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FIRST AMENDED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR D
HIGHGATE ESTATES

a Residential Community in West Bountiful City, Utah

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**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
HIGHGATE ESTATES**

(a Residential Community in West Bountiful, Utah)

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HIGHGATE ESTATES (this "Declaration") is made this 9th day of April 2019, by Blackgate Investments, LLC, a Utah limited liability company (the "Declarant").

RECITALS:

- A. Declarant owns or has the right to purchase certain real property located in West Bountiful, Davis County, State of Utah, as more particularly described on Exhibit A to this Declaration (the "Property"). The Property shall be, and hereby is, subject to the provisions of this Declaration.
- B. Declarant has recorded or intends to record a subdivision plat against the Property, creating 25 building lots, namely Lots numbered 1 through 25, as part of a residential subdivision known as "Highgate Estates" (the "Subdivision" or the "Project"). All lots in the Subdivision shall be subject to, and governed by, the covenants, conditions and restrictions set forth in this Declaration, unless otherwise specified herein.
- C. Declarant had previously filed a declaration for the Subdivision on or around February 7, 2019 ("Prior Declaration") and desires to amend and replace the Prior Declaration.

NOW THEREFORE, Declarant declares as follows:

The Prior Declaration is hereby replaced in its entirety by this Declaration.

All lots within the Property shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the protective covenants, conditions, restrictions and equitable servitude set forth in this Declaration, with only those exceptions specifically granted herein. It is the intention of the Declarant in imposing these covenants, conditions and restrictions to create a general plan of development, to protect and enhance the property values and aesthetic values of the lots and homes in the Subdivision. The covenants, conditions and restrictions contained herein are intended to and shall run with the title of the land, and be binding upon the successors, assigns, heirs, and any other person holding any ownership or possessory interest in the Property, and shall inure to the benefit of all lots in the Subdivision.

The covenants, conditions, and restrictions shall be binding upon the Declarant and its successors in interest, and may be enforced by the Declarant or by any Owner, as hereinafter defined. Notwithstanding the foregoing, no provisions of this 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 Declaration: (1) Installation and completion of the Improvements, as hereinafter defined; (2) Use of any lot owned by the Declarant as a model home, or for the placement of a temporary construction storage trailer without utility services; (3) Installation and maintenance of signs incidental to sales or construction, subject to applicable laws and ordinances; and (4) Assignment of Declarant's rights under this Declaration in whole or part to one or more builders intending to construct

homes in the Subdivision.

The City is an intended third-party beneficiary of this Declaration. The Association shall not amend this Declaration in the future without the City's permission.

Notwithstanding any applicable theory relating to a mortgage, deed of trust or similar instrument, the term Lot Owner, Owner, or Owners shall not mean or include the mortgagee or beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

ARTICLE I DEFINITIONS

Unless the context clearly requires otherwise, the following terms used in this Declaration shall have the following meanings:

1.1 "Act" means the Utah Community Association Act, Utah Code Ann. § 57-8a-101 *et seq.*, as amended from time to time.

1.2 "Assessment" means any of the fees, assessments, or payments required to be made by Owners of Lots within the Project, including the reinvestment fee, annual assessments, supplemental assessments, and special assessments, as more particularly described in Article 4.

1.3 "Association" means Highgate Estates Homeowners Association, Inc.

1.4 "Bylaws" means the *Bylaws of Highgate Estates Homeowners Association*. A copy of the Bylaws is attached hereto as Exhibit B.

1.5 "Board" means the Board of Directors of the Association.

1.6 "City" means the City of West Bountiful, a political subdivision of the State of Utah.

1.7 "Common Areas" mean the portions of the Project intended for common use by the Owners which are not included within the Lots and which are not dedicated or reserved for public use, as set forth on the Plat Map. The Common Areas are more particularly identified in Section 10.1.

1.8 "Common Expenses" means all sums lawfully assessed against the Lots or the Owners; all expenses of administration, maintenance, repair or replacement of the Common Areas; all expenses of management of the Association; all expenses allocated by the Association among the Owners; all expenses agreed upon as common expenses by the Association; and all expenses declared common expenses by this Declaration.

1.9 "County" means Davis County, Utah.

1.10 "County Recorder's Office" means the Davis County Recorder's office which maintains an official record of deeds and real property records and accepts such documents for recordation pursuant to Utah Code Ann. § 17-21-1.

1.11 "Covenants" means every covenant, condition, restriction, easement, and limitation set forth in this Declaration.

1.12 "Entrance Sign Easement" means the easement regarding the entrance sign on Lot 13 of the Plat. The Entrance Sign Easement is more specifically described in Section 10.7.

1.13 "Declarant" means Blackgate Investments, LLC, a Utah limited liability company, and its successors and assigns, and any assign or successor that acquires Declarant's interest in the Property.

1.14 "Declaration" means this *Declaration of Covenants, Conditions, and Restrictions for Highgate Estates*, as it may be amended from time.

1.15 "Detention Basin" means the storm-water containment basin located within an easement on Lot 23 as shown on the Plat Map, which can fill completely during a 10-year or larger event.

1.16 "Dwelling" shall mean the single-family residence built or to be built on any Lot, including the attached garage.

1.17 "First Mortgage" means a recorded Mortgage or consensual lien granted by the Owner which is not subject to any senior lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.18 "First Mortgagee" means any person or entity named as a Mortgagee under a First Mortgage and any successor-in-interest to such Mortgagee.

1.19 "Green Strip Area" means the right-of-way green spaces that are owned by the City that run alongside Highgate Avenue through the Property.

1.20 "HollyFrontier" means HollyFrontier Woods Cross Refining LLC, a Delaware limited liability company.

1.21 "Improvement" means every structure, feature or improvement of any kind placed or constructed in the Project, including but not limited to any Dwelling, building, garage, lighting, deck, porch, patio, sidewalk, foundation, awning, fence, retaining wall, driveway, irrigation or drainage feature, storage structure or other product of construction, and landscaping.

1.22 "Lawn" means the front, back, and side areas of a Lot that are planted with grass.

1.23 "Lot" means a subdivided and individually numbered residential parcel as designated on the Plat Map recorded with the County Recorder's Office. The term Lot includes any Dwelling or other Improvement constructed thereon.

1.24 "Member" means a person or entity who is a member of the Association.

1.25 "Mortgage" means any mortgage, deed of trust, or other document pledging any portion of a Lot or interest therein as security for the payment of a debt or obligation.

1.26 "Mortgagee" means the mortgage or beneficiary identified in a Mortgage.

1.27 "Owner" means the person or entity vested with legal, record fee simple title to any Lot. If there is more than one record holder of legal title to a Lot, each shall be an Owner.

1.28 "Period of Declarant's Control" means the period of time during which Declarant shall have administrative control of the Association and the other rights and privileges as set forth in this Declaration. Following the recording of this Declaration, the Period of Declarant's Control shall continue until such time as Declarant sees fit to, by written notice, transfer administrative control of the Association to the Owners, but in no event shall the Period of Declarant's Control extend beyond the time when one hundred percent (100%) of the Lots in the Project have been conveyed by Declarant to Lot purchasers.

