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E# 3009574 PG 1 OF 49  
Leann H. Kilts, WEBER COUNTY RECORDER  
15-Oct-19 0807 AM FEE \$40.00 DEP TN  
REC FOR: SMITH KNOWLES PC  
ELECTRONICALLY RECORDED

**FIRST AMENDED & RESTATED  
MASTER DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
of  
VILLAGE AT PROMINENCE POINT, A MASTER, MIXED-USE DEVELOPMENT  
In Weber County, Utah 11-405-0001 & 0002 kl**

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THIS FIRST AMENDED & RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VILLAGE AT PROMINENCE POINT, A MASTER, MIXED-USED DEVELOPMENT ("Master Declaration") is hereby adopted by Meritage Companies, LLC and Mountain Vista Trails, LLC, Utah limited liability companies, the Declarant, and made effective as of the date recorded in the Weber County Recorder's Office.

**RECITALS:**

(A) This Master Declaration affects and concerns the real property located in Weber County, Utah and more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference ("Property", "Master Community" or "Project").

(B) On or about January 22, 2015, a Plat Map depicting Master Community was recorded in the Weber County Recorder's Office as Entry No. 2718843 ("Plat").

(C) On or about November 9, 2017, a Declaration of Covenants, Conditions, and Restrictions of Village at Prominence Point ("Enabling Declaration") was recorded in the Weber County Recorder's Office as Entry No. 2889108

(D) Pursuant to Article 18.05 of the Enabling Declaration, Declarant possesses the unilateral right to amend the Enabling Declaration until December 31, 2027 with the written consent of VH Prom, LLC. This Master Declaration hereby amends, replaces and supersedes all prior declarations and amendments, rendering the prior declarations and amendments of no further force and effect.

**Certification**

By signing below, the parties identified herein, provided their written consent approving the recording of this Master Declaration. Further, pursuant to Article 17.07 of the Enabling Declaration, applicable first mortgagees have been provided notice and either provided consent or are deemed to have consented pursuant to Utah Code § 57-8a-220 to the recording of this Master Declaration. Additionally, pursuant to Article 18.05, VH Prom, LLC has provided its written consent.

(E) A Development Agreement with North Ogden City, recorded as Entry No. 2895460 in the recorder's office of Weber County, Utah, including any authorized amendments, also governs the Project and is deemed to be further covenants running with the land and binding upon any purchase of any portion of the Project.

(F) Neighborhoods & Sub-associations. Subject to modification and expansion, at the time this Master Declaration is recorded, the following distinct Neighborhoods, which will also include separate Neighborhood Sub-associations, shall exist within the Master Community:

1. Community Retail;
2. Apartment Buildings;
3. Townhomes;
4. Independent Living Center (which may or may not be organized as a condominium building); and
5. Patio Homes (an adult community, age 55 and older).

It is the purpose and intent of the provisions of this Master Declaration that the Master Association shall be charged with and be responsible for the management of the Common Areas and open space within the Project. With Master Association approval, Neighborhood Association may be tasked with certain maintenance responsibilities where necessary and prudent.

(G) Declarant desires to subject the Property to the terms of this Master Declaration. Declarant intends to develop a mixed-use development on the Property pursuant to the Community Association Act, Utah Code §§ 57-8a-101, *et. seq.* Declarant will develop and convey all of the Lots within the Project subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Master Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Project. Common Areas and Limited Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in this Master Declaration. The Project does not constitute a cooperative.

(H) Declarant have deemed it desirable, for the efficient preservation of the values and amenities of the Master Community, to create an entity which possesses the powers to maintain and administer the Common Areas and Limited Common Areas (where applicable) and otherwise administer and enforce the provisions of this Master Declaration. For such purposes, Declarant will cause to be registered with the Utah Department of Commerce the Village at Prominence Point Master Association, Inc. (the "Master Association").

(I) The Master Association is governed by the terms of this Master Declaration, the Articles of Incorporation for Village at Prominence Point Master Association, Inc. ("Articles"),

and the Bylaws for Village at Prominence Point Master Association, Inc. ("Bylaws"), which Bylaws are attached hereto as **Exhibit "B"** and shall be recorded in Weber County Recorder's Office contemporaneously with the recording of this Master Declaration. These Bylaws hereby amend, replace and supersede all prior bylaws and amendments, rendering the prior bylaws and amendments of no further force and effect. These Bylaws, along with any future amendment(s), shall be the sole Bylaws for the Master Association.

(J) Notwithstanding the foregoing, no provision of this Master Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Master Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; (4) assignment of Declarant's rights under this Master Declaration in whole or part; and (5) Declarant's rights with respect to subsequent phases or expansion of the Project.

(K) Supplemental Declarations, as may be deemed appropriate by Declarant on a phase-by-phase basis to address differences in circumstances may be recorded related to expansion of the Project.

(L) Upon the written approval of the Master Association, a Neighborhood Declaration may be recorded organizing a Neighborhood Sub-association.

(M) These Recitals are made a part of this Master Declaration.

## **COVENANTS, CONDITIONS AND RESTRICTIONS**

### **ARTICLE I** **DEFINITIONS**

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Master Declaration, shall have the following meanings:

(A) "Act" means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et. seq.*

(B) "Architectural Control Committee" or "ACC" shall mean the Architectural Control Committee created by Master Board in accordance with the Governing Documents, which shall govern the entire Master Community. The ACC may, in its sole discretion, delegate certain

responsibilities to Neighborhood Sub-associations. Declarant shall retain authority to appoint the Master Board and correspondingly the ACC until Declarant no longer owns any Lots in the Master Community.

(C) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Master Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, master assessment, neighborhood assessment, special assessment, limited assessment, individual assessment, reserve assessment, capital improvement assessment, late fee or other charge. Sub-associations may also levy assessments separately to members within the sub-association.

(D) "Articles" shall mean the Articles of Incorporation of Village at Prominence Point Master Association, Inc., as amended.

(E) "Bulk Service Contract" or "Bulk Service Provider" shall mean a service provider for items such as; internet, television, cable, satellite, telephone, data, solar power and similar utilities and services.

(F) "Bylaws" shall mean the Bylaws of Village at Prominence Point Master Association, Inc., as amended.

(G) "City" shall mean North Ogden, Utah and its appropriate departments, officials and committees.

(H) "County" shall mean Weber County, Utah and its appropriate departments, officials and committees.

(I) "Common Area(s)" shall include all areas designated as Common Area and facilities or open space as depicted in the Plat(s) or described within this Master Declaration as being owned or intended ultimately to be owned by the Master Association, together with all Improvements or structures thereon and all easements appurtenant thereto. Certain community amenities may be owned by other sub-associations or third party entities (as set forth in subsequent plats, recorded documents or governing documents). Notwithstanding, owners in the Master community may be granted corresponding rights of access along with maintenance responsibilities for community amenities.

Subsequent Neighborhood Declarations, as approved by the Master Association, may make further designations within said Neighborhood with regard to Common Areas or amenities within sub-associations, which can include parking maintenance and access within specific sub-associations, club houses and related amenities in the Apartments. For purposes of this Master Association, Common Area(s) do not include the clubhouses and related amenities, which includes athletic courts, pools, or

other amenities owned by other sub-associations. Notwithstanding, certain corresponding rights of access along with maintenance responsibilities may be provided.

(J) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Master Association, including, without limitation, costs, expenses and liabilities for: (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas, (and any Limited Common Areas that are the responsibility of the Master Association if applicable); (B) providing facilities, services and other benefits to Owners as set forth in this Master Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments; (E) operating the Master Association; and (F) creating reserves for any such costs, expenses and liability as required by this Master Declaration or the Act.

(K) "Declarant" shall mean and refer to Meritage Companies, LLC and Mountain Vista Trails, LLC, and their successors and assigns.

(L) "Development Agreement" shall mean that certain agreement approved by North Ogden City on or about November 6, 2017, which is attached hereto as **Exhibit B**.

(M) "Dwelling" shall mean any residence that is designed and intended for use and occupancy as a single-family residence, together with all Improvements located on the same Lot and used in conjunction with such residence, including but not limited to: Community Retail buildings, Apartment Buildings, Townhomes, Independent Living Center, and Patio Homes. Dwelling may also refer to an individual apartment or condominium unit.

(N) "Governing Documents" shall mean this Master Declaration, Plat(s), Bylaws, Articles, Rules, and any other documents or agreements binding upon an Owner.

(O) "Improvement" shall mean all structures and appurtenances of every type and kind, including, but not limited to: buildings, facilities, amenities, Dwellings, residences, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building or Dwelling.

(P) "Limited Common Area" shall mean all property designated on the recorded Plat Map(s), or as described in sub-association documents as Limited Common Areas, which may be owned by individual sub-association but for the exclusive use and enjoyment of one or more appurtenant Lots but fewer than all of the Lots.

(Q) "Lot" shall mean any numbered lot shown on any official and recorded Plats, including all Improvement located thereon. Lot shall may also refer to the individual Dwelling.

(R) "Manager" shall mean any entity or person engaged by the Master Board to manage the Project.

(S) "Master Declaration" shall mean the First Amended & Restated Declaration of Covenants, Conditions and Restrictions for Village at Prominence Point, a Mixed-Use Development, together with any subsequent amendments or additions through subsequent recording amendments or supplements.

(T) "Master Association" shall mean Village at Prominence Point Master Homeowners Association, Inc. and, as the context requires, the duly elected and authorized Board of Directors through its officers, directors and managers.

