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WHEN RECORDED RETURN TO:

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**AMENDED AND RESTATED DECLARATION  
OF  
CONDITIONS, COVENANTS AND RESTRICTIONS**

**(Canyon Centre Court)**

This Amended and Restated Declaration of Conditions, Covenants and Restrictions (the "**Declaration**") is made as of the 17th day of August, 2016, by Weekley Homes, LLC, a Delaware limited liability company (the "**Declarant**"), with the consent of CND-A.Z Holdings, LLC, a Texas limited liability company, the current owner (the "**Current Owner**") of that certain real property generally outlined, shown and particularly described in attached **Exhibit A** (the "**Subject Property**"), amends and restates, and supersedes that certain Declaration of Conditions, Covenants and Restrictions (Canyon Centre Court) against the Subject Property in the real property records of Salt Lake County, Utah on May 10, 2016 as Entry No. 12276418, Book 10429, Pp. 5977-6047.

The Declarant has recorded the plat of "Canyon Centre Court" (the "**Plat**") in the office of the County Recorder for Salt Lake County, Utah (the "**Official Records**") and, accordingly, this Declaration is subject to the terms, restrictions and notes shown on the Plat. Except as otherwise specified in this Declaration, the Declarant desires to subject the Subject Property to the easements, covenants, conditions, restrictions and charges set forth in this Declaration, to and for the benefit of the Subject Property and all parties having or acquiring any right, title or interest, fee or otherwise, in the Subject Property or any part thereof. By the execution, delivery and recording of this Declaration in the Official Records, the Declarant declares that (a) the Subject Property and the project subject to the terms and conditions of this Declaration (the "**Project**") is not a cooperative and (b) except as may be otherwise specified in this Declaration, the Subject Property and any part thereof shall be held, sold and conveyed subject to the following easements, covenants, conditions, restrictions and charges, which shall run with such property and shall be binding upon, and inure to the benefit of, all parties having or acquiring any right, title or interest, fee or otherwise, in the Subject Property or any part thereof.

**ARTICLE 1. DEFINITIONS**

As used in this Declaration, and except as otherwise defined in this Declaration, capitalized terms used in this Declaration shall be defined as set forth in attached **Exhibit B**.

**ARTICLE 2. PROPERTY SUBJECT TO THIS DECLARATION**

The Declarant hereby declares that all of the Subject Property is, and shall be, owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the terms and conditions of this Declaration. The Subject Property contains (a) seventeen (17) single-family or lots as shown on attached **Exhibit A** (individually, a "**Unit**" or a "**Lot**" and, collectively, the "**Units**" or the "**Lots**") and (b) as and to the extent part of each Lot, those common maintenance

maintenance areas (the “*HOA Maintenance Areas*” or “*Common Areas*”), all as designated and shown on attached *Exhibit A*. In addition to the terms and conditions set forth in this Declaration, the Project shall be subject to the rules and regulations as set forth in attached *Exhibit C* (the “*Rules and Regulations*”) and, further, any amendments or supplements to the Rules and Regulations. Further, the Project is subject to that certain Master Declaration of Covenants, Conditions and Restrictions pertaining to the Canyon Centre development (as the same may be amended or supplemented from time to time, the “*Master Declaration*”) as attached as *Exhibit D*. Any easements, reservations, restrictions, and conditions disclosed by, or part of, the Plat or the Master Declaration are incorporated in and made a part of this Declaration by this reference.

### **ARTICLE 3. HOA MAINTENANCE AREAS**

3.1 Right to Use, Access and Enjoy HOA Maintenance Areas. Subject to the terms conditions of this Declaration and except for the private sidewalks providing access to each residence as shown on attached *Exhibit A*, the Owners of any Lots, and their respective tenants, guests and invitees thereof (individually, a “*User*” and, collectively, the “*Users*”), shall have the right to use and access, in common with others and subject to the Rules and Regulations, the HOA Maintenance Areas, which rights (the “*Common Rights of Access and Use*”) shall be appurtenant to and pass with fee title to every Unit. Notwithstanding the foregoing, unless otherwise approved, in advance and in writing by the Association (a) the “*Private Driveway*” designated as part of the HOA Maintenance Areas and shown on attached *Exhibit A* shall be used only for purposes of, as and to the extent designed or designated therefor, vehicular and pedestrian access to and from the Lots; (b) the “*Snow Storage and Parking Areas*” designated and shown on attached *Exhibit A* only be used for purposes of the temporary parking of passenger vehicles for Users and, in winter months, as needed by the Association for snow storage; (c) the “*Common Sidewalks and Landscaping Areas*” designated and shown on attached *Exhibit A* shall be used only for purposes of, as and to the extent designed or designated therefor, pedestrian access to and from the Lots by Users, as well as the mailbox for each Lot within the Common Sidewalks and Landscaping Areas; and (d) the HOA Maintenance Areas designated on attached *Exhibit A*.

3.2 Designation of HOA Maintenance Areas. The Declarant may, but is not obligated to, retain control of the HOA Maintenance Areas until such time as the Declarant has completed improvements to be constructed thereon (as determined by the Declarant, the “*Improvements*”). Upon completion of the Improvements, free and clear of all liens, restrictions and encumbrances associated with or arising from any such Improvements, the HOA Maintenance Areas shall be, and remain, subject to the terms and conditions of this Declaration (including without limitation any rights of the Users otherwise described in this Declaration) and, further, the Rules and Regulations and the Master Declaration (as the same may be amended or supplemented).

3.3 Reservations and Easements - HOA Maintenance Areas. The Declarant reserves itself and grants to the Association for the benefit, and burden, of the Declarant, the Association, the Owners of Lots perpetual easements under and through the Lots and HOA Maintenance Areas for the installation, continued operation, and maintenance of power, water, communications, and other utility services as may be necessary for the ownership, use and occupancy of the Lots (collectively, the “*Utilities*”), together with an easement for the construction, maintenance and repair, and use of the HOA Maintenance Areas and the Utilities; provided that, except as and to extent of public record or otherwise in existence as of the date hereof and except for services or utilities to be provided to any improvements situated on the Lots, any such utility easements shall located near the outside boundaries of the Lots and shall not unreasonably interfere with the use development of the Lots or any improvements on the Lots, as limited and restricted hereby.

3.4 Designation of HOA Maintenance Areas and City Owned Common Maintenance Areas. The following portions of the Lots within the Subject Property, inclusive of any other **Maintenance Areas**” shown and designated on attached **Exhibit A**, are HOA Maintenance Areas:

- (a) The Common Sidewalks and Landscaping Areas, inclusive of the
- (b) The Snow Storage and Parking areas;
- (c) The Retaining Walls, Perimeter Fencing, Entrance Fence and Street
- (d) The Private Driveway;
- (e) All sidewalks that provide access to the front entry areas of the residential Improvements on each Lot; and
- (f) Such other areas as may be determined, from time to time, by the Association.

The “**City Owned Common Maintenance Areas**” are as shown and designated on **Exhibit A**.

3.5 Reservations - HOA Maintenance Areas. The Declarant, subject to Section 3.3, above, reserves unto itself and grants to the Association an easement over, across, under, and through the HOA Maintenance Areas for the construction, maintenance and repair, and use of fences, retaining walls, project signs, planters, landscaping, and any Utilities. Further, subject to Section 3.3, above, the Declarant or the Association may, and, to the extent required by law, shall have the right to grant easements to municipalities or private utilities performing or providing Utilities to the Subject Property, the HOA Maintenance Areas or any part thereof.

3.6 Special Provisions. Water service to the Subject Property shall be delivered to a single, public meter that will be billed to the Association. As further described in Section 5.2, each Lot is equipped with a private water meter to allow the Association to bill each lot separately its actual water usage.

3.7 Taxable Square Footage for each Lot/Owner. The actual taxable square footage each Lot (and each corresponding Owner) includes undivided portions of the HOA Maintenance Areas, as designated and shown on the Plat.

#### **ARTICLE 4. ASSOCIATION**

4.1 General. The Declarant shall organize an association of the Owners of one or Lots within the Subject Property. The Association shall be organized under the name “**Canyon Centre Court Owners Association**” or such similar name as the Declarant shall designate, and have such property, powers and obligations as are set forth in this Declaration for the benefit, and burden, of the Subject Property and all Owners and Users.

4.2 Organization. The Declarant, before the first Lot is conveyed to an Owner, shall organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Utah. The Articles of Incorporation of the Association shall provide for its perpetual existence, but, in the event the Association is at any time dissolved, whether voluntarily or involuntarily, by operation of law or otherwise, the Association shall automatically be succeeded an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall

thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had made to constitute the governing documents of the unincorporated association. The Declarant cause the Association to register with the Utah Department of Commerce, as prescribed by Utah Code Ann. § 57-8a-105, within ninety (90) days following the recording of this Declaration in the Official Records.

4.3 Membership. Every Owner of one or more Lots within the Subject Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Subject Property, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

4.4 Voting Rights. The Association shall have two classes of voting membership:

(a) Class A members shall be all Owners of Lots within the Subject Property, including the Declarant.

(b) The Class B member shall be the Declarant; provided that the Class B membership shall terminate upon the first to occur of the following:

(i) sixty (60) days after seventy-five percent (75%) of the Lots that may be created are conveyed to Lot Owners other than the Declarant;

(ii) seven (7) years after the Declarant has ceased to offer Lots for in the ordinary course of business;

(iii) the day the Declarant, after giving written notice to the Lot Owners, records an instrument voluntarily surrendering all rights to control activities of the Association; or

(iv) 120 days following the termination of the Class B membership in accordance with this Declaration; provided that the Declarant may voluntarily surrender the right appoint and remove a member of the board before the period of administrative control terminates under this.

Until the Class B membership is terminated as provided above, all voting rights in the Association shall belong to the Class B member, except to the extent otherwise expressly provided herein. Upon termination of the Class B membership, all voting rights in the Association shall belong to the Class A members. On all matters upon which the Class A members are entitled to vote, each Class A member shall have one vote for each Lot owned within the Subject Property; provided that, in the event more than one person holds an interest in any Lot, the vote for such Lot shall be exercised by such persons as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

4.5 Powers and Obligations. The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah.

(c) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant, and subject, to this Declaration or otherwise promoting the general benefit of the Subject Property or the Owners within the Subject Property.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

4.6 Liability. Except as and to the extent resulting from the intentional misconduct or gross negligence of any such person, any individual member of the Association shall not be liable the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of the Association's duties. In the event any member of the Association is made a party to any proceeding because the individual is or was a member, director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

4.7 Interim Board; Turnover Meeting. The Declarant shall have the right to appoint interim board of one (1) to three (3) directors, who shall serve as the board of directors of the Association until replaced by the Declarant or their successors have been elected by the Owners at the turnover meeting described in this section. The board of directors of the Association shall the right, but not the obligation, to appoint such officer(s) as may be necessary or appropriate to oversee the day-to-day administration of the Association, who shall serve for term, and subject to limitations, as may be imposed by the board of directors of the Association; provided that, in the event the board of directors of the Association shall not appoint any such officer(s), the board of directors of the Association shall be responsible for the day-to-day administration of the  
The Declarant shall call a meeting of the Association for the purpose of turning over responsibility for the Subject Property to the Association not later than the first to occur of the following:

- (a) sixty (60) days after seventy-five percent (75%) of the Lots that may be created are conveyed to Lot Owners other than the Declarant;
- (b) seven (7) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business;
- (c) the day the Declarant, after giving written notice to the Lot Owners, an instrument voluntarily surrendering all rights to control activities of the Association; or
- (d) 120 days following the termination of the Class B membership in accordance with this Declaration; provided that the Declarant may voluntarily surrender the right appoint and remove a member of the board before the period of administrative control terminates under this Declaration.

At the turnover meeting, any existing directors or officers of the Association shall resign and, concurrently therewith, the Owners shall elect and ratify a board of directors of the as provided in this Declaration and the Bylaws of the Association, which board of directors shall consist of an odd number of at least three (3) members, the majority of whom shall be Lot owners, and which board of directors then shall have the right, but not the obligation, to appoint such officer(s) as may be necessary or appropriate to oversee the day-to-day administration of the Association, who, again, shall serve for term, and subject to any limitations, as may be imposed by the board of directors of the Association. If the Declarant fails to call the turnover meeting as

required by this section, any Owner of one or more Lots may call the meeting by giving notice as provided in the Bylaws.

4.8 Annual Budget. The Bylaws shall provide for the preparation and approval of an annual budget for the Association, consistent with any and all Applicable Laws.

**ARTICLE 5. MAINTENANCE AND ASSESSMENTS;  
INSURANCE OBLIGATIONS AND RELATED MATTERS**

5.1 Maintenance and Repair Rights, Obligations and Limitations. The Association, subject to the availability of the necessary funds therefor (inclusive of any "*Assessments*" [as defined below] and insurance proceeds therefor), shall have responsibility for (a) the maintenance and repair, including snow removal and storage, of the HOA Maintenance Areas, inclusive of, without limitation, any associated landscaping (regardless of whether located within the HOA Maintenance Areas); (b) except as and to the extent any damage or destruction may be caused by City of Cottonwood Heights, Utah (the "*City*"), the maintenance and repair, including snow and storage, of the surface areas, but no more, of the City Owned Common Maintenance Area; and (c) any property and facilities, including without limitation any Utilities within the HOA Maintenance Areas (as applicable, "*Common Utilities*"), that the Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and the Users. The Declarant shall identify any such property and facilities, including without limitation any Common Utilities, by written notice to the Association, and they shall remain the responsibility of the Association until the Declarant, in its reasonable discretion, revokes such privilege of use and enjoyment by written notice to the Association. No mortgagee shall have the right to participate in determining whether the damage or destruction to the HOA Maintenance or any Common Utilities shall be repaired or reconstructed. If, in the reasonable discretion of the Association, a decision is made not to restore, repair or replace any damaged Improvements, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive landscaped condition consistent with any Applicable Laws and the Standards. The Association shall retain, for the benefit of all of the Owners, any insurance proceeds remaining after paying the costs of repair, replacement, restoration, or reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Association levy special Assessments to cover the shortfall therefor.

5.2 Maintenance of Utilities, Storm Sewer Systems, Lots, and Other Private Areas. Each Owner shall be individually responsible for (a) the installation and on-going maintenance of any Utilities exclusively serving the Owner's Lot; (b) except to the extent part of the HOA Maintenance Areas and, then, except as otherwise specified in this Declaration as the or the Association, the installation and on-going maintenance (and/or repair) of the hardscape and landscape areas within the Owner's Lot; and (c) litter and graffiti removal when necessary or appropriate, but, in any case, no less frequently than weekly, from the Owner's Lot and any improvements thereon, inclusive of any part of the sidewalk with any such Owner's Lot. As and to the extent any such installation and maintenance shall not be performed by any such Owner, then, upon ten (10) business days advance, written notice to such Owner, the Association shall have the right, but not the obligation, to undertake and perform any such installation and maintenance, the cost and expense for which, together with a management fee in an amount equal to five percent of any such costs and expenses, shall be the responsibility of the Owner and, then, assessed and pursuant to the terms and conditions of Sections 5.3 and 5.8, below, and subject to default terms, including default interest, pursuant to the terms and conditions of Sections 7.2 and 7.5, below. Further, water utility service to the Subject Property shall be controlled by a master water meter

will be used to bill the Association for the entire amount of water used by the Subject Property. Lot is equipped with a private water meter to allow the Association to reconcile water usage for Lot against the total water usage for the Subject Property; each Lot will be billed for water utility service by the Association based on actual usage. Maintenance of the water meters on each Lot be provided by the Association.

5.3 Purpose of Assessments. The assessments or charges levied by the Association pursuant to this Declaration shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of Lots within the Subject Property and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose related to the use and enjoyment of the HOA Maintenance Areas and Lots situated upon the Property, including, without limitation, the costs of providing the maintenance required in this Declaration by the Association (including without limitation for the City Owned Common Maintenance Areas), together with the costs of management, accounting and legal services, except that the Association may not incur legal costs in any one year in excess of ONE THOUSAND NO/100 DOLLARS (\$1,500.00) without approval of more than sixty-seven percent (67%) of the Owners (excluding for these purposes the Declarant) (as applicable, "*Assessments*"). Further, the Association shall not commence or prosecute any Claim, unless first approved by more than sixty-six percent (66%) of the Association, which approval must be accompanied by the of a reasonable budget and the approval of a special assessment in an amount equal to the budget, and which budget amount shall be levied equally among the Lots and, then, collected before commencement of any such action.

5.4 Duty of the Association - Assessments. The Association shall fix the amount of Assessments against each Lot for the purposes set forth above. Subject to the Applicable Laws, the Association shall have the right, but not the obligation, to establish reserves for the purposes set above. To the extent the Association determines any such reserves are necessary, the continuation, maintenance and administration of any such reserves will comply with Utah Code Ann. and any other Applicable Laws. The Association shall give each Owner of one or more Lots notice of such Assessment at least thirty (30) days in advance of the due date of the Assessment shall cause to be prepared a roster of the Lots showing Assessments applicable to each Lot. The roster shall be kept by the Association and shall be subject to inspection by any Owner of one or more Lots during regular business hours. Upon demand, the Association shall furnish to any of one or more Lots a certificate in writing setting forth whether the Assessments on such Owner's Lot have been paid, any outstanding Assessments and any approved Assessments not yet due and payable, together with such other evidentiary documentation as may be reasonably necessary therefor.

5.5 Amount of Assessments; Working Capital Assessment. The annual Assessment purposes of this Declaration shall be assessed equally against each Lot, except that no Assessment shall be levied against any such Lot until such time as it is first occupied or sold, transferred or conveyed to a person or entity other than a successor to the Declarant. In addition to the annual Assessment, the Association shall levy a one-time Assessment against each Lot at the time such is sold, transferred, or conveyed to a person or entity other than a successor to the Declarant in an amount equal to TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) for purposes of facilitating the maintenance of the Common Areas and the operation of the Association (the "*Working Capital Assessment*").

5.6 Special Assessments. In addition to the Assessments authorized by this Declaration, the Association may levy in any Assessment year a special Assessment, applicable to

that year only, for the purpose of defraying all or part of the cost of any construction or reconstruction, unexpected repair, or replacement, repair or maintenance of a described capital improvement upon any Common Areas, or for any other one-time expenditure not to be paid for of regular annual Assessments. No such Assessment may be levied without the vote or written consent of more than sixty-seven percent (67%) of the voting power of the Owners and, if an of any Lot, the Declarant. The special Assessment shall be made equally against each Lot in the Subject Property subject to assessment under this Declaration.

5.7 Benefited Assessments. The Association may levy Assessments against a Lot, as follows:

(a) To cover the costs, including overhead and administrative costs, of providing services to one or more Lots, upon request of an Owner pursuant to any menu of special services which the Association may, but shall not be obligated to, offer, including, without limitation, the (i) repair of pavements, utilities and retaining structures associated with the Areas; (ii) removal of snow and other services deemed necessary for the upkeep of the Common Areas; and (iii) landscape maintenance, pest control service, cable television service, internet security, caretaker, transportation, fire protection, utilities, trash collection and recycling, and services and facilities.

Nothing in this Section shall be construed as a representation by the Declarant or the Association as to what, if any, services shall be provided. In addition, the Board may enter into, modify or cancel contracts for services in its discretion, unless the services are otherwise required by the Association's Articles of Incorporation or Bylaws. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Association's budget as a common expense which shall be assessed equally against each Lot pursuant to this Declaration (non-use of services provided to all Owners of one or more Lots or Lots as a common expense shall not exempt any Owner of one or more Lots from the obligation to pay Assessments for such services).

5.8 Creation of Lien and Personal Obligation of Assessments. Each Owner of any by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments as may be fixed, established and collected from time to time in the manner provided in this Declaration. Such Assessments, with any interest, expenses or attorneys' fees imposed pursuant to this Declaration, shall be a on the land and shall be a continuing lien upon the Lot against which each such Assessment is Such Assessments, together with together with any interest, expenses or attorneys' fees imposed pursuant to this Declaration, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or other charges and costs fell due. Such liens and personal obligations shall be enforced in the manner set forth in this Declaration.

5.9 Exempt Property. The following property shall be exempt from payment of Assessments of any kind or nature under this Declaration:

(a) All portions of the Subject Property, including without limitation any Common Areas, owned by the Declarant or the Association or, further, for which the Declarant or the Association shall have the obligation to maintain or repair; and

(b) Any property owned by, dedicated to and accepted by a government authority, municipality or public utility provider.