1.29 "Plat Map" or "Plat" means the plat map for the Project filed with the County Recorder's Office and any plat incorporating additional real estate into the Project. A copy of the Plat current as of the date of this Declaration is attached hereto as Exhibit C. Declarant reserves the right to modify the terms of any revised or amend the plat for the Project. Any such revisions or amendments recorded in the County Recorder's Office shall be deemed the Plat Map for purposes of this Declaration. Also, Declarant may expand the Project to include additional phases or additional lots for the Project. In the event the Project is expanded and one or more additional plats are recorded with the County Recorder's Office, then the term Plat Map shall refer to all recorded plats for the Project.

1.30 "Pipeline Easement" means the easement that runs with the land for an underground drainage Pipe in favor of HollyFrontier that burdens Lots 4, 5, 6, 7, 8, and 25 as further described in Section 10.8.

1.31 "Project" means the Highgate Estates subdivision, including potential future phases thereof, as identified on the Plat Map. The Project is not a cooperative nor is it a condominium. The Project includes the Lots, Common Areas, and public areas within the boundaries of the Project as shown on the Plat Map.

1.32 "Property" means the real property situated in Davis County, State of Utah, as more particularly described in Exhibit A, against which this Declaration is recorded.

1.33 "Rules and Regulations" means the rules, regulations, and restrictions, not inconsistent with this Declaration or the Bylaws, duly adopted and promulgated by the Board.

1.34 "Subdivision Improvements" shall mean all improvements and facilities to be installed outside of the boundaries of Lots, as identified on the Plat, including those items that are necessary to provide access and utility service to the Lots and items required by the City as a condition of its approval of subdivision of the Property.

ARTICLE II LOT RESTRICTIONS

2.1 Zoning Regulations. The zoning ordinances of the City and any applicable building, fire, and health codes are in full force and effect in the Property, and no Lot may be occupied or used in a manner that is in violation of any such ordinance or Code.

2.2 Business or Commercial Uses. No portion of the Property may be used for any commercial, mining, or business use. Nothing in this provision is intended to prevent (a) the Declarant from using one or more Lots for purposes of a construction office during construction of the Subdivision Improvements or until the Lots are sold, whichever occurs later, or (b) the conduct of a home occupation entirely within a Dwelling. No home occupation will be permitted that requires or encourages clients, customers, patients or others to come to a Dwelling to conduct business, or that requires any employees outside of the Owner's immediate family or household.

2.3 Restriction on Signs. Signage shall be permitted only in accordance with City ordinances.

2.4 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of a certificate of occupancy by the City.

2.5 Dwelling to be Constructed First. No garage, storage unit, or other out-building may be

constructed prior to the construction of the Dwelling on a Lot, except that Lots 6, 7, 9, and 10 are expressly exempt from this restriction.

2.6 Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Property are to be underground, including lines within any Lot which service Improvements within that Lot. No propane tanks or oil tanks may be installed on any Lot except for temporary heat during construction.

2.7 Service Yards. No clothes lines, service yards, or storage yards shall be permitted. Exterior mechanical equipment must be screened in a manner approved by the Committee so that it is not visible from adjoining Lots, except as provided herein.

2.8 Maintenance of Property. All Lots and the Improvements on them shall be maintained in a clean, sanitary, and attractive condition at all times. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during construction of Improvements) open storage or parking of farm or construction equipment, boats, campers, camper shells, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading) or inoperable motor vehicles; accumulations of Lawn or tree clippings or trimmings; accumulations of construction debris or waste; and household refuse or garbage except as stored in tight containers in an enclosure such as a garage or behind a fenced area. Sidewalks that front a lot shall be kept clear of debris, snow, and ice, which the Owner shall maintain in a timely manner.

2.9 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, that would cause the cancellation of conventional homeowners insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess or those reasonable and customary for household uses, the discharge of firearms or fireworks other than in connection with celebration of the 4th of July and 24th of July holidays, and setting open fires (other than properly supervised and contained barbecues).

2.10 Fuel Storage. No fuel oil, gasoline, propane, or other fuel storage tanks may be installed or maintained on the property. Dwellings shall be heated with natural gas, solar, or electric heat. Propane or other such containerized fuels may be used only during construction of the Dwelling until the permanent heating system is installed and operational.

2.11 Recontouring. No lot shall be recontoured, including grading for purposes of basement construction, without the prior written approval of the City.

2.12 Drainage. No Owner shall alter the direction of natural drainage from his Lot, nor permit accelerated storm run-off to leave his Lot without first using reasonable means to dissipate the flow energy. Each Owner shall require its builder to deliver finished grades to streets and other common water carriers, such as trails, paths, creeks, canals or ditches. Owners shall not take any action that would cause water (from sprinklers or otherwise) to flow towards the foundations of the Dwellings on the Lots. Owners are responsible for keeping the private drain that has been installed along their property line in working order and free from blockage.

2.13 Sewer Connection Required. All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Dwelling units must be connected to the sanitary sewer system.

2.14 Trash and Rubbish. All Lots (improved or unimproved) shall be kept free of rubbish,

weeds, and other unsightly items, and shall be maintained in such a manner as not to detract from the residential quality of the Property. Trash, rubbish, garbage or other waste shall not be kept except in covered containers. Garbage and trash receptacles shall be stored inside a garage or behind a fenced area.

2.15 Parking and Storage of Vehicles. The storage of any automobiles, trucks, buses, tractors, trailers, camping vehicles, boats, boat trailers, snowmobiles, mobile homes, two and three wheeled motor vehicles, or other wheeled motor vehicles shall be prohibited unless such vehicles are stored in a garage or behind a fenced area.

2.16 Horses. Horses may not be kept or maintained on Lots 8 or 25. Horses may be kept or maintained on all other Lots.

ARTICLE III DECLARANT CONTROL; ENFORCEMENT OF COVENANTS

3.1 Declarant Control. Declarant shall have control of the Association as defined in Section 1.28 above and as set forth in this Section 3.1. During the Period of Declarant's Control, Declarant shall have the right to amend this Declaration, and no amendment of this Declaration shall be valid unless approved in writing by Declarant. During the Period of Declarant's Control, Declarant shall also have the sole right to approve exceptions to (or variances from) any of the covenants contained herein, subject to City ordinances.

3.2 Right to Enforce Covenants. The Declarant, the Association, and each Owner shall have the right to enforce any of the covenants, conditions, and restrictions contained in this Declaration.

ARTICLE IV ARCHITECTURAL CONTROLS

It is the intention and purpose of this Declaration to impose architectural standards on the Improvements to any Lot of a type and nature that result in buildings which are architecturally compatible in terms of lot coverage, proportion, materials, colors and general appearance, while at the same time allowing for appropriate diversity in style and design. To accomplish this goal, the Declarant hereby establishes the following architectural design standards. All Improvements on any Lot shall be subject to the following restrictions and architectural design standards:

4.1 Number of Dwellings. Only one single family residence may be constructed on any Lot. All Dwellings shall have an attached garage for at least two (2) vehicles. In addition, if Owners elect to construct an accessory building of any kind, it shall comply with the standards set forth in Section 4.5 below.

