection charges, if appropriate).

7.6 **Foreclosure Sale.** The Master Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Declarant appoints the Association's attorney as trustee, who qualifies under Utah Code Ann. §57-1-21(1)(a)(i). The Declarant hereby conveys and warrants pursuant to Utah Code Ann. §57-1-20 and §57-8a-302 to the Association's attorney, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of the Master Declaration. The Master Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

7.7 **Homestead Waiver.** Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Master Declaration (whether such liens are now in existence or are created at any time in the future), the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

7.8 **Termination of Delinquent Owner's Rights.** The Master Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to vote and right to utilize the Recreational Amenities and other common facilities; provided, however, that before termination of such rights the delinquent Owner be provided at least fourteen (14) days prior notice, in accordance with the notice requirements in the Bylaws, of:

- (a) the impending termination of rights if payment is not received;
- (b) the amount(s) past due, including any interest and late charges; and
- (c) the right to request a hearing before the Board of Directors.

7.9 **Requiring Tenant to Pay Rent to Master Association.**

(a) Pursuant to and as provided for in the Act, the Master Association shall have a right to demand and collect rent from any tenant occupying any Unit for which an Assessment is more than sixty (60) days late; provided, however, that before requiring a tenant to pay lease payments to the Master Association, the Owner be provided at least fifteen (15) days' prior notice, in accordance with the notice requirements in the Bylaws, of:

(i) the Master Association's intent to demand the Owner's tenant pay his/her lease payments to the Master Association if payment is not received within fifteen (15) days;

(ii) the amount(s) past due, including any interest, late charges, collection costs and attorneys' fees; and

(iii) that any costs of collection, including, but not limited to attorneys' fees and other assessments that become due may be added to the total amount due and to be paid through collection of the tenant's lease payments;

(b) If the Owner fails to pay the amount owing after fifteen (15) days, the Master Association may exercise its rights to collect the lease payments from the delinquent Owner's tenant by delivering written notice to the tenant, in accordance with the notice requirements in the Bylaws, that:

(i) due to the Owner's failure to timely pay Assessments, the Master Association has notified the Owner of the Master Association's intent to collect all lease payments until the amount owing is paid, in full;

(ii) Utah law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Master Association, until the amount owing is paid, in full; and

(iii) the tenant's payment of the lease payments to the Master Association does not constitute a default under the terms of the tenant's lease agreement with the Owner.

(c) The Master Association shall provide the Owner a copy of the notice to given to the tenant.

(d) The tenant to whom notice under Section 7.9(b) is given shall pay to the Master Association all future lease payments as they become due and owing to the Owner beginning with the next monthly or other period payment until the Master Association notifies the tenant that the amount owed by the Owner is paid.

(e) The delinquent Owner shall credit each payment that his/her tenant makes to the Master Association pursuant to this Section 7.9 against any obligation that the tenant owes to the Owner as though the tenant made such payment to the Owner and Owner may not initiate suit or other action against the tenant for failure to make any lease payment that the tenant pays to the Master Association as required under Section 7.9(d).

(f) Within five (5) business days after the amount owing is paid, in full, the Master Association shall notify the tenant, in accordance with the notice provisions in the Bylaws, that the tenant is no longer required to pay future lease payments to the Master Association and a copy of said notice shall be mailed to the Owner.

**7.10 Attorneys' Fees Incurred as a Result of a Default.** In addition to any attorneys' fees and costs provided for herein, the Master Association shall be entitled to recover all reasonable fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy (and all related activities including seeking and responding to discovery, taking depositions or examinations, introduce evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials,

hearings, or other court proceedings, including as reasonably necessary related to assert any non-dischargeability of debts, to assert claims against the bankruptcy estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments); and (h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Master Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

7.11 **Master Association Responsibility after Foreclosure.** If the Master Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), the Master Association shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to: obligations to pay Assessments or maintain the Unit.

## ARTICLE VIII. DESIGN CONTROLS

8.1 **Design Review Board.** Except as provided in Article XX during the Declarant Control Period, the Design Review Board shall be composed of at least three (3), but not more than five (5), natural persons appointed by the Board of Directors. Persons serving on the Design Review Board shall serve at the pleasure of the Board of Directors. The Board of Directors may remove a member of the Design Review Board and appoint a new Design Review Board member at any time, provided that at all times there shall be a least three (3) persons serving. Members of the Design Review Board may or may not be Board of Directors or members of the Master Association and may include one or more paid professionals, such as an architect, to perform such services. The Design Review Board shall enforce the Design Guidelines and shall have and may exercise all the powers, duties and responsibilities set out in this Master Declaration. The Design Review Board may hire a secretary or other personnel to perform administrative, clerical, and other functions.

8.2 **Design Review Fees.** The operating costs of the Design Review Board, including the services of its planning consultants, professionals, and other staff, shall be covered through a fee paid to the Design Review Board by Owners applying for plan review and approval, consistent with § 57-8a-109(2) of the Act. The Design Review Board shall make available to all Owners a current design review fee schedule, which may be modified from time to time in accordance with the Act. Fees must be paid in full before any review by the Design Review Board commences and the unused portion thereof, in any, is refundable.

8.3 **Scope of Authority.** Except as otherwise provided in this Master Declaration, no improvements of any kind or changes in the natural condition of any land within the Project shall be erected, altered or permitted to remain on any Unit or elsewhere in the Project unless complete architectural plans, specifications and a site plan showing the location and orientation for such construction, alteration or landscaping are approved by the Design Review Board prior to the commencement of any work. Work subject to Design Review Board approval may include, but is not limited to, the construction of structure, installation of utility line, fence, grading, planting, antennas, satellite dishes, flag poles, any renovation, expansion or refinishing of the exterior of an existing Unit or other structure, excavating, clearing, landscaping or other modification. Notwithstanding the foregoing, any work performed by or on behalf of Declarant to any of the property within the Project including, but not limited to, the construction of Subdivision Improvements and infrastructure, or the initial construction of the Units by the Declarant or plans of a bulk-builder that have been pre-approved by the Declarant, shall not require approval of the Design Review Board.

8.4 **Design Review Process.** Subject to further specification in the Rules or Design Guidelines, architectural designs, plans, and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the Design

Review Board for review and approval prior to the commencement of any construction or work. Specifically, among other things, the Design Review Board may require:

(a) Preliminary plans including: (i) plot plans to scale of the site with buildings located and elevation of floors shown above or below a designated point on the street; (ii) floor plans for each level to scale; (iii) elevations to scale of all sides of a detached dwelling; (iv) one major section through a detached dwelling; (v) a perspective; and (vi) specifications of all exterior materials.

(b) Final plans and specifications, including: (i) plot plans to scale showing the entire site, buildings, garages, walkways, driveways, fencing, lighting, retaining walls, elevations of existing and finished grade and contours (including those at the corners of the Lot and at adjacent property line and street fronts, and elevations of floors from a designated point on the street; (ii) detailed floor plans, (iii) detailed elevations, indicating all materials and showing existing and finished grades; (iv) detailed sections, cross and longitudinal, (v) details of cornices, porches, windows, doors, garages, steps, patios, fences, exterior light and other architectural elements.

(c) Detailed landscaping plans, if applicable, including specific information regarding any proposed grading, irrigation systems, drainage, plantings, and/or Controlled Surfaces (as defined in Section 19.5 herein).

(d) Accessory Structure Plans. No Accessory Structure shall be permitted on any Lot that is less than 7,000 square feet. No Accessory Structure shall be permitted without the prior written approval of the Design Review Board. No Accessory Structure shall exceed twelve (12) feet in height. No Accessory Structure may occupy more than twenty-five percent (25%) of the rear yard. The colors and materials for an Accessory Structure must be substantially similar to the colors and materials of the primary residence. An Accessory Structure must comport with applicable City setback and building permit requirements. In the event of a dispute as to whether a structure or improvement constitutes an Accessory Structure, the determination of the Design Review Board shall be conclusive and binding.