In addition, the Association may, by resolution, grant exemptions to certain entities qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code of 1986, as



amended (the “Code”), so long as such entities own property subject to this Declaration for listed in Section 501(c) of the Code.

5.10 Responsibility for Repair and Replacement. Unless otherwise specifically approved, in advance and in writing, by the Association, each Owner shall carry property for the full replacement cost of all insurable improvements on the Owner’s Lot, less a reasonable deductible. Within ninety (90) days after damage to or destruction of a structure on a Lot, the shall (a) promptly repair or reconstruct in a manner consistent with the original construction or other plans and specifications as are approved by the Association, unless the Association, in its discretion, agrees to extend such period, or (b) clear the Lot of debris and maintain it in a neat and attractive landscaped condition consistent with the Standards. The Owner shall pay any costs that insurance proceeds do not cover. Additional recorded covenants applicable to any Subject Property may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Lots and for clearing and maintaining the Lots in the event the are not rebuilt or reconstructed.

5.11 Owner Responsibility. Notwithstanding any other term or condition of this Declaration, as and to the extent arising or resulting from activities on or about, or the use of, the Common Areas by or at the direction or invitation of any Owner, or caused by, directly or any act, omission or negligence of any such person, that Owner shall, and hereby agrees to, indemnify, defend, and save harmless the Association, the Declarant and the other Owners and Users, together with, as applicable, the officers, agents, employees, and representatives thereof, and against any and all claims, liens, encumbrances, demands, liabilities, suits, actions, costs (including litigation costs), fines, fees (including attorneys’ fees), orders, decrees, judgments, and losses of any kind or nature resulting from or related to the death or injury of any person or damage to the Common Areas (for which the Owner shall be responsible, cost or otherwise). In event of an such damage or destruction to any part of the Common Areas, then, upon written from the Association, which shall delineate any repair and restoration reasonably required by of any such damage to the Common Areas, the Owner shall promptly and diligently (in any case later than, subject to “*force majeure*” (as defined below), ninety [90] days following the date of such notice) repair and restore the Common Areas so damaged or destroyed to the condition immediately before any such damage or destruction. In the event the Owner shall fail to so repair and/or restore the Common Areas, the Association shall have the right, and option, to so repair and restore the Common Areas and, in the event, and to the extent, the Owner does not reimburse the Association (together with a management fee in an amount equal to five percent [5%] of any such costs and expenses) within ten (10) business days following written demand for the costs and expenses of any such repairs (together with reasonably satisfactory evidentiary documentation thereof), the Association shall have the right, and option, to assess the Owner and the Owners for the costs and expenses of any such repairs and/or restoration, together with a management fee an amount equal to five percent [5%] of any such costs and expenses (in addition to, and not in of any other rights or remedies to which the Association may be entitled at law or in equity). For these purposes, “*force majeure*” means any reasonable delay caused by acts of nature, strikes, lockouts, other labor troubles, riots, civil commotion, insurrection, war or other reason not the fault of the party delayed (financial inability excepted), in which case performance of the action in question shall be excused for the period of delay and the period for the performance of such act be extended for a period equivalent to the period of such delay.

**ARTICLE 6. ARCHITECTURAL REVIEW AND CONFIRMATION**

6.1 Architectural Review and Approval. Other than the Improvements, if any, to be constructed by or at the direction of the Declarant, and with the intent and purpose to assure of workmanship and materials, to assure harmony of external design with the existing and as to the location with respect to topography and finished grade elevations, and to avoid plan repetition, no Improvement, construction, enhancement, or other alteration to an Owner's Lot shall be commenced, erected, placed or altered on any Lot until the construction plans and showing the nature, shape, heights, materials, colors and proposed location of the Improvement been submitted to and approved pursuant to the procedures and an specific requirements and guidelines for review and approval of residential construction set forth in the Master Declaration "***Design and Construction Guidelines***"), which approval shall be confirmed, in writing (together with reasonably satisfactory evidentiary documentation thereof) (as applicable, the "***Design and Construction Approvals***"), to the Declarant or, in the event that administrative control shall have been relinquished by the Declarant to the Association, the Association. The Association, in its reasonable discretion, may charge a reasonable fee to cover the cost of reviewing and confirming Design and Construction Approvals.

6.2 Liability; Nonwaiver. The Association shall not be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any or failure to secure any Improvements approvals under the Master Declaration.

#### **ARTICLE 7. ENFORCEMENT**

7.1 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on the Owner's Lot, or within the Common Areas, an Improvement contrary to the provisions of this Declaration, or causes or any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated, then the Association shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be and within sixty (60) days of written notice to the Owner, then the Association shall have the right to do any or all of the following:

- (a) Impose reasonable fines against such Owner in the manner and amount Association deems appropriate in relation to the violation.
- (b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the done, provided that no items of construction shall be altered or demolished in the absence of proceedings.
- (c) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

7.2 Default in Payment of Assessments; Enforcement of Lien. If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights and right to use any Common Areas until such Assessments, together with any other charges assessed under this Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from the Owner's Lot.

(b) The Association shall have a lien against each Lot for any Assessment levied against the Lot, and any fines or other charges imposed under this Declaration or the against the Owner of the Lot from the date of recording of a notice thereof in the Official Records. Such lien may be enforced by judicial foreclosure in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. In any such judicial foreclosure, delinquent Owner shall be required to pay the costs and expenses of the proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The delinquent Owner shall also be required to pay any costs, fines, charges or assessments which shall become due during the period of foreclosure, and all such costs, fines, charges or assessments shall be secured by the lien being foreclosed. The Association, through duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, mortgage and convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, and any other fines and charges imposed under this Declaration, without foreclosing or waiving the lien described in this Declaration. Recovery on any such action, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

7.3 Notification of First Mortgagee. The Association shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days.

7.4 Subordination of Lien to Mortgages. The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment (or associated charges) lien, but the sale or transfer of any Lot which is subject to any mortgage or of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or in lieu of foreclosure shall extinguish any lien of an Assessment (or other charges) notice of which was recorded after the recording of the mortgage or trust deed. Such sale or transfer, however, not release the Lot from liability for any Assessments or charges thereafter becoming due or from lien of such Assessments or charges.

7.5 Interest, Expenses and Attorneys' Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest at the rate of eighteen percent per annum, from the due date until paid. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Association not to exceed thirty percent (30%) of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a for preparing the notice of lien established from time to time by resolution of the Association. In event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

7.6 Nonexclusiveness and Accumulation of Remedies. An election by the to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

7.7 Appointment of Trustee. The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to Bonneville Superior Title Company, having an address at 7050 Union Park Center, Suite 110, Midvale, Utah 84047, with power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of assessments under the terms of Declaration.

#### **ARTICLE 8. DISPUTE RESOLUTION**

8.1 Disputes between Owners. Any disputes between Owners, the Declarant or the Association concerning the interpretation, compliance or enforcement of the provisions of this Declaration shall be submitted to a mutually agreeable mediator or mediator service prior to the institution of any action. The mediation shall be nonbinding, and the parties to the mediation shall bear the costs equally.

8.2 Arbitration. Unless any disputes are otherwise resolved pursuant to Section 8.1, above, of this Declaration, any such disputes shall be resolved by binding arbitration, before a arbitrator reasonably designated by the Declarant or, if the Declarant no longer owns any part of Subject Property, by the Association, or such neutral, independent arbitration service that the Declarant or the Association, as the case may be, shall designate (in any case, the "*Arbitrator*"), in Salt Lake City, Utah. If an Owner objects to the Arbitrator, the Owner must inform the Declarant writing within ten (10) days of Owner's receipt of written notice informing Owner of the Arbitrator and, then, if the parties are unable to agree on another arbitrator, then either party may, pursuant to the applicable provisions of the Utah Uniform Arbitration Act, U.C.A.

Section 78B-11-101, et seq., as amended, apply to a court of competent jurisdiction to designate an arbitration service provider, which designation shall be binding upon the parties. Selection of the arbitrator shall be the responsibility of Arbitrator or the appointed arbitration service, as

The rules and procedures of the arbitration service that are in effect at the time the request for arbitration is submitted will be followed unless the parties expressly agree otherwise, and the applicable discovery and other time periods thereunder may be adjusted, as determined by the arbitrator, in order to permit the prompt conclusion of the arbitration proceeding. The arbitration service designated or finally appointed as aforesaid shall administer the arbitration or any and all Disputes required to be joined under the law.

(a) These arbitration provisions shall be governed by and interpreted under Utah law pursuant to the Utah Uniform Arbitration Act, U.C.A. Section 78B-11-101, et seq., now effect and as it may be hereafter amended, and in accordance with the Utah Rules of Civil Rules 16, 26, 30, 33, 34, 36, and 56, unless the parties mutually agree to alternative arbitration procedures, and the applicable discovery and other time periods thereunder may be adjusted, as determined by the arbitrator, in order to permit the prompt conclusion of the arbitration. The parties to the arbitration shall share equally in the arbitrator's fees and expenses. The award

the arbitrator shall be final and may be entered as a judgment in a court of competent jurisdiction. Unless otherwise recoverable by law or statute, each party shall bear its own costs (including expert's costs) and expenses, including attorneys' fees and paraprofessional fees for any

Notwithstanding the foregoing, if a party unsuccessfully contests the validity or scope of in a court of law or equity, the non-contesting party shall be awarded reasonable attorneys' fees paraprofessional fees and expenses incurred in defending such contest, including such fees and associated with any appellate proceedings. In addition, if a party fails to abide by the terms of a settlement or arbitration award, the other party shall be awarded reasonable attorneys' fees, paraprofessional fees and expenses incurred in enforcing such settlement or award.

(b) These arbitration provisions are a self-executing arbitration agreement. Any dispute concerning the interpretation or the enforceability of these arbitration provisions, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity hereof, or these alternative dispute resolution provisions, or the scope arbitrable issues thereunder, and any defense relating to the enforcement of these alternative resolution provisions, including, without limitation, waiver, estoppel, or laches, shall be decided an arbitrator in accordance with these arbitration provisions and not by a court of law.

(c) The parties to this Declaration expressly consent and agree that arbitration of any Dispute may, at the option of the Declarant, include consolidation, joinder, or any other means to provide for joint participation of all parties involved in the Dispute and who are in order to provide for the complete resolution of such Dispute.

8.3 Waiver of Litigation Rights. All persons bound and subject to the provisions of Declaration acknowledge and agree that by being bound to binding arbitration as provided herein: (a) such person, including each Owner, is giving up any rights it might possess to have a dispute litigated in a court or jury trial; (b) such person's discovery and appeal rights will be limited; (c) an Owner's election to purchase a Lot to this Declaration and these arbitration provisions is voluntary and the Owner understands its provisions; (d) the Declarant and each Owner and will take all reasonably necessary to secure participation by such other necessary and proper parties in the resolution procedures set forth herein; and (e) the Declarant would not have sold the Lots without each Owner being bound to these arbitration provisions.

8.4 Choice of Law and Scope of Arbitrator's Authority. All disputes shall be interpreted and enforced according to the Utah Uniform Arbitration Act, U.C.A. Section 78B-11-101, et seq., as amended, which is designed to encourage use of alternative of dispute resolution that avoid costly and potentially lengthy court proceedings. Interpretation application of these procedures shall conform to Utah court rulings interpreting and applying the Uniform Arbitration Act. The arbitrator shall apply the laws of the State of Utah, and the award may be enforced in any court of competent jurisdiction. The arbitrator shall have the to try and shall try all issues, whether of fact or law, including without limitation, the validity, and enforceability of these arbitration provisions, and may issue any remedy or relief that the of the State of Utah could issue if presented the same circumstances.

8.5 Acknowledgment. BY ACCEPTANCE OF A DEED TO A LOT, EACH ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE FOREGOING AND AGREES TO SUBMIT ANY DISPUTES OR CLAIMS OR CONTROVERSIES ARISING OUT OF THE MATTERS INCLUDED WITHIN THESE ARBITRATION PROVISIONS TO NEUTRAL BINDING ARBITRATION AS SPECIFIED IN THESE ARBITRATION PROVISIONS.

8.6 Disputes Under FHA/VA Warranty. Notwithstanding the provisions set forth above, the arbitration provisions shall not apply to the extent an Owner is issued a builder's warranty approved by the U.S. Department of Housing and Urban Development for issuance to certain Federal Housing Administration or Veterans Administration Financed Buyers ("**FHAVA Warranty**"). With respect to all disputes arising out of the FHA/VA Warranty ("**FHAVA Disputes**"), the Declarant and Owners shall comply with the dispute resolution procedures and provisions specified in the FHA/VA Warranty. The arbitration of FHA/VA Warranty Disputes not be mandatory. All other disputes shall continue to be governed by the arbitration provisions set forth in this Declaration, including, without limitation, the provisions requiring binding arbitration. However, in the event that the Owner who is issued a FHA/VA Warranty files an action in a court of law regarding an FHA/VA Warranty Dispute while at the same time pursuing an arbitration for other disputes, the Declarant may elect to have all disputes resolved in the court action

8.7 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW AS TO ALL DISPUTES, OWNERS AND THE DECLARANT WAIVE ANY RIGHTS JURY TRIAL FOR SUCH DISPUTES EVEN IF THE ABOVE DESCRIBED ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AND PROVISIONS ARE OTHERWISE FOUND UNENFORCEABLE. BY DELIVERY AND ACCEPTANCE OF A DEED TO A LOT, EACH OWNER AND THE DECLARANT MAKE THIS WAIVER KNOWINGLY, AND VOLUNTARILY, AND ACKNOWLEDGE THAT NO ONE HAS MADE ANY REPRESENTATION OF FACT TO INDUCE THEM TO MAKE THIS WAIVER OR IN ANY MANNER OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. SUCH PARTIES FURTHER ACKNOWLEDGE THAT PRIOR TO DELIVERY AND ACCEPTANCE OF A DEED THAT THEY HAVE HAD THE OPPORTUNITY TO BE ADVISED BY LEGAL COUNSEL IN CONNECTION WITH THIS COVENANT AND IN MAKING THIS WAIVER. EACH OWNER AND THE DECLARANT ACKNOWLEDGE HAVING READ UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THIS JURY WAIVER, AND INTEND THIS JURY WAIVER BE READ AS BROADLY AS POSSIBLE AND EXTEND TO ALL DISPUTES, AS DEFINED HEREIN.

8.8 No Amendment; Reservation of Rights and Remedies. Except as and to the otherwise required by law, rule or regulation, the provisions, terms and conditions of this Article 8 may not be amended, supplemented, repealed, modified, or terminated without the advance, consent of the Declarant (or its successor-in-interest), which rights and remedies are expressly reserved by the Declarant notwithstanding any term or condition of this Declaration (including without limitation Article 9, below).

#### **ARTICLE 9. MISCELLANEOUS PROVISIONS**

9.1 Amendment and Repeal. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Subject Property, may be amended or as to all or any portion of the Subject Property by the vote or written consent of Owners of Lots holding more than sixty-seven percent (67%) of the voting rights of the Class A members of the Association, together with the written consent of the Class B member, if such membership has not been terminated as provided herein. Any such amendment or repeal shall become effective only upon recordation in the Official Records, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special rights of the Declarant without the Declarant's written consent, affect any Lot Owner's voting

or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners the affected Lots unanimously consent to the amendment. To the extent any amendment relates to the preservation or maintenance of any Common Areas or the City Owned Common Maintenance Areas, or the existence of an entity responsible for accomplishing the same, such amendment shall be approved by the lead administrative official of the land use authority.

9.2 Declarant's Retained Rights. In addition to the rights otherwise retained by the Declarant herein, the Declarant reserves for itself the following rights:

(a) The Declarant reserves the right for itself (and to the extent necessary, right is hereby extended to the Association and its affiliates, agents, employees and contractors), to enter upon any Common Area, any Common Maintenance Area or any Lot and to do whatever the Declarant deems necessary or advisable in connection with construction or other work to be performed by the Declarant for the development of the Subject Property Improvements, including, but without limitation, the construction and installation of systems, fire protection, drainage, water storage facilities, the installation of all utilities, the construction of all roads, grading and landscaping, the construction of all Buildings and other Improvements to be constructed by the Declarant, including amenities, the erection or placement of such temporary structures as may be reasonably necessary to facilitate such development, and the placement of such sign or signs as the Declarant may deem advisable in connection with the construction of the Improvements and with sale of the Lots. The foregoing rights may be exercised by the Declarant as to any Common Area notwithstanding the conveyance of such Common Area to the Association.

(b) The Declarant may use any portion of the Common Area and Common Maintenance Area without charge for the purpose of marketing for sale Lots owned by the and may construct and maintain upon portions of the Common Area, Common Maintenance Area and property owned by the Declarant such facilities, activities, and things as, in the Declarant's opinion, may reasonably be required, convenient, or incidental to the Improvement or sale of Lots. Such permitted facilities, activities, and things include but are not limited to business offices, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant may park vehicles in areas other than garages or driveways, including on streets. The Declarant's rights this Section are delegable by the Declarant to any builder who is a purchaser (or with an option to purchase) of more than one Lot.

(c) The Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Lots for the purpose of making, constructing, and installing Improvements to such Lot and to the Common Area and Common Maintenance Area as it deems appropriate in its sole discretion.

(d) Any or all of the Declarant's special rights and obligations set forth in this Declaration may be transferred in whole or in part to other persons; provided, the transfer shall not reduce any obligation nor enlarge any right beyond that which the Declarant has under this Declaration. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by the Declarant. The Declarant may allow other persons to exercise, on a one time or basis, any right of the Declarant without transferring the entire right. In such case, a recorded instrument is not required.

(e) No person other than the Declarant or any affiliate thereof shall use the name "**Canyon Centre Court**" or any derivative of "**Canyon Centre Court**" for any commercial purpose in any printed or promotional material, or in logo or depiction, without the Declarant's or the Association's prior written consent. However, Owners may use the name "**Canyon Centre**

*Court*” where such term is used solely to specify that a particular property is located within the Subject Property.

(f) The Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, Improvement or condition which may exist on any portion of the Subject Property, including any Lot, and a nonexclusive easement of access throughout the Subject Property to the extent reasonably necessary to exercise such right. Except in an emergency or in the case of an inspection relating to construction or in a case enforcement of a violation of this Declaration, the Design and Construction Guidelines or any condition of design review approval, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into the interior of an occupied Residence or other structure on a Lot shall be permitted without the Owner’s consent. Except where entry is necessary to abate a violation of Declaration, the Design and Construction Guidelines or any condition of design review approval, person exercising this easement shall promptly repair, and pay for, any resulting damage.

(g) The Declarant shall have the right to make the following boundary line adjustments without the consent of the Association or the Owners: (i) as between the boundary of any Lots owned by the Declarant; (ii) as between the boundary of any Lots owned by the Declarant and any Common Area; and (iii) as between the boundary of any Lots owned by the Declarant and property adjacent to the lands abutting such Lots. As to any boundary line adjustment under this Section, the Declarant shall obtain any requisite approvals required by the appropriate local governing authority and shall pay all reasonable costs incident thereto, including preparation, approval and recording of an amended plat.

(h) The rights granted under this Section 9.2 of this Article shall terminate upon the earlier of (a) the period specified in the particular Section; (b) fifty (50) years from the this Declaration is recorded in the Official Records; or (c) the termination of Class B membership provided in this Declaration. Thereafter, the Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between the and the Association which provides for rental payments based on the fair market rental value of such portion of the Common Areas, or as an Owner of a Lot. This Article may not be amended without the written consent of the Declarant so long as the Declarant owns any portion of the Property.

9.3 Regulatory Amendments. Notwithstanding the provisions of Section 9.1 above, until termination of the Class B membership, the Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any Applicable Laws, including without limitation any applicable statute, ordinance or regulation or of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Utah, or any corporation wholly owned, directly or indirectly, by the United States or the State of Utah which insures, guarantees or provides financing for a planned community or lots in a planned community.

9.4 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Subject Property and Owners thereof for an initial period of fifty (50) years commencing with the date on which this document is recorded in the Official Records. Thereafter, this Declaration shall continue to run the land and be and remain in full force and effect at all times with respect to all property within Subject Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided,



however, that this Declaration may be terminated at the end of the initial or any additional period resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning more than sixty-seven (67%) of the voting rights in the Association. Any such termination shall become effective only if (a) a certificate of the president secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Official not less than six (6) months prior to the intended termination date.