4.2 Dwelling Size. Dwelling size requirements are as follows:

- a. A Rambler, One-story home shall be not less than two thousand two hundred (2,200) square feet above grade.
- b. A two-story home shall have not less than two thousand two hundred (2,200) square feet of total square footage: at least two thousand two hundred (2,200) square feet on the main floor, before a second level is added the second level has no minimum requirement of square footage.

4.3 Ceiling Height. The ceiling of the main floor shall be a minimum of nine (9) feet in height.

4.4 Dwelling Height and Width. No structure shall exceed thirty-five (35) feet as measured from the lowest finished ground level to the highest part of the roof, except as otherwise provided in this Section. As an exception, the height of a main structure may be increased to a maximum of forty (40) feet if, for every foot of height in excess of thirty-five (35) feet, an additional foot of setback beyond the minimums required in this Article is provided on the front and each side of the structure. If public buildings or quasi-public buildings are allowed in the Community, they may be erected to a height greater than thirty-five (35) feet when approved as a conditional use by the planning commission.

4.5 Accessory Buildings. If an Owner elects to construct an accessory building of any kind on a Lot (for storage of boats, recreational vehicles, or other items), the accessory building shall satisfy the following standards:

- a. The accessory building, including its face and side(s) that are visible from the street, shall have the same design and quality (in terms of architectural design, exterior features and materials, and roofing as the Dwelling constructed on the Lot. Notwithstanding the foregoing, the back and side(s) of the accessory building that are not visible from the street may use different exterior features and materials from those of the Dwelling, but must still be of the same color scheme as the Dwelling constructed on the Lot.

4.6 Exterior Requirement. No structure may be built with less than one hundred percent (100%) of all the faces of the structure of either brick, stone, cementitious siding or stucco (excluding the accessory building pursuant to Section 4.5(a)). Stone and masonry requirements shall be in accordance with the applicable City ordinances. The use of plastic soffit or fascia is prohibited. Exposed cement foundation height shall average not more than twenty-four (24) inches above finished grade on all sides.

4.7 Roof Design. All roofing materials must be of architectural grade. Wood roofing materials are prohibited.

4.8 Windows. All windows must be at least double glazed. Each side of the house must contain a minimum of one window.

4.9 Balconies and Decks. Any balcony or deck which is above the natural grade must be constructed in compliance with the following: All posts or pillars supporting any deck must be at least twelve (12) inches in width. The area under any deck must be either be landscaped or screened from view so that the view from adjoining Lots or streets is not of the unfinished underside of the deck. The area under any deck shall not be used for storage of equipment, firewood, building material, or similar material.

4.10 Driveways. Every garage shall be serviced by a driveway, which shall be of sufficient width and depth so as to park three (3) vehicles completely out of the street right of way. The maximum drive approach width shall be thirty-two feet (32'). The rest of the driveway on a Lot may be wider, but not the drive approach. All drivable surfaces must be paved with concrete.

4.11 Garages. The primary garage of each Dwelling shall not face the street in front of the Dwelling.

ARTICLE V

CONSTRUCTION COVENANT

In order to minimize the inconvenience to neighboring Owners during periods of construction within the Property, the following construction regulations shall be enforced. These regulations shall be made a part of the construction contract between the Owner and the Builder of each Dwelling or other Improvements on a Lot. The Owner shall be bound by these regulations, and violations committed by the Builder or its employees, subcontractors or others shall be deemed a violation by the Owner for which Owner is liable.

5.1 Temporary Trailer. A builder or general contractor constructing a home on a Lot may utilize a trailer during the construction period only, subject to applicable City ordinances. The trailer must be located within the Owner's Lot. The temporary trailer may not be installed prior to the commencement of construction, and must be removed upon the first to occur of: (1) the issuance of a certificate of occupancy, (2) the termination, expiration, or cancellation of the building permit, (3) the suspension of construction activities for a period of sixty (60) days, or (4) one year after the commencement of construction.

5.2 Construction Debris Removal. The Builder must comply with City ordinances requiring the placement and maintenance of a trash container or dumpster on the Lot. The Builder shall collect trash at the end of each work day and deposit construction trash, packing material, unusable scraps, and other debris in a suitable container, protected from the wind, and regularly serviced. No trash may be burned, buried, or otherwise disposed of within the Property. No concrete trucks may be cleaned out on the Lot or elsewhere within the Property.

5.3 Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of a Dwelling or other Improvements. Once the Dwelling is enclosed, materials shall be stored inside, and out of sight, whenever practical and possible.

5.4 Sanitary Facilities. The Builder is responsible for the installation and maintenance of an approved portable toilet facility during construction.

5.5 Construction Sign. During periods of actual construction on the Dwelling, the Owner or Builder may install a sign not to exceed six (6) square feet in area identifying the Lot and the Builder. The sign must also comply with any sign ordinance enacted by the City after the date of this Declaration. The sign must be removed upon completion or abandonment of construction.

5.6 Hours of Work. Daily working hours on the site shall be limited to the period beginning at 7:00 AM and ending at 9:00 PM, or such lesser period as is allowed by City ordinances. The Builder is responsible for controlling noise emanating from the site.

5.7 Removal of Mud. The Builder is responsible for cleaning up and removing mud that is deposited on the roadways of the Property by their construction operation at least once each week.

5.8 Duration of Construction. No construction shall be undertaken without a building permit and all other necessary permits from the City and any other governmental entity having jurisdiction over construction on the site. No materials, tools, temporary offices or portable toilets, excavation or construction equipment, or similar materials or equipment may be delivered to this site prior to the issuance of the building permit. It is the obligation of the Owner to construction with all reasonable speed once construction has commenced, and in any event, all exterior surfaces of the building shall be substantially completed within a period of six (6) months from the date of the foundation is complete.

5.9 Damage to Subdivision Improvements. Each builder or contractor who performs

construction activity on a Lot shall be required at its own cost and expense to repair any damage caused by such builder or contractor to any of the Subdivision Improvements. If the Owner of such Lot is unable to cause the builder or contractor to repair such damage, then the Owner of such Lot shall be responsible to make the repairs at the Owner's cost and expense. This provision shall not be construed to prohibit or prevent such Owners from seeking to recover all such costs and expenses from the responsible builder or contractor.

5.10 Completion of Construction. An Owner is not obligated to construct a Dwelling on his or her Lot, but once an Owner has decided to construct a Dwelling, construction of a Dwelling must be substantially completed (meaning a certificate of occupancy has been issued by the city for the Dwelling) within twenty-four (24) months following the issuance of a building permit has been issued to Owner by the city. If an Owner fails to comply with this requirement, the Owner shall be responsible to pay a fine of one hundred dollars (\$100.00) per day to the Association for each day after the twenty-four (24) month period until the Dwelling receives a final certificate of occupancy.