**8.5 Building Permits and Other Approvals.** Any approval of the Design Review Board authorized or required under this Master Declaration is entirely different than and separate from any building permit or other permit or approval that may be required under City ordinance or by any other governmental entity. Any and all necessary building permits and approvals must be obtained prior to the commencement of construction or work. Notwithstanding any other provision in this Article VIII or the Design Guidelines, the Design Review Board shall not be responsible for: (a) determining that any construction or construction documents conform to applicable building codes, zoning or other land-use regulations; (b) the accuracy or content of any construction documents or specifications prepared by any architect, engineer or any other Person; (c) construction means, methods, techniques, sequences or procedures, safety precautions or subsequent loss, damage or failures due to soil or any other natural or man-made conditions that may exist; or (d) any failure to carry out any construction in accordance with plans or specifications.

**8.6 General Standards.** In its review and consideration of an Owner's design review application, the Design Review Board shall evaluate, among other things: (a) the materials to be used on the exterior of Unit; (b) exterior colors; (c) harmony of architectural elements and design with other Units within the Project; (d) height and other design features; (e) location with regard to topography and finished grade elevations; (f) harmony of landscaping with the Unit and with the Community-Wide Standard; (g) impact of lighting (interior and exterior) on night skies and neighboring Units; and (h) consistency of all of the foregoing with the Design Guidelines. Each Owner acknowledges, by taking title to a Unit, that determinations of the Design Review Board with regard to esthetic matters are subjective and may change as the composition of the Design Review Board changes.

8.7 **Rules.** The Design Review Board may promulgate, adopt, amend and/or replace rules and regulations necessary to implement these architectural covenants and/or refine or modify the design review process by the affirmative vote of a majority of the Design Review Board and such notice as may be required under the Act.

8.8 **Construction Rules.** Except on construction performed by the Declarant, with regard to the development of the Project, construction of Subdivision Improvements and/or the initial construction of the Units, the Design Review Board may impose reasonable construction rules and regulations for any construction project affecting the exterior of any Unit or for any landscaping project to minimize the inconvenience to adjoining Owners during the period of construction. In connection therewith, the Design Review Board may impose rules requiring pre-construction conferences and regulations regarding portable offices and trailers, construction debris removal, construction area appearance, sanitary facilities, construction parking and vehicles, construction signs, hours of work, soil conservation and dust, removal of mud, and duration of construction. Concurrent with final plan submittal, an Owner shall deposit with the Design Review Board any performance deposit and/or executed voluntary lien form as may be required in the Rules. Any such performance deposit shall be retained pending the completion (including clean up) of all improvement described in the final, approved plans and constructed on the Owner's individual Unit. In the event that the Owner, the contractor or the contractor's respective agents, representatives or employees (a) cause any damage; (b) fail to construct the Unit or improvements in accordance with the approved plans; or (c) fail to comply with the Design Guidelines, the Master Declaration or any rules or regulations adopted or promulgated by the Design Review Board or the Board of Directors, the Design Review Board may use the performance deposit, among other things, to repair and/or rectify the damage or enforce the Design Guidelines, this Master Declaration, and any other Rules thus violated and cure any defect or problem caused by the non-compliance. In the event of the Design Review Board's use of all or any portion of the performance deposit, the Owner shall immediately pay to the Master Association an amount sufficient to replenish the performance deposit to the sum initially deposited. Failure to replenish the performance deposit within seven (7) days following the Design Review Board's delivery of written demand shall be deemed a material breach of the Design Guidelines and this Master Declaration and shall entitle the Design Review Board to deny the Owner's contractor's access to the Subdivision (including any of contractor's suppliers, subcontractors, employees and material men) and lien the Unit in an amount equal to the performance deposit deficiency.

8.9 **No Liability.** Neither the Design Review Board, the Board of Directors, the Master Association, the Manager, nor the Declarant shall be liable for damages to any Owner or any other Person by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove any design review application or plans. The Design Review Board shall have no liability or responsibility for any representations made to any Owner or prospective owner by any realtor or other third parties regarding the Design Guidelines or any design control covenant or the design review process. The decision of the Design Review Board shall be governed by these covenants and any rules or regulations duly adopted by the Design Review Board pursuant to these covenants.

8.10 **Written Records.** The Design Review Board shall maintain complete written records, which may in an electronic format, of all approved applications, including one set of the final approved architectural and site development plans, and of all actions of approval or disapproval, and all other formal actions taken by it under the provisions of Article VIII. The records of the Design Review Board shall be maintained by the Master Association.

8.11 **Inspection and Compliance.** The Design Review Board shall have no duty or obligation to make inspections of any construction. Nothing herein, however, shall prevent the Design Review Board from making inspections prior to, during, or after construction. Unless otherwise provided in the Rules, upon the completion of any work for which an approved plan and specifications are required, the Owner shall give written notice of completion to the Design Review Board. Within thirty (30) days after

receipt of such notice, the Design Review Board may inspect the work to determine its compliance with the approved plan. If the Design Review Board finds that the work was not done in substantial compliance with the approved plan, the Design Review Board may issue written notice to such Owner specifying the non-compliance and requiring the Owner to cure such non-compliance within thirty (30) days or any extension thereof granted.

8.12 **Enforcement.** Any construction, alteration nor other work done or undertaken without first obtaining written approval from the Design Review Board shall be deemed to be a violation of this Master Declaration and the Design Guidelines. Upon written notice of a violation from the Design Review Board or the Board of Directors, an Owner, at his/her own expense, shall conform or remove the nonconforming construction, alteration, or other work and shall restore the Unit or the affected portion thereof to substantially the same condition as existed prior to the nonconforming construction alteration or other work within thirty (30) days or such extension thereof granted. If an Owner fails to timely remedy the violation as required hereunder to the reasonable satisfaction of the Design Review Board, the Design Review Board or the Board of Directors shall have the right to enter onto the Lot and may remedy the violation or remove the same or otherwise restore the Unit to substantially the same condition as existed prior to the violation without the same being deemed as trespass. Upon demand, the Owner shall reimburse the Master Association for all costs and expenses incurred by the Design Review Board and/or the Board of Directors in taking corrective action, including attorneys' fees, regardless of whether a lawsuit was filed. The Owner shall be personally liable for all such costs and expenses, and the Master Association also shall have a lien against the non-complying Unit for the amount of all such costs and expenses. Any amounts not paid, without waiver of any other right or remedy, may be collected as an Assessment Lien as provided in Article VII. Such lien shall be (a) evidenced by a statement executed by the Master Association and notice of the lien recorded with the Davis County Recorder, and (b) subject to foreclosure in the manner provided by law.

8.13 **Variances.** The Design Review Board may authorize variances from the Design Guidelines or the design control provisions of this Master Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations may require, subject to any City approval required under the Development Agreement. To be valid, a variance must be in writing, and approved by every member of the Design Review Board. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Master Declaration or the Design Guideline shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of any variance shall not operate to waive any of the provisions of this Master Declaration for any purpose except as to the particular Unit and provision of the Design Guideline or hereof covered by the variance and shall not affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Unit.

8.14 **Appeal.** A decision of the Design Review Board may be appealed to the Board of Directors; provided, however that any exercise of the Design Review Board's power by the Declarant pursuant to Section 20.3 herein on any design review matter shall be the final decision and shall not be appealable.

8.15 **Design Review Process Not Applicable to Declarant.** Notwithstanding anything in Article VIII to the contrary, the Design Review process and fees shall not apply to the Declarant.

## **ARTICLE IX. RIGHT TO USE COMMON AREA AND FACILITIES**

### **9.1 Rights and Nonexclusive License to Use Common Area and Facilities.**

(a) Subject to all other terms and conditions of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and Facilities and the right and nonexclusive license for the use and enjoyment of the Benefitted

Common Area to which that Owner's Unit has been assigned, if any, subject to any restrictions related to such use. Such rights and nonexclusive license shall be appurtenant to and shall pass with title to the Unit and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area and Facilities and assigned Benefitted Common Area, if any, as the Owner whose Unit the Occupant is occupying. All such rights shall be subject to any Rules established by the Board of Directors.