9.5 Joint Owners. In any case in which two or more persons share the ownership of Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

9.6 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Subject Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of the Owner's Lot and other areas within the Subject Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

9.7 Nonwaiver; Integration; Successors and Assigns. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The attached exhibits are incorporated in, and made a part this Declaration by this reference. The terms and conditions of this Declaration shall be binding upon, and inure to the benefit of, the successors and assigns of the Declarant and each Owner.

9.8 Construction; Severability; Number; Captions. This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity enforceability of the remaining part of that or any other provision. As used herein, the singular include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended for convenience of reference and shall in no way limit any of the provisions of this Declaration.

9.9 Notices and Other Documents. Any notice or other document permitted or by this Declaration may be delivered either personally (receipted), by facsimile (confirmed), by electronic means (confirmed), or by mail. Delivery shall be deemed effective upon receipt; that, if delivery is by mail, delivery shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows:

If to the Declarant: Rod Staten  
Weekley Homes, LLC

6243 South Redwood Road, Suite 230  
Taylorsville, UT 84108

With copies to: John Burchfield  
Weekley Homes, LLC  
1111 North Post Oak Road  
Houston, TX 77055  
Telephone: 713-963-0500

If to an Owner, at the address given at the time of the purchase of a Lot, or at the Lot. If to the Association, the mailing address of the Association as filed with the Utah Department of Commerce, Division of Corporations and Commercial Code. The address of a party may be changed at any time by notice in writing delivered as provided herein.

DATED as of the date set forth above.

*(Declarant and Current Owner signatures and acknowledgements follow)*





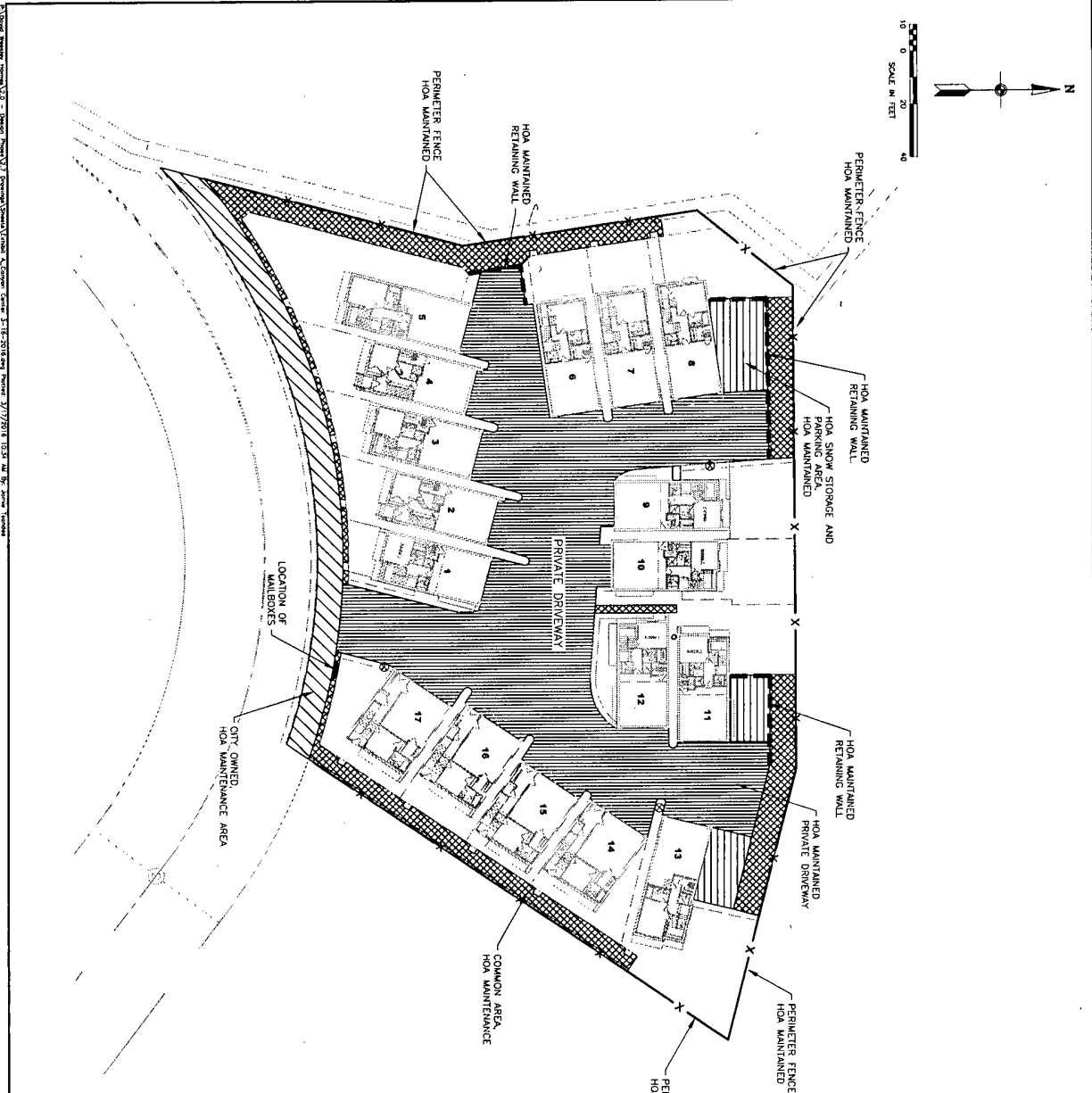
**EXHIBIT A**

***(Depiction and Legal Description of Subject Property; Canyon Centre Plan and Layout, including Building Envelopes, Snow Storage and Parking Areas, Private Driveway, City-Owned Common Areas and other HOA Maintenance Areas)***

Lot No. 1 of the Canyon Centre Subdivision, as shown on the Canyon Centre Phase 3 Plat, recorded on December 28, 2015, as Entry No. 12196155, Book 2015P, Page 0295, in the Official Records of the Salt Lake County, Utah Recorder's Office.

SUBJECT TO ALL RESTRICTIONS, RESERVATIONS AND OTHER CONDITIONS OF RECORD AS MAY BE DISCLOSED BY A RECORD EXAMINATION OF TITLE AND/OR A PHYSICAL INSPECTION OR SURVEY OF THE REAL PROPERTY

Tax ID Numbers:           22-25-176-022  
                                  22-25-176-023  
                                  22-25-176-024  
                                  22-25-180-001  
                                  22-25-180-002



LEGEND	
	HOA MAINTENANCE AREAS
	CITY OWNED COMMON MAINTENANCE AREAS MAINTAINED BY HOA
	COMMON SIDEWALKS AND LANDSCAPING
	SNOW STORAGE AND PARKING AREA HOA MAINTAINED AREAS TO BE USED AS SNOW STORAGE DURING WINTER SEASON AND PARKING DURING NON WINTER SEASON
	PRIVATE DRIVEWAY
	PERIMETER FENCING AND ENTRANCE FENCE
	RETAINING WALLS
	STREET LIGHTS

SNOW REMOVAL: HOA MAINTENANCE FOR THE PRIVATE DRIVEWAY, CITY OWNED SIDEWALK, AND COMMON SIDEWALKS SHALL INCLUDE SNOW REMOVAL.  
 NOTE: ALL ITEMS IDENTIFIED IN THE LEGEND ABOVE ARE MAINTAINED BY THE HOA.

LANDSCAPE  <b>EXHIBIT A</b>  DRAWING NO. EX-A SHEET 1 OF 33	DAVID WEEKLEY HOMES <b>CANYON CENTRE - COTTONWOOD HEIGHTS</b> COTTONWOOD HEIGHTS, UT	<b>VERIFY SCALE</b> BAR IS ONE INCH ON ORIGINAL DRAWING	
	DESIGN: DESP J. TSANDES REVIEW: CHECKED J. TSANDES DRAWN: J. TSANDES	APPROVED: J. TSANDES	NO. DATE REV. BY DESCRIPTION
DATE: NOVEMBER 2015 PROJECT NUMBER: 461-15-02		<b>Bowen Collins &amp; Associates, Inc.</b> CONSULTING ENGINEERS	

## **EXHIBIT B**

### **(Definitions)**

- 1.1 “**Applicable Laws**” means any governmental or municipal laws, rules, ordinances, or regulations applicable to the Subject Property, or any part thereof, including without limitation any applicable zoning laws.
- 1.2 “**Association**” means the nonprofit corporation to be formed to serve as the owners association as provided in Article 4 hereof.
- 1.3 “**Building Envelope**” means the limits of disturbance or buildable area of each Lot as shown on the Plat, outside of which no disturbance shall occur, except for underground Utilities installations and landscaping activities approved, in advance and in writing, by the Association.
- 1.4 “**City Owned Common Maintenance Area**” or “**City Owned Common Maintenance Areas**” means, as designated and shown on attached *Exhibit A*, the area(s) designated as such in this Declaration.
- 1.5 “**Claim**” means any claim, grievance, or dispute arising out of or relating to: (i) the interpretation, application, or enforcement of the Declaration, Bylaws or Articles of Incorporation; (ii) the rights, obligations, and duties of any party bound by the Declaration, Bylaws, or Articles of Incorporation; or (iii) the design or construction of improvements within the Project, other than matters of aesthetic judgment under Article 6 of the Declaration, which shall not be subject to review.
- 1.6 “**Common Area**” or “**HOA Maintenance Areas**” means, as designated and shown on attached *Exhibit A*, the areas within the Project, including those areas within any one or more Lots, designated as “**HOA Maintenance Areas**” within this Declaration, including any Improvements situated within any such Common Areas or HOA Maintenance Areas.
- 1.7 “**Common Sidewalks and Landscaping Areas**” means, as designated and shown on attached *Exhibit A*, the sidewalk and landscaping areas, inclusive of the mailboxes, within the Project that are included in the HOA Maintenance Areas and, accordingly, maintained by the Association.
- 1.8 “**Declaration**” means all of the easements, covenants, restrictions and charges set forth herein, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including without limitation the Rules and Regulations.
- 1.9 “**Dispute**” means any and all actions or claims by, between or among the Declarant and/or any Owners arising out of or in any way relating to (a) the Project or any Lot or Residences thereon, any agreements or duties or liabilities as between the Declarant and an Owner relating to the development, construction or sale of any portion of the Project, any maintenance of the Project or any HOA Maintenance Areas, or (b) the use or condition of any portion of the Project, or the design or construction of or any condition on or affecting the Project or any portion thereof, including without limitation construction defects, surveys, soils conditions, grading, specifications, installation of improvements, or disputes which allege strict liability, negligence or breach of implied, express or statutory warranties as to the condition of any portion of the Project or improvements thereon.
- 1.10 “**Improvement**” or “**Improvements**” means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter or

product of construction efforts on or in respect to the Subject Property.

- 1.11 “**Lot**” means a platted lot within the Subject Property as shown on the Plat, excluding for these purposes any tract designated in this Declaration as being a Common Area.
- 1.12 “**Owner**” means the person or persons, including the Declarant, owning any Lot in the Subject Property, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in any Lot or any other part of the Subject Property, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise. The rights, obligations and other status of being an Owner shall commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred to the date of any such termination.
- 1.13 “**Perimeter Fencing and Entrance Fence**” means, as designated and shown on attached Exhibit A, the fencing surrounding the perimeter of the Subject Property that is included in the HOA Maintenance Areas.
- 1.14 “**Private Driveway**” means, as designated and shown on attached Exhibit A, the private driveway located within the Subject Property.
- 1.15 “**Project**” means the Subject Property, the Lots, the improvements thereon and the development, construction, marketing and sale of the Subject Property, the Lots, and the improvements thereon.
- 1.16 “**Residence**” or “**Residences**” means each residential structure constructed, from time to time, within each Lot part of the Subject Property and intended for the occupancy of individual Owners or tenants thereof.
- 1.17 “**Retaining Walls**” means, as designated and shown on attached Exhibit A, the retaining walls located within the Subject Property that are included in the HOA Maintenance Areas.
- 1.18 “**Snow Storage and Parking Areas**” means, as designated and shown on attached Exhibit A, the Snow Storage and Parking Areas adjacent to Lots 8, 11 and 13, which may only be used for parking when not needed for snow storage. When these areas are used for snow storage, any vehicles parked there, upon notice from the Association, must be immediately moved and, then, either parked in private garages within the Subject Property or, alternatively, relocated off-site.
- 1.19 “**Standards**” means the standards of use, conduct, architecture, landscaping, aesthetic matters, maintenance, repair, replacement and upkeep standards described in this Declaration, as the same may be amended from time to time by the Association, including without limitation the Rules and Regulations.
- 1.20 “**Street Lights**” means, as designated and shown on attached Exhibit A, the street lights located within the Subject Property and included in the HOA Maintenance Areas.
- 1.21 “**Subject Property**” means the property described in Article 2 of this Declaration; provided that notwithstanding the foregoing, the Declarant shall retain the right to annex any real property, improved or unimproved, near, adjacent or contiguous to the Subject Property and, thereby, make any such real property (and improvements) part of the Project and, then, subject to the terms and conditions of this Declaration.
- 1.22 “**Rules and Regulations**” means the use restrictions and/or the rules and regulations set forth in *Exhibit C*, as the same may be amended or supplemented from time to time by the Association.



## *EXHIBIT C*

### *(Rules and Regulations)*

In addition to any restrictions noted on the Plat, the requirements of any Applicable Laws, and the terms and conditions of this Declaration, the Subject Property shall be held, used and enjoyed subject to the following conditions, limitations and restrictions:

1. Use of Lots/Occupancy of Improvements on Lots. Occupancies of Residences on the Lots shall be primarily for residential use, as a residential dwelling. Secondary commercial and business uses, without any adverse external effect on the nature, perception, operation or ambiance of the Subject Property as a first class residential community are expressly permitted, subject to restrictions of record and local zoning ordinances and regulations. In addition to the uses that are restricted by zoning, the following uses are prohibited within the Subject Property, including without limitation within any Unit:

(a) trailer courts, mobile home parks, recreational vehicle campgrounds, and facilities for the sales or service of mobile homes or trailers;

(b) junkyards, scrap metal yards, automobile uses parts sales facilities, motor vehicles sales operations or dealerships, motor vehicle dismantling operations, and sanitary landfills;

(c) dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage or refuse of any nature, other than handling or reducing waste produced on the premises from authorized uses in a clean and sanitary manner;

(d) consignment shops, pawn shops, thrift stores, flea markets, salvage businesses, or discount stores whose merchandise consists primarily of uses goods or merchandise, excess inventory, discontinued items, and/or goods acquired through liquidation of other businesses or fire or bankruptcy sales; provided, periodic Association sponsored or sanctioned events or activities on the Common Area (such as, without limitation, craft fairs, arts festivals, or farmers markets) shall be permitted;

(e) truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use which is not prohibited);

(f) tanning parlors, massage parlors, or any establishment which offers entertainment or services by nude or partially dressed male or female persons, except that the provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a hotel, a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;

(g) "adult entertainment uses," which term shall mean, for the purpose of this Declaration, any theater or other establishment which shows, previews, or prominently displays, advertises or conspicuously promotes for sale or rental: (A) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature or inconsistent with the prevailing community standard within the City; or (B) sexually explicit games, toys, devices, or similar merchandise;

(h) tattoo parlors, body piercing shops, and so-called "head shops" (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs);

(i) mini-warehouses, warehouse or distribution centers, and motor and freight terminals;

(j) any facility for the dyeing and finishing of textiles, the production of fabricated metal products, or the storage and refining of petroleum;

(k) dry cleaning plants; provided, facilities for the drop-off or pick-up of items dry cleaned outside of the community are permitted;

(l) engine and motor repair facilities; heavy machinery sales or storage facilities of any kind or nature; and

(m) any use which would cause or threaten the cancellation of any insurance maintained by the Association, or which would measurably increase insurance rates for any insurance maintained by the Association or Owners above the rates that would apply in the absence of such use, except such uses as are specifically authorized under the Rules and Regulations.

2. Structures Permitted. No structures shall be erected or permitted to remain on any Lot except one single-family structure containing a dwelling unit and structures normally accessory thereto. The foregoing provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool, tennis court, sport court, or structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with the Applicable Laws, is compatible in design and decoration with the dwelling structure constructed on such Lot, meets the definition of an enclosed Storage Area, and otherwise has been approved, in advance and in writing, by the Association. Each dwelling shall have a garage for not less than two (2) passenger vehicles. The construction of all Improvements on a Lot shall be confined to the Building Envelope, except as may be otherwise approved pursuant to the Design and Construction Guidelines, underground Utilities and landscaping activities pursuant to a development permit granted by the Association. No disturbance whatsoever shall occur outside of the Building Envelope, except for Common and Access Areas serving each Lot, underground Utilities and landscaping activities pursuant to a development permit granted by the Association.

3. Residential Use. Lots shall only be used for single-family residential purposes. Except with the consent of the Association, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of dwelling units, (b) the right of the Declarant or any contractor or homebuilder to construct dwelling units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any dwelling unit as a sales or rental office or model home for purposes of sales or rental in the Subject Property, and (c) the right of the Owner of a Lot to maintain the Owner's professional personal library, keep the Owner's personal business or professional records or accounts, handle the Owner's personal business or professional telephone calls or confer with business or professional associates, clients or customers, in the Owner's dwelling unit. Any rentals of the dwelling units on any Lot are subject to the applicable rules, restrictions, and regulations set forth in the Master Declaration, as well as the Cottonwood Heights Municipal Code, as may be amended from time to time. The Association shall not approve commercial activities otherwise prohibited by this paragraph unless the Association determines that only normal residential activities would be observable outside of the dwelling unit and that the activities would not be in violation of applicable governmental ordinances.

4. Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the enjoyment of other Lots or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any Common Areas, or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

5. Animals. No animals or livestock of any kind shall be raised, bred or kept or permitted within any Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof. No dog shall be permitted to roam the Subject Property unattended, and all dogs shall be kept on a leash while outside a Lot. An Owner or resident may be required to remove a pet upon receipt of the third notice in writing from the Association of violations of any rule, regulation or restriction governing pets within the Subject Property.

6. Maintenance of Structures and Grounds. Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Lot neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Except for HOA Maintenance Areas, each Owner shall be responsible for maintaining the areas between such Owner's Lot line and the street, including without limitation sidewalks and street trees. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

7. Parking. Parking of commercial vehicles, boats, trailers, motorcycles, trucks, truck campers or other recreational vehicle or equipment and vehicles in excess of three-quarter (3/4) ton in weight shall not be allowed on any part of the Subject Property, excepting only if kept in designated Storage or, as otherwise approved, in advance and in writing, by the Association, in the side or back yard of the Lot behind the front elevation of the dwelling, or within the confines of an enclosed garage or screened area, the plans of which shall have been reviewed and approved by the Association prior to construction, and no portion of the same may project beyond the screened area. Vehicles owned, rented, borrowed or under the control of the occupant of the dwelling located on the Lot and, further, vehicles owned by others who are guests of the occupants of the dwelling may be parked in the Snow Storage and Parking Areas for a period not to exceed three (3) days in any thirty (30) day period. Notwithstanding the foregoing, when the Snow Storage and Parking Areas are needed for snow storage, any vehicles parked there, upon notice from the Association, must be immediately removed. No vehicle shall be allowed to be parked on any part of the Private Driveway within the Subject Property, except as otherwise provided herein.

8. Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Association reasonably determines that its presence offends the occupants of the neighborhood. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed by the Association, the Association may have the vehicle removed from the Subject Property and charge the expense of such removal to the Owner.

9. Signs. No signs shall be erected or maintained on any Lot, except a project sign and except that not more than one "For Sale" or "For Rent" sign placed by the Owner, the Declarant or by a licensed real estate agent, not exceeding five (5) square feet in size, may be temporarily displayed on any Lot. The restriction contained in this paragraph does not apply to signs used by a builder during the construction and sales period and shall not prohibit the temporary placement of "political" signs on any Lot by the Owner.

10. Rubbish and Trash. No Lot or part of the Common Areas shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, Common Areas, HOA Maintenance Areas or on any Lots. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or any such materials from any Lot, street, Common Maintenance Area or Common Area within ten (10) days following the date on which notice is mailed by the Association, the Association may have such materials removed and charge the expense of such removal to the Owner.