ARTICLE VI LANDSCAPE STANDARDS

It is the intent of the Declarant to require appropriate landscaping of Lots following construction of any Improvements, and to encourage the use of appropriate plant materials. The use and Improvement of each Lot is subject to the following Landscape Standards:

6.1 Lawn and Landscaping Required. Lawns are to be installed as soon as practical following completion of the construction of the Dwelling, but in no event later than eighteen (18) months from the issuance of the certificate of occupancy by the City.

6.2 Placement of Trees and Shrubs. Planting of a minimum of six (6) trees and a minimum of twelve (12) five-gallon shrubs in the front and/or visible side yard within each Lot is required. Conifers shall be a height of at least six (6) feet and deciduous trees shall be at least a two-inch (2") caliper. Only sod and trees shall be permitted to be planted in the parking strip. All trees in parking strip must be Chanticleer Pear and planted every 15' along the park strip. All trees must be approved by the Architecture design committee.

6.3 Fences. Fencing shall be permitted in the Property only in accordance with applicable City ordinances and must be decorative in nature. Barb wire and field fence on posts are prohibited. No chain link is permitted as cross-fencing or in back and side yards where it is visible from roads.

6.4 Regular Maintenance. With respect to his or her Lot, each Owner on a regular basis shall:

1. Mow the Lawn and ensure that the Lawn height does not exceed four inches;
2. Edge the Lawn and ensure that no part of the lawn runs onto paved surfaces such as sidewalk;
3. Water the Lawn sufficient to maintain a healthy, and green color (typically several inches of water a week);
4. Remove and replace any dead or missing patches of grass in the Lawn;
5. Water plants, trees, and shrubbery to maintain a healthy appearance;
6. Promptly remove weeds in the Lawn, gardens, sidewalks, and driveways;
7. Fertilize the Lawn;
8. Promptly remove plant clippings, fallen leaves, and trash cans from view from the front yard, except on trash pick-up day;
9. Promptly remove dead plants, shrubs, and trees, and debris from the Lot;

10. Remove and replace dead shrubs and trees of similar nature and scale;
11. Prune shrubs to a consistent level and in a manner consistent with the neighborhood; and
12. Prune trees as needed to be safe and presentable, including pruning back branches to allow pedestrian traffic to pass safely.

ARTICLE VII
DESIGN REVIEW COMMITTEE

It is the intention of the Declarant to have high-quality, well-built homes in the Subdivision in order to create a community that will command and protect high property values. Accordingly, the following provisions shall apply:

7.1 Design Review Committee Approval Required. In order to create, maintain and improve the Subdivision as a desirable community, and to establish and preserve harmonious design for the community, no Improvements of any kind may be constructed within the Subdivision unless the plans and design for the same have been reviewed and approved by the Design Review Committee. The Design Review Committee shall be comprised of two (2) persons designated by Declarant, who may be related to or otherwise affiliated with Declarant and need not be Lot Owners. Only plans that comply with the terms of this Declaration and provide for high quality construction and design will be approved. Except as provided herein, no Improvements may be constructed or undertaken without Design Review Committee approval. The Design Review Committee may impose a charge of two hundred dollars (\$200.00) for the review and processing of plans.

7.2 Creation of the Design Review Committee. The concurrence or approval of at least two (2) of the two (2) members of the Design Review Committee shall be necessary to carry out the provisions applicable to the Committee. The members of the Design Review Committee will be appointed by Declarant and the members of the Design Review Committee may be changed by Declarant from time to time in Declarant's sole and absolute discretion. The Design Review Committee may designate representatives or agents to act on its behalf. In the event of the death, resignation, or incapacity of any member of the Design Review Committee, the vacancy must be filled by the Declarant. The Design Review Committee will cease to function at the conclusion of the Period of Declarant's Control.

7.3 Design Review Committee Duties. The Design Review Committee will be responsible for the review and, subject to compliance with this Declaration, approval of all plans for the construction of any Improvements upon any Lot. The Design Review Committee may enforce the provisions of this Declaration, including by legal action if necessary. In addition to the authority expressly granted herein, the Design Review Committee shall have all rights, powers and privileges as are reasonably necessary to give effect to this Declaration and to enforce the terms of this Declaration.

7.4 Use of Consultants. The Design Review Committee is authorized to retain the services of one or more consulting architects, landscape architects, or designers qualified to practice in the State of Utah to assist the Design Review Committee in performing duties and responsibilities set forth in this Declaration.

ARTICLE VIII
ASSOCIATION AND MEMBERSHIP THEREIN

8.1 Membership. Each and every Owner, by accepting a deed for any Lot, whether or not it shall be so expressed in such deed, automatically becomes a Member of the Association, and agrees to be

bound by the Covenants identified herein and by such reasonable Rules and Regulations as may, from time to time, be established by the Association. Membership is mandatory for all Owners. When more than one person or entity is an Owner of a Lot, all such persons or entities shall be Members. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership of such Lot, whether by conveyance, intestate succession, testamentary disposition, foreclosure of a Mortgage, or such other legal processes as are now in effect or as may be hereafter established pursuant to the laws of the State of Utah. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of an obligation.

8.2 Transfer. Upon the transfer or conveyance of any Lot, the transferee or grantee shall become a Member, and the transferor or grantor shall immediately cease being a Member. The Board shall maintain a list of all Members and shall note each transfer of ownership on such list. Upon the transfer or conveyance of any Lot, the selling or transferring Owner shall promptly inform the Association of the name of the transferee or grantee. All transfers will be charged a transfer fee of \$200.00 payable at closing.

8.3 Voting Rights. The Owner or Owners of each Lot shall be entitled to one (1) vote for each Lot owned. The one (1) vote for such Lot shall be exercised as they, among themselves, determine. Where a Lot is owned by more than one Owner, the vote of any one of them shall be conclusively presumed to have been exercised as a result of an agreement among such Owners and in the event multiple Owners attempt to exercise a vote for such Lot on any question or issue, the Owners of such Lot will forfeit the right to vote on that question or issue. In no event shall more than one (1) vote be cast with respect to any Lot. With respect to any question or issue requiring a vote of the Association, vote of the Owners, or vote of the Members of the Association, the total number of votes cast shall not exceed the number of Lots in the Project. Unless otherwise required by this Declaration or the Bylaws, the number of affirmative votes required for approval of any matter submitted to vote of the Members shall be a majority of the votes cast with respect to such matter. All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws.

8.4 Meetings. Unless otherwise provided by this Declaration or by the Bylaws, all matters requiring a vote of the Members of the Association shall be decided at a meeting of the Members held for that purpose. Except in the case of an emergency or other situation which requires shorter notice, written notice designating the time and place of such meeting shall be provided to each Member no less than ten (10) or more than sixty (60) days in advance of a meeting. Other provisions for giving notice of such meetings, determining a quorum, and tallying votes shall be included in the Bylaws, or shall be established by the Board. In lieu of attending a meeting held for the purpose of exercising voting rights, Members may exercise such voting rights in writing or through a proxy, if designated in writing before the time for such vote. By attending a meeting where a vote is held, by exercising a vote in writing, or by designating a proxy, an Owner shall be conclusively deemed to have received adequate notice of such meeting or such vote.