(U) "Master Board" or "Board" means the Board of Directors of the Master Association elected pursuant to the Bylaws and serving as the management body of the Master Association.

(V) "Member" or "Owner" shall mean and refer to the person or persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the Weber County Recorder's Office, including buyers under any contract for deed, trustees, managers, members or authorized representatives of entities, trusts and other legal organizations owning a Lot. Notwithstanding, "Owner" or "Member" shall exclude any person or entity holding title solely for purposes of securing performance of any obligations, including the trustee and/or beneficiary under a deed of trust or mortgagee under a mortgage. Membership in the Master Association is appurtenant to each Lot and an Owner shall be deemed a "Member" of the Master Association.

(W) "Neighborhood", "Neighborhood Sub-association", or "Sub-association" shall mean a separate and distinct area within the Master Community, wherein a separate sub-association is formed, with the consent of the Master Association, by the filing for a Neighborhood Declaration. At the time this Master Declaration is recorded, it is anticipated that that the following Neighborhoods will exist.

1. Commercial Retail Parcels. All commercial lots and improvements are subject to both the Master Declaration and any applicable sub-association Declaration.
2. Apartment Buildings. All Apartment Building lots and Apartment Buildings are subject to both the Master Declaration and any applicable sub-association Declaration.
3. Townhomes. All townhome lots and Townhomes shall be two-or three-story attached structures and are subject to both the Master Declaration and any applicable sub-association Declaration.
4. Independent Living Center. An independent living facility is subject to both the Master Declaration and any applicable sub-association Declaration.
5. Patio Homes. All patio home lots and Patio Homes are subject to both the Master Declaration and any applicable sub-association Declaration. This portion of the Master Community portion will be devoted to a 55 years of age and older community.

Each Neighborhood may be subject to different Assessments; varying architectural and use restrictions, varying amenities and maintenance responsibilities, and other conditions specific to each Neighborhood.

(X) "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

(Y) "Plats" or "Maps" shall mean an official and recorded plat or amended plat concerning the Project,

(Z) "Property", "Project" "Master Community" or "Subdivision" shall mean all phases of Village at Prominence Point, all Lots, Common Areas, Limited Common Areas and other property, as shown on the Plat(s) and any future Plat(s).

(AA) "Rules" shall mean any instrument adopted by the Master Board for the regulation and management of the Master Association as provided in the Governing Documents.

(BB) Semi-Private Roads shall mean and refer to the roadways within the Project. In cooperation with the City for approval of the Project, the roadways shall be treated as private with regard to their maintenance and upkeep. The Master Association shall be responsible for the maintenance and repair of roadways in the Project, subject to any responsibilities or costs delegated to a sub-association. Notwithstanding, the general public shall have access rights to utilize roadways in the Project for access to the Project consistent with City ordinance and the Governing Documents.

(CC) "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Lots or within easements as identified on the Plats that are necessary to access and utility service to the Lots, and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.

(DD) "Undeveloped Land" shall, at any point in time, mean adjacent land that is annexed into the Project. The Project is divided into several tracts, with the five Neighborhoods identified above. The tracts shall serve as temporary legal descriptions until such time as the actual platting is approved by the City. Thereafter, once a tract is platted, the Lots shall be the operative designations.

## ARTICLE II EASEMENTS & RIGHTS

2.1 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

2.2 Easement Concerning Limited Common Area. The Master Association shall have a non-exclusive easement for any utility or any required maintenance in and through the Limited Common Area. With the exception of the rights and easements granted to the Master Association, the Owner(s) of a Lot shall have the exclusive use of all Limited Common Area appurtenant to their Lot.

2.3 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

- (a) The right of the Master Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Master Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;
- (b) The right of the Master Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.
- (c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service.

2.4 Reservation of Access and Utility Easements. Declarant hereby reserve an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Master Association and those claiming by, through or under the Owners or the Master Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Master Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

- (a) Parking. Notwithstanding the existence of Semi-Private Roads within the Project, the Association may adopt and enforce parking restrictions upon the roadways and throughout the Project that are more restrictive than City ordinances upon Owners, occupants, and their guests, tenants, invitees.

2.5 Management of Roadways. The Master Association, subject to the rights and duties of Owners and sub-associations, as set forth in this Master Declaration, shall be primarily responsible for the management, control, operation, care, maintenance, repair, replacement and upkeep of the Semi-private Roads unless and until such responsibility is transferred to, and accepted by, a public agency, authority or utility in accordance with the provisions hereof. The maintenance, repairs, replacement and upkeep of the Semi-private Roads



shall include, but is not limited to, plowing of snow, requiring adequate crack sealing, seal coat, patching and overlay.

2.6 Use of Semi-private Roads. Unless the Master Association dedicates the Roadways to a public entity as permitted herein, all Semi-private Roads within the project shall be accessible to the general public as set forth herein.

2.7 Dedication of Semi-private Roads. The Master Association shall have the right to dedicate or transfer all or any part of the Semi-private Roads to any public agency, authority or utility for continued use as access, ingress and egress to and from the Lots and Common Area and subject to such conditions as may be agreed to by the Master Association and subject to the approval of the Owners as provided for herein, together with the approval of the public agency, authority or utility. Any such dedication shall be approved by the Owners by a vote of not less than two-thirds (2/3) of all Lot Owners at a meeting called for such purpose and no such dedication or conveyance shall in any way limit any Owner's right to access to the Lots or Common Area or be effective unless and until there shall be recorded in the office of the County Recorder for Weber County, State of Utah, a written instrument duly executed and acknowledged by the Owners of not less than two-thirds (2/3) of all such Lots agreeing to such dedication or conveyance.

2.8 Fire Lanes; Parking Restrictions. All Semi-private Roads within the Project shall be designated a fire lane. Parking on the Semi-private Roads and the aprons leading to covered parking is not allowed. All Common Area Parking shall be for licensed, operable vehicles only. No parking area shall be used of recreational vehicles or of trailers, mobile homes, boats, snow mobiles or campers which have been detached from trucks. No repairs to automobiles or trucks or changing oil on any vehicle, trailer or boat may be performed in any parking or common area.

2.9 Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or if any structure constructed by Declarant on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.10 Easements for Construction and Development Activities. Declarant reserve easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or

necessary for the (a) construction of Dwellings on Lots, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots, or other property in the Project, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

2.11 Easement in Favor of Master Association. The Lots, Common Area and Limited Common Area are hereby made subject to the following easements in favor of the Master Association and its directors, officers, agents, employees and independent contractors:

- (a) For inspection during reasonable hours of the Lots, Common Area and Limited Common in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair and replacement of portions of the Common Area;
- (c) For correction of emergency conditions on one or more Lots or on portions of the Common Area and Limited Common Area;
- (d) For the purpose of enabling the Master Association, the Architectural Control Committee or any other committees appointed by the Master Association to exercise and discharge during reasonable hours their respective rights, powers and duties;
- (e) For inspection during reasonable hours of the Lots, Common Area and Limited Common in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

2.12 Landscaping Easement. The Master Association shall have an easement and related access rights in order to maintain the landscaping and snow removal of the Common Areas, as set forth in this Master Declaration. The Master Association, its agents, employees, or subcontractors, shall have the right of easement over and across each Lot, but not to any portion of the interior of any Dwelling, for the purpose of maintaining the Lot in accordance with the provisions of Article III hereof, together for the purpose of maintaining, repairing or replacing, as necessary, any and all land-drain laterals that may traverse said Lots.

2.13 Income Generated from Service Providers. Declarant, as owner of the real property at the time it is annexed into the Master Community through recordation of a plat, which includes the dedication of certain utility easements to the City or County, may negotiate terms with service providers that desire to install infrastructure to provide services to owners in the Master Community. During the Declarant' Control Period, any income gained from these negotiations

with service providers by Declarant may be retained by the Declarant. Further, the Master Association and Sub-Association may enter into contracts with third party companies related to the provisions of utilities and related services for the benefit of owners in the Master Community.

2.14 Delegation of Use. Any Owner may delegate, in accordance with the Governing Documents, his or her right of enjoyment to the Common Area and any Common Facilities located thereon to the members of his or her family and his or her tenants and shall be deemed to have delegated said rights to contract purchasers who reside on said Owner's Lot.

2.15 Easement for Completion of Project. Declarant shall have a transferable easement over and on the Common Area for the purpose of completing construction of the Project and improvements therein as shown on the Plat and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing such easement. Declarant and the person causing the damage shall be liable to the Master Association for the prompt repair of such damage.

2.16 Easements Deemed Created. All conveyances of a Lot within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided for herein even though no specific reference to such easements appears in any such conveyance.

### ARTICLE III COMMON AREAS & MAINTENANCE

3.1 The Common Areas shall be and are hereby conveyed to the Master Association, a Utah non-profit corporation, subject to this Master Declaration and subject to all easements as set forth in this Master Declaration.

3.2 Common Areas Maintained by the Master Association. All Common Areas shall be maintained by the Master Association, which shall generally include (where applicable):

- (a) Asphalt repair, maintenance and replacement of Semi-private Roads within the Property;
- (b) General landscape and sprinkler maintenance, including the repair, maintenance and replacement of existing sprinkler systems and landscaping within the Common Areas and landscaping strips lining roads serving the community that are not otherwise maintained by the City or sub-association.
- (c) Repair, maintenance and replacement of perimeter fencing surrounding the Master Community that has not been modified or added to by an Owner.