11. Completion of Construction. The construction of any building on any Lot, to the extent any such construction is not performed by the Declarant, including painting and all exterior finish, shall be completed within eighteen (18) months from the beginning of construction as evidenced by a Certificate of Occupancy issued by the applicable governmental entity. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Association. The building area shall be kept reasonably clean and in workmanlike order, including without limitation with any reasonably necessary or appropriate dust control measures, during the construction period.

12. Landscape Completion. All landscaping must be completed within six (6) months from the date of occupancy of the dwelling unit constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Association.

13. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently.

14. Fences. All fences must be approved by the Association. All perimeter fencing shall conform to the Design and Construction Guidelines adopted from time to time established by the Association.

15. Newspaper Boxes. No newspaper box or receptacle shall be placed on or adjacent to any Lot without the prior approval of the Association.

16. Service Facilities. Service facilities (garbage, fuel tanks, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring property. All telephone, power, natural gas, cable television and other communication lines shall be placed underground.

17. Prohibition on Easements. No Owner may grant an access easement over the Owner's Lot to any person other than an Owner of a Lot within the Subject Property or in favor of any parcel other than a Lot within the Subject Property.

18. Association Rules and Regulations. In addition, the Association from time to time may adopt, modify or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Subject Property. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation

shall be delivered by the Association promptly to each Owner and shall be binding upon all and occupants of all Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.

***EXHIBIT D***  
***(Copy of Master Declaration)***

When Recorded Return to:  
Scott R. Sabey  
FABIAN & CLENDENIN  
215 South State Street, Suite 1200  
Salt Lake City, UT 84111

12033926  
4/20/2015 4:27:00 PM \$94.00  
Book - 10316 Pg - 3767-3807  
Gary W. Ott  
Recorder, Salt Lake County, UT  
COTTONWOOD TITLE  
BY: eCASH, DEPUTY - EF 41 P.

**MASTER DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTION FOR:**

**Canyon Centre**  
7350 South Wasatch Boulevard Cottonwood Heights, Utah

April 17, 2015

Prior Parcel # 22-25-176-021  
CTIA-72829-AP

Ent 12033926 BK 10316 PG 3767

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**MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CANYON CENTRE**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON CENTRE is executed this 11 day of April, 2015 by CANYON CENTRE CAPITAL, LLC, a Utah limited liability company ("**Declarant**").

A. Declarant is the fee simple owner of certain real property (the "**Property**") located in the city of Cottonwood Heights, Salt Lake County, State of Utah and more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference.

B. The Property includes a resort based residential, retail and commercial center to be known as "**Canyon Centre**", and may from time to time be referred to herein as the "**Project**".

C. The Plat was recorded April 8, 2015 as Entry # 12026637 in Book 2015P at Page 83, and the Master Plan for the Property has been approved by the City. Copies of the Plat and the Master Plan are attached hereto respectively as **Exhibits B and C** respectively, and are incorporated herein by this reference.

D. Declarant desires to adopt this Master Declaration to establish common easements, easements, covenants and restrictions and to provide for the common management and operation of the Project, to place certain use restrictions on the Property and to protect and preserve the value of the Project and the improvements which are intended to be constructed therein.

NOW, THEREFORE, Declarant does hereby declare that the Property, as defined and described herein, is subject to the Act.

**ARTICLE I  
DEFINITIONS**

1. **Defined Terms.** Unless the context clearly indicates otherwise, certain terms used in this Master Declaration have the meanings set forth in this Article I. Unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

"**Act**" means and refers to the Utah Revised Nonprofit Corporation Act, Utah Code Ann. 16-6a-101 et seq.

"**Allocated Interest**" means the undivided interest in the Common Easement Areas, Common Facilities and the Common Expense liability as set forth in Section 8.2.

"**Annual Budget**" means the budget adopted by the Board for the following year based on the Board's projections of Common Expenses and reserves for such year.

"**Architectural Control Committee**" means the committee of the Master Association established pursuant to Section 10.2, which committee shall be separate from and in addition to any governmental or quasi-governmental architectural or design review process.

~~BK 10316 PG 3771~~

**"Articles"** means the Articles of Incorporation prepared and filed for the formation of the Master Association in accordance with the requirements of applicable laws and regulations of the State of Utah.

**"Assessments"** means all of General Assessments, Supplemental Assessments and Reimbursement Assessments.

**"Board"** means the governing board of the Master Association.

**"Building"** means a structure built on any portion of the Project for permanent use, including, but not limited to, buildings, the Parking Structure, theaters, stages, amphitheaters, outside platforms and docks, canopies, plazas, enclosed atriums, malls and porches.

**"Bylaws"** means the written procedures adopted for the regulation or management of the affairs of the Master Association, as they may be amended from time to time.

**"City"** means Cottonwood Heights, a municipal corporation of the State of Utah, or the Cottonwood Heights Community Development and Renewal Agency, as applicable.

**"Common Easement Area"** means any easements, including designated easements as shown on Exhibit D within the Project owned by the Master Association for the use and benefit of the Master Association and which may in the future be formally designated on the Plat (without further approval or consent from any Owner) as areas to be owned and used in common and/or the conveyance of such areas by deed to the Master Association. Except where the context shall require otherwise, the term Common Easement Areas shall include all Common Facilities. The Park and all Park Improvements are expressly excluded from the Common Easement Area.

**"Common Expenses"** means any and all costs and expenses incurred by the Master Association in the performance and preservation of the rights, duties and obligations of the Master Association, including, by way of explanation but not by way of limitation, (i) the ownership, operation and/or maintenance of the Common Easement Areas, and Common Facilities, (ii) the costs and expenses associated with the existence of the Master Association, (iii) a reasonable contingency reserve, surplus and/or sinking fund, and (iv) a ten percent (10%) administrative fee to be paid to the Master Association.

**"Common Facilities"** means all Project signs and all improvements located upon the Common Easement Areas, if any, and including, without limitation, any directional, traffic, identification and/or Project signs used for the entire Project and not exclusively for any specific Building or Occupant. Common Facilities shall also include any and all equipment which shall be leased, owned or used by the Master Association in the ownership, operation and maintenance of the Project.

**"Condominium Association"** means and refers to THE CANYON CENTRE CONDOMINIUM ASSOCIATION incorporated as a Utah nonprofit corporation to govern the operation and maintenance of the Units, including the Parking Structure, and to implement the provisions of the Condominium Declaration.

**"Condominium Declaration"** means the Condominium Declaration for Canyon Centre recorded against Lot 2 of the Property.

**"Condominium Plat"** means the record of survey map of the portion of the Project subject to the Condominium Declaration and recorded in the records of the county recorder of Salt Lake County, Utah, and all amendments and supplements thereto.

**"Declarant"** means and refers to Canyon Centre Capital, LLC, a Utah limited liability company.

**"Declaration"** means this Master Declaration of Covenants, Conditions and Restrictions for Canyon Centre.

**"Default Rate"** means the rate of interest determined in accordance with the provisions of Section 8.14 and which is required to be paid in accordance with the provisions of this Master Declaration.

**"Design Guidelines and Standards"** means the standards and procedures which are to be adopted by the Architectural Control Committee pursuant to Section 10.4 hereof.

**"Development Agreement"** means the Development Agreement entered into between Cottonwood Heights Community Development and Renewal Agency, City and Developer with respect to the Project.

**"Director"** has the meaning set forth in Section 6.9.

**"Drainage Easement"** has the meaning set forth in Section 5.6.

**"Drainage Lines"** has the meaning set forth in Section 5.6.

**"Easement" or "Easements"** means any easement or, as the context shall require, all easements (i) granted pursuant to the provisions of this Master Declaration, (ii) set forth on the Plat, or (iii) to which the Property is subject pursuant to documents which have been or will be recorded with the Salt Lake County Recorder, State of Utah.

**"Environmental Laws"** has the meaning set forth in Section 3.11.

**"General Assessments"** means the share of the Common Expenses which are to be paid by each Owner, except the Owner of the Park, as more specifically set forth in Section 8.16 hereof.

**"Hotel Plaza"** means that portion of the Hotel Unit (as defined in the Condominium Declaration) designated as the Hotel Plaza on the Condominium Plat, which plaza shall be constructed and maintained by the Hotel Owner as determined by the Board and the Architectural Control Committee and which shall be open to the public at the times determined by the Board, subject to reasonable rules and regulations promulgated and enforced by the Hotel Owner.

**"Improvements"** means and includes all Buildings and other improvements made to or constructed upon any portion of the Property and shall include, by way of explanation and not by way of limitation, all Buildings, plazas, driveways, sidewalks, parking areas, the Parking Structure, curb, gutters, landscaping, retaining walls, signs, utilities, exterior lighting and exterior signs.

**"Interest Rate"** means that rate of interest determined in accordance with the provisions of Section 8.14 and which shall be paid in accordance with the provisions of this Master Declaration.

**"Landscaping"** means lawn, ground cover, flowers, shrubbery, trees and the like which may be complemented with earth berms, masonry or similar materials and the real property located thereunder, together with all sprinkling or other irrigation system related thereto.

**"Landscape Plan"** means the plan for the installation and maintenance of Landscaping of a Lot which has been submitted to and approved by the Architectural Control Committee.

**"Lot"** means a parcel, plot, or other division of land designed for separate ownership or occupancy and shown on the Plat, and also includes a Unit in a condominium association that is a part of the Project even though such condominium Unit is constructed on only a portion of a platted lot. Except where the context specifically otherwise requires, reference to a Lot shall include a reference to the Allocated Interest in the Common Easement Area appurtenant to such Lot.

**"Master Association"** refers to the CANYON CENTRE OWNERS ASSOCIATION, a Utah nonprofit corporation, organized to own the Common Easement Areas and Common Facilities, if any, to govern the operation and maintenance of the Project, except as maintained by the Owners hereunder, and to implement the provisions of this Master Declaration.

**"Master Plan"** means and refers to the non-binding, general plan of development for the Property, as amended from time to time, and as further described in Section 2.5.

**"Member or Members"** refers to each or all Owners, each of which is entitled to vote and otherwise participate in decisions made by the Master Association and which parties shall consist of all Owners.

**"Mortgage"** means any mortgage, deed of trust or other security instrument by which a Lot or any part of the Property is encumbered. No Mortgage executed by an Owner of a Lot shall be construed to constitute a lien or other encumbrance upon any other Lot or the Common Easement Areas or Common Facilities.

**"Mortgagee"** means any person or entity named as the mortgagee or beneficiary under a Mortgage or any successor in interest to such person or entity.

**"Occupant"** means any party, whether such party shall be an individual, corporation, limited liability company, joint venture, partnership or association which has purchased, leased, rented or otherwise acquired the right to occupy and use any Building or any portion thereof, whether or not such right is exercised.

**"Office Plaza"** means the portion of the Office Unit (as defined in the Condominium Declaration) designated as the Office Plaza on the Condominium Plat, which plaza shall be constructed and maintained by the Office Owner as determined by the Board and the Architectural Control Committee and which shall be open to the public at the times determined by the Board, subject to reasonable rules and regulations promulgated and enforced by the Office Owner.

**"Owner"** means and refers to any party, including Declarant, whether such party shall be an individual, corporation, limited liability company, joint venture, partnership or association, which holds in fee title, the rights and incidents of ownership of real property in the State of Utah as to a Lot within the Project as evidenced in the official records of Salt Lake County, State of Utah, and shall also include any sub-association created by any Lot Owner (other than the Condominium Association), but not the individual sub-lots therein. The term "Owner" does not refer to any party that holds such interest solely as security for performance of any obligation, including a Mortgage.

**"Owner's Percentage"** has the meaning set forth in Section 8.2.

**"Park"** means Lot 1 of the Project.

**"Park Improvements"** means the improvements located on the Park, including a summer theatre with a covered stage area as and if reasonably directed by City, grassy area, one Water Feature, perimeter walking trail, lighting and other features, all to be constructed and maintained by City.

**"Parking Unit"** means the Unit depicted on the Condominium Plat that is available for parking by the Owners as more particularly set forth in the Condominium Declaration or the Development Agreement.

**"Parking Structure"** means the Parking Structure to be constructed by Declarant within Units 2A, 2B, and 2C of the Project and which will be maintained by the Condominium Association.

**"Plat"** means a subdivision plat of the Property which shall be prepared, submitted and approved in accordance with applicable ordinances of the City and which shall, either prior to or subsequent to the recordation of this Master Declaration, be recorded in the official records of Salt Lake County, State of Utah, and all amendments and supplements thereto.

**"Project"** means the Property, together with the Improvements, the Common Easement Areas, the Common Facilities and the Landscaping which are now located upon or may in the future be located upon the Property and which shall collectively be commonly known as **"Canyon Centre"**.

**"Project Signs"** has the meaning set forth in Section 7.5.

**"Property"** means the real property described in Recital A, less any portion thereof that shall be deeded or otherwise dedicated to the City for public use, and all of which is subject to this Master Declaration.

**"Reference Rate"** has the meaning set forth in Section 8.14.

**"Reimbursement Assessment"** means amounts required to be repaid by an Owner pursuant to Section 8.6 hereof.

**"Required Maintenance"** has the meaning set forth in Section 3.3.

**"Reserve Analysis"** means an analysis to determine (i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common Easement Area that has a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the Master Association; and (ii) the appropriate amount of any reserve fund.

**"Restaurant or Retail Plaza"** means any portion of the Restaurant or Retail Unit (as defined in the Condominium Declaration), designated as Restaurant or Retail Plaza on the Condominium Plat, which plaza shall be constructed and maintained by the Restaurant or Retail Owner as determined by the Board and the Architectural Control Committee and which shall be open to the public at the times determined by the Board, subject to reasonable rules and regulations promulgated and enforced by the Restaurant or Retail Owner.

**"Road Improvements"** has the meaning set forth in Section 4.1.

**"Roadways"** means the roads within the Project as set forth on the Plat.

**"Rules and Regulations"** means standards for the occupancy and use of the Common Easement Areas and other portions of the Project and other matters related to the administration and management of the Project which may be adopted and amended from time to time in accordance with the provisions of this Master Declaration.

**"Sign Easements"** has the meaning set forth in Section 5.7.

"**Supplemental Assessments**" means the share of any additional assessment levied in accordance with provisions of Section 8.5 hereof which is to be paid by each Owner.

"**Taxes**" means all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or public authority against or upon the Property and/or Improvements.

"**Unit**" means each separate condominium Unit of the Project as depicted on the Condominium Plat and designated thereon as a Unit, all of which Condominium Plat is included within platted Lot 2 of the Project.

"**Utility Easement**" has the meaning set forth in Section 5.5.

"**Utility Lines**" has the meaning set forth in Section 5.5.

"**Water Features**" means any natural or artificial streams, ponds, waterfalls or the like at any time located on the Park or other Lot within the Project. The water feature located at the southeastern end of the Project and shown on Exhibit D shall not be considered a Common Facility, and if constructed, will be maintained by the Condominium Association.

## ARTICLE II SUBMISSION

2.1 **Declaration.** Declarant hereby declares that the Property and any and all Improvements that are at any time located upon any portion of the Property shall be held, sold, conveyed, transferred, designed, constructed, operated, maintained, leased, subleased, encumbered and occupied subject to the easements, covenants, conditions and restrictions set forth in this Master Declaration and which are for the purpose of establishing Common Easement Areas, Easements, covenants and restrictions which shall provide for the operation of the Project, to place certain use restrictions on the Property, which shall be binding on Declarant, its successors and assigns and all parties having or acquiring any right, title or interest in and to any and all portions of the Property, and the respective heirs, successors and assigns of such parties.

2.2 **Covenants to Run With Land.** This Master Declaration and all of the easements, covenants, conditions, restrictions and other provisions contained herein are intended to be, and shall constitute covenants which shall run with the land and which shall be binding upon and shall inure to the benefit of Declarant, each respective Owner, each Occupant and any other party which has or may acquire any interest in or to any portion of the Property. Any party that acquires an interest in any portion of the Project, or which may occupy any portion of the Project, shall be deemed to consent and agree to be bound by the Declaration and all of the easements, covenants, conditions, restrictions and other provisions herein contained.

2.3 **After Acquired Title.** In the event that as of the date of the recordation of this Master Declaration, Declarant shall not be the holder of record of legal title to any portion of the Property, then all of Declarant's right, title and interest in such portion of the Property, whether such right, title and interest shall arise by reason of a contract for deed or otherwise, shall be deemed to be equitable title, and such equitable title shall be deemed to be subject to and bound by this Master Declaration and all of the easements, covenants, conditions and restrictions and other provisions herein contained. In the event that fee simple title to any portion of the Property shall become vested in Declarant at any time after the execution, delivery and/or recordation of this Master Declaration, then any such real property shall immediately and automatically, without the necessity of the execution, delivery or recordation of any other document or instrument, become



subject to and bound by this Master Declaration and all of the easements, covenants, conditions and restrictions and other provisions herein contained.

2.4 **Dedication of Roadways.** All of the main roadways within the Project, have been dedicated as public rights of way on the Plat, and the ownership, use and maintenance thereof will be governed by the ordinances of the City and applicable law.

2.5 **Master Plan.** During the period of time required to plan, develop and construct the Project, the Master Plan may be revised, modified or amended by the Declarant in response to technological, economic, environmental, planning, social, marketing, municipal, financial, governmental or other requirements. The Master Plan may be modified by recordation of a supplement to this Master Declaration recorded for the purpose of revising the Master Plan, which supplement shall be signed by Declarant and any other then Owner whose Lot is modified by the Master Plan modification.

2.6 **Amendment of Plat.** Declarant reserves the right to cause an amended Plat to be recorded subsequent to the date of the recordation of this Master Declaration; provided, however, that any modification to the Plat must be signed by any Owner whose Lot is impacted by the Plat modification. Declarant specifically reserves the right to record such number of Plats as Declarant shall determine, in its discretion, to be necessary to adequately define the Project and all of the Lots, Common Easement Areas, Roadways, and other parts of the Project. Each amended Plat, when so approved and recorded as required by this Section 2.6 shall be deemed to be the Plat, and any such Plat shall then constitute the Plat of the Project. After an Owner becomes the owner of a Lot, no revision, amendment, restatement or supplement to the Plat may modify conditions which exist upon an Owner's Lot without the written consent of such Owner, which consent shall not be unreasonably withheld or delayed. An amendment, restatement or supplement to the Plat permitted in accordance with the provisions of this Section 2.6 shall be attached to a supplement to this Master Declaration and recorded in the office of the county recorder of Salt Lake County, State of Utah. Such supplement to this Master Declaration shall specifically state that the Plat attached thereto shall, for all purposes thereafter, constitute the Plat referred to in this Master Declaration. Any such supplement to this Master Declaration authorized pursuant to this Section 2.6 shall be signed by Declarant and need not be signed by, nor consented to by any Owner, Mortgagee, or the City.

2.7 **Condominium Declaration.** Declarant intends to record the Condominium Declaration with respect to platted Lot 2 as described in the Condominium Plat, for the purpose of addressing improvements and restrictions unique to Lot 2, including without limitation those affecting the Parking Structure.

2.8 **Enforcement.** Unless otherwise specifically set forth herein, Declarant or any Owner has the right to enforce, by any proceeding at law or in equity, all Easements, covenants, conditions, restrictions, liens, charges, rights and/or duties now or hereafter imposed by the provisions of this Master Declaration. Failure of Declarant or any Owner to enforce any Easement, covenant, condition, restriction, lien, charge, right and/or duty contained herein on any one or more occasion shall not be deemed a waiver of the right to do so on any subsequent occasion.

2.9 **Relationship of Associations.** The Master Association shall do such things as are within its powers and as may reasonably be required to maintain the Project and its development. The Members of the Master Association shall be Declarant and the Owners of the Lots or any other sub-association, if applicable, other than the Condominium Association, which shall not be a separate member of the Master Association and shall not have any voting rights separate from the rights of each Owner of a Unit. The duties and powers of the Master Association shall relate to the Property and the Project as a whole, while the duties and powers of the Condominium Association shall relate only to the land governed by the Condominium Plat as expressly set

forth therein and not otherwise governed by this Master Declaration, and the duties and powers of an sub-association shall relate only to the Lot governed by such sub-association.

### ARTICLE III ADMINISTRATION OF PROJECT

3.1 **Development of Lots.** Each Owner shall be responsible for the construction of all Improvements on its Lot that are not constructed by Declarant. No Owner shall be responsible to contribute to the cost of the initial construction of any Improvements located upon any other Lot. Further, each Owner, except the City, for so long as it is the Owner of the Park, shall be responsible to pay its proportionate share of the repair, replacement and/or reconstruction of Improvements constructed within the Common Easement Areas for which the Master Association has responsibility in accordance with the provisions of this Master Declaration.

3.2 **Construction of Improvements.** No Improvements shall be constructed upon a Lot, nor shall there be any alteration or repainting of the exterior of any existing Building or other Improvement unless and until complete plans and specifications therefore have first been submitted to and approved by the Architectural Control Committee; provided, however, that the consent of the Architectural Control Committee shall not be required for any repair or repainting of an existing Improvement if upon completion of such repair, repainting or refurbishing the Improvement shall be in compliance with plans and specifications previously approved by the Architectural Control Committee for such Improvement. Approval from the Architectural Control Committee is not required for Improvements to be constructed by Declarant on Common Easement Areas, or Roadways. No temporary structure shall be permitted on any Lot; provided, however, that trailers, temporary construction offices, sheds and other similar temporary structures shall be permitted for construction purposes during the actual construction of the Improvements. Once commenced, construction of all Improvements shall be diligently prosecuted to completion. The Owner of the Lot on which Improvements are being constructed shall at all times keep the Roadways contiguous to the Lot reasonably free from any dirt, mud, garbage, trash or other debris which might be occasioned by construction of the Improvements.

3.3 **Maintenance of Improvements.** All Improvements located upon a Lot, including the parking strip and islands within parking lots, shall be continuously maintained by its Owner at such Owner's sole cost and expense so as to preserve a well-kept appearance of a first-class commercial development, including any landscaping features constructed on such Lot, and the Condominium Association shall maintain all Condominium Common Easement Areas. Each Owner shall be required, at its sole cost and expense, to maintain its Lot in a clean, safe and orderly manner and to cause all weeds, rubbish and debris to be removed from its Lot. Except for the Water Feature within the Condominium Common Area which is a Common Facility to be maintained by the Condominium Association, each Owner shall be responsible for the exterior maintenance of any and all Buildings and any and all Improvements, including, sidewalks, parking lots and driveways, located on said Owner's Lot. The Condominium Association shall also be responsible for the maintenance of the Parking Structure, subject to receipt of the Parking Expenses (as defined in the Condominium Declaration). If the Master Association reasonably determines that the level of exterior maintenance on any Improvement located on an Owner's Lot or the maintenance landscaping or of a vacant Lot or the Parking Structure is unacceptable, the Master Association shall so notify the Owner, or Condominium Association, as applicable, in writing, and the Owner will have thirty (30) days thereafter in which to correct the deficiencies specified in such notice. If, in the Master Association's opinion, the Owner fails to correct the stated deficiencies within said thirty (30) day period, the Master Association may order the necessary work (the "Required Maintenance") performed at the Owner's expense or expense of the Condominium Association, as applicable. The cost of the Required Maintenance shall be assessed to the applicable Owner as a Reimbursement Assessment.

3.4 **Parking.** All parking and driving surfaces constructed upon a Lot must be (i) properly graded to assure adequate drainage and collection and distribution of storm water runoff, (ii) paved with concrete, asphalt or other hard surface paving material approved by the Architectural Control Committee, (iii) marked to designate approved parking areas, with appropriate parking reserved to permit access by the physically impaired, and adequately lighted and screened, all as specifically set forth in the Design Guidelines and Standards. Each Owner shall be responsible to construct and maintain all parking and driving surfaces located upon such Owner's Lot other than parking subject to the Condominium Declaration which shall be constructed and maintained as set forth therein. No parking of company vehicles or vehicles of employees, guests, visitors or business invitees shall be permitted upon the Roadways. The public parking rights in the Parking Unit shall be as set forth in the definition of "Parking Unit" in Article 1, above.

3.5 **Barriers Restricted.** The Design Guidelines and Standards may contain certain requirements for the construction of walls, berms, enclosures, screening or other Improvements which shall be designed and constructed to enhance the overall appearance of the Project.

3.6 **Landscaping.** Each Owner shall be responsible to cause Landscaping to be planted, installed and maintained upon all portions of each Lot upon which no other Improvements have been constructed, including, without limitation, those portions of a Lot which shall be subject to Easements granted pursuant to this Master Declaration. All Landscaping shall be planted, installed and maintained pursuant to a Landscaping Plan which meets the Design Guidelines and Standards, and which has been submitted to and approved by the Architectural Control Committee prior to installation of the Landscaping; provided, however, that approval from the Architectural Control Committee for Landscaping to be planted or installed by Declarant on any portion of the Project, other than a Lot improved by Declarant, is not required. No Owner shall be required to cause Landscaping to be planted or installed upon any Lot upon which no Improvements have been constructed; provided, however, that in the event that an Owner shall utilize only a portion of its Lot by the construction of limited Improvements (e.g., a parking lot), then that portion of the Lot on which Improvements are not constructed may be required to be landscaped as part of the construction of such limited Improvements as determined by the Architectural Control Committee. In any event, each Owner shall be required to keep such Owner's Lot free from rubbish, debris, fire hazards or any unsanitary, unsightly or offensive condition and to conduct such weed abatement, rubbish and debris removal and other maintenance as shall be required to cause said Lot to be maintained in compliance with standards established by the Master Association and the City.

3.6.1 **Landscaping Plan.** Once landscaping is installed, each Owner shall maintain the Landscaping on such Owner's Lot, whether planted or installed by Owner or Declarant or the predecessor of either, in accordance with the maintenance standards set forth in the approved Landscaping Plan, including the planting of replacement plants as necessary to maintain a well-kept appearance. Any changes in the Landscaping shall be approved by an amendment or revision of the existing Landscaping Plan submitted to and approved by the Architectural Control Committee.

3.6.2 **Failure to Maintain.** If the Master Association reasonably determines that the Landscaping for a Lot is not being maintained in accordance with the approved maintenance standards, the Master Association shall so notify the Owner of such Lot in writing, and the Owner will have thirty (30) days thereafter in which to correct the deficiencies specified in such notice. If, in the Master Association's opinion, the Owner fails to correct the stated deficiencies within said thirty (30) day period, the Master Association may order the necessary work performed on the Landscaping at the Owner's expense, plus a 10% administrative fee. The cost of said action shall be assessed to said Owner as a Reimbursement Assessment.

3.7 **Common Facilities.** The Master Association shall manage, administer and maintain the Common Facilities, provided, however, that nothing contained herein shall preclude the Master Association

from entering into contracts with other parties, including a management company, to perform tasks related to the management, administration and maintenance of the Common Facilities. All costs and expenses incurred in connection with such management, administration and maintenance, including specifically, but without limitation, any capital improvement which is made upon or within the Common Easement Areas (except the initial capital cost) and the cost of the acquisition of any Common Facilities, shall constitute a Common Expense. Declarant or any subsequent Owner of a Lot shall be responsible for the payment of costs and expenses incurred in the initial construction of Improvements upon the Common Easement Areas within such Lot; provided, however, that any subsequent Owner of a Lot has the right to determine what Improvements, if any, shall be constructed upon the Common Easement Areas.

3.8 **Costs of Landscaping Common Easement Areas.** Except as otherwise agreed between Declarant and an Owner, Declarant shall be responsible for (i) the planting of any and all Landscaping within the Common Easement Areas, (ii) the construction and installation of all sprinkler and irrigation systems required to maintain such Landscaping, and (iii) the payment of any and all costs and expenses incurred in such planting, construction and installation.

3.9 **Management of Landscaping in Common Easement Areas.** Each Lot Owner shall manage, administer and maintain Landscaping on such Owner's Lot, including within the Common Easement Areas and including the maintenance, repair and replacement of sprinkler or irrigation systems required to maintain such Landscaping. The Master Association shall be entitled to the actual benefit of any warranty that may be related to such planting, construction and installation. No party other than Declarant, including the City, shall be entitled to enforce the provisions of this Master Declaration related to the maintenance of the Landscaping within the Common Easement Areas as a third party beneficiary.

3.10 **Permitted Use.** All Lots shall be used exclusively for resort, residential or commercial purposes and shall include uses which are an integral part of the business of the Owner or Occupant of a Lot and which are located in Buildings constructed as required by the Design Guidelines and Standards and used in a manner consistent with Declarant's intention that the Project be developed and used as a resort, residential and business center. Subject to applicable zoning ordinances, such use shall specifically include governmental, professional or business offices, banks or financial institutions, research and development facilities, retail sales, hotels, single family or multifamily residences, restaurants and medical facilities as well as a public park, outdoor theatre and public parking. So long as Declarant shall remain a Class "B" Member, Declarant shall, in its discretion, determine if an intended use is an appropriate use within a resort, residence and business center. At such time as Declarant shall cease to be a Class "B" Member, the Board shall, in its discretion, determine if an intended use is an appropriate use within a resort, residence and business center. Appropriate uses of the Park include, without limitation, activities such as plays, concerts, festivals, open air markets, fairs, exhibitions and other public gatherings, all of which shall be under the control and direction of the City or other owner of the Park. Each Owner is permitted to impose reasonable rules and regulations concerning access by the public to the improvements constructed by such Owner on its Lot.

3.11 **Environmental Restriction.** Each Lot shall be used and occupied in compliance with all environmental laws which may now or which may in the future, be applicable to such Lot including without limitation all present and future federal, state, and local judicial decisions, orders, decrees, laws, statutes, rules, rulings, regulations, permits, certificates, codes or ordinances of any governmental authority having jurisdiction over the Property, including, without limitation, the Utah Environmental Quality Code, Title 19, Utah Code Annotated; the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 *et seq.*; the Clean Air Act, 42 U.S.C. 7401 *et seq.*; the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. 1251 *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*; the Hazardous Material Transportation Act, 49

U.S.C. 5101 *et seq.*; the Atomic Energy Act, 42 U.S.C. 2011 *et seq.*; any so-called "Superfund" or "Superlien" law; and the rules, rulings, regulations, decisions and publication promulgated pursuant to said laws, all as may be amended from time to time (collectively the "Environmental Laws"). Notwithstanding any standard set forth in the Environmental Laws, in no event shall a Lot be used for any business or other activity which will generate reportable quantities of hazardous wastes, or which will store, treat or dispose of hazardous wastes, unless the Master Association shall provide express, prior written approval of such use. The terms "generate," "store," "treat," "dispose of" and "hazardous wastes" has the same meaning as defined in RCRA or regulations promulgated thereunder. The phrase "reportable quantities of hazardous wastes" means any quantities of hazardous wastes which must be reported to the Environmental Protection Agency pursuant to 40 CRF Part 302, as amended.

3.12 **Reserve Analysis.** The Master Association shall cause a Reserve Analysis to be conducted no less frequently than every five (5) years. The Master Association shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every two (2) years. The Reserve Analysis and updates shall project a minimum of 30 years into the future. The Master Association shall maintain a reserve fund based on the Reserve Analysis for the maintenance, repair, and replacement of the Common Easement Areas as determined by the Owners annually and which will be included in the Annual Budget. All such funds shall be segregated from other operating accounts to the extent required by Utah law, and to the extent such funds are not expended, they shall be retained as additional reserves. The Reserve Analysis report shall be prepared by a person or persons with (1) experience in current building technologies, (2) a solid working knowledge of building cost estimating and life cycle costing for facilities, and (3) the tools and knowledge to prepare a report. Preferably, but subject to the discretion of the Board in determining that the qualifications have otherwise been met by one person, two people shall prepare the Reserve Analysis, an architectural consultant who will perform a property condition assessment and a reserve study professional who will utilize the property condition assessment and prepare the Reserve Analysis. The Reserve Analysis shall be presented at the annual meeting or special meeting of the Owners, and the Owners shall be given an opportunity to discuss reserves and to vote on the funding of the reserve fund. The minutes of the Master Association shall reflect such decisions. Notwithstanding anything to the contrary herein, the Declarant or the Board may unilaterally, without approval of any Owner or Mortgagee, amend this Section to comply with future changes of applicable law.

3.13 **Compliance with Law.** No portion of the Project may be occupied for any use which is in violation of applicable ordinances, laws and regulations of any governmental entity having jurisdiction over the use of all or any portion of the Project.

3.14 **Storage.** Unless specifically approved in writing by the Architectural Control Committee, no materials, supplies or equipment (except during the construction of Improvements) shall be stored in any area of any Lot except inside a Building or behind a visual barrier approved by the Architectural Control Committee.

3.15 **Nuisances.** No Owner or Occupant shall create a nuisance in the Project. No rubbish or debris of any kind shall be placed or permitted to accumulate outside a Building upon any Lot, and no odor shall be permitted to arise therefrom, so as to render any Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any Property in the vicinity thereof or to the Occupants thereof. No use or operation shall be conducted in the Project that is noxious, objectionable, unsightly or detrimental to others in any manner and due to any cause such as, but not limited to, vibration, sound, radiation, air, water, drainage or sewer pollution, dust or emission of odorous toxic or nontoxic substances.

3.16 **Signs.** No sign which is to be placed upon the exterior of any Building, including glass surfaces, or any sign located within any Building which may be viewed from the exterior of said Building shall

be installed without the prior written approval of the Architectural Control Committee. All such signs shall be in compliance with the Design Guidelines and Standards. Notwithstanding the foregoing, any sign providing general designation of the Project or any sign benefitting the Project which shall be installed by Declarant shall not be subject to review and approval by the Architectural Control Committee.

3.17 **Utilities.** All utility lines, connections and installations must be underground and rise within the Building to be serviced by such lines. Any external transformers, motors, heating and/or air conditioning equipment or other similar apparatus must be screened as to eliminate visibility from ground level at any location in the Project as shall be specifically set forth in the Design Guidelines and Standards or as shall be approved by the Architectural Control Committee.

3.18 **Subdivision of Lot.** No Lot shall be further subdivided without the prior written consent of Declarant for so long as Declarant owns any portion of the Property. Declarant shall, in the exercise of its sole discretion, be permitted to grant or withhold such approval. At such time as Declarant shall cease to be an Owner of any portion of the Property, no Lot shall be further subdivided without the prior written consent of the Board. Notwithstanding the foregoing, Declarant has the right, subject to applicable laws and ordinances but without the consent being required of any Owner or any Mortgagee, to relocate or otherwise reconfigure the boundary lines of any Lot, to eliminate Lots designated on the Plat, to create new Lots through the subdivision or reconfiguration of one or more existing Lots and to otherwise design and develop the Lots within the Project as Declarant shall determine; provided, however, that such rights shall be applicable only to Lots which shall be owned by Declarant at the time of such adjustments or to Lots owned by an Owner that has provided written consent to such change. Nothing contained herein shall be construed to grant Declarant the right to alter the boundary of any Lot not owned by Declarant without the express written consent of the Owner of such Lot. Upon any reconfiguration of a Lot, Declarant shall cause to be prepared and recorded an amendment to the Plat which shall set forth the boundaries of the reconfigured Lot. No signature of any Mortgagee or any Owner, other than Declarant, or other Owner in the event such Lot is not owned by Declarant, shall be required on any such amendment.

3.19 **Reservation by Declarant.** Declarant reserves the right to erect, construct and maintain the Common Easement Areas located at any entrance to the Project or upon any portion of the Project owned by Declarant, such signs, sales offices or other administrative office as may be reasonably necessary for the completion of the Project and the leasing, sale or disposition of the Lots.

3.20 **No Third Party Beneficiary.** This Master Declaration is being recorded for the benefit of Declarant and the Owners and no other party shall be entitled to enforce any provision hereof. No party shall be permitted to claim that such party is an intended third party beneficiary entitled to enforce rights, duties and/or obligations set forth herein.

#### ARTICLE IV ROADWAYS

4.1 **Roadways.** Declarant has constructed all Roadways and Road Improvements within the Project, all of which have been dedicated to the City. Access to the Roadways from a Lot shall be at such locations as shall be determined by Declarant in accordance with regulations and limitations imposed on the Lot by the City.

**ARTICLE V  
OTHER EASEMENTS**

5.1 **In General.** The Property and any portion of the Property which is sold as a separate Lot shall be conveyed and owned subject to and together with the Easements herein recited or as shall be set forth on the Plat, whether or not such Easements are specifically set forth in the document of conveyance. In each instance the physical location of an Easement may, in some circumstances, be located in the same place and the use thereof may be shared with other Easements similarly located and in each such instance the rights and privileges associated with each such Easement shall be interpreted separately, but the use shall be deemed to be non-exclusive with any other Easement similarly located. Easements granted pursuant to this Master Declaration shall be utilized in the manner that shall be reasonably determined to be the least disruptive to the Lot upon which such Easement is situated. No Easement may be amended, extinguished or otherwise modified in any manner by an amendment to this Master Declaration or the Plat without the express written approval of the owner of the real property which shall be benefited or intended to be benefited by the existence of such Easement. It is expressly agreed that any and all Easements granted pursuant to this Master Declaration shall survive any termination, expiration or other cessation of this Master Declaration and shall be extinguished only upon the execution and delivery of a termination executed by the party legally entitled to terminate the Easement intended to be terminated.

5.2 **Other Easements.** In addition to other Easements specifically granted in this Master Declaration, there is hereby granted to each Owner certain perpetual easements described in this article and/or which are described on the Plat, including, without limitation, a non-exclusive Easement for ingress and egress for pedestrians over all areas designated on the Plat as Common Easement Areas, or which shall in the future be designated as Common Easement Areas.

5.3 **Ingress, Egress and Parking on Common Easement Areas.** There is hereby granted to each Owner a non-exclusive Easement for ingress and egress for both pedestrian and vehicular traffic over and across, together with the right for temporary parking of motor vehicles upon, all portions of the Common Easement Areas which have been designed, constructed and designated or which shall in the future be designed, constructed and designated for such use, together with the right to temporarily park vehicles upon such portions of the Common Easement Areas which have been constructed and designated or which shall in the future be designed and constructed for such use. All parking pursuant to the Easement hereby established shall be for temporary use associated with the conduct of permitted uses within the Project and shall be in accordance with applicable Rules and Regulations.

5.4 **Use of Roadways.** Each Owner agrees that during the actual construction of Improvements on such Owner's Lot, the use of the Roadways shall be limited to wheeled vehicles of such weight and size that shall be in compliance with applicable laws and ordinances, and (ii) the use shall not interfere with the access rights of other Owners.

5.5 **Public Utility Easement.** There is hereby granted to Declarant, each Owner and to the provider of any utility service, a non-exclusive Easement (the "**Utility Easement**") to construct, install, operate, service, repair, replace and maintain any and all underground public and private utility lines of any nature, including, without limitation, culinary water, irrigation water, sanitary sewer, storm water drainage, natural gas, electricity, cable television, telephone and other forms of communication, which may now exist or which may in the future exist which may be required or desirable to service any Improvements, including specifically, but without limitation, all wiring, lines, conduits, pipes, sewers, valves, junction boxes, control boxes and drainage lines and related facilities (the "**Utility Lines**"). The Utility Easement shall be located upon those areas of the Project designated on the Plat. The Utility Easement herein granted shall include an easement over and across the surface of the Property within the boundaries of the Utility Easement as may be

necessary to service and maintain such Utility Lines. In the event any utility company, quasi-utility company, public entity, agency or district, cable company or similar entity furnishing a service covered by this Utility Easement requests a specific easement to be located within the Utility Easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement, provided that such Easement shall be in compliance with the provisions of this Section 5.5. At such time as Declarant shall cease to be the Owner of a real property over which the Utility Easement is required, the Master Association shall be deemed to have reserved the right and authority to grant such easement, provided that such easement shall conform with the provisions of this Section 5.5.

5.6 **Drainage Easement.** There is hereby granted to Declarant and each Owner a non-exclusive Easement (the "**Drainage Easement**") to construct, install, operate, service, repair, replace and maintain any and all gutters, culverts, underground lines and other facilities necessary to provide for the drainage of the Project (the "**Drainage Lines**"). The Drainage Easement shall be located upon those areas of the Project designated on the Plat. The Drainage Easement herein granted shall include an easement over and across the surface of the Property within the boundaries of the Drainage Easement as may be necessary to service and maintain such Drainage Lines.

5.7 **Sign Easements.** There is hereby granted to Declarant and the Master Association one or more easements (the "**Sign Easements**") to construct, install, service, replace and maintain the Project Signs. The Sign Easements shall be located upon the Common Easement Areas, and other areas of the Project specifically designated on the Plat. The Sign Easements herein granted shall include an easement over and across the surface of the Property from the Roadway to the location of the Project Signs as shall be reasonably necessary for the construction, installation, servicing, replacement and maintenance of the Project Signs. The Sign Easement shall be utilized in the manner that shall be reasonably determined to be the least disruptive to those portions of the Property upon which such Easement is situated. Responsibility for the maintenance of the Project Signs is specifically set forth in Section 7.5. An Owner of a Lot upon which one of the Sign Easements shall be located shall be responsible to install and maintain Landscaping upon such areas of the Sign Easement that shall not be occupied by a Project Sign, but shall not be responsible to maintain any Project Signs and related Improvements installed by Declarant or the Master Association upon said Owner's Lot.

5.8 **Encroachment Easement.** There is hereby granted to Declarant and each Owner a reciprocal appurtenant Easement of encroachment as between Lots and Common Easement Areas, as applicable, due to the placement or settling or shifting of any Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each adjacent portion of such areas, as applicable, along a line perpendicular to such boundary at such point; provided, however, in no event shall an Easement for encroachment exist if such encroachment occurred due to willful conduct on the part of the party responsible for the installation of such Improvements.

5.9 **Access to Perform Duties.** There is hereby granted unto the Master Association an Easement, together with the right to grant and transfer such Easement to others as is reasonably required to accomplish the intended purpose of such Easement, over and through all portions of the Project for the purpose of permitting the Master Association to exercise its rights and discharge its obligations and duties under this Master Declaration. Such right of access shall be specifically granted to security personnel employed by or under contract with the Master Association, all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties.

5.10 **Extension of Easement.** Each Lot, whether now existing or whether in the future existing, as defined in accordance with the provisions of this Master Declaration, has appurtenant thereto, and shall be benefited and burdened by, as applicable, the Easements herein granted. Each Owner shall be entitled to the



benefit of the Easements herein granted and shall be entitled to permit each Occupant, together with any employee and any business customer, invitee and guest of said Owner and/or Occupant, to enjoy the benefits of the Easements herein granted, but said Owner's use and enjoyment of its Lot shall be subject to and burdened by the Easements also herein granted.

5.11 **No Public Dedication.** Nothing contained in this Master Declaration shall be deemed to be a gift or dedication of any portion of the Project to or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Master Declaration will be strictly limited to and for the purposes herein expressed. Notwithstanding the grant of the Easements, each Owner may be entitled to take whatever steps it deems necessary to protect and preserve the private ownership of its Lot and to prevent same from being dedicated to the public use as a matter of law; provided, however, that such steps shall be taken in such manner and at such time as shall cause minimal disruption of the occupancy and usage of said Owner's Lot. An Easement granted herein to the City shall be deemed granted to the City, which may be used by its employees, agents, contractors and representatives in performance of their respective duties within the Project, and shall not be construed to be a grant to the public generally.

#### ARTICLE VI MASTER ASSOCIATION

6.1 **The Master Association.** The Master Association shall exist for the sole purpose of performing the functions and providing the services contemplated in this Master Declaration. The Master Association shall own the Common Easement Areas and Common Facilities and shall be responsible for administration of the Project. The Master Association shall be organized as required by the Act prior to or concurrently with the execution and recordation of this Master Declaration and Declarant shall be responsible to pay costs and expenses incurred in such organization. The Master Association shall be operated as a nonprofit corporation and shall be governed by the Board and officers authorized by the Bylaws. The Board may adopt, amend and revise from time to time, Bylaws which shall constitute written procedures for the regulation or management of the affairs of the Master Association, provided, however, that no provision of the Bylaws shall materially alter or amend the rights or obligations of the Owners set forth in this Master Declaration.

6.2 **Members of Master Association.** Each Owner shall be entitled and required to be a Member of the Master Association. An Owner shall become a Member of the Master Association immediately and automatically upon becoming an Owner and shall cease to be a Member immediately and automatically upon ceasing to be an Owner as evidenced in the official records of the County Recorder, Salt Lake County, State of Utah. The right to be a Member shall be appurtenant to the real property within the Project and shall not be transferred except upon the transfer of title to said real property and then only to the transferee of title thereto. Any transfer of title to a Lot shall operate automatically to transfer the Owner's rights as a Member of the Master Association appurtenant thereto to the new Owner thereof. Any attempted separate transfer shall be void.

6.3 **Voting Rights.** The Master Association has two (2) classes of Members.

6.3.1 **Class "A" and Class "B".** Class "A" Members shall be all Owners, with the exception of Declarant. Each Class "A" Member shall be entitled to vote on all issues to be voted upon by the Members of the Master Association. Each Member shall be entitled to the Allocated Interest in the Association and number of votes appurtenant to his or her Lot, as set forth in Section 8.2. Each Lot shall have one (1) vote. In the event the Additional Property is added to the Project, the number of votes held by each existing Class "A" Member shall decrease by recalculating pursuant to the foregoing formula.

The Class "B" Member shall be Declarant and any successor or assignee of Declarant who takes title to one or more Lots for the purpose of development and sale and to whom Declarant assigns in a recorded writing one or more of the Class "B" votes. Each Class "B" Member shall be entitled to three (3) times the number of votes that said Member would be entitled to cast were said Class "B" Member voting as a Class "A" Member as calculated in accordance with this Section 6.3.1.

The Class "B" Membership shall terminate and any Owner then holding Class "B" Membership shall be deemed to be a holder of Class "A" Membership upon the happening of the earliest to occur of the following: (i) when the total outstanding Class "A" votes in the Master Association equal the total outstanding Class "B" votes; or (ii) fifteen (15) years from the date of recording of this Master Declaration; or (iii) when Declarant so determines. From and after the happening of any one of the stated events, Declarant shall advise the Master Association in writing of the termination of Class "B" Membership within thirty (30) days of the happening of such event.

6.4 **Voting.** Each Member shall be entitled to vote on all matters brought before the Members for a vote thereon. The Master Association may deny any Member the right to vote or participate in any meeting of the Members solely because of the failure of said Member to pay Assessments levied against such Member's Lot. Unless otherwise specifically provided, a majority of the votes present, in person or by proxy, and entitled to vote on any matter before the Master Association shall be required to approve such matter. Any Owner may, by written notice to the Master Association, transfer its voting rights to its Mortgagee or to the Occupant of such Owner's Lot. Such transfer shall be effective until notice of revocation of such transfer signed by said Owner shall be received by the Master Association. No such transfer shall relieve an Owner of any obligation under this Master Declaration.

6.5 **Multiple Ownership.** If title to a Lot is held by more than one party, then all such parties shall be Members of the Master Association and entitled to participate as a Member, but the votes allocated to such Lot must be voted together so that all votes associated with a Lot shall be voted as a block; provided, however, that such Member(s) may be counted together for the sole purpose of determining whether a quorum regardless of whether such Member(s) vote as a block. No fractional votes shall be allowed. Joint or multiple Owners of a Lot shall designate in writing one party to vote on behalf of said Owners and such designated Owner, and only such designated Owner, shall cast the votes attributable to such Lot.

6.6 **Vote of Members.** The Board may cause such matters as it shall determine to be submitted to a vote of the Members either at the annual meeting of the Members or at a special meeting called for the purpose of conducting a vote of Members. In addition to such matters as the Board may submit to a vote of the Members, there shall be submitted to a vote of the Members any matters required to be voted upon by Members in accordance with the provisions of the Act, including specifically but without limitation, any amendment to the Articles.

6.7 **Meetings.** There shall be a meeting of the Members of the Master Association not less often than once each calendar year; provided, however, that a meeting of the Members may also be called by the Board or upon the written request of Members which shall be entitled to cast at least one-third (1/3) of the total votes of the Master Association. A meeting of the Members shall be held at such time and place within Salt Lake County, State of Utah, as shall be designated by the Board. In the event that the Board shall receive a written request for a meeting from at least one-third (1/3) of the total votes of the Master Association, within ten (10) days of the date of the receipt of such request, the Board shall set the date, time and location of such meeting and such meeting shall be held within thirty (30) days of the date of such request. At any meeting of Members, the Members entitled to cast, in person or by proxy, a minimum of fifty-one percent (51.0%) of the total votes of the Master Association, shall be required to constitute a quorum necessary for the conduct of business at such meeting. If the quorum required for the conduct of the business of the Master Association

shall not be present at any meeting, then the Members so present may adjourn the meeting to a date which shall be not less than ten (10) days or more than thirty (30) days from that date. Notice of such adjournment and the date to which the meeting has been adjourned shall be given to all Members. The quorum to be required at the rescheduled meeting shall be fifty percent (50.0%) of the quorum which was required at the meeting which was adjourned without the conduct of the business of the Members. In the event that the required quorum shall not be present at any meeting so rescheduled in the manner set forth, the meeting shall again be rescheduled and notice shall again be given to all Members, all in the manner set forth for the first rescheduled meeting, and the quorum required shall again be reduced to fifty percent (50.0%) of the quorum required at the most recent rescheduled meeting. Any meeting can be rescheduled as many times as may be required to eventually permit the business of the meeting to be conducted.

6.8 **Organization.** The Board shall be entitled to establish such organization and elect such officer(s) as it shall deem necessary to properly perform the functions of the Master Association; provided, however, that if no other officer or organization shall be established, the Board shall, at a minimum, upon a majority vote of the Board, appoint at least a President who shall be authorized to act for and on behalf of the Master Association and shall be authorized to enter into contracts and other agreements and to execute such other documents as may be required to permit the Master Association to perform the duties and obligations and exercise the rights and privileges of the Master Association as contained in this Master Declaration. An officer of the Master Association need not be a Member.

6.9 **No Personal Liability; Indemnification.** No Member of the Board (a "Director") or officer of the Master Association shall be personally liable to the Master Association or its Members for civil claims arising from acts or omissions made in the performance of duties as a Director or officer, unless the acts or omissions are the result of the intentional misconduct of such Director or officer. To the full extent allowed under Utah law and in accordance with the provision contained herein, the Master Association shall indemnify an individual made a party to a proceeding because such person is or was a Director or officer of the Master Association against any and all reasonable expenses, including attorney's fees and costs, in connection with such proceeding if (i) such person's conduct was in good faith, and (ii) such person reasonably believed that said person's conduct was in, or not opposed to, the Master Association's best interest, and (iii) in the case of any criminal proceeding, said person had no reasonable cause to believe such person's conduct was unlawful. The Master Association shall not indemnify a Director or officer under this provision in connection with (i) a proceeding by or in the right of the Master Association in which the Director or officer was adjudged liable to the Master Association, or (ii) any other proceeding charging that the Director or officer derived an improper personal benefit, whether or not involving action in such person's official capacity, in which proceeding said person was adjudged liable on the basis that said person derived an improper personal benefit.

## ARTICLE VII RIGHTS, DUTIES, OBLIGATIONS AND RESTRICTION

7.1 **Management of Common Easement Areas.** The Master Association, acting through the Board, has the powers and duties provided in the Articles and Bylaws and such additional powers as shall be reasonable and necessary for the Master Association to accomplish the purposes of this Master Declaration. The Master Association shall be responsible for the operation, management, regulation, maintenance, repair and replacement of the Common Easement Areas, except to the extent any such functions are assumed by another entity. The Master Association shall be responsible for the exclusive management, control, operation and maintenance of the Common Easement Areas, and shall keep the same in good, clean, attractive, safe and sanitary condition, order and repair. Where it deems necessary or desirable, the Master Association may construct, reconstruct, repair or replace any capital improvement related to or located upon the Common Easement Areas. The Master Association shall not be responsible for the maintenance of any Lot except to the extent that Common Easement Areas or Common Facilities (such as the Water Feature) are located on such

Lot. The Master Association may, by written contract, delegate in whole or in part, to such person or persons as it shall deem advisable, such of the Master Association's duties, responsibilities and functions as are properly delegable. The Master Association has the right to exercise any right or privilege given to it expressly by this Master Declaration or by law, and every other right or privilege or duty given to it herein or reasonably necessary to effectuate any such right, privilege or duty. All goods and services procured by the Master Association in performing its responsibilities shall constitute a Common Expense. Nothing contained in this Master Declaration shall be construed to obligate the Master Association to incur any expenses which cannot be reimbursed to the Master Association from the Owners by virtue of an Assessment.

7.2 **Rules and Regulations.** The Master Association may, in its discretion, make reasonable Rules and Regulations governing the use of the Common Easement Areas and Common Facilities; provided, however, that such Rules and Regulations shall be consistent with the rights and obligations established by this Master Declaration. The Master Association or any aggrieved Owner may initiate and prosecute, as permitted by law, appropriate legal proceedings against an offending Owner and/or Occupant to enforce compliance with such Rules and Regulations or to recover damages for noncompliance therewith. In the event that the Master Association or any aggrieved Owner shall initiate any such legal proceedings, if such party prevails, such party shall be entitled to recover from the offending Owner costs and expenses incurred by the Master Association in connection with such proceedings, including court costs and reasonable attorneys' fees. Each Owner shall be responsible to insure that each Occupant of any portion of said Owner's Lot(s) complies with such Rules and Regulations. Each lease or other agreement which shall provide for the occupancy of all or any part of the Lot shall require the Occupant to comply with this Master Declaration and the Rules and Regulations.

7.3 **Allocation of Taxes.** Each Owner shall be responsible to pay, prior to delinquency, any and all Taxes which shall be levied against an Owner's Lot and any Improvements located upon such Owner's Lot. Declarant shall be responsible to pay, prior to delinquency, any and all Taxes which shall be levied against any portion of the Property owned by Declarant. The Master Association shall be responsible to pay, prior to delinquency, all Taxes levied against the Common Easement Areas and Common Facilities. All Taxes levied against the Common Easement Areas and Common Facilities shall be a Common Expense and shall be paid by all Owners as part of the Common Expenses. Any Owner, Declarant or the Master Association shall be entitled to protest or appeal the amount of Taxes levied and delay payment of Taxes being protested or appealed, provided that such protest or appeal is prosecuted according to applicable law and such law shall permit delay in payment of such Taxes pending resolution of such protest or appeal. In the event that Taxes are not separately levied and collected by the applicable taxing authority between the Lots, Common Easement Areas and Common Facilities, then the Master Association shall make a reasonable allocation of the Taxes based upon the value of applicable portions of the Project.

7.4 **Special Services.** The Master Association has the power to provide services to an Owner or a group of Owners not otherwise provided in this Master Declaration. Any such service or services to an Owner or group of Owners shall be provided pursuant to an agreement in writing which shall provide (i) a detailed description of the service or services to be provided, (ii) for the payment to the Master Association by such Owner or Owners, of all costs and expenses incurred by the Master Association in providing such services, including a fair share of the overhead expenses of the Master Association, (iii) that the agreement shall be binding upon the successors and assigns of such Owner or Owners, and (iv) that amounts required to be paid, if not paid when due, shall be subject to a Reimbursement Assessment levied in accordance with the provisions of this Master Declaration.

7.5 **Project Signs.** Declarant may construct certain signs which shall be designed to identify the name, logo and other identification of the Project generally and not for the use or identification of any specific Owner or Occupant to the exclusion of others (the "Project Signs"). The Project Signs, if constructed, shall be constructed within the "Sign Easements" described in Section 5.7. The initial design of the Project Signs

may vary from location to location, shall be determined in the sole discretion of Declarant and may, but shall not be required to include in some instances the sign, supporting pole or structure and lighting. Declarant shall be responsible for payment of costs and expenses incurred in the construction and installation of any Project Signs Declarant shall elect to install. The Master Association shall be responsible to maintain any Project Signs installed and Improvements related to such Project Signs and any and all costs and expenses which shall be incurred in the operation, servicing, replacement and maintenance of the Project Signs (and such related Improvements) shall be a Common Expense.

7.6 **Restriction Against Hotel.** For so long as the Hotel to be constructed within the Condominium Unit (the "Hotel") is completed and open for occupancy on or before December 31, 2017 and is continuing to operate as a hotel, (i) no other hotel shall be constructed with in the Project, and (ii). no rooms within the Project shall be rented for short-term rentals at a rate less than 150% of the Hotel's then average daily rate. Only the owner of the Hotel Unit may enforce this restriction, and in no event shall Declarant have any responsibility for enforcement of this restriction.

7.7 **Enforcement of Rights.** The Board shall be responsible to reasonably pursue performance of duties and obligations to be performed and/or collection of payments required to be made to or for the benefit of the Master Association or the Project generally, including, by way of illustration and not by way of limitation, payment of unpaid Assessments from Owners, enforcement of warranty obligations of parties responsible for the construction and/or maintenance of Improvements constructed for the benefit of the Master Association or the Project generally and insurance claims resulting from damage to the Common Easement Areas or Common Facilities. Declarant shall cooperate in the assignment to the Master Association of any warranties associated with the construction of Improvements constructed by Declarant and Landscaping installed upon the Common Easement Areas.

7.8 **Manager.** The Master Association may by written contract delegate in whole or in part to a professional manager such of the Master Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any manager retained by the Master Association shall be a Common Expense.

7.9 **Implied Rights.** The Master Association may exercise any right or privilege given to it expressly by this Master Declaration or by law, and every other right or privilege reasonably implied from the existence of any right, privilege, or duty given to it herein or reasonably necessary to effectuate any such right, privilege, or duty.

#### ARTICLE VIII ASSESSMENTS

8.1 **Payment of Assessment.** Each Owner by acceptance of a deed to any Lot, whether or not it shall be so expressed in such deed or other conveyance shall be deemed to and does hereby covenant and agree to pay to the Master Association any and all Assessments levied against such Lot and any Unit included therein, as applicable, in accordance with the provisions of this Master Declaration. Assessments on Units may be levied on and delivered to the Condominium Association or to individual owners of Units at the discretion of the Master Association, so long as duplicate Assessments are not made. Unless later determined otherwise by the Board, all Units shall be assessed at the Unit level by the Master Association for Common Expenses of the Master Association rather than through the Condominium Association. The Assessments, together with interest thereon which shall accrue at the Interest Rate or Default Rate, as set forth herein, late charges and costs of collection thereof, including court costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot, as applicable, against which such Assessments are made from the date on which such Assessments are due. Declarant has the duty to pay any and all Assessments which shall be levied against

any Lot owned by Declarant and Assessments shall commence upon the date of the recording of this Master Declaration; provided, however, that no Assessments shall be levied for, nor shall any Common Expenses be incurred for any portion of the Project for which construction and/or installation of Improvements or Landscaping required to be completed by Declarant has not been so completed.

8.2 **Apportionment.** The amount of each General or Supplemental Assessment to be paid by an Owner shall be computed by apportioning the total of such Assessment among and to all Owners in accordance with the lineal footage of such Owner's Lot along the Roadways adjacent to such Lot. Such percentage shall be obtained by dividing the Owner's lineal footage by the total lineal footage within the total Project to arrive at the Owner's percentage interest in the Project (the "Owner's Percentage"). The total amount of the applicable Assessment will be multiplied by the Owner's Percentage to determine the amount of the applicable Assessment which such Owner shall be required to pay.

8.3 **Annual Budget.** General Assessments shall be determined on the basis of a calendar year beginning January 1, and ending December 31, next following; provided, however, that the first such year shall begin on the date that this Master Declaration is recorded and shall end December 31 of such year. On or before November 1st of each year, the Board shall prepare and furnish to each Owner or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year the "Annual Budget". The Annual Budget shall itemize for the applicable year, the estimated Common Expenses, as defined above, anticipated receipts, if any, and any estimated deficits or surpluses from the prior operating period. The Annual Budget shall serve notice of and as the supporting document for the General Assessment for the upcoming fiscal year and as a guideline under which the Project shall be operated during such annual period.

8.4 **General Assessment.** All Common Expenses shall be paid through an annual general assessment to all Owners, apportioned as set forth in Section 8.2 and Schedule 8.2. Each Owner's share of the total Common Expenses, as estimated by the Annual Budget, shall be a "General Assessment". Except as set forth on Schedule 8.2, each respective share of a General Assessment shall be based upon the Owner's Percentage of the Annual Budget. At the end of each calendar year, the Board shall determine the exact amount of the Common Expenses which have been incurred, and shall charge or credit each Owner in the next assessment period for the difference between the actual Common Expenses incurred for the prior assessment period and the estimated Common Expenses upon which said General Assessment was based. Within ninety (90) days of the close of each calendar year, each Owner shall be provided a copy of the operating statement of the Master Association for the preceding year. Said operating statement shall provide reasonable detail of the actual income and expenses of the Master Association for the applicable year. In the event actual expenses are less than indicated in the Annual Budget, excess amounts shall be retained by the Board to be applied to the expenses the following year.

8.4.1 **Notice.** The General Assessment for each calendar year shall be due and payable on January 1 of such year. Failure of the Board to give timely notice of any General Assessment by delivery of the Annual Budget, as provided herein, shall not be deemed a waiver or modification in any respect of the provisions of this Master Declaration or a release of any Owner from the obligation to pay such General Assessment or any other Assessment; provided, however, the date on which payment shall become due in such case shall be deferred to a date thirty (30) days after notice of such General Assessment has been given to the Owners in the manner provided in this Master Declaration.

8.4.2 **Payment.** Any Owner which shall not have paid its annual General Assessment in full on or before January 1 of each year shall be deemed to have elected to pay such General Assessment in equal semi-annual installments. Any General Assessment which shall not be paid on or before January 1 of the applicable year shall accrue interest at the Interest Rate on the unpaid balance thereof from the original date due until paid. The Board may, but shall not be required to send out semi-annual statements to an Owner and

each such installment shall be due and payable on the first day of each month without notice or demand. Any semi-annual installment of any General Assessments which shall not have been received by the Board on or before the fifth day of any month in which it is due shall be assessed a late charge in an amount to be determined from time to time by the Board, but which shall not be in an amount in excess of five percent (5.0%) (or the maximum rate permitted by applicable law, whichever is lower) the amount of the unpaid installment. In the event that a semi-annual installment of a General Assessment is not paid when due, then so long as the semi-annual payment or payments shall remain delinquent, the unpaid balance of such General Assessment shall accrue interest at the Default Rate. Late charges and interest on any unpaid semi-annual installments of any General Assessments may be charged according to procedures established by the Board, regardless of whether semi-annual statements are sent. The Board has the right to establish a fee for costs and expenses incurred in maintaining records of the installment payments of General Assessments, which fee shall be charged only to Owners who pay such General Assessments on an installment basis.

**8.5 Supplemental Assessments.** In addition to the General Assessment, the Board may upon the vote of the majority of the Board at a meeting called for the purpose of such vote, levy, in any year, one or more Supplemental Assessments applicable to that year only for the purpose of paying, in whole or in part, (i) the cost of any reconstruction, repair or replacement of a capital improvement upon the Common Easement Areas and Common Facilities, (ii) deficits created by non-payment of any Assessments by any Owner, (iii) extraordinary costs and expenses which may be incurred in the maintenance required to be paid by the Owners, and (iv) other costs and expenses required to be paid by the Owners in accordance with the provisions of this Master Declaration. At the time of the adoption of such Supplemental Assessment, the Board shall designate the time and the manner in which such Supplemental Assessment is to be paid by each Owner; provided, however, that the due date for payment of a Supplemental Assessment shall be at least thirty (30) days from the date that notice of the Board's approval of the Supplemental Assessment shall be given by the Board. Such Supplemental Assessment shall be apportioned to each Owner based on the Owner's Percentage. Any Supplemental Assessment which shall not be paid on or before the applicable due date shall accrue interest at the Default Rate on the unpaid balance thereof from the original date due until paid.

**8.6 Reimbursement Assessment.** The Board may, subject to the provisions hereof, levy an Assessment against any Owner if the willful or negligent failure of such Owner to comply with this Master Declaration, the Articles, the Bylaws or the Rules and Regulations has resulted in the expenditure of funds by the Master Association to cause such compliance, including without limitation attorney's fees and costs. Such Assessment shall be known as a Reimbursement Assessment and shall be levied only after written notice to the Owner. The amount of the Reimbursement Assessment shall be due and payable to the Master Association thirty (30) days after notice to the Owner of the decision of the Board that the Reimbursement Assessment is owing. Interest shall accrue on any Reimbursement Assessment at the Default Rate from the date of expenditure of funds by the Master Association until such amounts shall be repaid.

**8.7 Collection of Assessments.** The Board shall in its sole discretion, be entitled to establish such procedures for the collection of Assessments, including provisions for filing a lien against the Lot in the overdue amount as set forth in Section 8.10, late charges, interest on unpaid Assessments, and such other matters as the Master Association shall determine, and has any and all rights and remedies provided at law or in equity for the collection of debts, subject only to the requirement of notice and hearing provided in Section 8.8.

**8.8 Notice of Unpaid Assessment.** If any Assessment or any installment thereof is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the applicable Owner. Such notice shall specify (i) that the applicable Assessment or installment thereof is late, (ii) the action required to cure such default, including the specific amount required to be paid, including late charges, interest and costs of collection, if any, (iii) a date not less than thirty (30) days from the date the notice is mailed by which such

default must be cured, and (iv) that a failure to cure the default on or before the date specified in the notice may result in the acceleration of the balance of the Assessment for the current year and the filing and foreclosure of a lien for the Assessment. If the default in the payment of the Assessment is not cured as specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further notice or demand to the Owner and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or in this Master Declaration.

8.9 **Remedies to Enforce Assessments.** Each Assessment, together with accrued interest, late charges or other similar charges, levied shall be a separate, distinct and personal debt and obligation of the Owner against whom such Assessment is assessed. Suit to recover a money judgment for such personal obligation shall be maintainable by the Master Association against such Owner without foreclosing or waiving the lien securing the same. Any and all rights and remedies shall be exercised in such manner, on one or more occasions and in such order as the Board shall elect, without waiver of any other right or remedy or lien provided in this Master Declaration or by law. Any failure of the Board to exercise any such right on one or more occasions shall not constitute a waiver of the right to so exercise such right in the future. In addition to the amount of the unpaid Assessment, an Owner shall be required to pay any and all costs and expenses which may be incurred by the Master Association in collection of such Assessment, including reasonable attorneys' fees and costs, whether or not litigation is commenced.

8.10 **Lien for Assessments.** All sums assessed to an Owner of any Lot in the Project pursuant to the provisions of this Master Declaration, together with interest thereon at the Interest Rate or Default Rate, as applicable, late charges and costs of collection, shall be secured by a lien on such Lot in favor of the Master Association. To evidence a lien for sums assessed pursuant to this Master Declaration, the Board shall cause to be prepared a written notice of lien setting forth (i) the name of the Owner of the applicable Lot, (ii) the legal description of the Lot, (iii) the amount of the Assessment, (iv) the date such Assessment was due and (v) the amount remaining unpaid. Such notice of lien shall be signed and acknowledged by an officer of the Master Association, and shall be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in the payment of the Assessment and after the notice required to be given pursuant to Section 8.8. Such lien may be enforced by the sale or foreclosure of the Lot encumbered by the lien at a foreclosure sale conducted by the Board or its attorney in accordance with the provisions of Utah law applicable to the foreclosure of a mortgage or in any manner permitted by Utah law, including specifically, but without limitation, the method recognized under the laws of the State of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Annotated, as amended from time to time. In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, and such costs and expenses shall be secured by the lien herein provided whether or not the same shall be specifically set forth therein. The Owner shall also be required to pay to the Master Association any Assessments against the Lot which shall become due during the period of foreclosure or sale, and all such Assessments shall be secured by the lien herein provided. The Master Association has the right and power to bid in any foreclosure or sale and, upon purchase thereof, to hold, lease, mortgage or convey the subject Lot. In the event a proceeding for the foreclosure of the lien granted hereby shall be commenced, while such proceeding shall be in process, the Master Association shall be entitled to the appointment of a receiver to collect the rentals being derived from said Lot.

8.11 **Priority of Lien; Liability of Owner.** The priority of lien for Assessments provided for herein over a Mortgage shall be governed by the provisions of Section 9.3. No foreclosure of a lien shall extinguish the personal liability of the Owner therefor unless the Master Association shall either (i) actually purchase the Lot at the foreclosure sale conducted to foreclose such lien, or (ii) actually receive payment in full of amounts due. An Owner's personal liability for payment of Assessments shall be reduced by the amount actually paid at the foreclosure by the successful bidder that shall remain after allocation for payment of costs



and expenses incurred by reason of such sale. No other sale or transfer shall relieve such Owner from liability for any Assessments which shall be due as of the date of foreclosure.

8.12 **Certificate of Assessment.** The Board shall, upon written request, and for a reasonable charge, furnish a certificate signed by an officer of the Master Association, setting forth whether the Assessments on a specific Lot have been paid and said certificate may be conclusively relied upon by the party requesting same.

8.13 **No Avoidance.** No Owner may avoid or diminish such Owner's obligation to pay Assessments, the right of the Master Association to assert a lien against said Owner's Lot to enforce payment of same or be relieved of such Owner's personal obligation for the payment of Assessments by reason of (i) a waiver of the use or enjoyment or the actual non-use of any of the Common Easement Areas, Common Facilities or any other portion of the Project, (ii) a waiver of any services provided for in this Master Declaration, or (iii) all or any part of said Owner's Lot being unoccupied for all or any portion of the period for which such Assessments have been made.

8.14 **Accrual of Interest.** Interest shall accrue on amounts required to be paid in accordance with the provisions of this Master Declaration from the date such payment is due until the required amount is received by the Master Association. The term "**Interest Rate**" when used in this Master Declaration shall refer to a per annum rate of interest which shall be two percent (2.0%) per annum above the Reference Rate. The term "**Default Rate**" when used in this Master Declaration shall refer to a per annum rate of interest which shall be six percent (6.0%) per annum above the Reference Rate. The Interest Rate and the Default Rate shall be adjusted at the same time and in the same manner as there shall occur any change in the Reference Rate. The Reference Rate is the rate of interest established and made public from time to time by Wells Fargo Bank, N.A. and its successors and assigns, and used by such bank as its reference point for pricing loans to substantial commercial borrowers, whether such rate shall be denominated as its reference rate, prime rate or other similar or dissimilar term (the "**Reference Rate**"). The Reference Rate shall be deemed also to refer to any subsequent reference point, however denominated, that may in the future be adopted by such bank as the replacement for the Reference Rate which is currently being used by such bank as its reference point. All calculations of interest hereunder shall be made as follows: (i) the Interest Rate or the Default Rate, as applicable, shall be multiplied by the amount due, (ii) the product determined in clause (i) above shall be divided by three hundred sixty-five (365); and (iii) the quotient obtained in clause (ii) above shall be multiplied by the actual number of days in the period for which the calculation is being made.

8.15 **No Offset.** All Assessments shall be payable in the amounts specified in the levy thereof, and no offset or reduction thereof shall be permitted for any reason, including, without limitation, any claim that the Master Association, the Board or any officer, employee, agent or representative thereof is not properly exercising its duties and powers under this Master Declaration.

8.16 **No Assessments to Park Owner.** The Park beautifies the entire Project, but will generate little or no revenue for its Owner even though the Owner will incur significant expense maintaining the Park Facilities (excluding the Water Feature, which is a Common Facility). Consequently, notwithstanding anything in this Declaration to the contrary, as long as the City is the Owner of the Park, it shall not be required to pay any Assessments of any type (whether General Assessments, Supplemental Assessments, or otherwise), and during such period the provisions of this Declaration concerning Assessments against Owners are not applicable to the Owner of the Park. Such relief from Assessments favoring the City as Owner of the Park is not subject to modification or amendment without the express, prior written consent of the City for such period as it owns the Park. Notwithstanding anything in the foregoing, this Section 8.16 does not impact any assessment that may be charged to the City pursuant to the Condominium Declaration.

**ARTICLE IX  
MORTGAGE PROTECTION**

9.1 **Mortgagee Protection.** No breach of any of the covenants, conditions, restrictions, or limitations contained in this Master Declaration shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions or limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure, trustee's sale or by deed or assignment in lieu of foreclosure.

9.2 **Notice of Noncompliance to Mortgagee.** From and after the time a Mortgagee makes written request to the Master Association therefore, the Master Association shall notify such Mortgagee in writing in the event that the Owner of a Lot encumbered by the Mortgage held by such Mortgagee neglects, for a period of thirty (30) days or more, to cure any failure on the part of such Owner to perform any of his obligations under this Master Declaration.

9.3 **Priority of Assessment Lien.** The lien or claim against a Lot for unpaid Assessments levied by the Master Association pursuant to this Master Declaration shall be subordinate to a Mortgage affecting such Lot which has been recorded prior to the date such Assessment became due. A Mortgagee who comes into possession of the Lot pursuant to its Mortgage or a deed or assignment in lieu of foreclosure shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder or delivery of a deed or assignment in lieu of foreclosure, except that such Mortgagee shall be responsible for the payment of a pro rata share of such prior Assessments or charges resulting from a pro rata reallocation thereof to all Lots including the Lot in which the Mortgagee is interested.

9.4 **Financial Information.** Any Mortgagee has the right, at its request and expense and upon reasonable notice, to examine the books and records of the Master Association during reasonable business hours. From and after the time a Mortgagee makes written request to the Master Association therefore, and at the expense of such Mortgagee, the Master Association shall furnish to such Mortgagee copies of such financial reports or writings summarizing or reflecting the financial position or history of the Project as may be prepared for distribution to or use by the Owners generally.

9.5 **Amendment to Article.** No amendment to this Article IX which has the effect of diminishing the rights, protection, or security afforded to Mortgagees shall be accomplished or effective unless all of the first Mortgagees of the individual Lots have given their prior written approval to such amendments. Any amendment to this Article IX shall be accomplished by an instrument executed by the Master Association and filed for record in the office of the County Recorder of Salt Lake County, State of Utah. In any such instrument, an officer of the Master Association shall certify under penalties of perjury that the prior written approval of first Mortgagees required by this Article IX as a condition to amendment has been obtained.

9.6 **Notices to Mortgagee.** Any notice to a Mortgagee under this Article IX shall be in writing and shall be sufficient for all purposes if personally delivered or if sent by first class mail, postage prepaid, and addressed to the Mortgagee at the address for notices from time to time specified by the Mortgagee in writing to the Master Association. Any such notice shall be given in the manner specified in Section 12.1 of this Master Declaration.

**ARTICLE X  
ARCHITECTURAL CONTROL**

10.1 **Architectural Control.** No Owner, except Declarant, shall, without the prior written approval of the Architectural Control Committee, granted in accordance with the provisions of this Article X, undertake or permit others to undertake upon said Owner's Lot (i) the construction, installation, erection or expansion of any Building or other Improvement, including utility facilities, (ii) the voluntary demolition or destruction of any Building or other Improvement, (iii) the grading, excavation, filling or similar disturbance of the surface of the land, including, without limitation, changes of grade or drainage pattern, (iv) landscaping, clearing or removal of trees, shrubs or plants, (v) planting or other installation of Landscaping, or (vi) any change or alteration of any previously approved Improvement, including any change of exterior appearance, color or texture or approved Landscaping. Approval shall be requested and granted or denied in accordance with this Article and the Design Guidelines and Standards. If the Architectural Control Committee should determine, in accordance with the provisions of this Master Declaration, that a proposed Improvement or alteration of same is not consistent with the Design Guidelines and Standards, such Improvement or alteration shall not be made. Declarant and the Board has the standing and authority to enforce in accordance with rights and remedies provided in this Master Declaration and in courts of competent jurisdiction, the Design Guidelines and Standards and the decisions of the Architectural Control Committee.

10.2 **Architectural Control Committee.** There shall be established a three (3) member Architectural Control Committee to administer the provisions of this Article X. The members of the Architectural Control Committee may, but need not be Owners or Occupants of the Project. Until the earlier to occur of (i) January 1, 2030 or (ii) the date upon which Declarant shall no longer own any Lots within the Project, Declarant has the right to appoint all members of the Architectural Control Committee. Thereafter, the membership of the Architectural Control Committee shall be determined by the Board and its members shall be appointed and/or removed upon a vote of the Board.

10.3 **Purpose of Architectural Control Committee.** It is the stated purpose of the Architectural Control Committee to assure that all Buildings and other Improvements which shall be constructed or installed upon the Project shall (i) be of good quality and sound construction, (ii) harmonize with the existing surroundings and Improvements which have been or will be constructed upon the Project, (iii) be located upon the applicable Lot in such manner as to enhance the overall design of the Project, (iv) be in compliance with Design Guidelines and Standards adopted by the Architectural Control Committee, and (v) not detract from the overall quality and design of the Project. The Architectural Control Committee shall be permitted to approve such plans and specifications as it shall, in its best judgment, have determined will promote the development and maintenance of the Project as a first-class development. Compliance of proposed plans and specifications with applicable zoning requirements, building codes and other laws shall not necessarily mean that such plans and specifications shall be permitted to be developed and implemented pursuant to this Master Declaration. Approval of the plans and specifications may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Master Declaration, but also by virtue of the reasonable dissatisfaction of the Architectural Control Committee with the location of the Improvements on the Lot, the elevation, the color scheme, the finish, design, proportions, architecture, drainage plan, shape, height, style and appropriateness of the proposed Improvements or alteration to existing Improvements, the materials used therein, the Landscaping, including size, height or location of vegetation on the Lot, or because of the Architectural Control Committee's reasonable dissatisfaction with any other matters which, in the reasonable judgment of the Architectural Control Committee, will render the proposed Improvements to not be in harmony with the Project or not in keeping with the Design Guidelines and Standards.

10.4 **Design Guidelines and Standards.** The Architectural Control Committee shall adopt such Design Guidelines and Standards as it reasonably deems necessary to inform Owners of the standards which

will be applied in approving or disapproving proposed Improvements ("**Design Guidelines and Standards**"). The Design Guidelines and Standards and any requirements imposed by the Architectural Control Committee as a condition for approval of any proposed Improvements shall be in compliance with existing law, but may impose additional requirements not otherwise imposed by law. The Architectural Control Committee has the right to amend or revise the Design Guidelines and Standards from time to time as the Architectural Control Committee may determine upon a majority vote of its members; provided, however, that no amendment or revision shall require an Owner to alter or modify either (i) any existing Improvement or Landscaping constructed in accordance with the provisions of this Article X upon said Owners Lot or (ii) plans and specifications which have been approved by the Architectural Control Committee within six (6) months of the date of the adoption of such amendment or revision, pursuant to which plans and specifications construction has commenced, but may not be completed. The different, additional or revised Design Guidelines and Standards shall become effective as to all matters requiring Architectural Control Committee approval from and after the date of adoption of the revised Design Guidelines and Standards by the Architectural Control Committee. Design Guidelines and Standards may amplify, but may not be less restrictive than the regulations and restrictions contained in this Master Declaration and shall be binding upon all Owners of Lots within the Project. Review and approval by the Architectural Control Committee shall be based upon the standards set forth in this Master Declaration and in the Design Guidelines and Standards. The Architectural Control Committee shall consider not only the quality of the specific proposal, but also its effect and impact on neighboring Lots, existing Buildings and the entire Project. In no event shall any Improvement be constructed which shall not be in compliance with engineering, architectural or building codes or any other code design requirements and zoning or other applicable municipal, state or federal laws, ordinances or regulations.

10.5 **Design Review Procedures.** The Design Guidelines and Standards shall specifically state the procedures of the Architectural Control Committee with respect to the submission of plans and specifications for approval and may state such other rules, regulations, policies and recommendations which the Architectural Control Committee will consider in approving or disapproving proposed construction or alteration of Improvements; provided, however, that such procedures shall not be less restrictive than the procedures required in this Article X. An Owner shall submit three (3) copies of preliminary "plans and specifications" for any Improvements to be constructed upon its Lot, which plans and specifications shall include, site plans, maps, dimension drawings, exterior elevations, drainage plans, parking plans, exterior colors, materials and textures and other data sufficient to adequately disclose the scope and design of the proposed Improvements and a detailed Landscape Plan. Within five (5) days of its receipt of a submission from an Owner, the Architectural Control Committee shall advise such Owner in writing if the Architectural Control Committee considers the materials sufficiently complete to permit review by the Architectural Control Committee. If the Architectural Control Committee determines the submission to be insufficient, such notice shall specify the information that will be required to permit the Architectural Control Committee to begin its review.

10.5.1 **Review Period.** All such plans and specifications submitted to the Architectural Control Committee shall be approved or disapproved by the Architectural Control Committee in writing within thirty (30) business days after its receipt of a complete submission. In the event that additional information is requested by the Architectural Control Committee, the approval period will be extended accordingly. The Architectural Control Committee shall provide written notification of approval or disapproval. In the event that the plans and specifications are not approved as submitted, such written notification shall also include a reasonably detailed explanation of the reasons for such disapproval. The Architectural Control Committee has the right to approve submitted plans and specifications subject to specified conditions. Upon approval, two (2) copies of the plans and specifications and related materials shall be returned to the Owner and one (1) copy shall be retained by the Architectural Control Committee.