8.5 Declarant Approval. Notwithstanding any other provision of this Declaration, during the Period of Declarant's Control all matters for which the Declaration or the Bylaws call for a vote of the Members of the Association may be decided solely by the Declarant with or without a meeting and with or without a vote of the Members. Any matters which are submitted to a vote of the Members during the Period of Declarant's control shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Period of Declarant's Control, all such matters shall be submitted to a vote of the Members of the Association and shall be decided solely by the votes of the Members.

8.6 Board of Directors. The Board shall be the governing body of the Association. In addition to those set forth herein, the powers, rights, privileges, and duties of the Board shall be set forth in the

Bylaws. During the Period of Declarant's Control, the Declarant shall appoint the members of the Board, which shall number no less than three (3) directors. After the Period of Declarant's Control, the members of the Board shall be chosen, removed, or replaced by the vote of the Members of the Association in accordance with the provisions of the Bylaws.

8.7 Professional Management. The Association may carry out the functions required of it pursuant to this Declaration, the Bylaws, or the Rules and Regulations, to the extent such functions are properly delegable, by and through a professional manager ("Manager"). If a Manager is engaged, the Manager shall be an independent contractor and not an employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by the Board, be authorized to perform any of the properly delegable functions or acts required or permitted or performed by the Association.

ARTICLE IX ASSOCIATION ASSESSMENTS

9.1 Covenant to Pay Assessments. The Owner of any Lot, by accepting a Deed for said Lot, whether or not it shall be expressed in the deed, agrees and is deemed to have agreed to pay to the Association all fees, annual assessments, supplemental assessments, and special assessments as set forth in this Declaration.

9.2 Purpose of Assessments. The operations and obligations of the Association, as identified in the Act, this Declaration, and the Bylaws, shall be funded through fees, annual assessments, supplemental assessments, and special assessments levied against the Lots.

9.3 Types of Fees and Assessments. The Association may impose the following fees and assessments:

9.4 Annual Assessment. After the first calendar month of ownership, each Owner shall pay an annual assessment for each Lot owned by such Owner. The annual assessment shall be the Lot's share of the total annual amount necessary for the Association to perform all of its obligations, whether imposed by the Act, this Declaration, or the Bylaws. Without limitation, the annual assessment shall include each Lot's share of the Common Expenses including the cost to maintain and preserve the Common Areas, including insurance thereon, the amounts necessary to perform the Association's other maintenance obligations, the amounts necessary to fund the Association's reserve fund in a manner consistent with the Act, the Association's administrative expenses, and the amount any obligations imposed on the Association by any applicable law, ordinances, or regulations, all of which shall be identified in the Association's budget. The annual assessment shall be fixed, and from time to time adjusted, by the Declarant during the Period of Declarant's Control and thereafter by the Board in accordance with the provisions of the Act. At a minimum, the Board or the Declarant shall review the annual assessment on an annual basis and make such adjustments as are necessary. The Declarant or the Board may require that the annual assessment attributable to each Lot be divided in twelve equal shares and paid in the form of a "monthly membership assessment," to be due and payable each month on a date fixed by the Board. The amount of the annual assessment shall be fixed at a uniform rate for each Lot and will be a proportion of the Association's annual Common Expenses, the numerator of which is the total Common Expenses and the denominator of which is the total number of Lots. The denominator will not be reduced in the event multiple Lots are combined to form one Lot; in such event, the Owner of such combined Lots shall pay the assessment attributable to each of the Lots as if they were separate. As additional Lots are constructed or conveyed to purchasers, the Declarant or the Board shall adjust the amount of the annual assessment accordingly. After the period of Declarant's Control, the Board may not increase the amount of an annual assessment for any

fiscal year by more than twenty percent (20%) over the previous fiscal year's annual assessment without first obtaining the affirmative vote of a majority of a Quorum of the Members at a meeting of the Association called for such purpose.

9.5 Supplemental Assessment. In the event the annual assessment is insufficient to meet the Association's regular recurring obligations in any given fiscal year, the Declarant during the Period of Declarant's Control or the Board thereafter may assess a supplemental assessment against each Lot for a share of any supplemental amount necessary to meet the Association's annual obligations. Each Lot's share of a supplemental assessment shall be determined in the same manner as for annual assessments.

9.6 Special Assessment. The Declarant during the Period of Declarant's Control or the Board thereafter may assess a special assessment to pay for special, non-recurring, or emergency expenses of the Association or the Project which exceed the Association's annual budget for the fiscal year during which such expenses arise, including but not limited to expenses related to damage to the Project, unanticipated repairs, and Common Area improvements. Any special assessment shall represent the pro-rata share of such expenses attributable to the Lot or Lots benefited by such expenses, or to which such expenses apply. In the event such expenses apply to or benefit less than all the Lots in the Project, the Declarant or Board may impose a special assessment against less than all of the Lots in the Project.

9.7 Capital Improvements. Notwithstanding any other provision of this Declaration, after the Period of Declarant's Control, the Association shall not make any Capital Improvement without the authorization of sixty-seven (67%) of a Quorum of the Owners voting at a meeting called for the purpose of proposing such Capital Improvement. For purposes of this Section, a "Capital Improvement" shall mean the installation of new Improvement, or a major upgrade to an existing Improvement, located within a Common Area or other portion of the Project managed by the Association, for which funds are not otherwise identified in the Association's budget. If approved as provided in this Section, the cost of a Capital Improvement may be assessed to the Lots as a special assessment.

9.8 Budget. The annual assessment shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided that for the first fiscal year shall begin on the date of the conveyance of the first Lot by Declarant. On or before December 1 of each year thereafter, the Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, the anticipated receipts (if any), and any deficit or surplus from the prior operation period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period. On or before December 1 of each year, the Board shall also notify each Owner of the amount of the following fiscal year's annual assessment for each Lot owned by such Owner.

9.9 Reserve Account. The Association must comply with the terms and provisions of the Act relating to a reserve analysis and the funding of a reserve account for those Common Areas of the Project, if any, for which the Association is required to maintain a reserve account. Any reserve account will be funded by assessments imposed in accordance with the terms of this Article 9. At the closing of each Lot, each Owner, except for Declarant, shall pay an amount of \$500 into the reserve account.

9.10 Lien and Personal Obligation. The fees and assessments identified above, together with any applicable late payment fees, interest, costs, and reasonable attorney fees, shall be a charge and lien against the Lot against which such assessment is imposed. In addition, each Owner's obligation to satisfy such assessments is an independent and personal covenant of such Owner, with all amounts being due and payable without setoff or deduction when assessed. In the event of a failure to pay such assessments, or other default, the Association may pursue an action against the Owner to collect the assessment and

enforce the lien against a Lot by foreclosure in the manner set forth below. The Association's lien shall be a continuing lien on each Lot and shall be subordinate to a First Mortgage, where the Mortgagee is a lender who loaned funds for the purchase of the Lot, and shall also be subordinate to a lien for property taxes or other public assessments, but the Association's lien shall be superior to all other liens, charges, or encumbrances of any sort which shall hereafter arise or be imposed on any Lot. The Association's lien shall not be affected by the sale or transfer of any Lot.