- (d) The Master Association shall make reasonable and prudent efforts to contract with a third party for the removal of snow from relevant areas within the Common Area. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow will be delegated to a third party, who may utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. To the extent allowed by law, the Master Association shall not be responsible or liable for said third party's discretion and removal of snow.
- (e) Light poles that are not maintained by the City;
- (f) Community mailboxes;
- (g) Walkways and sidewalks that serve more than one Lot (not maintained by the City or County); and
- (h) Private utility lines/infrastructure that serves more than one Lot (not maintained by the City or County).

3.3 Building Maintenance. With exception of Common Area, the Master Association will not perform any building maintenance in the Master Community. Such maintenance will be the responsibly of the Owners and/or Sub-association, as further detailed in sub-association documents.

#### ARTICLE IV OWNERS' MAINTENANCE OBLIGATIONS

4.1 Duty to Maintain. It is the obligation of each Owner to maintain their Lot, Dwelling and Improvements located thereon in a clean and sanitary condition and uncluttered at all times in order to preserve and enhance the enjoyment of the Project.

4.2 Repairs by Master Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Master Declaration, the Master Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 15 days. If the Owner fails to take corrective action, the Master Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the

Master Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Master Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Master Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

4.3 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Master Board. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Master Board. Declarant shall be exempt from this provision.

4.4 Repair Following Damage. In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Master Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Master Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Master Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Master Association.

#### ARTICLE V MEMBERSHIP

5.1 Each Owner shall be a member of the Master Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner cease to have an ownership interest in the Lot. Upon the transfer of an ownership interest in a Lot the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Master Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Lot is held. Notwithstanding the foregoing, the Declarant shall also be granted voting rights as a Class "B" Member, as defined below.

**ARTICLE VI**  
**VOTING**

6.1 The Master Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Unless otherwise stated herein, Class "A" membership shall be entitled to one (1) equal vote for each Lot in which they are an Owner. In regards to the Apartment Building owners, there shall be allocated to the builder owner one (1) equal vote for each individual apartment unit within the building. Only an Owner that is current on all Assessments and/or other fees thirty days in advance of the meeting or vote shall be deemed in good standing and entitled to vote. With regard to any approval that requires a specified percentage of total membership, the total membership shall be calculated from the total number of Owners eligible to vote at the time such approval is sought. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Master Association that Person shall be entitled to cast all votes appertaining to that Lot. But if more than one of such Person(s) is present, the votes appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Lot may not be divided between Owners of such Lot or with respect to matters before the Master Association, and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

(b) Class "B". The Class "B" Member shall be Declarant. In all matters requiring a vote, the Class "B" membership shall receive one hundred (100) votes for each recorded Lot or acre of property in the Undeveloped Land owned by Declarant. For purposes of Class "B" membership, the number of votes allocated to Apartment Buildings shall be the number of individual apartments units within the building multiplied by one hundred (100). The Class "B" membership shall also be entitled to appoint the members of the Master Board and Master Association during the Class "B" Control Period.

**ARTICLE VII**  
**CONTROL PERIOD**

7.1 The Class "B" Control Period runs until ninety (90) days after the first to occur of the following:

(a) Declarant no longer owns any Lots or Undeveloped Land; or

(b) When, at its discretion, the Class B Member so determines.

7.2 Notwithstanding anything to the contrary in this Master Declaration, Declarant may exercise its discretionary termination of control in whole or in part as to any portion of the Subdivision at its sole election and determination. In doing so as to a portion of the Subdivision, it does not waive any reversionary or remaining control as to all other portions of the Subdivision, the control of which is not expressly terminated by Declarant.

### **ARTICLE VIII** **MASTER ASSOCIATION**

8.1 **Organization.** The Master Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Master Association shall be comprised of the Owners within the Project, and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Master Association is deemed an appurtenance to the Lot, and is transferable only in conjunction with the transfer of the title to the Lot. The Master Association shall serve as the organizational body for all Owners.

(a) **Neighborhood Sub-association(s).** During the Class B Control Period, the Master Association shall have the sole and absolute right to create one or more Sub-associations for purposes not inconsistent with this Master Declaration including, but not limited to, the following which shall be provided for in a Neighborhood Declaration:

- i. Acquire and improve any Lot, tract, parcel or portion of the Tract.
- ii. Promulgate rules and regulations governing Neighborhood Association Common Area owned by or under the control of the Neighborhood Association and rules and regulations governing the reasonable use of Lots.
- iii. Determine the services, in addition to those furnished by the Master Association or Neighborhood Association, which are to be furnished to or for the benefit of the Members of the Neighborhood Association.
- iv. Assess the Neighborhood Association for collection of the Master Association Assessments or Owners directly.

8.2 **Master Declaration Controls.** Sub-association governing documents shall not be inconsistent with the terms and provisions of this Master Declaration and any inconsistency shall be governed by this Master Declaration. Neighborhood Sub-associations may be formed with the

approval of the Master Board and by satisfying all necessary legal requirements including, but not limited to, the preparation, execution and recording of Sub-association governing documents.

8.3 Relationship between Association and Neighborhood Associations. It is the purpose and intent of the provisions of this Master Declaration that the Master Association shall be charged with and responsible for the management of all activities in the Project including, in addition to all other duties and responsibilities set forth herein, the following:

- (a) The approval of all rules and regulations of each Neighborhood Sub-Association and providing of assistance, where deemed appropriate by the Master Association, to a Neighborhood Association in the enforcement thereof; and
- (b) Approval of responsibilities between the association with the collection of Assessments of each Neighborhood Sub-association

Nothing herein contained shall restrict or prohibit a Neighborhood Association from owning, in its own name, Common Area or other property related thereto, the use of which shall be restricted to Members of that neighborhood Association. However, it is the intent of this Master Declaration that any such Common Area owned by a Neighborhood Association, the use and maintenance thereof and the activities of the Neighborhood Association, shall be consistent with and in furtherance of the Project objectives and the terms and provisions of this Master Declaration to assure that the whole of the Project is developed and approved as a quality residential community.

8.4 Enforcement Powers. The Master Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense; (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

- (a) The Master Association shall have the exclusive right to initiate enforcement actions in the name of the Master Association. The Master Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.
- (b) The Master Association shall have the authority to initiate and compromise claims and litigation on behalf of the Master Association resulting from the



enforcement of the Governing Documents. In the event that the Master Association initiates legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Master Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Lot(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

- (c) The Master Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

8.5 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Master Association. The Master Association has the power to levy assessments against each Lot as necessary to carry out its functions. Assessments shall be levied against all Lots in the Property, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Master Association the assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

- (a) All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Lot at the time the assessment fails due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.
- (b) Special Assessment. The Master Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.

- (c) **Individual Assessment.** The Master Association may levy individual assessments on every Lot, Owner or occupant that shall cause any damage to the Project or otherwise causes the Master Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Lot(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.
- (d) **Neighborhood Assessments.** Neighborhood Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Neighborhood Sub-associations. The Neighborhood Association has the power to levy assessments against each Lot as necessary to carry out its functions, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable. If the Neighborhood Sub-Association fails to levy and collect neighborhood assessments, the Master Association may elect to carry out those functions. Further, the Master Association may levy a Neighborhood Assessment to Owners in a specific Neighborhood for costs, special services or amenities available for Owners within that Neighborhood that are provided by the Master Association.
- (e) **Reserve Fund.** The Master Association may levy a reserve fund assessment, as set forth in this article.
- (f) The Master Association may levy other assessments or fees, as authorized by the Governing Documents.

8.6 **Budget.** The Master Board is authorized and required to adopt a budget annually, which shall be presented to the Owners at a meeting of members.

- (a) The Master Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget.
- (b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

8.7 Reserve Fund Analysis. Following the Class B Period, the Master Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Master Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Master Board, to conduct the reserve analysis.

8.8 Reserve Fund Account Creation. The Master Association shall create a reserve fund account that is separate and distinct from the Master Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Master Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Master Board's discretion, to fund the reserve account.

8.9 Reinvestment Fee. The Master Association, which is intended as a large master planned development, shall have power to levy a one-time reinvestment fee when a change in ownership of a Lot occurs in the amount set by the Master Board. (As of the date of the recording of this Master Declaration, which is subject to change, the current amount is \$350). The Declarant Related Entities shall not be subject to the Reinvestment Fee. The Master Association may utilize its discretion in setting the amount and any potential allocation to a sub-association.

8.10 Date of Commencement of Assessments. Assessments provided for herein shall commence as to each Lot on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Master Board may provide. Notwithstanding, Assessments for those Lots owned by Declarant or their assigns, successors, subsidiaries, related construction entities, or other entities established by Declarant, or Declarant' members, for the purpose of constructing Dwellings on the Lot (collectively "Declarant' Related Entities") shall not commence until the completed Dwelling is conveyed to an Owner that is not the Declarant or a Declarant' Related Entity. No amendment of this Master Declaration changing the allocation assessments with regard to Declarant or Declarant Related Entities shall be valid without the consent of the Declarant.

8.11 Fines. Following notice as required by the Act, the Master Association shall have the power to assess a fine against an Owner (or their Lot) for a violation of the terms and conditions of the Governing Documents in an amount set by the Master Board.

8.12 Hearing Process. The Master Board shall have authority to create a reasonable hearing process, consistent with the Act, applicable when the Master Association takes an adverse action related to any particular Owner(s).

8.13 Master Association Rules. The Master Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing: (a) the use of the Common Areas; (b) the use of any facilities owned by the Master Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; (e) collection policies and procedures; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Master Board. The Rules may supplement, clarify and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents.

- (a) During the Class B Period, Declarant shall be exempt from the rule making procedure required by Utah Code § 57-8a- 217.

8.14 Statement of Account & Payoff Information. Upon a written request from an Owner that the Master Association provide the Owner with a statement of his/her account, the Master Association may charge a fee, not to exceed \$10.00, for providing such statements. In addition, when a request is made to the Master Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Lot Owner's sale of his/her Lot, the Master Association may charge a fee not to exceed \$50.00.

8.15 Availability of Documents. The Master Association shall make appropriate documents available to Owners (and their lenders, insurers and/or authorized agents) consistent with the Act and the Utah Revised Non-Profit Act. The Master Board may adopt a record retention policy to govern its record retention procedures.

8.16 Indemnity of Master Association Board and Officers. The Master Association will indemnify the officers, agents and Master Board of the Master Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under the Governing Documents.

8.17 Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Articles of Incorporation and Bylaws of the Master Association.

8.18 Number of Board, Term of Office. The appointment, election and term of the Members of the Master Board are set forth in the Bylaws and Articles. Members of the Master Board may serve consecutive terms, and may also serve as officers of the Master Association.

8.19 Independent Accountant/Bookkeeper. The Master Association may retain the services of an independent accountant or bookkeeper to assist the Master Board and officers to maintain accurate financial records of the Master Association.

**ARTICLE IX**  
**NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE**

9.1 **Delinquent Assessment.** Any Assessment not timely paid shall be delinquent, and the Master Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

9.2 **Due Date, Charges & Interest.** Unless otherwise established by the Master Association, monthly assessments shall be due and payable on the first of each month and late if not received by the 10<sup>th</sup> of each month. The Master Board may charge a late fee in an amount set by the Master Board, but not to exceed \$50. In addition to late fees, interest shall accrue on all unpaid balances, including prior, unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Master Board may also impose other reasonable charges imposed by a Manager related to collections.

9.3 **Lien.** Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Master Association.

9.4 **Foreclosure.** The Master Association shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Master Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Lot not been acquired by the Master Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

9.5 **Other Remedies.** All rights and remedies of the Master Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Master Association. The Master Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally.

9.6 **Payment by Tenant.** The Master Association shall be entitled to demand and collect

from a tenant of any Lot, the amount of any assessment that is more than sixty (60) days past due.

9.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Master Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

9.8 Appointment of Trustee. The Declarant hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Burt R. Willie, Esq., a licensed member of the Utah State Bar, with power of sale, the Lot and all Improvements to the lot for the purpose of securing payment of assessments under the terms of this Master Declaration.

**ARTICLE X**  
**SUBORDINATION OF LIEN TO INSTITUTIONAL**  
**FIRST AND SECOND MORTGAGES**

10.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Master Association. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a prior, recorded institutional first or second mortgage shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer; provided, that to the extent there are any proceeds of the sale on foreclosure of such mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such mortgage, the lien shall apply to such excess. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee holding an institutional first or second mortgage of record or other purchaser of a Lot obtains title pursuant to remedies under the mortgage, its successors and assigns shall not be liable for the share of the assessments by the Master Association chargeable to such Lot that became due prior to the acquisition of title to such Lot by such acquirer. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

**ARTICLE XI**  
**ARCHITECTURAL CONTROL COMMITTEE**

11.1 Architectural Control Committee ("ACC"). An Architectural Control Committee may be appointed by the Declarant to oversee any construction, re-construction, remodeling or

altering of exterior Improvements. If no ACC is appointed, the Master Board will assume the duties and responsibilities of the ACC. The Master Association may coordinate and adopt a process with the Neighborhood Associations with regarding to any necessary coordination and approval of Improvements within the Neighborhood Associations. Declarant shall remain empowered to appoint the ACC until it turns over such authority in writing to the Master Association.

11.2 Approval by Master Board or ACC Required. No exterior Improvement of any kind will be constructed or commenced on any Lot(s) within the Master Community without the prior, written approval of the ACC, which plans must be harmonious with existing Improvements and the existing character within the Subdivision. The overall architectural style and detailing of each Improvement (including each Dwelling) and the associated landscaping and site use is subject to ACC review and approval.

Approval of the ACC will be sought in the following manner:

- (a) Plans Submitted. A written rendering, prepared by a licensed architect or engineer when requested by the ACC, of the proposed remodeling or construction must be submitted. The Plans shall also include: (1) a description of how debris will be removed; (2) name, address and phone number of contractor(s) performing the work; (3) when construction or remodeling will begin and conclude; and (4) proposal to mitigate any nuisance to other Owner(s).
- (b) Review. Within 30 days from receipt of the submitted plans, the ACC will review the plans and respond in writing to the Owner determining whether or not the plans comply with the conditions imposed by the Master Declaration and are consistent with and in architectural harmony with other Improvements within the Project. The ACC may: (1) approve the plans; (2) reject the plans; (3) request additional information; or (4) require that certain conditions be met.
- (c) Failure to Act. If the ACC fails to respond, the Owner may complete the construction in accordance with the submitted plans. Notwithstanding the Improvement(s) shall not violate the terms and condition of the Master Declaration and shall be in architectural harmony and consistent with the other Improvements in the Project.

11.3 Variances. The ACC cannot grant any variance that has the effect of modifying applicable zoning or building code regulations or directly violates the Governing Documents. The burden of obtaining a variance is entirely on the applicant.

11.4 Declarant, Master Board and ACC Not Liable. The Declarant, Master Board, ACC and its members shall not be liable to the applicant for any damages, or to the Owners of any Lots within the Project for their actions, inactions, or approval or disapproval of any set of plans submitted for review. The Owners' shall have no claim against the Declarant, Master Board or ACC as a result of the performance or failure to perform the duties created by this Master Declaration. Each Owner has an equal duty and right to enforce these covenants against every other Owner, and may seek independent redress if it believes the Declarant, Master Board or ACC has acted improperly.

11.5 Limitations on Review. The ACC's review is limited to those matters expressly granted in this Master Declaration. The ACC shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the ACC prior to construction.

11.6 Architectural Review Fee. The ACC may charge a fee to an Owner submitting a plan for review not to exceed the actual costs to review the plans.

## ARTICLE XII ARCHITECTURAL RESTRICTIONS

12.1 Development Agreement. All Improvements shall satisfy those architectural restrictions set forth in the Development Agreement.

12.2 Design Guidelines. The Declarant and/or ACC may adopt Design Guidelines where desired to add additional detail and restrictions to those set forth in the Development Agreement.

12.3 Neighborhood Sub-Association. Sub-association governing documents may establish further architectural and design requirements and restriction, as approved by the ACC, applicable to Improvements and Dwellings within a Sub-association.

## ARTICLE XIII USE LIMITATIONS & RESTRICTIONS

13.1 Neighborhood Sub-Association. Sub-association governing documents may establish further use restrictions, as approved by the Master ACC, applicable to Sub-associations.

13.2 Residential Uses. All Tracts/Lots are intended to be used for residential housing and are restricted to such use. No Dwelling shall be used for business or commercial activities



unless provided in this Declaration. Nothing herein shall be deemed to prevent (i) Declarant, the Association, or its duly-authorized agents from using any units owned by the Declarant or the Association as sales models; or (ii) any Owner or his or her duly-authorized agent from renting or leasing his or her Dwelling from time to time. No tent, shack, garage, accessory building or out-building shall be used as a temporary or permanent residence.

13.3 No Noxious or Offensive Activity. No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may be a nuisance or may cause embarrassment, disturbance, or annoyance to Occupant(s) of other Units or Lots, including but not limited to unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

13.4 Vehicles & Parking. Trailers, motorhomes, 5th wheels, campers and any other type of recreational vehicles shall not be repaired or stored on the Property. Temporary parking which is reasonably necessary for the loading and unloading of any such recreational vehicle shall be allowed. The Master Association may promulgate further rules and policies with regard to vehicles and parking including, but not limited to: time and location restrictions, fines, towing, enforcement, visitor parking, street parking, type of vehicles, rules and prohibitions with regard to oversized, commercial, recreational, trailers, RVs, boats and other types of vehicles. All garage doors shall be kept closed except when open for a temporary purpose.

13.5 External Improvements. No dog runs, walls, decks, or gazebos shall be allowed without prior approval of the ACC.

13.6 Nuisances. No clothes lines shall be stored on any Lot or Common Area. No unlicensed vehicle is to be parked within the Project, including on Lots or Common Areas. No rubbish or debris of any kind shall be placed or permitted by an Owner upon any Lot, Common Area, or Limited Common Area, so as to render such Lot, Common Area or Limited Common Area, or a portion thereof, unsanitary, unsightly, offensive or detrimental to other Owners. No Owner shall use a Dwelling, Lot, or any part of the Project in such manner so as to obstruct or interfere with the enjoyment of other Owners.

13.7 Restrictions on Animals. No animals other than common household pets, up to a maximum of two (2), shall be allowed for each Dwelling, provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's control. "Control" for the above purposes shall only mean on a leash or lead, within a vehicle, or within the Dwelling of the Owner. Pet owners shall promptly remove and dispose of all excrement emitted by their pets. Fierce, dangerous or vicious animals or animals that cause a nuisance by barking or other offensive activity shall not be permitted. Failure to abide by these conditions shall result in fines and further

legal action, as authorized by the Board. All restrictions and rules as set forth by the City with respect to animals are hereby incorporated by this reference. The Association may also defer to the City or County for enforcement of violations of animals rules where appropriate. Any complaint with regards to a pet or animal in the Subdivision shall first be made to the County Animal Control Department prior to contacting the Master Board or Manager.

The Association may adopt further rules and policies for management of pets in the Project, including procedures for approval of service/assistance animals. Further, sub-association may adopt further restrictions and policies with regard to pets applicable to their sub-association.

13.8 Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any Dwelling, upon any Lot, or upon the Common Area, or upon any part of the Project which would be in violation of any statute, ordinance, regulation, rule, permit, or other validity-imposed requirement of any governmental authority, nor result in the cancellation of any insurance policy. No damage to, or waste of, the Common Area or Common Facilities or any part thereof shall be committed by any Owners or guest or invitee of any Owner, and each such Owner shall indemnify and hold harmless the Association and the other Owners against all loss resulting from any such damage or waste caused by such Owner, his or her family, guests, tenants, licensees, or invitees.

13.9 Rules and Regulations. Each Owner and any person or persons occupying a Lot or using any facility within the Project shall comply with each and every provision of the Rules and Regulations governing use of the Project as such Rules and Regulations may from time to time be adopted, amended, or revised by the Association.

13.10 Construction Exemption. During the construction of any permitted structures or improvements, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that, during the course of such construction, nothing shall be done which will result in a violation of said provisions, covenants, conditions, or restrictions upon completion of the construction.

13.11 Garbage, Refuse and Debris. All trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. All containers for the storage or disposal of such material shall be kept in a clean and sanitary condition, and shall be stored in the garages of each Owner. Such containers may be placed for collection not more than twelve (12) hours prior to the scheduled collection date and shall be removed from the view of the general public and stored in a reasonably prompt manner after collection. No lawn, shrub, or tree clippings or trimmings may be stored or accumulated on the any Lot or Unit except as allowed above.

13.12 Satellite Dishes. For Townhomes and Patio Homes, no more than one satellite dish

may be installed per building. Notwithstanding, the use of fiber, cable and other less visible options are preferred. The location of any satellite dishes in the Project, including any related cables or infrastructure must receive the prior, written approval from the ACC.

13.13 Antenna. No antenna may be placed on the exterior of any Dwelling. Any antenna must be contained within the attic space of the Dwelling to which is attached.

13.14 Patios and Balconies. Patios and balconies are to be kept neat and orderly at all times. Residents shall not hang bathing suits, brooms, mops, rugs, lights, etc. on the patio or balcony. The installation of sunshades, blinds, or hanging fabrics is not allowed. Storage of any personal property or trash containers is not allowed. All plants must be free standing and have saucers underneath them. Hanging plants are not permitted. No bikes and/or motorcycles are allowed to be kept on any patio or balcony at any time. Only furniture designed for outdoor use is permitted.

13.15 Holiday Lighting. Holiday Lighting and any other seasonal exterior décor to be temporarily attached to a Dwelling shall only be allowed on the Patio Homes and Townhomes. Holiday Lighting may only be displayed between October 1st and January 30th.

13.16 Window Coverings. Residents shall not use blankets, sheets, foils, or non-standard window coverings in place of draperies or blinds. Residents shall not place objects on window or window seals which are visible from the outside. No flashing or neon lights shall be placed in/on premises.

13.17 Barbeques. The use or storage of any charcoal burner, liquid petroleum, gas fueled or any other cooking devices ("Barbeque Devices") are prohibited in any Dwelling or on any balcony. With respect to Patio Homes, Barbeque Devices may be stored in garage or rear patios, and must be used outdoors within Lot boundaries. With respect to Townhomes, Barbeque Devices must be stored in garages, and used on the back patio of such Townhome.

13.18 Commercial Use Prohibited. No commercial trade or business, WITHIN THE RESIDENTIAL AREAS, may be conducted in or from any Lot unless: 1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; 2) the business activity conforms to all zoning requirements for the Property, and the necessary and required permits and licenses are obtained; 3) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and 4) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Master Board. However, the Master Board may approve and permit certain care related services to be provided on the Property for the Independent Living

Center, and those services may (1) include third party providers to provide regular care services on site to residents of the Independent Living Center, and (2) require third party employees to operate or frequently visit the Independent Living Center and/or occupy or use certain common areas within the Independent Living Center, as approved by the Master Board. The terms "trade or business" shall have their ordinary and generally accepted meanings, which shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or a license is required therefore. As used herein, "commercial or business" activity shall not include the rental or leasing by an Owner of a Lot and the Improvements thereon for residential purposes. This Section specifically prohibits the use of a Lot for the commercial repair or sale of any vehicle, equipment, boat or other fuel operated equipment.

13.19 External Energy Devices. No energy producing devices including, but not limited to, solar panels and generators of any kind, shall be constructed, installed or maintained on the Property. However, with approval of the ACC, solar panel systems may be installed on the Independent Living Center and/or the Apartment Buildings.

13.20 Signs and Advertising. Except as otherwise permitted herein for the Community Retail Sub Association, Independent Living Center, and Apartment Buildings, no commercial billboard or advertising shall be displayed to the public view on or from any dwelling Unit or Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, vacancy sign or "For Sale/ sign, thereon, with the sign and hanging apparatus not exceeding a total of 9 square feet. Signs advertising the name of the builder and the name of the institution providing financing may be displayed on a Lot during construction of the improvements; said sign and hanging apparatus may not exceed 16 square feet. Residential owners or occupants may not use or install lighted, moving or flashing signs for any purposes on the Property. The ACC may approve the use of monument signs which may be lit with ground or internal lighting, to be employed by the Master Association or sub-associations to identify the Project and sub-association properties. Directional signs may be used to give directions to traffic or pedestrians or give special instructions provided the same is approved by the ACC prior to installation. The Apartment Buildings, Community Retail, and Independent Living Center sub-association boards may use or employ signs and advertising for the purpose of marketing the sub-association properties generally, including but not limited to the ongoing use of banners, A-Frames, and marketing flags, to be used exclusively for the those sub-associations during construction and on an ongoing basis. The ACC shall create and enforce rules related to general marketing used by the Apartment Buildings, Community Retail, and Independent Living Center sub-association boards.

13.21 Other. Without limiting the generality of any of the foregoing provisions: (a) Unless otherwise approved by the ACC, no horns, whistles, bells or other sound devices, except

security devices used exclusively for security purposes, shall be located, used or placed on any Lot or home. The ACC, in its sole discretion, shall have the right to determine the existence of any such nuisance. (b) No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Project. (c) The discharge of firearms, including without limitation, "B-B" guns (or of similar nature), and pellet guns, is prohibited. (d) On-site storage of gasoline or other fuels is prohibited on any Lot, with the exception of up to five (5) gallons of fuel stored for emergency purposes and operation of lawn mowers or similar tools or equipment. (e) All bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers, and similar items shall be stored so as not to be visible from the streets or adjacent property. No such items shall be allowed to remain on the front of the Lots so as to be visible from adjacent property when not in use. (f) Reflective window coverings are prohibited. (g) Above ground swimming pools greater than five feet in diameter are expressly prohibited, unless otherwise approved by the ACC.

#### ARTICLE XIV INSURANCE

14.1 Insurance Requirement. The Master Association shall obtain insurance as required in this Master Declaration and as required by applicable law. The Master Association may obtain insurance that provides more or additional coverage than the insurance required in this Master Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

#### 14.2 Property Insurance.

- (a) Blanket Policy of Property Insurance. The Master Association shall maintain a blanket policy of property insurance covering all Common Areas in an amount not less than one-hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
- (b) Master Association's Obligation for Property Insurance Deductible. The Master Association shall keep an amount equal to the Master Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- (c) Master Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Master Board determines that a claim is likely not to exceed the Master Association's property insurance policy

deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Master Association's policy deductible; (b) an owner who does not have a policy to cover the Master Association's property insurance policy deductible is responsible for the loss to the amount of the Master Association's policy deductible; and (c) the Master Association need not tender the claim to the Master Association's insurer.

14.3 Comprehensive General Liability (CGL) Insurance. The Master Association shall obtain CGL Insurance insuring the Master Association, the agents and employees of the Master Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Master Association. The coverage limits under such policy shall not be less than one million dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Master Association or another Owner.

14.4 Directors and Officers Insurance. The Master Association shall obtain Directors and Officers liability insurance protecting the Master Board, the Officers, and the Master Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

- (a) Include coverage for volunteers;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Master Board, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager

14.5 Insurance Coverage for Theft and Embezzlement of Master Association Funds. The Master Association may obtain insurance covering the theft or embezzlement of funds.

14.6 Named Insured. The named insured under any policy of insurance shall be the Master Association. Each Owner shall also be an insured under all property and CGL insurance policies.

14.7 Master Association's Right to Negotiate All Claims and Losses and Receive

Proceeds. Insurance proceeds for a loss under the Master Association's property insurance policy shall be payable the Master Association, and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Master Declaration. After any repair or restoration is complete and, if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Master Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Dwellings. Each Owner hereby appoints the Master Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

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

14.9 Owners' Individual Coverage. EACH OWNER SHOULD PURCHASE INDIVIDUAL PROPERTY COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT.

14.10 Neighborhood Sub-association. Neighborhood Association shall obtain insurance as required by the Act and consistent with sub-association governing documents.

## ARTICLE XV DAMAGE & DESTRUCTION

15.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Master Association, the Master Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

15.2 Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Master

Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Master Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

15.3 In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Master Association, in a neat and attractive condition.

#### ARTICLE XVI DISBURSEMENT OF PROCEEDS

16.1 If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas shall be retained by and for the benefit of the Master Association and placed in a capital improvements and/or reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) shall be retained by and for the benefit of the Master Association and placed in a capital improvements and/or reserve account.

#### ARTICLE XVII REPAIR AND RECONSTRUCTION

17.1 If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Master Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

#### ARTICLE XVIII CONDEMNATION

18.1 Whenever all of any part of the Common Areas shall be taken (or conveyed in lieu



of and under threat of condemnation by the Master Board acting on the written direction of members representing at least sixty-seven percent (67%) of the total Master Association vote by any authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Master Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Master Association shall otherwise agree, the Master Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Master Board. If the taking does not involve any improvements of the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Master Association and used for such purposes as the Master Board shall determine.

#### ARTICLE XIX ANNEXATION

19.1 Annexation. Additional phases of Subdivision may be added to the Property pursuant to the following procedures, and subject to the limitations as follows:

19.2 Annexation by Declarant. Declarant may from time to time and in its sole discretion expand the Property subject to this Declaration by the annexation of all or part of the lands initially constituting the Undeveloped Land. The annexation of any such land shall become effective upon the recordation in the office of the County Recorder of Weber County, Utah, of (a) a subdivision plat or map covering the land to be annexed and (b) a supplemental declaration which (i) describes the land to be annexed or incorporated by reference to the description contained in the subdivision plat, (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the property subject to this Declaration, (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land, (iv) states which portions of the annexed land are Common Areas and which portions are Lots within any new land classification, provided that the nature and incidents of any such new land classification shall be fully set forth in such supplemental declaration or in another supplemental declaration previously filed with respect to some portion of the property, and (v) describes generally any improvements situated on the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Subdivision and subject to this Declaration.

19.3 Limitation on Annexation. Declarant's right to annex land to the Property shall expire twenty (20) years after this Declaration was first filed for record in the office of the county recorder of Weber County, Utah.

19.4 Annexation by the Association. Following the Class B Control Period, the Association may annex land to the Subdivision by obtaining approval of such annexation from (a) the owner or owners of the land to be annexed and (b) 67% of the Owners. Nothing in this paragraph shall be construed to require any prior approval for, or to limit or present, any annexation performed by Declarant, so long as such annexation satisfies the limitations set forth herein.

19.5 No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any additional land to the Subdivision or to develop or preserve any portion of the Undeveloped Land in any particular way or according to any particular time schedule. No land other than the Property as defined on the date hereof and land annexed thereto in accordance with the terms of this Declaration shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat or map filed by Declarant or described or referred to in any documents executed or recorded by Declarant.

## ARTICLE XX MISCELLANEOUS PROVISIONS

20.1 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance, and is subject to abatement by the Master Association.

- (a) Any single or continuing violation of the covenants contained in this Master Declaration may be enjoined in an action brought by an Owner or by the Master Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.
- (b) Nothing in this Master Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Master Declaration is to be construed as being in addition to those remedies available at law.
- (c) The remedies available under this Master Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.
- (d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Master Declaration in the future or against other similar violations.

20.2 Severability. Each of the covenants contained in this Master Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

20.3 Limited Liability. Neither the Master Board, the Architectural Control Committee, its individual members, nor any Owner shall have personal liability to any other Owner for actions or inactions taken under these covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority, under these covenants, and without malice.

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

20.5 No Representations and Warranties. Each Owner and occupant understands, agrees, and acknowledges through taking title or residing in the Project that the Master Association and the Master Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Property.

20.6 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Master Declaration and the Plat, the Articles, Bylaws, and then the Rules.

20.7 Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Lot in the Project is conclusively deemed to have notice of this Master Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Master Declaration against his/her Lot, whether or not there is any reference to this Master Declaration in the instrument by which he/she acquires interest in any Lot.

20.8 Notices. All notices under this Master Declaration are provided as set forth in the Bylaws.

20.9 Liberal Interpretation. The provisions of this Master Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

20.10 Master Association Litigation.

- (a) In recognition of the expenses and disruption associated with litigation, the Master Association shall not commence a judicial or administrative proceeding without the approval of Owners representing at least 80% of the total vote of the Master Association and the Declarant during the Class B Control Period.
- (b) Neither the Master Association nor any Owner shall institute an action against any person which arises out of an alleged defect in the development of the Subdivision until: (i) Declarant and the person(s) who physically constructed the portion of the subdivision in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect or other portions of the Subdivision (provided, however, that the terms of this Section shall not create an obligation of any person to effect a repair of an alleged defect); (ii) the Master Association or Owner(s) have pursued their remedies under any express warranty covering all or any portion of the alleged defect; (iii) the Declarant and the affected contractor(s) have been given the opportunity to be heard at a meeting of the Master Association regarding the alleged defect; and (iv) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation.
- (c) Notwithstanding any other provision to the contrary in this Master Declaration, the Master Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant' contractors, or any other person or entity involved in the construction of the Dwellings unless and until all of the following requirements have been satisfied:
  - i. The Master Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of

experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Master Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Master Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "Litigation Budget"); and

- ii. The Master Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget.
- (d) If any claims or actions falling within the scope of this Section are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Master Association.
  - (e) No action affected by this Section shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorney's fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Master Association in such action.
  - (f) This Section shall not apply to: (i) actions brought by the Master Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Master Association in proceedings instituted against it; or, (v) actions brought by the Master Association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Master Association or its manager for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

20.11 Repurchase Option for Construction Defect Claims. In the event any Owner shall commence action against Declarant or Declarant' Related Entities for the purpose of constructing Dwellings on the Lot (collectively "Declarant") in connection with any alleged construction defects in such Owner's Dwelling, Declarant shall have the option, but not the obligation, to purchase such Dwelling on the following terms and conditions:

- (a) The purchase price shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty, in connection with the alleged defect:
  - (i) The purchase price paid by the original Owner of the Dwelling & Lot when originally purchased from Declarant;
  - (ii) The agreed upon value of any improvements made to the Dwelling by anyone other than Declarant; and
  - (iii) The Owner's reasonable moving costs.
- (b) Close of escrow shall occur not later than forty-five (45) days after written notice from Declarant to the Owner of Declarant' intent to exercise the option herein.
- (c) Title shall be conveyed to Declarant free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes.
- (d) Exercise of the repurchase option as provided for herein above shall constitute full and final satisfaction of all claims relating to the subject Dwelling and Lot. The Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.
- (e) Declarant's option to repurchase granted herein with respect to any particular Dwelling and Lot shall automatically terminate upon the expiration of the last applicable statute of limitations applicable to any construction or warranty claim governing such Dwelling and Lot including all applicable tolling periods.

20.12 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Master Declaration, this Article and its subsections may not be amended except with the prior written consent of the Declarant.

20.13 Severability. Each of the covenants contained in this Master Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and

effect.

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

20.15 No Representations and Warranties. Each Owner and occupant understands, agrees, and acknowledges through taking title or residing in the Project that the Declarant, Master Association and the Master Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Project.

20.16 Amendment. At any time while this Master Declaration is in effect, the covenants herein contained can be modified by the Declarant or Declarant's successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Master Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

20.17 Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Lot in the Project is conclusively deemed to have notice of this Master Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Master Declaration against his/her Lot, whether or not there is any reference to this Master Declaration in the instrument by which he/she acquires interest in any Lot.

20.18 Right to Modify Lot Boundaries and Interior Boundary Lines. Declarant reserve the unilateral right to modify Lot boundaries and interior boundary lines and/or combine Lots or Dwellings so long as it owns the Lots; provided, however, such changes may not extensively alter the boundaries of the Common Area and Facilities nor change the percentages of ownership

interest.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Master Declaration the day and year first above written.

**DECLARANT:  
MERITAGE COMPANIES, LLC**

[Signature]  
By: Jack A Barrett  
Its: Member

STATE OF Arizona  
:SS  
COUNTRY OF Maricopa

On this day of Oct 11, 2019, personally appeared before me Cody Son Thwait's, known to me to be the Jack A. Barrett of Meritage Companies, LLC, and known to me to be the person who executed the within instrument on behalf of said entity.

[Signature]  
NOTARY PUBLIC



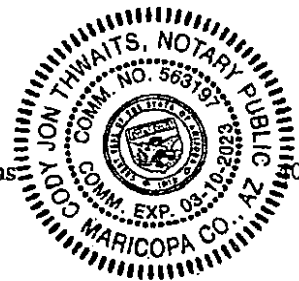
**DECLARANT:  
MOUNTAIN VISTA TRAILS, LLC**

[Signature]  
By: Dawn Barrett  
Its: Member

STATE OF Arizona  
:SS  
COUNTRY OF Maricopa

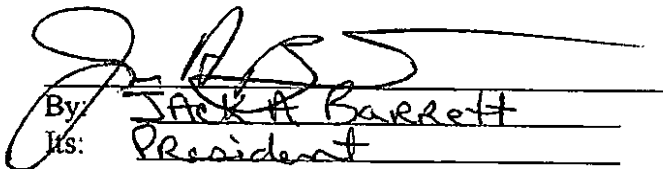
On this day of Oct 11, 2019, personally appeared before me Cody Son Thwait's, known to me to be the Dawn Barrett of Mountain Vista Trails, LLC, and known to me to be the person who executed the within instrument on behalf of said entity.

[Signature]  
NOTARY PUBLIC



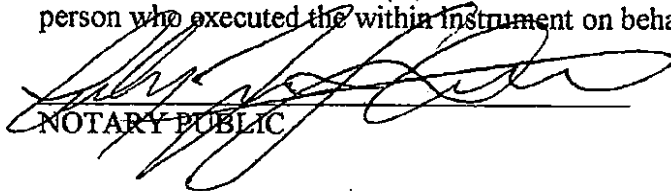


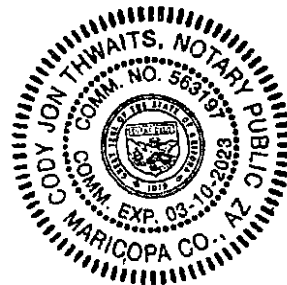
(Consent provided pursuant to Article 18.05 of the Enabling Declaration)  
VH Prom, LLC

  
By: JACK A. BARRETT  
Its: President

STATE OF Arizona  
:ss  
COUNTRY OF Mexico

On this day of Oct 11, 2019, personally appeared before me Cody Jon Thwaits known to me to be the Jack A. Barrett of VH Prom, LLC, and known to me to be the person who executed the within instrument on behalf of said entity.

  
NOTARY PUBLIC



## EXHIBIT A

### NORTH OGDEN CITY LEGAL DESCRIPTION

PART OF THE NORTH HALF OF SECTION 5, T.6N., R.1W., S.L.B. & M., U.S. SURVEY. DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH LIES N89°47'40"E 3513.84 FEET AND SOUTH 310.70 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 5 AND RUNNING THENCE EAST 1097.76 FEET; THENCE S00°50'15"W 744.35 FEET; THENCE N89°03'50"W 149.94 FEET; THENCE ALONG A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 79.28 FEET, A RADIUS OF 217.00 FEET, A CHORD BEARING OF N78°35'51"W, AND A CHORD LENGTH OF 78.84 FEET; THENCE ALONG A REVERSE CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 103.39 FEET, A RADIUS OF 283.00 FEET, A CHORD BEARING OF N78°35'51"W, AND A CHORD LENGTH OF 102.82 FEET; THENCE N89°03'50"W 792.06 FEET; THENCE ALONG A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 30.04 FEET, A RADIUS OF 317.00 FEET, A CHORD BEARING OF N86°20'55"W, AND A CHORD LENGTH OF 30.03 FEET; THENCE N00°56'10"E 127.98 FEET; THENCE ALONG A CURVE TURNING TO THE RIGHT WITH AN ARC LENGTH OF 80.02 FEET, A RADIUS OF 480.00 FEET, A CHORD BEARING OF N05°42'42"E, AND A CHORD LENGTH OF 79.92 FEET; THENCE N10°29'14"E 252.64 FEET; THENCE ALONG A CURVE TURNING TO THE LEFT WITH AN ARC LENGTH OF 76.88 FEET, A RADIUS OF 420.00 FEET, A CHORD BEARING OF N05°14'37"E, AND A CHORD LENGTH OF 76.77 FEET; THENCE N00°00'00"W 158.70 FEET TO THE POINT OF BEGINNING.

CONTAINING 18.26 ACRES

### ANNEXATION AREA LEGAL DESCRIPTION

PART OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 6 NORTH, RANGE 1 WEST, AND ALSO PART OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 7 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF LOT 54-R, MYSTERY MEADOWS SUBDIVISION PHASE 2, SAID POINT ALSO BEING A POINT ON THE EXISTING BOUNDARY OF THE CORPORATE LIMITS OF NORTH OGDEN CITY, SAID POINT LIES S00°20'01"W ALONG THE MONUMENT LINE BETWEEN THE NORTHWEST CORNER AND THE SOUTHWEST CORNER OF SAID SECTION 5, 281.23 FEET AND S89°39'50"E 2866.43 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 5; AND RUNNING ALONG THE BOUNDARY OF THE CORPORATE LIMITS OF NORTH OGDEN CITY THE FOLLOWING TWENTY (20) COURSES; (1) NORTH ALONG THE EAST LINE OF SAID 54R, 72.15 FEET TO A POINT ON THE SOUTH LINE OF LOT 32, ROYLANCE FARMS P.R.U.D PHASE 2, 3<sup>RD</sup> AMENDMENT; (2) N85°09'01"E ALONG SAID SOUTH LINE, 12.61 FEET TO THE SOUTHEAST CORNER OF SAID LOT 32; (3) N08°23'50"E ALONG THE EAST LINES OF LOT 32 AND 31, ROYLANCE FARMS P.R.U.D. PHASE 2, 3<sup>RD</sup> AMENDMENT 118.26 FEET TO THE SOUTHWEST CORNER OF LOT 28, ROYLANCE FARMS P.R.U.D. PHASE 2, 3<sup>RD</sup> AMENDMENT; (4) N55°25'02"E ALONG THE SOUTHERLY LINES OF LOTS 28, 27, 26, AND 25, ROYLANCE FARMS P.R.U.D. PHASE 2 3<sup>RD</sup> AMENDMENT, 197.79 FEET TO THE SOUTHEAST CORNER OF SAID LOT; (5) N20°28'01"E ALONG THE EAST LINE OF SAID LOT 25, 75.84 FEET TO THE SOUTHWEST CORNER OF COMMON AREA, ROYLANCE FARMS P.R.U.D. PHASE 2, 3<sup>RD</sup> AMENDMENT; (6) N89°04'38"E ALONG THE SOUTH LINE OF SAID COMMON AREA, 230.59 FEET A PORTION OF WHICH RUNS ALONG THE SOUTH LINE OF ROYLANCE FARMS PHASE 4; (7) N88°01'08"E 377.46 FEET; (8) N88°36'08"E 543.60 FEET; (9) N00°48'08"E 3.79 FEET TO THE SOUTHWEST CORNER OF LOT 408, ROYLANCE FARMS PHASE 4; (10) S89°44'26"E ALONG THE SOUTH LINE OF SAID LOT 48, 169.02 FEET TO A POINT ON THE WEST LINE OF LOT 1, ROYLANCE FARMS COMMERCIAL SUBDIVISION; (11) S00°50'00"W ALONG THE WEST LINE OF SAID LOT 1, 59.79 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; (12) S89°42'34"E ALONG BOUNDARY OF SAID LOT 1, 79.91 FEET TO THE SOUTHERLY CORNER OF SAID LOT 1; (13) S00°15'26"E ALONG BOUNDARY OF SAID LOT 1, 25.00 FEET TO THE SOUTHERLY CORNER OF SAID LOT 1; (14) S89°42'34"E ALONG THE SOUTHERLY LINE OF SAID LOT 1, 0.11 FEET; (15) SOUTH 348.94 FEET; (16) N87°37'48"E 193.97 FEET TO THE CENTERLINE OF WASHINGTON BOULEVARD (400 EAST STREET); (17) S00°50'18"W ALONG SAID CENTERLINE, 175.02 FEET; (18) N89°09'45"W 211.12 FEET; (19) N00°50'15"E 191.47 FEET; (20) WEST 1601.59 FEET TO A POINT ON THE WEST LINE OF LOT 54-R, MYSTERY MEADOWS SUBDIVISION PHASE 2, SAID POINT ALSO BEING THE POINT OF THE BEGINNING.

CONTAINING 631,677 SQUARE FEET OR 14.501 ACRES MORE OR LESS.

**BYLAWS  
OF VILLAGE AT PROMINENCE POINT MASTER  
ASSOCIATION, INC.**

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The following are the Bylaws of Village at Prominence Point Master Association, Inc. ("Bylaws"), a Utah nonprofit corporation ("Association"). Upon recordation of these Bylaws, they are binding upon the Association and all present and future Owners and/or occupants.

**ARTICLE I - DEFINITIONS**

**Section 1.1 Definitions.** All terms used but not defined herein shall have the meanings given them under that certain First Amended & Restated Master Declaration of Covenants, Conditions and Restrictions for Village at Prominence Point, a Master, a Mixed-Use Development, recorded in the Official Records of the Weber County Recorder's Office contemporaneously herewith (hereinafter "Master Declaration"), and as the same may be amended from time to time as therein provided.

**ARTICLE II - MEETINGS OF OWNERS**

**Section 2.1 Annual Meetings.** An annual meeting of the Owners shall be held no less than once each calendar year at a location and time designated by the Board of Directors ("Board"). The Board may set the date, time and location of the annual meeting in accordance with Section 2.3 below.

**Section 2.2 Special Meetings.** Special meetings of the Owners may be called at the request of the Board, or upon written request of the Owners holding at least fifty-one percent (51%) of the total eligible membership. Notwithstanding, the Board remains the only authorized body to act for and in behalf of the Association.

**Section 2.3 Notice of Meetings.** Unless an Owner requests in writing that all notices be provided to said Owner by U.S. mail, all notices shall be given by, or at the direction of, the Board via email or other electronic communication. Notice shall be provided at least ten (10) days before a meeting, but no more than sixty (60) days, to each Owner at the email or electronic address provided by the Owner. Said notice is effective upon sending the email or electronic communication. Notices provided by U.S. mail shall be sent via U.S. First Class Mail and effective upon deposit in the mail. Such notice shall specify the location, day and time of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Upon becoming an Owner of the Association, or upon the written request by the Association, Owners shall provide a valid email address or other requested electronic information for purpose of notification related to the Association unless the Owner has opted out by providing a written request for notice by U.S. Mail.

**Section 2.4 Quorum.** Unless otherwise specifically set forth in the Master Declaration, at any meeting of Owners, a quorum shall be established by those Owners present, in person or by proxy, at a properly noticed meeting. Notwithstanding, the Board remains the only authorized body to act for and in behalf of the Association. Further, a majority of those Owners present in person or proxy at such meeting may vote to reschedule the meeting based upon low attendance. Otherwise, the meeting shall proceed as scheduled.

**Section 2.5 Proxies.** At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the Owner, and filed with the Board at or before said meeting. Notwithstanding, any proxy delivered to the Board at the meeting must be provided no later than any point in the meeting announced as the final time to deliver proxies. The proxy form provided with any notice of meeting may also provide an additional requirements and a deadline to return proxies. Every proxy shall be revocable and shall automatically terminate upon conveyance by the Owner of his Lot. If conflicting proxy votes for an Owner or Lot exist, said proxy votes will not be counted.

**Section 2.6 Conduct of Meetings.** The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at an Association meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Association or Board meeting, work session, event, get-together, or similar event regardless of the location of such event.

**Section 2.7 Action Taken Without a Meeting.** Any action that may be taken at any annual or special meeting of Owners may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners eligible to vote on the action were present and voted, unless a different approval percentage for the action is specifically set forth in the Master Declaration. The Board may obtain such approvals and conduct business through mail or email/electronic ballots.

Ballots shall set forth each proposed action and provide the option of voting for or against each proposed action. The ballot must specify the period of time, up to 90 days, during which the Association shall accept written ballots. Following this period, the Association shall provide notice if such action was approved.

**Section 2.8 Voting.** Only an Owner that is current on all assessments and charges due and owing at least thirty (30) days prior a duly noticed meeting shall be deemed in good standing and eligible vote. The Association shall have two (2) classes of voting membership, Class "A" and Class "B," as set forth in the Master Declaration.

The votes appurtenant to any one Lot may not be divided between Owners of such Lot and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the Owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot. The Association shall honor the vote of: a duly authorized trustee or successor trustee of a trust that is an Owner; the duly authorized representative of a legal entity that is an Owner; and shall honor the vote of an individual that is a holder of a Limited or General Durable Power of Attorney with respect to an Owner as though such vote were the vote of the Owner.

### **ARTICLE III - BOARD, SELECTION AND TERM OF OFFICE**

**Section 3.1 Number & Tenure.** Except for the Initial Board selected by Declarant, which consists of three members and their successors, that may hold office during the Class B Control Period, the affairs of the Association shall be managed by a Board of Directors composed of three (3) individuals. At the first meeting of the Owners at which the election of Directors will take place following the Class B Control Period, the candidate who receives the most votes shall serve as a Director for three (3) years. The candidate that receives the second highest number of votes shall serve as a Director for two (2) years, and the third candidate who receives the third highest number of votes shall serve as Director for one (1) year. At each annual election, the successor to the Director whose term shall expire in that year shall be elected to hold office for the term of (3) years. Any change in the number of Directors may be made only by amendment of these Bylaws. The members of the Board of Directors shall serve until their respective successors are elected, or until their death, resignation or removal.

**Section 3.2 Advisory Board Member.** During the Class B Control Period and prior to turnover of the Association to Owner control, the Declarant and/or Board may identify an owner(s) to be an advisory member of the Board and participate in Board meetings and activities. This advisory member(s) shall not vote.

**Section 3.2 Eligibility.** Following the Class B Control Period, all members of the Board shall be Owners or an Owners' spouse or legal partner that resides with Owner in the Dwelling. Notwithstanding, only one member of a single household can be a member of the Board at any one time.

**Section 3.3 Resignation & Removal.** A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director, except during Class B Control Period, may be removed from the Board, with or without cause, by a vote of at least (51%) of the Owners of the Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining Directors and shall serve for the unexpired term of his predecessor.

**Section 3.4 Compensation.** No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for actual and approved expenses incurred in the performance of his duties.

**Section 3.5 No Estoppel or Reliance.** No one may rely upon any authorization (from the Board or otherwise) contrary to the terms and conditions of the Governing Documents regardless of circumstances. No claim of estoppel, waiver or similar equitable claims or defense may be raised by anyone related to any alleged reliance.

**Section 3.6 Records Retention.** The Board shall take appropriate action to develop, implement and update procedures for record retention. The Board should maintain documents in a manner to be easily accessible and copied. The Board may budget specifically for this expense and may seek the advice of consultants in developing retention procedures.

#### **ARTICLE IV - NOMINATION AND ELECTION OF DIRECTORS**

**Section 4.1 Nomination.** Following the Class B Control Period, nomination for election to the Board may be made by the Board or by Owners from the floor at the annual meeting.

**Section 4.2 Election.** Following the Class B Control Period, the election of Directors shall be by vote or written ballot, as determined at the discretion of the Board. The persons receiving the largest number of votes shall be elected. Cumulative voting is not authorized.

#### **ARTICLE V - MEETINGS OF THE BOARD**

**Section 5.1 Regular Meetings.** Regular meetings of the Board shall be held at least annually, or more frequently as determined by the Board. All notices shall be provided by email or other electronic means. Directors are required to provide an email or electronic address for purposes of notice of Board meetings. Notice shall be provided at least five (5) days before a meeting, but no more than thirty (30) days.

Owners, and Owner representatives (if designated in writing in advance) may attend Board meetings and may be present for all discussions, deliberations, and decisions except when the Board is in executive session. Owners shall comply with all reasonable rules established by the presiding officer for their attendance. The Board may limit Owners' comments and/or questions to a specific period of time within the meeting. The Board shall provide email notice in accordance with the Act to Owners that have requested, in writing, to be notified of Board Meetings and have provided a valid email address.

**Section 5.2 Special Meetings.** When, in the discretion of the President or two members of the Board, circumstances require that a meeting be held sooner than the required five (5) five' notice for a regular meeting, a special meeting may be called by the President or by any two (2) Directors, after not less than twenty-four (24) hours' notice to each Director.

**Section 5.3 Quorum.** A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**Section 5.4 Conduct of Meetings.** The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at a Board meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Association or Board meeting, work session, event, get-together, or similar event regardless of the location of such event.

**Section 5.5 Action Taken Without a Meeting.** The Directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

## ARTICLE VI - POWERS AND DUTIES OF THE BOARD

**Section 6.1 Powers and Duties.** The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Governing Documents and Utah law. The Board may delegate its authority to manager(s), subject to any limitations or provisions contained in the Governing Documents.

## ARTICLE VII - OFFICERS AND THEIR DUTIES

**Section 7.1 Enumeration of Officers.** The officers of this Association shall be a president, secretary, and treasurer, as designated by the Board.

**Section 7.2 Election of Officers.** The election/appointment of officers shall take place at the first Board meeting following the annual meeting of the Owners. Officers shall serve in their office for a period of one (1) year. Notwithstanding, nothing in these Bylaws prevent an officer or directors from being re-elected to their respective positions.

**Section 7.3 Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. Appointed Officers may be removed by the Board with or without cause.

**Section 7.4 Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any Director or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be

removed and replaced by a majority of the Board of Directors at any time, with or without cause. In the event of death, resignation or removal of an officer, his successor shall be selected by the Board and shall serve for the unexpired term of his predecessor.

**Section 7.5 Duties.** The Board may by resolution adopt and identify the respective duties of the officers. The Board may also utilize a manager to assist in these duties. The Board may also adopt rules and policies governing the signing of checks, approval of invoices, deposit of accounts, limits on spending without Board approval and other policies governing the accounts and funds of the Association.

**Other Officers:** Other officers shall have the duties and obligations as set by the Board.

## ARTICLE VIII - CONTRACTS

**Section 8.1. Contracts.** The Board may authorize any officer(s), agent(s), to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Association, and such authority may be general or confined to specific instances.

## ARTICLE IX - COMMITTEES

**Section 9.1 Committees.** The Board may appoint such committees as deemed appropriate in carrying out its purposes. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board. The Board may terminate any committee at any time.

## ARTICLE X - MISCELLANEOUS

**Section 10.1 Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of asserting persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:

- (a) If the objecting person was in attendance at the meeting and the issue upon which the objection was based was perceptible and no objection to the particular procedural issue was made at the meeting.
- (b) If the objecting person was not in attendance at the meeting but had proper notice of the meeting.
- (c) If the objecting person was not in attendance at a meeting and had actual notice of the meeting before it occurred.
- (d) If the objecting person who was not in attendance at the meeting and did not have proper or actual notice fails to assert the objection within 15 days of receiving notice of the circumstances giving rise to their objection.

**Section 10.2 Requirements for Objections.** All objections except those made at a meeting shall be in writing. Whenever made, objections must specifically describe the circumstances giving rise to the objection and reference the specific provision of the



Governing Documents or law that is alleged to have been violated, with a brief statement of the facts supporting the claimed violation.

**Section 10.3 Irregularities that Cannot Be Waived.** Any irregularity that is the result of fraud or that was done knowingly and intentionally in violation the Governing Documents or Utah law.

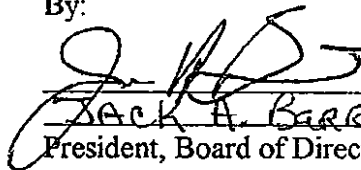
**Section 10.4 Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**Section 10.5 Amendment.** During the Class B Control Period, these Bylaws may be amended at any time by the Declarant. Following the Class B Control Period, these Bylaws may be amended by Owners holding at least fifty-one percent (51%) of the total eligible votes of the membership. An amendment to these Bylaws shall be effective immediately upon recordation in the Office of the Weber County Recorder, State of Utah.

The foregoing Bylaws are adopted by the undersigned and made effective upon recordation in the Office of the Weber County Recorder, State of Utah.

VILLAGE AT PROMINENCE POINT MASTER ASSOCIATION, INC.  
A Utah nonprofit corporation

By:

  
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JACK A. BARRETT  
President, Board of Directors