10.5.2 **Term of Approval.** Approval by the Architectural Control Committee shall be effective for a period of twelve (12) months from the date the approval is given, or six (6) months from the

expiration of the thirty (30) day period specified where approval is not expressly granted or denied. If construction has not commenced within the said six (6) month period, the approval shall be deemed expired and no construction shall thereafter commence without written renewal of such prior approval and such renewal shall be upon such terms as shall be imposed by the Architectural Control Committee pursuant to Design Guidelines and Standards then in effect.

10.6 **Required Vote.** The act, concurrence or determination of any two (2) or more members of the Architectural Control Committee shall constitute and shall be necessary for the Architectural Control Committee to act. Such concurrence or action of said two (2) or more members of the Architectural Control Committee may occur with or without a meeting, and at the same time or at different times. The Architectural Control Committee shall maintain such records as it shall deem necessary to record actions taken or determinations made by it.

10.7 **Variations.** The Architectural Control Committee may from time to time authorize variances from compliance with any provision of the Design Guidelines and Standards when circumstances such as topography, natural obstructions, or aesthetic, environmental or planning objectives or considerations may so warrant; provided, however, that no variance granted shall, in the reasonable opinion of the Architectural Control Committee, constitute a material violation of the standards for the Project. Each such variance must be approved by a majority of the members of the Architectural Control Committee. If such a variance is granted, no violation of this Master Declaration or the Design Guidelines and Standards shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive or to render unenforceable any of the terms and provisions of this Master Declaration for any purpose except as to the particular Lot and the provisions and circumstances covered by the variance, nor shall the granting of a variance be deemed to set a precedent with respect to any subsequent requests for variances. The Architectural Control Committee shall not delegate to any single member or group of members of the Architectural Control Committee or to any other person the power to grant variances pursuant to this Section 10.7. Any request for variance must be in writing and specify the variance requested and the reasons for such variance. A request for a variance shall be reviewed by the Architectural Control Committee within thirty (30) business days after its receipt of a written request for the same. The Architectural Control Committee shall provide written notification of approval or disapproval. Notification of disapproval shall include a reasonably detailed explanation of the reasons for such disapproval. In the event that the Architectural Control Committee shall fail to act within said thirty (30) day period, the requested variance shall be deemed disapproved, and within fifteen (15) days from said date, the Architectural Control Committee shall provide written notification of the reasons for such disapproval.

10.8 **Final Plans.** Upon approval of preliminary plans and specifications, the Owner shall proceed to prepare final construction plans and specifications, including a final Landscape Plan, which shall conform with the plans and specifications approved by the Architectural Control Committee. No later than the time the final plans and specifications are submitted to the appropriate governmental authority for the issuance of building permits, the Owner shall submit copies of the final plans and specifications and final Landscape Plan to the Architectural Control Committee. Prior to the commencement of construction, the Architectural Control Committee has the right to determine whether the final plans and specifications and Landscape Plan conform with the approval previously granted by the Architectural Control Committee. Such determination shall be made within ten (10) business days of the date final plans and specifications are delivered to the Architectural Control Committee. The Architectural Control Committee shall provide written notice of its approval or disapproval. Failure of the Architectural Control Committee to provide such notice within said ten (10) day period shall be deemed approval.

10.9 **Inspection.** The Architectural Control Committee has the right and authority to monitor construction of the Improvements to see that such Improvements are in compliance with the plans and

specifications which have been approved by the Architectural Control Committee. The Architectural Control Committee shall notify the Owner in writing of any failure to comply with the plans and specifications approved by the Architectural Control Committee. This right of inspection shall expire thirty (30) days after the Design Review Committee has received a written notice of completion of construction from the Owner.

10.10 **Notice of Noncompliance.** If the Master Association determines that any Improvements have been constructed without approval of the Architectural Control Committee or were not constructed in substantial compliance with the description and materials furnished to and any conditions of approval imposed by the Architectural Control Committee, then the Master Association or the Architectural Control Committee shall notify the Owner in writing of such noncompliance. Such notice shall specify the noncompliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance within thirty (30) days of the date of such notice, or in the event such noncompliance is not reasonably capable of being remedied within said thirty (30) days, then within such time as is reasonably necessary. In every such instance, the Owner shall commence such action as shall be required to remedy the noncompliance and shall diligently prosecute same to completion.

10.11 **Correction of Noncompliance.** If the Owner does not comply with the notice sent pursuant to Section 10.10, then the Master Association may, in its discretion, record a notice of noncompliance against the Lot on which the noncompliance exists, may remove or correct the noncomplying Improvement and, in such event, the Owner shall reimburse Declarant or the Master Association, as applicable, upon demand, for any and all expenses incurred in connection therewith. If such expenses are not reimbursed within thirty (30) days of notice thereof, the Board shall levy a Reimbursement Assessment in accordance with the provisions of Section 8.6. The Master Association has standing and authority to enforce in courts of competent jurisdiction the Design Guidelines and Standards and the decisions of the Architectural Control Committee. The right to remedy or remove any noncomplying Improvement shall be in addition to all other rights and remedies which the Master Association may have at law, in equity or under this Master Declaration, including specifically, but without limitation, the right to injunctive relief from a court of competent jurisdiction to stay construction or compel removal of a noncomplying Improvement. Should the Master Association be required to enforce the provisions hereof by legal action, the attorneys' fees and costs incurred, whether or not judicial proceedings are involved, shall be collectible from the Owner.

10.12 **No Liability.** No member of the Architectural Control Committee shall be personally liable for civil claims arising from acts or omissions made in the performance of duties as a member of the Architectural Control Committee, unless the acts or omissions are the result of the intentional misconduct of such member. Plans and specifications are not reviewed for (i) engineering, architectural, building code or any other code design requirements, (ii) compliance with zoning or other applicable municipal ordinances or regulations, or (iii) compliance with the requirements of any public utility. Neither the approval of plans and specifications by the Architectural Control Committee, nor the compliance of such plans and specifications to the Design Guidelines and Standards shall be construed to constitute any acknowledgement, warranty or representation by Declarant, the Master Association or the Architectural Control Committee as to the technical sufficiency, adequacy or safety of any Improvement or the compliance with applicable building codes, regulations or laws, including specifically, but without limitation, the Americans With Disabilities Act of 1990, as amended, and any regulations adopted pursuant thereto.

10.13 **Exclusions.** The provisions of this Article X shall not be applicable to the Common Easement Areas and any and all Improvements related thereto or constructed by Declarant; provided, however, that the provisions of this Article X, including specifically the Design Guidelines and Standards, shall be applicable to any Building and related Improvements that Declarant intends to construct upon a Lot owned by Declarant.

**ARTICLE XI  
INSURANCE AND CONDEMNATION**

11.1 **Insurance.** The Master Association shall obtain and maintain such insurance as may be required by law, including workman's compensation insurance, and has the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Board shall deem necessary or desirable. Insurance policies and insurance coverage shall be reviewed at least annually by the Board in light of the then existing and reasonably anticipated liabilities of the Master Association. All policies required shall be written by a company or companies authorized to write such insurance in the State of Utah and having a Best's Insurance Reports Rating of not less than A-XII, or in the event such publication ceases to be published, then an equivalent rating from an alternative rating service reasonably acceptable to the Master Association.

11.1.1 **Owner's Insurance.** Each Owner shall at all times maintain commercial general liability and property damage insurance providing coverage against personal injury, death and property damage occurring on such Owner's Lot in reasonable amounts and coverage that are customary for owners of first-class buildings for similar use in the metropolitan Salt Lake City, Utah area. Commercial general liability insurance shall include coverage for any Improvement that may be located upon an Owner's Lot and shall, to the extent reasonably obtainable, have limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence. Each Owner or Occupant, to the extent such Owner shall place responsibility on the Occupant to do so, shall keep its Lot and all Improvements thereon insured for the full replacement value thereof (less deductible) against property loss. Subject to the rights of any Mortgagee, all proceeds from such policy for any property loss, to the extent required, shall be used first by the Owner to repair or replace the Improvements on any Lot damaged by a covered peril.

11.1.2 **Master Association Insurance.** The Master Association shall acquire and maintain general commercial liability and property damage insurance providing coverage against personal injury, death and property damage occurring on or about the Common Easement Areas or Common Facilities, so long as such areas shall be owned by Declarant, and shall, to the extent reasonably obtainable, have limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per person and Two Million Dollars (\$2,000,000.00) per occurrence. In addition, the Master Association shall keep all Project Signs insured for the full replacement value thereof (less deductible) against property loss. Insurance for the Common Easement Areas and Common Facilities may be written in the name of, and the proceeds thereof payable to the Master Association, as trustee for each Owner. Premiums for insurance carried by the Master Association shall be a Common Expense.

11.2 **Condemnation.** In the event that all or any part of the Common Easement Areas is taken through condemnation or is conveyed to a condemning authority under threat of condemnation, the entire condemnation award or proceeds shall be used first to pay costs and expenses incurred to restore the remaining portions of the Common Easement Areas or Common Facilities that were taken to the condition that existed prior to such taking and any portion that shall remain thereafter shall be allocated to all Owners in the same proportion as used in the allocation of Common Expenses. Costs and expenses incurred in restoring such Common Easement Areas or other areas which shall be in excess of said condemnation award allocable to the Common Easement Areas shall be a Common Expense and may be included in a Supplemental Assessment made to all Owners. Subject to the rights of any Mortgagee, should the Improvements on any Lot be taken by eminent domain or be conveyed by the Owner by deed in lieu thereof, the proceeds therefrom shall be used first to restore the remaining Improvements on the Lot.

**ARTICLE XII  
MISCELLANEOUS PROVISIONS**

12.1 **Notices.** Upon acquisition of title to a Lot, each Owner shall provide written notice to the Master Association of such Owner's address for purposes of furnishing notices in connection with this Master Declaration. The Master Association shall maintain a record of the notice addresses furnished by the Owners. The address provided by an Owner shall be used for any notice required to be given under this Master Declaration and if no such address has been provided, then the address used by Salt Lake County for the mailing of real property tax statements for such Lot shall be used for such notice. All notices to be given pursuant to this Master Declaration shall be sufficient if given by personal service, by guaranteed overnight delivery service or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the prescribed address. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the date after delivery to the guaranteed overnight delivery service or two (2) days after mailing certified or registered mail. Notice of the regular annual meeting of the Members shall be sent as set forth in the Bylaws.

12.2 **Amendment.** Except where otherwise specifically provided in this Master Declaration, this Master Declaration may be amended upon the affirmative vote of a majority of the total votes of the Owners, taken together, as determined in accordance with Sections 6.3 and 6.4. Any such amendment shall recite that a vote of the Owners has been properly taken and that the amendment has been approved in accordance with the provisions hereof, shall be certified by an officer of the Master Association and shall be recorded in the office of the Salt Lake County Recorder, State of Utah. Any such amendment shall take effect upon such recordation. Each Owner makes, constitutes and appoints the Master Association the true and lawful attorney-in-fact of said Owner to act in said Owner's name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Master Declaration as may be required by law or by vote taken pursuant to the provisions of this Master Declaration. Any amendment to this Master Declaration which shall require the express consent of a specified party, shall be accomplished only by an amendment executed by both the Master Association and the party from whom such consent shall be required which shall be filed for record in the office of the County Recorder of Salt Lake County, State of Utah.

12.3 **Amendment by Declarant.** Declarant reserves and has the sole right to (i) amend this Master Declaration without the vote or consent of any Owner for the purpose of curing any inconsistency between the provisions contained herein, (ii) amend this Master Declaration without the vote or consent of any Owner in any manner which does not adversely affect the substantive rights of existing Owners or Mortgagees, and (iii) to amend this Master Declaration without the vote or consent of any Owner during the first two (2) years after the same has been recorded to comply with the request of any Mortgagee referred to in Article IX. The foregoing amendments may be made without the joinder or approval of any Owner, Mortgagee or the Master Association.

12.4 **Duration.** The covenants and restrictions of this Master Declaration shall run with and bind the Property and Project for a term of fifty (50) years from the date this Master Declaration is recorded, after which time, they shall be automatically extended for successive periods of ten (10) years, unless terminated at the end of any such period by the affirmative vote of two-thirds (2/3) of the Owners. No such termination shall terminate any Easement granted herein and all such Easements shall survive any termination of this Master Declaration and may be extinguished only in the manner provided by law for the termination of an easement.

12.5 **No Merger.** The easements, covenants and restrictions and other provisions contained in this Master Declaration shall remain in full force and effect despite the fact that any of the Lots may be owned by the same persons from time to time. It is the express intent of the Declarant to create a common scheme for the



development and operation of the Project which will not be terminated by the doctrine of merger or otherwise unless this Master Declaration is terminated in accordance with the provisions hereof.

12.6 **Assignment of Declarant's Rights and Remedies.** Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person, corporation, association or other entity which assumes such assigned duties of Declarant hereunder. In the event that Declarant attempts to assign less than all of the rights, powers and reservations of Declarant set forth herein, then any such assignment must specify which rights, powers and reservations are being assigned, and the only party that shall be permitted to exercise a right reserved or granted unto Declarant shall be the party to whom such right has been assigned. To be effective, such assignment must be in writing, must be recorded in the office of the Salt Lake County Recorder, State of Utah, and must specifically refer to the rights, powers and reservations of Declarant hereunder which are being assigned. Upon acceptance of such assignment by any such person or entity (such acceptance may be shown, among other ways, by execution of such assignment by such assignee, or by such assignee recording the assignment in the office of the Salt Lake County Recorder, State of Utah) and recording of such assignment in the office of the Salt Lake County Recorder, State of Utah, said assignee shall, to the extent of such assignment, assume, and be deemed to have assumed, Declarant's duties hereunder and have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment and recording, and to the extent thereof, the party making such assignment shall be relieved from all liabilities, obligations and duties hereunder arising from and after the date of such assignment. Anything contained elsewhere herein to the contrary notwithstanding, the mere conveyance or transfer of ownership of the Property by Declarant to any person or party, whether by deed or other instrument of conveyance, shall in no way convey any right, power or reservation of Declarant hereunder. A successor to Declarant by reason of any merger or consolidation of the then Declarant shall automatically be deemed to have assumed Declarant's duties hereunder and has the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein.

12.7 **Violation Creates Nuisance.** Any violation of any provision, covenant, condition or equitable servitude contained in this Master Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any party entitled to enforce the provisions of this Master Declaration.

12.8 **Violation of Law.** Any violation of any federal, state, municipal or local law, ordinance, rule or regulation pertaining to the ownership, occupation or use of any Property or Improvements within the Project, as the same are amended or revised from time to time, is hereby declared to be a violation of this Master Declaration and shall be subject to any and all of the enforcement procedures set forth in this Master Declaration.

12.9 **No Third Party Beneficiary.** This Master Declaration has been executed and recorded for the benefit of Declarant and the Owners. Unless otherwise set forth herein with specificity which shall include the name of the party which shall be intended to be benefited by a specific provision of this Master Declaration, no other party shall be construed to be an intended third party beneficiary of any of the rights, duties or obligations set forth herein, and no party other than Declarant or an Owner shall, therefore, have the right to enforce any provision hereof, unless such right shall be specifically set forth herein.

12.10 **Words of Conveyance.** The use of the word "grant," and any form thereof, as used in provisions of this Master Declaration to create or preserve easements, licenses or other rights and privileges described herein shall be deemed to be construed in such manner as shall be required to give effect to the easement, license, right or privilege intended to be created or preserved by such provisions and, to the extent necessary to effect such result, and any use of the word grant, or any form thereof, shall be deemed to include

such other words of conveyance (e.g. such as reserve, quitclaim, convey, transfer, etc.) as may be required to give effect to the easement, license, right or privilege intended to be created or preserved.

12.11 **Liberal Interpretation.** The provisions of this Master Declaration shall be liberally construed as a whole to effectuate the purpose of this Master Declaration.

12.12 **Gender and Number.** In this Master Declaration, unless the context requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

12.13 **Captions.** The titles, headings and captions used herein are for convenience only and are not a part of this Master Declaration and shall not be considered in construing, nor shall same be used to limit or amplify the terms and provisions hereof.

12.14 **Invalidity of Provision.** If any provision of this Master Declaration as applied to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Master Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Declaration as a whole.

12.15 **Exhibits.** All exhibits to this Master Declaration are incorporated herein by this reference.

12.16 **Governing Law and Venue.** This Master Declaration and the exhibits attached hereto shall be governed by and construed under the laws of the State of Utah, and if necessary shall be heard in the Third District Court, Matheson Courthouse.

[SIGNATURE PAGE TO FOLLOW ON NEXT PAGE]



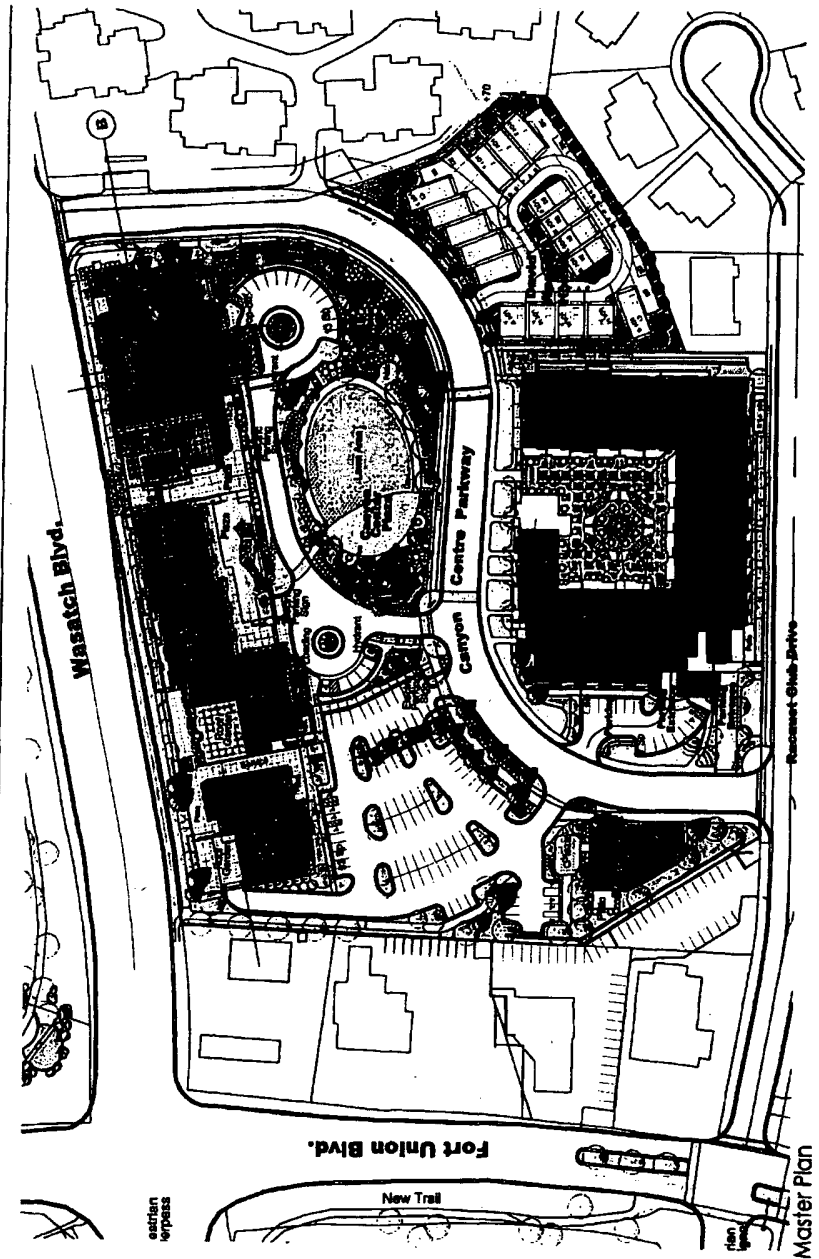
**EXHIBIT A  
TO  
MASTER DECLARATION**

**LEGAL DESCRIPTION**

All of lots 1, 2, 3, 4 & 5, of Canyon Center Amending Wasatch Gates Subdivision, according to the official plat thereof.



**Exhibit C - Master Plan**



BK 10316-PG-3000