9.11 Statement and Evidence of Payment. Upon receipt of a written request by an Owner, or any other person or entity, the Board shall within a reasonable time issue to such Owner or other person or entity a written certificate stating, as applicable, (i) that all annual, special, and supplemental assessments (plus any applicable costs or fees) have been paid with respect to any specified Lot as of the date of the certificate, or (ii) if all assessments have not been paid, the amount of such outstanding annual, special, or supplemental assessments (plus any applicable costs or fees) due and payable as the date of the certificate. The Board may make a reasonable charge for issuing such certificates. Any such certificate, when issued as provided herein, shall be conclusive and binding with respect to any matter therein stated.

9.12 Effect of Non-Payment and Remedies.

a. Late Fees and Interest. Any assessment not paid within ten (10) days from the due date thereof shall be subject to a late payment fee in an amount to be determined by the Board. In addition, all fees and assessments not paid when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Board.

b. Legal Remedies. The Association may bring an action at law against the Owner personally obligated to pay the same, and may foreclose the lien against such Owner's Lot in the manner provided by the laws of the State of Utah, and in the event a judgment is obtained, such judgment shall include interest on the assessment and reasonable attorney fees to be fixed by the court, together with the costs of the action. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose the Association's lien for any subsequent assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the membership votes appurtenant to ownership of such Lot, and to convey or otherwise deal with such Lot. In addition to the other rights and remedies set forth herein, the Association shall have all of the rights and remedies pertaining to enforcement of assessment liens as set forth in, and to be exercised in accordance with, the provisions of the Act, including, without limitation, the provisions in Utah Code Ann. §§ 57-8a-302 and -303, as the same may be amended. To this end, the Declarant (and each Owner by acceptance of a deed to a Lot) hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8a-302 to Stewart Title Insurance Agency of Utah, as trustee, 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 Declaration. The Association shall have the right to substitute said trustee and appoint a successor trustee as provided by statute. The lien of the Association shall be superior and prior to all other liens and encumbrances except liens and encumbrances recorded prior to the recordation of this Declaration, a First Mortgage on a Lot, and assessments, liens, and charges in favor of the State of Utah or a political subdivision thereof imposed for taxes or other governmental assessments or charges past due and unpaid. In any action brought by the Association (or counterclaim or cross-claim brought by the Association) to collect assessments or to foreclose a lien for unpaid assessments, the Association shall be entitled to have a receiver of the Owner appointed to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's

assessments of any kind or nature permitted hereunder.

ARTICLE X
EASEMENTS & RIGHTS OF WAY

10.1 **Green-Strip Maintenance by Association.** The Association directly, or through designated agents, will maintain the following Green Strip Areas to the same degree as the Lawn maintenance requirements set forth in Section 6.4 above:

1. The island on the west-side entrance of the Property approaching from 1450 West Street;
2. The island on the east-side entrance of the Property approaching from 1100 West Street;
3. The 2 Green Strip Areas, each approximately 798 feet long (see Exhibit C), that run alongside the east-side entrance of the Property approaching from 1100 West Street; and
4. The Green Strip Area within the Entrance Sign Easement.

10.2 **Strip Maintenance by Owners.** Each Owner is responsible for maintaining the Green Strip Area along Highgate Avenue that abuts each respective Owner's Lot. Each Owner shall maintain such Green Strip Area to the same degree as the Lawn maintenance requirements set forth in Section 6.4 above.

10.3 **City Approval.** The maintenance responsibilities described in Sections 10.1 and 10.2 may not be amended or removed from this Declaration in the future without the City's authorization.

10.4 **No Obstruction.** No person shall obstruct or permanently occupy any portion of the right-of-way green spaces described in Sections 10.1 and 10.2 without prior written permission of the Board.

10.5 **City as Third-Party Beneficiary.** The City is an intended third-party beneficiary of this Declaration. Notwithstanding any provision of this Declaration to the contrary: (1) neither the Declarant, the Association, nor any of the Owners shall amend this Declaration without the City's prior written consent; and (2) the City will be entitled to, but not required, to enforce this Declaration by any method, except the City will not be required to submit any dispute to arbitration or follow the pre-arbitration procedures of this Declaration.

10.6 **Detention Basin of Lot 23.** During the Period of Declarant's Control, the Declarant is responsible for the construction, grassing, and installation of an irrigation system for the Detention Basin. Thereafter, the Association shall maintain the Detention Basin on a regular basis, or as otherwise required by the City by advanced written notification, including (1) watering, weeding, fertilizing, and mowing the grass; (2) maintaining and upgrading the irrigation system; (3) removing debris and sediment as needed; and (4) maintaining the Detention Basin's original capacity and configuration. The Owner of Lot 23 shall provide unlimited and constant access of the Detention Basin to the Association for such maintenance. If such maintenance is not done according to the City's prior written specifications, the City may perform such maintenance and charge the cost thereof to the Association. The Detention Basin is part of Lot 23 of the Plat and the Owner of Lot 23 may enter the Detention Basin as part of the yard, but the easement on which the Detention Basin is located is in favor of the City. The Owners, Members, and the Association shall not build, place, or plant any structures, trees, shrubs, or other permanent objects within the Detention Basin.

10.7 **Entrance Sign Easement on Lot 13.** The Entrance Sign Easement is a part of Lot 13 of the

Plat but is in favor of the Association and permits the Association to erect, maintain, and replace an entrance sign on Lot 13 of the Plat as described herein. The Owner of Lot 13 shall provide unlimited and constant access of the Entrance Sign Easement to the Association for maintenance. The Association is responsible for maintaining the Green Strip Area within the easement as provided in Section 10.1. The Owner of Lot 13 shall maintain the other Green Strip Area that abuts Lot 13 as provided in Section 10.2. The Entrance Sign Easement is more specifically defined by the following legal description:

THE BASIS OF BEARING FOR THIS SURVEY IS SOUTH 00°03'47" EAST FROM THE CENTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN TO THE SOUTH QUARTER CORNER OF SAID SECTION 23.

BEGINNING AT A POINT ON THE SOUTH LINE OF HIGHGATE ESTATES SUBDIVISION, SAID POINT BEING SOUTH 00°03'47" EAST, ALONG THE SECTION LINE, 1951.20 FEET TO THE SOUTH LINE OF SAID HIGH GATE ESTATES AND EAST, ALONG SAID SOUTH LINE, 1302.43 FEET FROM THE CENTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 32.66 FEET TO THE SOUTH RIGHT OF WAY LINE OF HIGHGATE AVENUE; THENCE 105.17 FEET ALONG THE ARC OF A 175.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS SOUTH 72°47'00" EAST 103.59 FEET); THENCE SOUTH 2.00 FEET TO THE SOUTH LINE OF SAID HIGHGATE ESTATES; THENCE WEST, ALONG SAID SOUTH LINE, 98.95 FEET.