(b) The Master Association shall have nonexclusive easements with the right of access over and across each Unit, to make inspections, to prevent or mitigate damage to Common Area and Facilities or Benefitted Common Area, and to maintain, repair, replace or effectuate the restoration of the Common Area and Facilities and any other property or improvements for which the Master Association is responsible for maintaining, including any Benefitted Common Area or Service Area, which are accessible from such Unit. The Master Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and Facilities, Benefitted Common Area, and Service Area for purposes necessary for the proper operation of the Project.

(c) The right to hook-up, tie-in, connect to and utilize the water, power, gas, or other utility lines, valves, pipes, equipment, meters and systems servicing a Unit for the purpose of providing water, power, gas, or other utilities to the Common Area and Facilities or other parts of the Project in common use or necessary or convenient for the maintenance, operation, or management of common property by the Master Association is reserved to the Declarant and the Master Association; provided, however, that the Master Association shall pay the actual cost of the water, power, gas, or other utility service utilized by the Master Association to the Owner of any such Unit.

(d) Each Village Sub-Association shall be burdened and benefitted by reciprocal and cross access easements necessary to make inspections, to prevent or mitigate damage to its respective common property and to maintain, repair, replace or effectuate the restoration of such common property and any other improvements for which the Village Sub-Association is responsible for maintaining.

**9.2 Limitation on Easement.** Notwithstanding anything to the contrary in foregoing Section 9.1, an Owner's rights and license for the use and enjoyment of the Common Area and Facilities shall be subject to any other limitation in the Governing Documents and the following:

(a) The right of the Master Association to impose reasonable limitations on the number of Occupants per Owner or guests who at any given time are permitted to use the Common Area and Facilities;

(b) The right of the Association to suspend an Owner's right to the Common Area and Facilities: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the Governing Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period; and

(c) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or developed open space contained within the Project for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

**9.3 Utilities.** Easements and rights-of-way over, under and through the Project for the installation and maintenance of electrical lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment,



utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Board of Directors to be helpful in serving the Project, the Units, or the Owners are hereby reserved to the Declarant and the Master Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Area and Facilities and the Units by the Owners or Occupants. The Master Association shall have the power to grant and convey, in the name of the Master Association or for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over or under the Common Area and Facilities and Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, irrigation systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Unit, expressly consents to such easements and rights-of-way and authorizes and appoints the Master Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Master Association. However, no easement or right of way can be granted pursuant to this Section if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Unit.

9.4 **Easements for Encroachments.** If any portion of the Common Area and Facilities or any Subdivision Improvement encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area and Facilities as a result of the manner in which the Subdivision Improvements are constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Declarant or the Master Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

9.5 **Views.** Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

## ARTICLE X. USE LIMITATIONS AND CONDITIONS

10.1 **Rules.** The Master Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Master Association in carrying out any of its functions to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners and Community-Wide Standards. Pursuant to §57-8a- 218(15) of the Act, the requirements of §57-8a-218, subsections (1) through (12) of the Act, except subsection (1)(b)(ii), are hereby modified and shall not apply to the Master Association.

10.2 **Signs.** The Master Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to another Unit.

10.3 **Nuisance.** No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, City, county, state or federal body.

10.4 **Temporary Structures.** Subject to the exemptions in Article XX herein, no structure or building of a temporary character, including a tent, trailer or shack, shall be placed upon the Project or used therein unless it is approved by the Board of Directors.

10.5 **Parking.** Unless otherwise permitted by the Master Association in the Rules or by a Village Sub-Association, no automobiles or other vehicles of any type (including, without limitation, oversized, commercial, or recreational vehicles, boats, or trailers) shall be parked, stored, or located within any portion of the Project except in the Unit's driveway or garage. The Master Association may adopt Rules relating to the parking of vehicles within and in the area of the Project by Owners, Occupants, and their respective family members, tenants, and invitees, including, without limitation: (a) the right to remove or immobilize or cause to be removed or immobilized any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles allowed within the Project; (c) restrictions on the time period and duration of temporary parking; and (d) the assessment of fines to Owners who violate the Rules or Owners associated with people who violate such Rules. The Master Association may restrict or limit parking on City or public roadways within the Project by Owners, Occupants and by people associated with the use of Units. Notwithstanding anything to the contrary herein, nothing in this Section 10.5 shall give the Master Association any general police powers over the public portions of the Project or the portion of the Project dedicated to the City.

10.6 **Outside Speakers and Amplifiers.** Except as permitted in the Rules and subject to City ordinance, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.

10.7 **Repairs.** No repairs of any motor vehicles, detached machinery, equipment, or fixtures shall be made within the Project except as may be permitted by the Board of Directors in the Rules.

10.8 **Unightly Items.** All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers, machinery, and equipment not a part of the Unit, shall be prohibited on a Unit unless screened from view of neighboring Units and Common Area and Facilities. Trash and garbage shall be properly and promptly disposed of.

10.9 **Shooting and Hunting.** Shooting of any type of firearm or bow is strictly prohibited within the Project. Hunting, including bow-hunting, anywhere within the Project is prohibited.

10.10 **Animals.** Animals generally kept in households such as dogs, cats, birds, fish, and hamsters are allowed in the Project, subject to the terms and conditions of this Master Declaration and the Rules; provided, however, that no more than two (2) animals of any type may be kept in a Unit. No livestock or dangerous reptile may be kept in any Unit. Notwithstanding the foregoing, no animal may be kept within a Unit which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) in the good faith judgment of the Board of Directors, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Board of Directors may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Facilities or Unit of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. All fecal matter shall be immediately cleaned up in the Project. The Board of Directors may adopt Rules adding further Restrictions related to animals within the Project not inconsistent with this Master Declaration including, but not limited to, requirements for registration, specific fees or deposits for Owners or Occupants that have animals, the use of leashes, and restrictions on noise. Incessantly barking dogs will not be permitted. An Owner who keeps an animal within the

Project shall be liable for any and all damage caused by such animal, and shall indemnify and hold harmless the Master Association and any other Owner from any loss, claim or liability of any kind arising from, or related to, such animal.

**10.11 Residential Occupancy.**

(a) No trade or business may be conducted in or from any Unit unless so approved by the Board of Directors or:

(i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Unit, or the Common Area and Facilities;

(ii) the business activity conforms to all zoning and legal requirements for the Project and the business activity;

(iii) the business activity does not involve solicitation of Occupants or Owners of the Project;

(iv) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers, or other individuals coming into the Project who do not reside in the Project, as determined by the Board of Directors, in its sole discretion.

(v) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Project;

(vi) the business activity will not result in an increase of the cost of any of the Master Association's insurance;

(vii) the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted; and

(viii) the Board of Directors ongoing requests for information related to the business as necessary to determine compliance with this Section are responded to fully and completely.

(b) Except as allowed under Section 10.11(a) above or as allowed under Article XVIII herein, no Unit may be used for any purpose other than a residential purpose.

**10.12 No Subdivision or Timeshare of Unit or Recording by Owners of Restrictions.** No Unit shall be split, subdivided, separated or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part thereof. No subdivision plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project unless the Board of Directors and/or Owners (as required in this Master Declaration) have first approved the plat or the proposed covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be null, void, and of no legal effect.

**10.13 Slope and Drainage.** Notwithstanding anything to the contrary in this Master Declaration, no grading, construction, or landscaping, and no structure, plant, or other material shall be permitted or allowed to remain which may damage or interfere with the established ratios of Lots to open space or which may create erosion or sliding, or which may alter drainage channels or obstruct or retard the flow of water through such drainage channels or which may interfere with any utility or right of way. Each Owner shall be responsible to landscape and maintain his/her Lot in a manner consistent with existing land drain system and drainage pattern existing on the Lot at the time of the initial sale so as not to

interfere with or impair the land drain system in the Project or the existing drainage pattern on any other Lot. The Master Association may require an individual Lot Owner to enforce this Section against an adjoining violating Owner without Master Association involvement.

**10.14 Hazardous Substances.**

(a) The Owners shall comply with applicable "Environmental Laws" (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any "Hazardous Substances" (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, or allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. Notwithstanding, the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project shall not be deemed a violation of this Section 10.14.

(b) As used in this Section 10.14, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 10.14, "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety or environmental protection.

(c) The restrictions and obligations regarding Hazardous Substances and compliance with Environmental Law set forth in this Section 10.14 are separate from and in addition to any provisions elsewhere in this Master Declaration regarding potential environmental hazard notices and disclosure and the remedial action work plan for the Project.

**10.15 Snow Removal and Snow Stockpiling.** The Master Association may establish locations within the Project, which may change from time to time, to stockpile snow and ice accumulated during winter months which may encroach on Common Areas and Facilities, Benefitted Common Area, or Village Sub-Association property. No Owner, Occupant or invitee may block, obstruct, impair, impede, or otherwise interfere with any snow removal or snow stockpiling by the Master Association.

**10.16 Solar Energy Systems.** Solar energy systems and attendant equipment for the use of Units shall be prohibited from being constructed or installed on any part of the Common Area and Facilities in the Project. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Project, then the Board may adopt Rules for the installation and ongoing maintenance of solar panels or other energy conservation equipment. Any such Rules must require that the installation be an integral and harmonious part of the architectural design of the buildings. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. The Board shall assess the costs incurred by the Association related to the installation, operation, and maintenance of an energy conservation system to the requesting Owner(s) or benefitted Owner(s) in the Board's sole discretion. The costs to the Association arising under this Section shall be assessed and collected as a special Assessment.

**10.17 Unit Leases.** The leasing of Units is permitted as set forth in Article XVIII below, except as may be prohibited in any Additional Covenants. It is anticipated that one (1) Village Sub-Association will be created and used and operated as a townhome-style rental project. The leasing of those Lots and Units may not be prohibited through an amendment to this Master Declaration, unless approved by at least 67% of the Owners within that Village Sub-Association. This Section may also not be amended without the approval of at least 67% of the Owners within the aforementioned Village Sub-Association.

## ARTICLE XI. INSURANCE

**NOTICE: The Association's insurance policy does not cover the personal property or personal liability of the Owners or their Occupants.**

11.1 **Insurance Requirement.** The Master Association shall obtain insurance as required in this Master Declaration and as required by applicable law. The Master Association may obtain insurance that provides more or additional coverage than the insurance required in this Master Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance specific to a Benefitted Common Area or a Service Area may be obtained by the Master Association and the cost included in the Benefitted Common Area Expenses, or in the Service Area Expenses, as the case may be. Notwithstanding anything in this Article XI to the contrary, insurance obligations related to attached dwellings and common elements that are part of a Village Sub-Association shall be the responsibility and the obligation of that Village Sub-Association subject to applicable laws.

### 11.2 **Property Insurance.**

#### (a) **Hazard Insurance.**

(i) **Blanket Policy of Property Insurance.** The Master Association shall maintain a blanket policy of property insurance covering the Common Area and Facilities. An Owner of a Unit that is a single-family detached dwelling shall be responsible to obtain property insurance coverage for his/her own Unit. An Owner of a Unit that is an attached dwelling shall follow the property insurance requirements set forth in the Additional Covenants or as established by the Village Sub-Association. The Master Association shall have no obligation to insure a Unit.

(1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry, and shall include insurance for any fixture, improvement, or betterment installed in or to the or otherwise permanently part of or affixed to Common Areas and Facilities.

(2) At a minimum, the blanket policy shall afford protection against loss or damage by: (a) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (b) all other perils normally covered by "special form" property coverage.

(3) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(4) The blanket policy shall include either of the following insurance endorsements to assure full insurable value replacement cost coverage: (a) a "Guaranteed Replacement Cost Endorsement" under which the insurer agrees to replace the insurable property regardless of the cost; or (b) a "Replacement Cost Endorsement" under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an "Agreed Amount Endorsement" which must waive or eliminate the requirement for coinsurance.

(5) Each property policy that the Master Association is required to maintain shall also contain or provide for the following: (a) "Inflation Guard Endorsement," if available; (b) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (c) "Equipment Breakdown," if the Project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000), or the insurable value of the building containing the equipment.

(b) Flood Insurance.

(i) If any part of the Project's Common Area and Facilities is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering at a minimum, that portion of the Project's Common Area and Facilities ("Insurable Property") located within the Special Flood Hazard Area in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of the Insurable Property.

(ii) If the Project is not situated in a Special Flood Hazard Area, the Master Association may, nonetheless, in the discretion of the Board of Directors, purchase flood insurance to cover water and flooding perils to Common Areas and Facilities not otherwise covered by blanket property insurance.

(c) Earthquake Insurance. The Master Association may purchase earthquake insurance as the Board of Directors deems appropriate for Common Area and Facilities and buildings or structures for which the Master Association has a legal obligation to obtain property insurance.

**11.3 Comprehensive General Liability (CGL) Insurance.** The Master Association shall obtain CGL insurance insuring the Master Association, the agents and employees of the Master Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and Facilities and the Owner's membership in the Master Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000) covering all claims for death of or injury to any one individual or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Master Association or another Owner.

**11.4 Director's and Officer's Insurance.** The Master Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers of the Master Association, and the Master Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing law or similar state or federal statute or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any Manager and any employees of the Manager and may

provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

11.5 **Insurance Coverage for Theft and Embezzlement of Master Association Funds.** The Master Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (i) Officers and Directors of the Master Association; (ii) employees and volunteers of the Master Association; (iii) any Manager of the Master Association; and (iv) officers, directors, and employees of any Manager of the Master Association.

11.6 **Workers' Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Master Association to the extent that such insurance is required by law.

11.7 **Certificates.** Any insurer that has issued an insurance policy to the Master Association shall issue a certificate of insurance to the Master Association and upon written request, to any Owner or Lender.

11.8 **Named Insured.** The named insured under any policy of insurance shall be the Master Association. Subject to Sections 11.1 and 11.3(a)(i), each Owner shall also be an insured under all CGL insurance policies.

11.9 **Master Association's Right to Negotiate All Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Master Association's property insurance policy shall be payable to an Insurance Trustee (defined below) if one is designated, or to the Master Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Master Association, shall hold any insurance proceeds in trust for the Master Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Master Declaration. After any repair or restoration is complete, and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Master Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner. In the discretion of the Board of Directors or upon written request executed by Owners holding fifty percent (50%) of the total Allocated Interests, the Board of Directors shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Master Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this Section as the Owners or Board of Directors (as the case may be) shall require.

11.10 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Master Association and under direct authorization of the Master Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

11.11 **Waiver of Subrogation Against Owners and the Master Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Master Association, the Owners, any individuals residing with a Unit Owner if an Owner resides in the Unit, and the Master Association's agents and employees.

11.12 **Right of Action.** Nothing in this Master Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.

## ARTICLE XII. EMINENT DOMAIN

12.1 **Taking of a Unit.** If a Unit is taken by eminent domain, or sold under the threat thereof, or if a portion of a Unit is taken by eminent domain, or sold under the threat thereof, leaving the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Master Declaration, the award shall compensate the Owner for the Owner's Unit and Allocated Interest, regardless of whether any Common Areas and Facilities are taken.

12.2 **Taking of Common Area.** If the Common Area and Facilities or Benefitted Common Area, or a portion thereof, is taken by eminent domain, or sold under threat thereof, the Board of Directors shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Master Association.

12.3 **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project shall be terminated, and the Board of Directors shall wind down the Master Association in accordance with applicable law.

12.4 **Priority and Power of Attorney.** Nothing contained in this Article XII shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Master Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area and Facilities, or any part thereof.

## ARTICLE XIII. AMENDMENTS

13.1 **General Amendment Requirements.** Except as otherwise provided herein and subject to the rights and authority reserved to the Declarant in Article XX herein and elsewhere in this Master Declaration, this Master Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than sixty-five percent (65%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose or by written consents. The vote of approval of any one Owner of a Unit is sufficient if there are multiple owners of the Unit.

13.2 **Scope of Amendments.** Subject to Article XX herein, this Master Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in this Master Declaration. This Master Declaration may be amended to make a particular section of the Act applicable to the Master Association, including a section that would not otherwise be applicable to the Master Association.

13.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided in Section 13.1 shall be executed by the President and the Secretary of the Master Association shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Master Declaration have been complied with. The amendment shall be effective when it is recorded with the Davis County Recorder.

13.4 **Changes to Plat or Boundaries of the Master Association.** Except as otherwise provided herein and subject to the rights and authority reserved to the Declarant in Article XX herein and elsewhere in this Master Declaration, the Master Association may adopt an amended Plat,



supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit or Units upon the approval by vote of sixty-seven percent (67%) of Owners in the same manner as required to amend this Master Declaration. Any such Plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area and Facilities, deleting, adding or modifying Benefitted Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit, that Unit Owner must consent. If the approval required herein is obtained, each and every other Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; and (b) grants the Master Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.

**13.5 Amendments to Benefitted Common Area.** Subject to Article XX herein, any Supplemental Declaration or other recorded instrument designating a Benefitted Common Area may be amended in the same manner as an amendment to the Master Declaration described in Section 13.1 above.

**13.6 Amendment to Service Area.** Subject to Article XX herein, any group of Owners may petition the Board of Directors to designate their Units or Lots as a Service Area for the purpose of receiving from the Master Association special benefits or services from the Master Association which are not provided to all Units or Lots. Upon receipt of a petition signed by a majority of the Owners of the Units within the proposed Service Area, the Board of Directors shall examine and consider the terms upon which the requested benefits or services might be provided and shall notify the Owners in the proposed Service Area of such terms and attendant expenses (which may include a reasonable administrative charges). If such a petition is approved by the Board of Directors and by the Declarant during the Declarant Control Period, and by the Owners holding at least sixty-seven percent (67%) of the Allocated Interests within the proposed Service Area, the Master Association shall provide the requested benefits or services under the terms and conditions established by the Board of Directors. The costs and administrative charges associated with such benefits or services shall be assessed as Service Area Assessments to the Units within such newly-formed Service Area.

**13.7 Amendment to Conform to Law.** The Board of Directors may, without the approval of the Owners, amend this Master Declaration to conform the Master Declaration to any applicable legal requirements otherwise applicable to the Master Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Master Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:

(a) The Master Association must obtain from an attorney who has a significant experience and a regular practice in area of community association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section,

(b) The Directors must unanimously agree to the Amendment at the time it is recorded,

(c) The Board of Directors must provide to the Owners: (i) the proposed amendment instrument; (ii) the language of this section of the Master Declaration; (iii) the law that conflicts with the existing Master Declaration language or the provisions that must be complied with to permit owners to obtain financing; (iv) the attorney opinion letter required for the amendment; and (v) a notice in which the Master Association (1) notifies the Owner that it intends to amend

the Master Declaration pursuant to this section, (2) provides the Owner a right to object to the amendment within thirty (30) days, and (3) provides instructions on how, when, and where to properly return the objection. The Board of Directors may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.

(d) Within forty-five (45) days of providing the information to the Owners required by this Section 13.7, no more than thirty percent (30%) of the Allocated Interest holders have objected, in writing, to the amendment.

(e) Having otherwise complied with all of the requirements of this Section 13.7, the Board of Directors shall each sign the amendment instrument verifying that this Section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Allocated Interest holders objected after having received proper notice. The amendment shall be effective upon the recording of the instrument with the Davis County Recorder.

## **ARTICLE XIV. INTERPRETATION, CONSTRUCTION, AND APPLICATION OF MASTER DECLARATION**

14.1 **Conflicting Provisions.** In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat, the Master Declaration, the Articles, the Bylaws, and then the Rules. If there is a conflict between the Governing Documents and any Additional Covenants (or rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control, except where the Additional Covenants are allowed to differ by the Governing Documents.

14.2 **Interpretation of Master Declaration and Applicability of the Act.** The Declarant intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Master Association has included specific provisions in this Master Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Master Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Master Declaration and the Act, to the extent the Act does not legally allow this Master Declaration to contain provisions contrary to the Act, the Act shall control and this Master Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

14.3 **Cumulative Remedies.** All rights, options, and remedies of the Master Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Master Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.

14.4 **Severability.** Invalidation of any one or a portion of the Restrictions by judgment or court order shall in no way affect any other Restrictions, all of which shall remain in full force and effect.

14.5 **Construction.** The provisions of this Master Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a mixed-housing residential master planned community and for the maintenance of the Project. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Master Declaration to article and section numbers herein, unless otherwise expressly provided, are to the article and section in this Master Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Master Association, any Owner, or any other Person subject to their terms.

14.6 **Applicable Law.** Except as otherwise expressly provided in this Master Declaration related to Part 4 of the Act, this Master Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Master Declaration is recorded. Amendments to the Act after the date of recording of this Master Declaration shall not be applicable to the Master Association or the Project unless they are applicable as a matter of law or unless the Master Association makes those amendments applicable by amendment to the Master Declaration.

14.7 **Gender and Number.** Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

14.8 **Effect of Master Declaration.** This Master Declaration is made for the purposes set forth in the Recitals herein, and the Master Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Master Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Master Association shall have no liability whatsoever if any Restriction is determined to be unenforceable in whole or in part for any reason.

## ARTICLE XV. NOTICE

15.1 **Notices.** Any notice to be given to an Owner, a Lender, or the Master Association under the provisions of the Governing Documents shall be in writing and shall be deemed valid if provided by any of the below methods:

(a) **Notice to an Owner from the Master Association:**

(i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;

(ii) by a written notice placed in the United States mail, first-class postage prepaid, to the most recent address furnished by such Owner in writing to the Master Association for the purpose of giving notice, or, if no such address shall have been furnished, to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered forty-eight (48) hours after such deposit;

(iii) by email correspondence to an Owner: (1) sent to an email address provided by the Owner for the purpose of Master Association communications, or (2) emailed to an email address from which the Owner has communicated related to Master Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered when it is sent;

(iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner sent to a facsimile number provided by the Owner for the purpose of Master Association communications and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered twenty-four (24) hours after it is sent;

(v) by text message to an Owner sent to a telephone number capable of receiving text messages provided by the Owner for the purpose of Master Association communications or to a telephone number from which the Owner has communicated related to Master Association matters, and so long as no indication is received that the text message may not have been delivered. Any notice sent by text message shall be deemed delivered when it is sent; or

(vi) by any other method that is fair and reasonable given the circumstances and the subject matter of the notice or otherwise allowed by law.

(vii) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Master Association shall not be required to give more than one notice per Unit. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Unit address.

(viii) In case posting of a notice on the Unit is permitted, such posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Master Association the sooner of either two (2) days after the event or action for which notice was given, or ten (10) days after the posting.

(b) Special Notice Prior to Association Entry into a Unit.

(i) In case of an emergency involving the potential loss of life, the Master Association's agent or representative may enter the Unit immediately and without any notice.

(ii) In case of any emergency involving immediate and substantial damage to a Unit, the Common Areas and Facilities, Benefitted Common Area, or another Unit, before entering the Unit, the Master Association shall: (1) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit; (2) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Unit on behalf of the Association, then wait one minute; and (3) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.

(iii) If the Association enters a Unit for any purpose permitted in this Master Declaration other than those identified in the prior two paragraphs, before entering a Unit, the Association shall: (1) give notice to the Owner that an entry is required at least one (1) week in advance with such notice stating: (a) that the Association or its authorized Persons will enter the Unit, (b) the date and time of the entry, (c) the purpose of entering the Unit, (d) a statement that the Owner or Occupant can be present during the time the Association is in the Unit, (e) the full names of any Person who will be entering into the Unit, and the phone numbers and addresses of the Persons entering the Unit or of the company for whom the Persons entering the Unit are employed for the purpose of entering the Unit, (f) any other information the Association deems appropriate to include; and (2) post the written notice described above on the front door to the Unit at least three (3) days prior to entry into the Unit.

(c) Notice to a Lender. Notice to a Lender shall be delivered by United States mail, first-class postage prepaid, to the most recent address furnished by such Lender in writing to the Master Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered forty-eight (48) hours after such deposit.

(d) Notice to Master Association from an Owner. An Owner's notice to the Master Association shall be effective upon the satisfaction of any of the following delivery methods:

(i) by a written notice delivered personally to the Manager or President, which shall be effective upon delivery;

(ii) by a written notice placed in the United States mail, first-class postage prepaid, to the current registered business address of the Master Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;

(iii) by written email correspondence to the Master Association: (1) that is sent to an email address provided by the Master Association in the prior twelve (12) months for the purpose of Master Association communications, or (2) that is emailed to an email address from which the Manager or the Board of Directors has communicated related to Master Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent; or

(iv) by facsimile (whether to a machine or by other means) to the Master Association sent to a facsimile number provided by the Master Association for the purpose of Master Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

## ARTICLE XVI. ATTORNEYS' FEES AND COSTS

### 16.1 Legal Costs Associated with Disputes with Owners.

(a) Owners Liable for Fees Incurred in Dispute. If the Master Association utilizes legal counsel to enforce any Restriction after notice to the Owner that the Master Association intends to enforce the Restriction or after the Owner communicates or demonstrates an intent not to comply with the Restriction, the Master Association may assess all reasonable attorneys' fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.

(b) Costs. The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Master Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.

(c) Exception to Owner's Liability for Fees and Costs. If, related to (i) any dispute with an Owner, (ii) any challenge by an Owner to a position of the Master Association on a Restriction, or (iii) a request of an Owner for direction on the application of a Restriction, the Master Association incurs legal fees or costs related to the interpretation and application of a Restriction that the Master Association could not establish an initial position on without having incurred the fees and costs or that results in a substantial modification to a prior position taken by the Master Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Master Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

## ARTICLE XVII. RESERVES

17.1 Requirement for Reserves. Subject to Section 20.16, the Master Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Facilities, pursuant to the following provisions:

(a) Collection. Reserve funds may be collected as part of regular or special Assessments.

(b) Amount. In formulating the Master Association's annual budget, the Master Association shall include a reserve fund line item for Common Area and Facilities in an amount the Board of Directors determines, based on the reserve analysis, to be prudent. For purposes

of this Section 17.1, a reserve fund line item means the line item in the Master Association's annual budget that identifies the amount to be placed into the reserve fund.

(c) Surplus Monies Applied to Reserves. The Master Association may retain surplus Master Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.

(d) Segregation of Reserves. The Master Association shall segregate money held for reserves from regular operating and other accounts.

(e) Reserve Analysis. The Master Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Master Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (ii) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (iii) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (iv) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (v) a reserve funding plan that recommends how the Master Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future. As further provided in Section 20.16 below, the Master Association is not required to obtain a reserve analysis during the Declarant Control Period.

(f) Qualifications for Person Preparing Reserve Analysis. The reserve analysis shall be prepared by a Person or Persons with (i) experience in current building technologies; (ii) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (iii) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar professional associations establishing that the Person has some formal training related to preparing a reserve analysis.

(g) Summary and Copies of Reserve Analysis. The Master Association shall annually post and/or provide Owners a summary of the most recent reserve analysis or update and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Master Association shall provide a copy of the complete reserve analysis or update to an Owner who makes a written request for a copy.

**17.2 Exceptions for Benefitted Common Area and Service Area Reserves.** The requirements set forth in Subsections 17.1 (b), (c), (e), and (f) shall not apply to reserves, if any, for a Benefitted Common Area or Service Area. A reserve analysis prepared for any Benefitted Common Area or Service Area shall comply with Subsection 17.1(g) and a copy provided to the Owners of those Units assigned to the Benefitted Common Area or Service Area, as the case may be.

## **ARTICLE XVIII. LEASING AND OWNER OCCUPANCY**

**18.1 Master Declaration and Rules Govern Non-Owner Occupancy.** The leasing and non-Owner occupancy of Units shall be governed by this Article XVIII, the Rules, and procedures adopted as provided herein.

18.2 **Definitions.** For the purpose of this Article XVIII, the following definitions shall apply:

(a) "Non-Owner Occupied Unit" means:

(i) For a Unit owned in whole or in part by a natural person or persons, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner's primary residence; or

(ii) For a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.

(b) "Family Member" means:

(i) the grandparent, parent, sibling, child, or grandchild of an Owner and the grandparent, parent, sibling, child, or grandchild of an Owner's spouse; or

(ii) in the case of a Unit owned by a trust or other entity created for estate planning purposes, an individual occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of (1) a current Occupant of the Unit; or (2) the parent, child, or sibling of the current Occupant of the Unit.

18.3 **Restriction on Leasing and Non-Owner Occupancy.** Subject to the requirements in Sections 18.4 and 18.5 below, any Unit may be leased or non-Owner Occupied.

18.4 **Permitted Rules.** The Board of Directors may adopt Rules:

(a) Regarding reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units, including requiring informational forms to be filled out by Owners and Occupants identifying Occupant vehicles, Occupant contact information, and the like;

(b) Establishing other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Master Declaration; and

(c) Limiting the total number of Non-Owner Occupied Units within the Project if necessary to satisfy the requirements of a Lender for financing the purchase of Units.

18.5 **Requirements for Leasing and Non-Owner Occupancy.** Owners of Units must comply with the following provisions:

(a) Subject to the exemptions in the Act for an Owner's military deployment or an Owner's temporary relocation by an employer, and subject to applicable federal requirements and restrictions governing Units within an active-adult community within the Project, any lease or agreement for otherwise allowable non-Owner occupancy shall be in writing, for an initial term of at least six (6) months, and shall require that the Occupant(s) comply with the Governing Documents, and specify that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for non-Owner occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Occupant;

(b) If required in the Rules or requested by the Board of Directors, a copy of any lease or other agreement for non-Owner occupancy shall be delivered to the Master Association within the time period provided for in the Rules or required by the Board of Directors;

(c) An Occupant may not occupy any Unit for transient, short-term (less than six (6) months), hotel, resort, vacation, or seasonal use (whether for pay or not);

(d) Lease of only a portion of the Unit is prohibited; and

(e) The Owner shall be responsible for the Occupants of the Units and for any invitee of any Occupant and shall ensure their compliance with the Governing Documents. In addition to any other remedy for non-compliance with this Master Declaration, the Master Association shall have the right (but not the obligation) to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Occupant. The Master Association, the Board of Directors, and the Manager shall not be liable for any action taken pursuant to this Subsection 18.5(e) and the Owner shall indemnify and pay the defense costs of the Master Association, the Board of Directors, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this Subsection.

**18.6 Exceptions for Family Members.** If only Family Members occupy a Unit, then notwithstanding anything to the contrary herein:

(a) Subsections 18.5(a) and 18.5(b) above shall not apply to that occupancy;

(b) No written agreement regarding occupancy needs to be created between the Family Member and the Owner; and

(c) Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Board of Directors until an Occupant has violated a provision of the Governing Documents and if requested, may only be requested related to remedying or taking action as a result of such a violation.

**18.7 Village Sub-Association.** A Village Sub-Association's leasing requirements may differ from those set forth in this Article XVIII as approved by the Declarant during the Declarant Control Period or the Board thereafter. See Section 10.17 above for more information regarding the leasing of Units.

## ARTICLE XIX. GENERAL PROVISIONS

**19.1 Enforcement.** The Master Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions, including the right to prevent the violation of any such Restrictions and the right to recover damages and other sums for such violation, including, but not limited to attorneys' fees and costs incurred in conjunction with such enforcement.

(a) Each Owner, by taking title to a Unit, acknowledges and agrees that because a breach of the Governing Documents will result in immediate and irreparable injury to the Master Association and its other members for which they will not have an adequate remedy at law, the Master Association, if any such breach shall occur, be attempted, or be threatened, shall be entitled to an order of specific performance and to a temporary and permanent injunction enjoining such breach and to any and all other remedies to which the Master Association may be entitled pursuant to the Governing Documents or applicable law, without posting bond or furnishing other security and without proving special damages or irreparable injury, together with an award of attorneys' fees.

**19.2 No Liability of Officers.** To the fullest extent permitted by applicable law, neither the Board of Directors nor any officer of the Master Association shall be liable to any Owner or the Master Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.

**19.3 Use of Funds Collected by the Master Association.** All funds collected by the Master Association, including, specifically, Assessments and contributions to the Master Association paid by the Owners, shall be held by the Master Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Master Association and for other permitted purposes as set forth in this Master Declaration. No part of said funds shall inure to the benefit of any Owner other than as a



member of the Master Association or other than as a result of expenditures made for a permitted purpose as set forth in this Master Declaration.

**19.4 Owner Liability and Indemnification.** Each Owner shall be liable to every other Owner and to the Master Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the insurance deductible of the Master Association or not covered by the Master Association's insurance. Each Owner, by taking title to a Unit, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Master Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Master Association.

**19.5 Areas of Owner Responsibility.** Except to the extent that maintenance, repair, and upkeep of Unit exteriors and/or Lots has been assigned to the Master Association as part of a Service Area or to a Village Sub-Association, each Owner shall be responsible for the maintenance, repair, and upkeep of the Owner's Unit, including snow and ice removal during winter months. Likewise, each Owner shall be responsible to maintain the landscaping and other improvements to the Owner's Lot, except to the extent such maintenance has been assigned to the Master Association as part of a Service Area or to a Village Sub-Association. Each Owner of a Lot shall be responsible for the maintenance and upkeep of any landscaped park strip area adjacent to the Owner's Lot unless the Master Association assumes the obligation for maintenance of the park strip.

(a) Except to the extent provided by the Declarant pursuant to a written agreement, each Owner shall be responsible for initial landscaping for the Unit, including, sod, trees, shrubs, and flowers in accordance with the Design Guidelines and applicable City ordinance. Initial landscaping shall be completed in a timeframe required by City ordinance.

(b) A landscaping bond may be required by the City in addition to any performance bonds or deposits required by the Design Review Board.

(c) No concrete, masonry product, pavers, bricks, stone, cobblestone, tile, terrazzo, slate, slabs, rocks, pebbles, gravel, permeable or impermeable surfaces (collectively, "Controlled Surfaces") may be installed or constructed as part of a Unit's landscaping without the express, prior written authorization of the Design Review Board. Front, side, or rear yard landscaping comprised primarily of Controlled Surfaces is prohibited.

**19.6 Variances.** The Board of Directors, at its option and in extenuating circumstances, may grant variances from the Restrictions set forth in Master Declaration if the Board of Directors determines, in its discretion: (a) either that the Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Master Declaration has rendered such Restriction obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any negative financial affect or any other materially adverse effect on the Owners or Occupants of the Project and is consistent with the Community-Wide Standards and not prohibited by the Development Agreement. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board of Directors. No variance may be granted that is inconsistent with the Development Agreement, City ordinance, or the Act. No variance may be granted that relates to the payment of Assessments unless, after reasonable investigation under the circumstances, it clearly appears that the Owner is incapable of paying the Assessment and the Unit is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.

**19.7 Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant consents to the rights reserved to the Declarant and the Master Association in this Master Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Master Declaration, the Plat and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same. Such acceptance shall be deemed an appointment of the Master Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Master Association's reserved rights as set forth in this Master Declaration and shall not be affected by the disability of any such Owner or Occupant.

**19.8 Security.** Neither the Declarant nor the Master Association, in any way, shall be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. Neither the Declarant nor the Master Association shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that neither the Declarant nor the Master Association has any duty to any Owner or Occupant related to security or to prevent criminal conduct. By taking title to a Unit and/or residing in the Project, each Owner and Occupant acknowledges and agrees that neither the Declarant nor the Master Association nor the Board of Directors are insurers of the safety or well-being of Owners or Occupants or any of their personal property as it relates to criminal conduct, and specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct.

**19.9 Reasonable Accommodations.** Notwithstanding anything to the contrary in this Master Declaration, the Master Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

**19.10 No Representations and Warranties and Disclaimers.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE MASTER ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT. OWNERS HEREBY ACKNOWLEDGE THAT THEY UNDERSTAND THAT THE PROJECT MAY ADJOIN FUTURE UDOT EXPANSION, FUTURE DEVELOPMENT, AND FARM LAND THAT MAY CAUSE ODORS IN AND AROUND THE PROJECT.

## **ARTICLE XX. SPECIAL DECLARANT RIGHTS**

**20.1 Special Declarant Rights.** Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have the all rights and powers provided for in this Article

XX. If any other article in this Master Declaration contains the words "notwithstanding anything to the contrary," or words of similar import, the article shall all nonetheless be subject to the terms in this Article XX.

20.2 **Right to Appoint the Board of Directors During Declarant Control Period.** The Declarant shall have the right to appoint and remove all Directors during the Declarant Control Period. In the appointment of Directors, the Declarant shall not be bound by any qualifications for Directors in the Governing Documents. The Declarant may elect to have a Board of Directors of fewer than the required number of members until the Declarant Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Master Association otherwise) the powers of the Board of Directors without appointing Directors pursuant to the rights granted in the Articles to the Declarant.

20.3 **Declarant Retains All Rights and Authority During Declarant Control Period.** During the Declarant Control Period, the Declarant shall retain control, power, and authority over, and all decision-making ability or authority for the Master Association and/or the Project. During the Declarant Control Period, the Declarant may also assume (and shall be presumed to have assumed unless the Declarant notifies the Master Association otherwise) the powers and authority of the Design Review Board without the Board of Directors appointment of Design Review Board members. During the Declarant Control Period, the Declarant may pre-approve plans and/or waive design review fees for a bulk-lot builder. The Declarant shall determine whether to hire professional management during the Declarant Control Period.

20.4 **Easement Rights.** The Declarant shall have and hereby retains an easement for access over, under, across and through the entire Project and may utilize, allow anyone else to utilize, or may grant easements over, under across, and through any easement right reserved to anyone in the Master Declaration.

20.5 **Right to Amend Plat.** Subject to necessary approvals from any applicable municipality or government agency, during the Declarant Control Period, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat.

20.6 **Assessment Exemption.** The Declarant shall be exempt from any Assessments including any regular Assessment, Benefitted Common Area Assessment, Service Area Assessments or special Assessment.

20.7 **Right to Amend Governing Documents.** Until the expiration of the Declarant Control Period, the Declarant shall have the right to unilaterally amend, revise, and modify this Master Declaration, any Supplement to the Declaration establishing a Benefitted Common Area or Service Area or Additional Covenants, the Bylaws, the Articles, Design Guidelines, and the Rules in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone including, but not limited to the Owners. Pursuant to §57-8a-217(6) of the Act, the Declarant's promulgation or amendment of any Rules shall be exempted from the Act's rule-making process. Any amendment to the Bylaws or this Master Declaration shall be effective upon the recordation of the amendment duly executed by an authorized officer of the Declarant. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Master Declaration prior to the closing of a sale or transfer of any Unit.

20.8 **Right to Designate Benefitted Common Area and Service Area and Modify Prior Designations.** Until the expiration of the Declarant Control Period, the Declarant shall have the unilateral authority and sole right to designate Benefitted Common Area and Service Area and to designate the particular Units or Village assigned to such Benefitted Common Area or Service Area, as the case may be. During the Declarant Control Period, the Declarant shall have the unilateral authority

and sole right to modify any previously designated Common Area or Service Area and to adjust or modify the assignments of Units or the Village or Villages respectively thereto.

**20.9 Assignment of Special Declarant Rights.** The Declarant, at any time, may assign, transfer, or share all or some of its control, power, rights, exemptions, authority, or decision-making ability to the Master Association or any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Master Declaration, the rights of the Declarant as provided for in this Master Declaration may be exercised by any owner of the undeveloped land within the Project or to be expanded into the Project.

**20.10 Exceptions from Use Restrictions.** The Declarant shall not be bound by any use restriction in the Master Declaration as it relates to the Units owned by the Declarant.

**20.11 No Modification of Declarant Rights.** Any Declarant Rights in the Governing Documents and, specifically, in this Article XX, may not be substantively or procedurally altered during the Declarant Control Period without the written consent of the Declarant. Any document or amendment purporting to do so without the proper consent shall be void ab initio.

**20.12 Use of Units and Common Areas and Facilities for Sales Activities.** During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas and Facilities and any part of any Benefitted Common Area in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas and Facilities and Benefitted Common Area as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.

**20.13 Facilities Open to the Public.** The Declarant shall have the right to establish certain facilities and areas within the Project for the use and enjoyment of the public. Such facilities and areas may include, by way of example, open space, trails, paths, parks and other neighborhood areas conducive to public gatherings. The Declarant may designate such facilities and areas as open to the public at the time the same is made the responsibility of the Master Association or the Board of Directors may so designate at any time thereafter.

**20.14 Right to Use Common Area and Facilities for Special Events.** The Declarant may use the Common Area and Facilities and Benefitted Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions: (a) the availability of the Common Area and Facilities; (b) payment of costs and expenses incurred and indemnification of the Master Association against any loss or damage resulting from the special event; (c) return of the Common Area and Facilities in the same condition as existed prior to the special event.

**20.15 Declarant Rights Do Not Impose Obligations.** The Declarant Rights provided for in this Article XX shall not be construed to impose any obligation, legal or equitable, related to any matter or issue to which they might apply. The Master Association and each Owner, by taking title to a Unit, waive and disclaim any such duty and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.

**20.16 Declarant Exemption from Statutory Obligations.** Pursuant to §57-8a-217(6) of the Act, Declarant is hereby exempt from the provisions of §57-8a-217 of the Act. Pursuant to §57-8a-211(10) of the Act and Article XVII herein, §57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

**20.17 Authority to Grant Exemptions.** In its sole discretion, Declarant may grant exemptions from any provisions of this Declaration or other Governing Documents to a Person engaged in the construction, development, marketing, or selling of Lots or Units within the Property. This includes, without any limitation, exemption from Assessments, reinvestment fees, design guidelines, and so forth.

## **ARTICLE XXI. CONFLICT AND LITIGATION AVOIDANCE**

**21.1 Statement of Intent.** Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Unit that Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing a Unit, it therefore is acknowledged that it is unfair and improper thereafter to seek to have the Declarant or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner (by taking title to a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the value, sale, and ability to obtain financing for the purchase of a Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, each Owner, by taking title to a Unit, and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. The intent of this Article XXI is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Subdivision Improvements, the Common Area and Facilities, the Benefitted Common Area and the Units in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Master Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

**21.2 Dispute Resolution.** Declarant, Association, its officers and Directors, and all Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, condition, or sale of any part of the Project or any improvements thereon ("Claims") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

(a) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:

- (i) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (ii) The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
- (iii) The proposed remedy;

(iv) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and

(v) That the Person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the Claim.

(b) Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(c) In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the Parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with a Proceeding against the Respondent following one hundred eighty (180) days of the original Notice, except as may be limited by Section 21.3 below.

(d) Before initiating any Proceeding for any Claim against the Declarant or an affiliate of Declarant, in addition to the requirements and limitations set forth in Section 21.3 below, the Association shall:

(i) Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;

(ii) Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting; and

(iii) Receive approval from at least two-thirds (2/3) of the entire voting interests of the Association, who must be present in person or by proxy at the special meeting, to initiate any Proceeding of the Claim against the Declarant and/or its affiliate, if applicable.

(e) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

(f) Any provision in this Master Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding; and (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this

Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of: (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, (b) not less than seventy-five percent (75%) of the total voting power of the Board, and (c) the Declarant during the Declarant Control Period. Any purported amendment or deletion of this Section or any portion hereof, without all of these express prior written approvals shall be void.

(g) The dispute resolution procedures in this Section are in addition to and are not superseded by those protections provided to the Declarant by the Act, including, but not limited to, §57-8a-228.

(h) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

### 21.3 **MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT.**

In addition to the requirements and procedures set forth in Section 21.2 above, the Association and each Owner is deemed to have accepted and agreed to comply with the terms of this Section.

(a) Any and all claims, controversies, breaches, or disputes (each a "Dispute") involving the Declarant or any affiliate of the Declarant, and any Owner or the Association (individually referred to as a "Party" or collectively referred to as the "Parties") arising out of or related to this Master Declaration, the Units, the sale of a Unit, or any transaction related thereto, whether such Dispute is based on contract, tort, statute, or in equity, including, without limitation, any Dispute over: breach of contract, negligent or intentional misrepresentation or fraud, nondisclosure, breach of any alleged duty of good faith and fair dealing, allegations of latent or patent construction defects, breach of any fiduciary duty, or any other matter arising out of or related to the interpretation of any term or provision of this Master Declaration, sales agreement, or otherwise, shall be arbitrated pursuant to the Federal Arbitration Act (9 U.S.C. §1, et seq.) ("FAA") and subject to the procedures set forth in Sections 21.2 and 21.3.

(b) Such Dispute shall be submitted to binding arbitration by and pursuant to the rules of the American Arbitration Association ("AAA"), pursuant to its construction arbitration program, or such alternative as mutually agreed by the Parties. If AAA is not available and the Parties involved in the Dispute are unable to agree on another alternative, then either Party may, pursuant to the applicable provisions of the FAA, apply to a court of competent jurisdiction to designate an arbitration service provider, which designation shall be binding upon the Parties. The rules and procedures of such alternative arbitration service in effect at the time the request for arbitration is submitted shall be followed.

(c) The following are general arbitration provisions:

(i) The matters herein involve and concern interstate commerce and are governed by the provisions of the FAA now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the FAA.

(ii) To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the arbitration service rules shall govern the conduct of the proceeding.

(iii) This Section 21.3 shall inure to the benefit of, and be enforceable by, the Declarant, affiliates of the Declarant, subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom the Association or Owner contents is responsible for any alleged defect in or to the Project.

(iv) In the event any dispute is submitted to arbitration, each Party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration, unless the arbitrator orders otherwise.

(v) The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration. The decision of the arbitrator shall be final and binding. The Parties expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in Davis County.

(vi) The participation by any party in any judicial proceeding concerning this Section 21.3 or any matter arbitration-able hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Section 21.3. Attorneys' fees and costs shall be borne pursuant to (iv) above.

(vii) The fees to initiate the arbitration shall be advanced by the Party bringing the Claim and subsequent fees and costs of the arbitration and/or arbitrator shall be borne equally by the Parties to the arbitration; provided, however, that the fees and costs of the arbitration and/or the arbitrator shall ultimately be borne as determined by the arbitrator.

(viii) The arbitrator appointed to serve shall be a neutral and impartial individual.

(ix) If any provision of this Section 21.3 shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(x) All parties governed by this Master Declaration acknowledge and agree that they are waiving any rights to have the Disputes described by this Section 21.3 decided in a court or by a jury trial.

21.4 **Land Owners.** All Persons owning land that is initially or subsequently incorporated into the Project and who sign the Master Declaration or any amendment thereto subjecting that land to the Master Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Article XXI.

### CERTIFICATION

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

DATED as of the 20 day of FEBRUARY, 2020.

**CW THE PARK, LLC**  
A Utah Limited Liability Company

By: \_\_\_\_\_

Its: \_\_\_\_\_

State of Utah )





# EXHIBIT A

## PROPERTY LEGAL DESCRIPTION

\*Line \_\_\_\_\_

**BEG AT THE INTERSECTION OF THE S R/W LINE OF GORDON AVENUE & THE E R/W OF 2200 WEST STR, SD PT BEING 33.00 FT N 89°50'40" E ALG THE SEC LINE & 42.0 FT S 0°11'10" W FR THE NW COR OF SEC 19-T4N-R1W, SLM; & RUN TH N 89°50'40" E 1597.23 FT ALG SD S R/W LINE; TH S 0°11'10" W 1200.00 FT; TH S 89°50'40" W 1597.23 FT TO THE E R/W LINE OF SD 2200 WEST STR; TH N 0°11'10" E 1200.00 FT ALG SD R/W LINE TO THE POB.  
CONT. 44.00 ACRES**