CONTAINS 1,171 SF, OR 0.027 ACRES, MORE OR LESS

10.8 HollyFrontier Pipeline Easement. HollyFrontier has been granted a perpetual easement and right of way for constructing, operating, maintaining, repairing, replacing, inspecting, improving, and upgrading an underground drainage pipe together with all related facilities and appurtenances in, on, under, across, and over Lots 4, 5, 6, 7, 8, and 25. Buildings, fences, and other structures are prohibited within the Pipeline Easement. The Pipeline Easement also grants HollyFrontier the rights of ingress and egress on, over, under, over, and through Lots 4, 5, 6, 7, 8, and 25 and such Lot owners are responsible at their expense for repairing and replacing any fencing and landscaping within the Pipeline Easement damaged or removed in connection with HollyFrontier's installation, maintenance, and repair of a wastewater pipeline. The Pipeline Easement is further defined by the following legal description:

The Pipeline Easement is located in Davis County, Utah and more particularly described as:

BEGINNING AT A POINT ON THE SOUTH LINE OF A STORM DRAIN AND RIGHT OF WAY EASEMENT, WITH ENTRY NO. 2102111 IN BOOK 3862 AT PAGE 862, SAID POINT BEING SOUTH 00°03'47" EAST ALONG THE QUARTER SECTION LINE, 1169.04 FEET AND NORTH 89°56'13" EAST 521.24 FEET AND SOUTH 00°03'47" EAST 89.49 FEET FROM THE CENTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 00°03'47" WEST 16.50 FEET; THENCE NORTH 89°58'47" EAST 285.39 FEET; THENCE 146.42 FEET ALONG THE ARC OF A 293.50 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 75°41'17" EAST 144.91 FEET); THENCE 161.44 FEET ALONG THE ARC OF A 321.91 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 75°45'50" EAST 159.76); THENCE SOUTH 89°52'08" EAST 467.03 FEET TO THE EAST LINE OF SAID STORM DRAIN AND RIGHT OF WAY EASEMENT; THENCE ALONG SAID EASEMENT THE FOLLOWING FIVE (5) COURSES: 1) SOUTH 00°01'00" EAST 16.50 FEET; 2) NORTH 89°52'08" WEST 467.07 FEET; 3) 153.17 FEET ALONG THE ARC OF A 305.41 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS SOUTH 75°45'50" WEST 151.57 FEET); 4)

154.65 FEET ALONG THE ARC OF A 310.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 75°41'17" WEST 153.05 FEET); 5) SOUTH 89°58'47" WEST 285.38 FEET TO THE POINT OF BEGINNING.

CONTAINS 17,495 SF, MORE OR LESS

ARTICLE XI
GENERAL PROVISIONS

11.1 Violation Deemed a Nuisance. Any violation of these Covenants that remains on the property is deemed a nuisance, and is subject to abatement by any other Owner or by the Association.

11.2 Remedies.

a. Any single or continuing violation of the Covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by the Association, or by any other Owner. 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 attorney fees and costs of court.

b. Nothing in this 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. These covenants, conditions and restrictions are to be construed as being in addition to those remedies available at law.

c. The remedies available under this 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 Covenants contained in this Declaration in the future or against other similar violations.

11.3 Severability. Each of the covenants, conditions and restrictions contained in this 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 provisions shall remain in full force and effect.

11.4 Limited Liability. Neither the Declarant nor any other Owner shall have personal liability to any other Owner for actions or inactions taken under these Covenants, provided that any such action or inaction is the result of the good faith exercise of their judgment or authority, under these Covenants, and without malice.

11.5 Amendment. At any time while this Declaration is in effect, the Owners of sixty-six percent (66%) of the Lots may amend the provisions of this Declaration, subject to the City's prior written consent, provided that so long as Declarant owns any portion of the Property, Declarant's approval to any amendment shall be required. Any amendment must be in writing. No such amendment will be binding upon the holder of any mortgage or trust deed unless the holder joins in the amendment.

11.6 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Property is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions, and restrictions contained herein against his or her Lot, whether or not there is any reference to this

Declaration in the instrument by which he acquires his or her interest in any Lot.

11.7 Notices. All notices under this Declaration are deemed effective seventy-two (72) hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage prepaid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

11.8 Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Property. Paragraph headings are inserted for convenience only.

ARTICLE XII DISPUTE RESOLUTION; MANDATORY BINDING ARBITRATION

12.1 Statement of Intent. As used in this Article 12, "Association" means the Association, the Design Review Committee, any other homeowners association specific to the Project which the Declarant organizes, or any association which the Owners, or any group of Owners, may form to control, manage, maintain or improve the Project or any portion of the Project. Prior to purchasing a Lot, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Lot that Owner is purchasing or any other aspect of the Project, including, without limitation, the Common Areas. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant or the Developer. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot in the condition it and the Lots and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant, Developer, and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners, by purchasing a Lot, and the Declarant covenant and agree that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through the specific alternative dispute resolution mechanisms described below, and only after full disclosure, satisfaction of the right to cure periods, and knowing approval of the Owners, as set forth in the provisions of this Article 12. In addition, the Association and the Owners agree that they take ownership and possession of the Lots and Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

12.2 Binding Arbitration for All Disputes. To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant, the Developer, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant or Developer, or any engineer or contractor involved in the design or construction of the Project, which arise from or are in any way related to a Dwelling or other Improvement on a Lot, Common Area, Limited Common Area, or any other Improvement on or component of the Project (a "Dispute"), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant or Developer and any Owner or between or involving the Declarant or Developer and the Association. Arbitration proceedings, however, shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 12.3 below have been satisfied in full.

Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

- a. Any allegation that a condition in any of the Dwellings on the Lots, the Common Areas, the Limited Common Areas, or other Improvements in the Project is or involves a construction defect;
- b. Any disagreement as to whether an alleged construction defect has been corrected;
- c. Any claim or allegation that the Subdivision Improvements or Common Areas were not designed, constructed or installed correctly or that any Subdivision Improvements or Common Areas are defective in any manner;
- d. Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;
- e. Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;
- f. Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;
- g. Any alleged violations of consumer protection, unfair trade practice, or other statutes or laws;
- h. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
- i. Any allegation that any condition existing in the Project or created by the Declarant, Developer, or any of contractors, including construction-related noise, dust, and traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;
- j. Any disagreement concerning the scope of issues or claims that should be submitted to binding arbitration;
- k. Any disagreement concerning the timeliness of performance of any act to be performed by Declarant, Developer, or any contractors;
- l. Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;
- m. Any disagreement or dispute regarding management of the Association, or regarding reserve studies or funding of Association expenses; and
- n. Any other claim or disagreement arising out of or relating to the sale, design, or construction of any Improvement on the Lots, Common Areas, Limited Common Areas, off-site Improvements, management of the Association, or other claims regarding the Project.

12.3 Pre-Arbitration Requirements. An Owner or the Association may only pursue a claim against the Declarant in arbitration after all of the following efforts of dispute resolution have been

completed: (a) **Right to Cure:** the claimant (e.g. the Owner or the Association) shall provide to the Declarant or Developer, as applicable, a written Notice of Claim (defined below) and permit the Declarant or Developer one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; and (b) if the dispute is not resolved within the 180-day Right to Cure period, the parties shall participate in formal mediation with a mutually-acceptable third-party mediator in an effort to resolve the Dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant or Developer that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

12.4 **Notice of Claim.** "Notice of Claim" shall mean and include the following information: (a) an explanation of the nature of the claim, (b) a specific breakdown and calculation of any alleged damages, (c) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (d) photographs of any alleged defective condition, if applicable, (e) samples of any alleged defective conditions or materials, if reasonably available, (f) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (g) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

12.5 **Member Approval; Legal Opinion; Arbitration.** If a claim or dispute has not been resolved after satisfying and complying with the above-described "Pre-Arbitration Requirements," then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the total votes of the Association after the Association has obtained a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a mutually-acceptable arbitrator (preferably a former judge), or, if an arbitrator cannot be mutually selected, then by a member of the National Panel of Construction ADR Specialists promulgated by Construction Dispute Resolution Services, LLC ("CDRS"). The binding arbitration shall be conducted according to the rules and procedures set forth in the Arbitration Rules and Procedures promulgated by CDRS. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

12.6 **Fees and Costs of Arbitration.** Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. The arbitrator shall not award attorney fees, expert witness fees or arbitration costs to the prevailing party.

12.7 **No Waiver of Arbitration Right.** If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration or to insist on compliance with the requirements set forth in this Article 10. If any such court action is filed, then the court in such action shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein, including, without limitation, compliance with the Pre-Arbitration Requirements set forth above.

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

BEGINNING AT A POINT BEING SOUTH 00°03'47" EAST ALONG THE QUARTER SECTION LINE, 1183.17 FEET AND NORTH 89°56'13" EAST 42.00 FEET FROM THE CENTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE ALONG THE SOUTHERLY LINE AND EXTENSION THEREOF, OF MILLCREEK MEADOWS SUBDIVISION, ON FILE WITH THE OFFICE OF THE DAVIS COUNTY RECORDER, THE FOLLOWING THREE (3) COURSES: 1) NORTH 89°58'45" EAST 764.67 FEET, 2) NORTH 00°04'10" WEST 85.80 FEET, 3) SOUTH 89°52'08" EAST 762.40 FEET; THENCE SOUTH 00°01'00" EAST 151.93 FEET TO THE NORTH LINE OF THE WOODS CROSS REFINING COMPANY LLC PROPERTY AS DESCRIBED IN ENTRY NO. 2590008, BOOK 5233, PAGES 571-573; THENCE SOUTH 89°58'13" WEST, ALONG SAID WOODS CROSS REFINING COMPANY LLC PROPERTY, 3.69 FEET, MORE OR LESS, TO AN EXISTING CHAIN LINK FENCE; THENCE SOUTH 00°17'21" EAST, MORE OR LESS ALONG SAID FENCE AND ALONG THE WESTERLY LINE OF THE PROPERTY DESCRIBED IN ENTRY NO. 606272, 431.29 FEET; THENCE ALONG SAID ENTRY NO. 606272, SOUTH 00°01'25" WEST, ALONG SAID FENCE, 165.95 FEET TO A FENCE CORNER; THENCE NORTH 89°48'22" EAST ALONG AN EXISTING FENCE, 797.65 FEET TO THE WEST RIGHT-OF-WAY LINE OF 1100 WEST; THENCE SOUTH 00°17'38" EAST ALONG SAID WEST RIGHT-OF-WAY LINE A DISTANCE OF 105.93 FEET; THENCE WEST 2632.79 FEET; THENCE NORTH 00°00'48" WEST 103.53 FEET; THENCE NORTH 89°58'52" EAST 267.93 FEET TO SAID QUARTER SECTION LINE; THENCE NORTH 00°03'47" WEST ALONG SAID QUARTER SECTION LINE 332.70 FEET; THENCE NORTH 89°31'00" WEST 226.66 FEET TO THE EAST LINE OF AN EASEMENT RECORDED ON APRIL 8, 1955 AS ENTRY NO. 145065, IN BOOK 81, AT PAGE 634, ON RECORD WITH THE OFFICE OF THE DAVIS COUNTY RECORDER; THENCE ALONG SAID EASEMENT THE FOLLOWING THREE (3) COURSES, 1) NORTH 00°01'00" EAST 4.26 FEET TO THE POINT OF A 103.00 FOOT RADIUS CURVE TO THE LEFT, 2) ALONG THE ARC OF SAID CURVE A DISTANCE OF 57.19 FEET (THROUGH A CENTRAL ANGLE OF 31°48'38" CHORD BEARS NORTH 15°53'41" WEST 56.45 FEET), 3) NORTH 31°48'00" WEST 226.41 FEET; THENCE EAST 341.13 FEET; THENCE 18.86 FEET ALONG THE ARC OF A 12.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 44°58'07" EAST 16.98 FEET); THENCE NORTH 00°03'47" WEST 185.19 FEET; THENCE 66.46 FEET ALONG THE ARC OF A 475.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 04°04'16" WEST 66.40 FEET); THENCE NORTH 08°04'45" WEST 227.95 FEET; THENCE NORTH 89°02'45" EAST 49.10 FEET TO THE POINT OF A 275.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 14.59 FEET (THROUGH A CENTRAL ANGLE OF 3°02'23" CHORD BEARS NORTH 86°27'39" EAST 14.59 FEET); THENCE 20.12 FEET ALONG THE ARC OF A 12.00 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS SOUTH 39°57'03" WEST 17.84 FEET); THENCE SOUTH 08°04'45" EAST 208.77 FEET; THENCE 73.45 FEET ALONG THE ARC OF A 525.00 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS SOUTH 04°04'16" EAST 73.39 FEET); THENCE SOUTH 00°03'47" EAST 118.39 FEET TO THE POINT OF BEGINNING.

CONTAINS 33.808 ACRES, MORE OR LESS

EXHIBIT B

BYLAWS OF THE ASSOCIATION

EXHIBIT C
SUBDIVISION PLAT

12.8 Waiver of Subrogation. The Association and each Owner waives any and all rights to subrogation against the Declarant, the Developer, and any builder, contractor, and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the Project engineer, and builder, contractors of the Declarant and the builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, and their respective officers, employees, owners, contractors, insurers, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the Developer, and any of their officers, employees, owners, contractors, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

Executed on the date stated above.

DECLARANT:

Blackgate Investments, LLC,
a Utah limited liability company

By: [Signature]
Its: member

STATE OF UTAH)
 :SS
COUNTY OF DAVIS)

The foregoing instrument was acknowledged before me this 23rd of May, 2019, by Jay D. Gough, as manager of Blackgate Investments, LLC.

Shauna A. Brady
NOTARY PUBLIC

SEAL:

