

AMENDED AND RESTATED  
MASTER DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
THE COMMUNITY PRESERVATION ASSOCIATION  
FOR HIDEOUT CANYON  
IN  
HIDEOUT, UTAH

**THIS DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS IN SECTION 20, IMPORTANT CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION PROVISIONS, MEDIATION AND ARBITRATION REQUIREMENTS, AND IMPORTANT WARRANTY LIMITATIONS AND DISCLAIMERS IN SECTION 21, AND IMPORTANT PRIVATE AMENITIES GOLF COURSE AND GOLF CLUB PROVISIONS IN SECTION 22.**

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AMENDED AND RETATED MASTER DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR

THE COMMUNITY PRESERVATION ASSOCIATION FOR HIDEOUT CANYON  
This AMENDED AND RESTATED MASTER DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR THE COMMUNITY PRESERVATION  
ASSOCIATION FOR HIDEOUT CANYON is adopted by the Community Preservation  
Association, Inc., and is effective as of the date it is recorded with the Wasatch County Recorder.

RECITALS

- A. Mustang Development, LLC, is the developer of the Hideout Canyon development located in Hideout, Utah. The Project is a residential and commercial mixed-use master-planned community which includes multiple types of housing and recreational amenities.
- B. Capitalized terms in this Master Declaration are defined in Article 1 herein or in other sections of this Master Declaration.
- C. A Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon (the "Initial Declaration") was recorded on October 6, 2005, with the Wasatch County Recorder as Entry No. 290025, Book 0792, Pages 0493-0560.
- D. A Supplemental Declaration to the Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on October 9, 2007, with the Wasatch County Recorder as Entry No. 327019, Book 951, Pages 1052-1055.
- E. The First Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on January 4, 2008, with the Wasatch County Recorder as Entry No. 330382, Book 957, Pages 1427-1432.
- F. The Second Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on January 4, 2008, with the Wasatch County Recorder as Entry No. 330383, Book 957, Pages 1433-1438.
- G. The Third Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on January 4, 2008, with the Wasatch County Recorder as Entry No. 330384, Book 957, Pages 1439-1444.
- H. The Fourth Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on January 4, 2008, with the Wasatch County Recorder as Entry No. 330385, Book 957, Pages 1445-1450.
- I. The Fifth Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on January 4, 2008, with the Wasatch County Recorder as Entry No. 330386, Book 957, Pages 1451-1456.
- J. The Sixth Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on January 4, 2008, with the Wasatch County Recorder as Entry No. 330385, Book 957, Pages 1457-1462.
- K. The Seventh Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on January 4, 2008, with the Wasatch County Recorder as Entry No. 330385, Book 957, Pages 1463-1468.

- L. The Eighth Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on January 9, 2009, with the Wasatch County Recorder as Entry No. 343527, Book 980, Pages 1113-1117.
- M. The Ninth Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on January 9, 2009, with the Wasatch County Recorder as Entry No. 343528, Book 980, Pages 1118-1122.
- N. The Tenth Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on March 25, 2014, with the Wasatch County Recorder as Entry No. 3399413, Book 1101, Pages 1450-1454.
- O. The Eleventh Amendment to Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon was recorded on June 17, 2014, with the Wasatch County Recorder as Entry No. 401844, Book 1106, Pages 1619-1622.
- P. The Second Supplemental Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon for Soaring Hawk Phases 1, 2 and 4 was recorded on December 14, 2015, with the Wasatch County Recorder as Entry No. 419165, Book 1146, Pages 1149-1454.
- Q. In connection with development of the Project, the Community Preservation Association, a Utah nonprofit corporation, was formed as the master community association to own, operate, and maintain various common areas, common elements, and community improvements, and to administer and enforce the Governing Documents consistent with the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act.
- R. The Seventh Amendment to the Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon provides, *inter alia*, that the Initial Declaration may be amended by the affirmative vote or written consent of 75% of all outstanding votes, including those of the Declarant.
- S. The members of the Master Association and the Declarant now desire to further amend and restate the Initial Declaration, as amended to (a) conform to the changes to the Utah Community Association Act and other Utah laws; (b) more efficiently and effectively protect and enhance the value of the Project and the Property; (c) facilitate completion of the Development; and (d) clarify and define the rights of the Master Association and the Owners in and to the Project.
- T. The Terms and Conditions established herein are for the mutual benefit and burden of the Master Association, all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Project and/or the Property.
- U. Portions of the Project have been, or may be, developed under a condominium form of ownership and/or as particular individual neighborhoods or neighborhood sub-associations with additional special covenants, conditions, and restrictions. The Declarant, in its discretion, may form neighborhood sub-associations to govern and enforce such additional covenants, conditions, and restrictions; however, nothing in this instrument shall require the creation of a neighborhood sub-association. The powers, authority and jurisdiction of any such sub-associations shall be subordinate to that of the Master Association.
- V. This Master Declaration shall run with the land and shall govern the Project and use of the Property and shall be binding upon the Declarant, the Master Association, all Owners, and

any future Owners of any portion of the Property, his/her heirs, successors, and assigns, and any other Person that now or hereafter has any legal, equitable, or beneficial interest in any portion of the Property. By taking title to any Unit or other property in the Project, each Owner joins in and accepts the intent, purpose, and objectives of this Master Declaration and agrees to be bound by it, and acknowledges the benefits received from its existence and the Declarant's development of the Project, and accepts the burdens that accompany these benefits.

**NOW, THEREFORE**, pursuant to the Recitals set forth above and incorporated herein, and subject to the Terms and Conditions set forth below, the Initial Declaration, as amended, is hereby amended and restated by and through this Master Declaration. This Master Declaration, along with and subject to any future amendments, replaces and supersedes the Initial Declaration, as amended, in all respects.

## ARTICLE 1 DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 "Act" shall mean and refer to the Community Association Act codified beginning at § 57-8a-101, Utah Code Annotated ("Utah Code Ann.").
- 1.2 "Additional Covenants" shall mean and refer to any additional restrictions, conditions, or covenants imposed on a Unit or Owner as part of a Neighborhood Sub-Association. If the Additional Covenants are more restrictive than the provisions of this Master Declaration, the more restrictive provision shall control. The Master Association shall have standing and authority but not the obligation to enforce any such Additional Covenants.
- 1.3 "Allocated Interest" shall mean and refer to the voting interests in the Master Association which are allocated equally among the Units, subject to provisions in Sections 6.2(d) and 20 herein, and to each Unit's liability for the Common Expenses. Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Master Declaration and other Governing Documents.
- 1.4 "Articles" shall mean and refer to the Articles of Incorporation for the Master Association.
- 1.5 "Assessment" shall mean and refer to any monetary charge imposed or levied on a Unit or an Owner by the Master Association as provided for in this Master Declaration.
- 1.6 "Base Assessments" shall mean and refer to those Assessments levied on all Units to pay for Common Expenses for the general benefit of all Owners, more particularly described in Section 6.2 herein.
- 1.7 "Board" shall mean and refer to the Board of Directors of the Master Association.
- 1.8 "Builder" shall mean and refer to Park City Mountain Builders, LLC, and any other builders as may be designated by the Declarant.
- 1.9 "Bylaws" shall mean and refer to the Amended and Restated Bylaws of the Master Association, attached as Exhibit C, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.10 "City" shall mean and refer to Hideout City located in Wasatch County, Utah.

- 1.11 “Common Area and Facilities” unless otherwise more specifically provided in this Master Declaration, shall mean and refer to the real and personal property for the common use and enjoyment of the Owners, and specifically shall include, but not be limited to, the following: (a) all Common Area and Facilities designated as such the Plats, including any area designated as open space; (b) all trails and pocket parks as may be developed within the Project; (c) all utility installations and all equipment connected with, or in any way related to, the furnishing of utilities for the common use of all Units, or for the common areas; (d) any fence or wall on common property; (e) any road, street, lane, alley or cul-de-sacs within the Project not dedicated to the City or property of a Neighborhood Sub-Association; and (f) all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use, reserved for the exclusive use and enjoyment of the Owners and their respective family members, tenants, guests, and invitees, and all other parts of the Project outside of the Units not dedicated to the City or the public or which are necessary or convenient to the Project’s existence, maintenance, and safety, or normally in common use.;. In accordance with the Plats, the Common Area and Facilities shall be owned and operated by the Master Association.
- 1.12 “Common Expenses” shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair, and replacement of the Common Area and Facilities; (b) management and administration of the Master Association, including, but not limited to, compensation paid by the Master Association to managers, accountants, attorneys, consultants, and employees; (c) extermination, security, landscaping, snow removal, and other related services, to the extent such services are not expenses assessed as Specific Assessments; (d) insurance and bonds required or allowed by this Master Declaration; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Master Association as provided for or allowed in the Act or the Governing Documents; (g) all maintenance or other obligations of the Master Association for property outside of the Project; and (h) any other expenses of the Master Association arising from the operation of the Master Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.13 “Community-Wide Standards” shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Project or, at a minimum, the standards initially established by the Declarant and/or described in the Master Declaration, Design Guidelines, Rules, and Board resolutions. The Community-Wide Standards may or may not be set forth in writing.
- 1.14 “Declarant” shall mean and refer to Mustang Development, LLC, and its successors, assigns, and any related entity designated by the Declarant, in writing.
- 1.15 “Design Guidelines” shall mean and refer to the Community Preservation Association Hideout Canyon Design Review Guidelines promulgated by the Declarant and adopted by the Master Association, as they may be amended from time to time.
- 1.16 “Design Review Committee” shall mean and refer to the Design Review Committee as set forth herein.

- 1.17 “Development” shall mean and refer to the Hideout Canyon development, including all Units, Common Areas and Facilities, and other property within the Project as shown on the Plats covering the entire Property.
- 1.18 “Development Agreement” shall mean and refer to that certain Master Developer Agreement between the Declarant and the City for development of the Project, recorded with the Wasatch County Recorder on July 9, 2010, as Entry No. 360737, Book 1017, Pages 1027-1086, as it may be amended.
- 1.19 “Development Improvements” shall mean and refer to all development improvements to be installed outside of the boundaries of Units or within easements, as identified on the Plats, that are necessary to provide road access and utility service to the Units, and including other construction work required to comply with any ordinance or conditions of the City or other governmental agencies for the approval of any portion of the Development.
- 1.20 “Golf Club” shall mean and refer to Outlaw Golf Club, LLC, and its successors in interest, assigns, or transferees, which operates the golf club on the Golf Course.
- 1.21 “Golf Course” shall mean and refer to that certain real property located adjacent to, in the vicinity of, or within the Development, which is privately-owned by Mustang Development, LLC, its successors in interest or title, assigns or transferees, and operated as a golf course, and the related improvements and facilities thereon.
- 1.22 “Governing Documents” shall mean and refer to this Master Declaration, the Plats, the Articles, the Bylaws, the Design Guidelines, and the Rules, and any other written instrument by which the Declarant or Master Association may exercise power, or manage, maintain, or otherwise affect the Project.
- 1.23 “Lender” shall mean and refer to a holder of a mortgage or deed of trust on a Unit.
- 1.24 “Lot” shall mean and refer to a lot created by the Plats on which an attached or detached single-family dwelling is or will be constructed, and is included within the definition of the Unit under Section 1.41 below. The term “Lots” shall mean and refer to more than one Lot.
- 1.25 “Manager” shall mean and refer to any Person or Persons engaged by the Board to professionally manage the Master Association. The Association may engage more than one Manager. The term “Managers” shall mean and refer to more than one Manager.
- 1.26 “Master Association” shall mean and refer to the Community Preservation Association, a Utah Nonprofit Corporation, the membership of which shall include each Owner in the Project. If the Owners are ever organized as another type of entity, or if the Owners act as a group without legal organization, “Master Association,” as used in this Master Declaration, shall refer to that entity or group.
- 1.27 “Master Declaration” shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Hideout Canyon, including all attached exhibits other than any Bylaws, which are incorporated by reference, and any and all amendments to this Master Declaration.

- 1.28 “Neighborhood” shall mean and refer to any condominium development and/or any distinct neighborhood community developed within the Project. The term “Neighborhoods” shall mean and refer to more than one Neighborhood or all neighborhoods within the Project.
- 1.29 “Neighborhood Sub-Association” shall mean and refer to any community or condominium sub-association established for the governance of a particular Neighborhood within the Project, and which are subject to, and bound by, this Master Declaration.
- 1.30 “Occupant” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, occupying, or living in a Unit within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.
- 1.31 “Owner” shall mean and refer to the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the County Recorder of Wasatch County, Utah, but shall not include a trustee under a trust deed or mortgagee. The term “Owners” shall mean and refer to more than one Owner or all owners within the Project.
- 1.32 “Person” shall mean and refer to a natural individual, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity. The term “Persons” shall mean and refer to more than one Person.
- 1.33 “Plats” shall mean and refer to the record of survey maps of the Hideout Canyon development (individually, each a “Plat”), recorded with the Wasatch County Recorder, and shall include all recorded amendments and supplements thereto.
- 1.34 “Privately-Owned Amenities” shall mean and refer to certain real property and improvements and facilities located thereon, adjacent to, in the vicinity of, or within the Development, which are privately owned and operated by any Person other than the Master Association for recreational and related purposes on a membership basis, use-fee basis, or otherwise, and includes, without limitation, the Golf Club.
- 1.35 “Project” shall mean and refer to the Hideout Canyon development and all structures and improvements thereon, including the Units and the Common Area and Facilities.
- 1.36 “Property” shall mean and refer to the property legally described in Exhibit A and all easements and rights appurtenant thereto.
- 1.37 “Rules” shall mean and refer to the rules and regulations adopted by the Master Association.
- 1.38 “Special Assessments” shall mean and refer to those Assessments levied on all Units other than the Base Assessments and Specific Assessments, more particularly described in Section 6.9 herein.
- 1.39 “Specific Assessments” shall mean and refer to those Assessments levied on one or more Units, in addition to the Base Assessments and any Special Assessments, to pay for the benefits, services, and items provided by the Master Association to the Unit, the Owner, and/or Occupants, more particularly described in Section 6.10 herein.

- 1.40 “Terms and Conditions” shall mean and refer to any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.41 “Unit” shall mean and refer to a subdivided unit or condominium unit within the Development depicted as a separately identified parcel on the Plat, a survey, or condominium instrument which may be independently owned and conveyed, and is zoned or otherwise intended for development, use, and occupancy as an attached or detached single-family residence, sometimes referred to herein as a “Residential Unit” or as a commercial unit. The term “Unit” refers to land, if any, which is part of a Unit, including the lot for a detached single-family dwelling, or a commercial structure, as well as to any structures or other improvements on the Unit. In the case of a building within a condominium, or other structure containing multiple residential dwellings, each dwelling shall be deemed to be a separate Unit. The term “Unit” does not include Common Area and Facilities, common property of any Neighborhood Sub-Association, or property dedicated to the City or the public.
- In the case of a parcel or pod of vacant land, or land on which improvements are under construction, the parcel or pod shall be deemed to contain the number of Units designated for residential use for such parcel or pod in accordance with the Development Agreement and master plan for the Development, until such subdivision or Neighborhood plat or site plan is recorded on all or a portion of that parcel or pod. Thereafter, the portion encompassed by the Plat or site plan shall constitute a separate Unit or Units as determined above, and the number of Units on the remaining land, if any, shall continue to be determined in accordance with the above.
- In the case of the combination or consolidation of two or more Lots into a single Lot as may be allowed by the City, the combined Lot nevertheless shall retain the Allocated Interest of each original Lot.
- 1.42 “Water Features” shall mean and refer to any lake, pond, or stream constructed as part of the Development.

## ARTICLE 2 THE PROJECT

- 2.1 Nature of the Project. The Project is a residential and commercial mixed-use development that contains, or will contain six (6) commercial Units and up to one-thousand nine-hundred seventy-five (1,975) Residential Units, which are or will be divided into separate Neighborhoods, each distinct and unique in character, yet cohesive with all the other Neighborhoods in the Project. It includes a variety of housing types, open space, parks, trails, Water Features, roadways, and a commercial node. The commercial node is located off of Longview Drive, near the primary entrance to the Project, and includes neighborhood-type retail and office space. It is intended to primarily serve the residents of the Project but is accessible to surrounding neighborhoods within Wasatch County. The Project is not a cooperative and is not a condominium.
- 2.2 Registered Agent. The registered agent of the Master Association shall be as provided for in the Articles and supplementary filings with the Utah Division of Corporations and Commercial Code.



- 2.3 Expansion of Project. The Project may be expanded or contracted by the Declarant consistent with the Development Agreement.

### ARTICLE 3

#### DESCRIPTION AND MAINTENANCE OF THE UNITS, LIMITED COMMON AREA AND FACILITIES, AND ALLOCATED INTERESTS

##### 3.1 The Unit

- (a) The distinct Unit number that identifies the Unit on a Plat may or may not be consistent with the mailing address of the Unit.
- (b) Subject to further specification herein, and/or on the Plat or Neighborhood Sub-Association documents, each Unit generally consists of all structures on or within the boundary of the Unit, including, but not limited to, all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, footings, and fixtures. For attached Units, and, in all walls shared with or abutting another Unit, the Unit shall extend to the center of the wall, which shall form the boundary of the Units sharing that wall. Subject to dividing lines between Units (such dividing walls are "party structures", as defined below), any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Unit is part of the Unit if it: (i) is part of and an integral part of the Unit structure (such as bay windows, pop-outs, eaves, etc., not to include fences or other appurtenant structures that merely connect to the Unit structure); or (ii) was constructed as part of the original construction of the Unit.
- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit, shall be part of the Unit.
- (d) All exterior and interior doors, door jams, windows, window sills, window frames and all components therein, and garage doors within or on the boundary of any Unit are part of the Unit.
- (e) Party Walls. Each wall, fence, driveway, or similar structure built as part of the original construction on the Units, which serves and/or separates any two adjoining Units, shall constitute a party structure. To the extent not inconsistent with this Section, the general rules of law regarding party walls and liability for property damage due to negligence or the willful acts or omissions shall apply to such party structures. All Owners who make use of the party structure shall share the cost of reasonable repair and maintenance of such party structure equally. If a party structure is destroyed or damaged by fire or other casualty, then, to the extent such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the party structure may restore it. If other Owners subsequently use the party structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from any other user or Person under any rule of law regarding liability for negligent or willful acts or omissions. The right of contribution under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

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

### 3.2 Limited Common Area.

- (a) **Specific Identification of Limited Common Areas.** The Limited Common Area of each Unit or Units, if any, shall consist of areas identified on the Plat as Limited Common Area that are spatially associated with that particular Unit or Units.
- (b) **No Severance of Limited Common Area.** The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit or Units where so identified, and may not be severed from the ownership of the Unit.

### 3.3 Phase-Specific Common Area and Limited Common Area Allocations. Notwithstanding anything else to the contrary in this Master Declaration, the following phase-specific allocations (as such phases are defined below) of Common Area and Limited Common Area are created. All recording information is recorded in the public records of Wasatch County, Utah.

- (a) **Phase 1:** Phase 1 shall consist of all of: (i) the Hideout Canyon – Phase 1 – First Residential Plat, recorded June 27, 2005, as Entry No. 284926, in Book 764, at Page No. 424; (ii) Hideout Canyon Phase 1 – Pod 4 Residential Plat, recorded September 12, 2005, as Entry No. 288568, in Book 785, at Page No. 197; (iii) Hideout Canyon Phase 1 – Pod 4 Residential Plat, Amended, recorded on September 29, 2009, as Entry No. 352738, in Book 1001, at Page No. 126; (iv) Hideout Canyon Phase 1 Amended Pod 9 Residential Client, recorded on April 3, 2008, as Entry No. 334044, in Book 963, at Page 1979; and (v) Hideout Canyon Amended Phase 1 First Residential Plat, recorded on January 10, 2008, as Entry No. 330592, in Book 957, at Page 2354. In Phase 1 all driveways are Limited Common Area appurtenant to the Unit to which such driveway is spatially located and subject to the exclusive use of such appurtenant Unit. Further, all real property in Phase 1 that is not a driveway and is specifically identified as part of a Unit, or as Limited Common Area, is Common Area and Facilities, except for any road which has been dedicated as a public road.

- (b) Phases 2 and 4: Phases 2 and 4 shall consist of all of the Hideout Canyon Phases 2 and 4 Residential Plat, recorded on January 17, 2006, as Entry No. 295335, in Book 822, at Page 489. The roads known as Lasso Trail and Longview Drive, which run through Phases 2 and 4, shall be Common Area and Facilities, but only if such roads are not public roads dedicated to a municipality.
- (c) Phase 2A: Phase 2A shall consist of all of the Hideout Canyon Phase 2A Residential Plat, recorded on November 21, 2008, as Entry No. 342228, in Book 977, at Page 1669.
- (d) Phase 5: Phase 5 shall consist of all of the Hideout Canyon Phase 5 Residential Plat, recorded on April 16, 2009, as Entry No. 346911, in Book 988, at Page 1007. The roads known as Lariat Court and Longview Road, which run through Phase 5, shall be Common Area and Facilities, but only if such roads are not public roads dedicated to a municipality.
- (e) Phase 8: Phase 8 shall consist of all of the Hideout Canyon Phase 8 Residential Plat, recorded on June 5, 2009, as Entry No. 348949, in Book 993, at Page 424. (Lots 1-9 and R1-R6). In Phase 8, the private road identified as Reflection Ridge shall be Limited Common Area appurtenant to the Units in Phase 8.
- (f) Phase 8A: Phase 8A shall consist of all of the Hideout Canyon Phase 8A Residential Plat, recorded on August 25, 2015, as Entry No. 415529, in Book 1138, at Page 307. In Phase 8A, the road known as Reflection Lane shall be Limited Common Area appurtenant to the Units in Phase 8A. Further, Parcels A, B, and C shall be Common Area and Facilities.
- (g) Forevermore Phase: The Forevermore Phase shall consist of all of: (i) the Forevermore Plat A, recorded on July 20, 2012, as Entry No. 380683, in Book 1059, at Page 1458; and (ii) the Forevermore Plat A Amended, recorded on May 29, 2013, as Entry No. 390318, in Book 1082, at Page 272. Parcels identified as Open Space A and B shall be Common Area and Facilities.
- (h) Rustler Phase: The Rustler Phase shall consist of all of: (i) Rustler Plat A, recorded on October 11, 2011, as Entry No. 373003, in Book 1042, Page 1668; (ii) Rustler Plat A Amended, recorded on June 12, 2012, as Entry No. 379673, in Book 1057, Page 611; (iii) Rustler Plat B Amended, recorded on April 26, 2013, as Entry No. 389202, in Book 1079, Page 1681; (iv) Rustler Plat C, recorded on June 11, 2013, as Entry No. 390729, in Book 1083, at Page 339; (v) Rustler Plat C 1st Amended, recorded on November 23, 2015, as Entry No. 418531, in Book 1145, Page 162; (vi) Rustler Plat D, recorded on March 26, 2015, as Entry No. 410327, in Book 1125, Page 1564; and (vii) Rustler Plat B, recorded on October 17, 2012, as Entry No. 383247, in Book 1065, Page 1587. In the Rustler Court Phase, all roads, including Shortline Circle and Viewside Circle, are Common Area and Facilities if they are not public roads dedicated to a municipality.
- (i) Soaring Hawk Phase. The Soaring Hawk Phase shall consist of all of: (i) the Soaring Hawk Subdivision Phase 1 Plat, recorded September 26, 2014, as Entry No. 404842, in Book 1113, Page 1062; (ii) the Soaring Hawk Subdivision Phase 2 Plat, recorded July 16, 2015, as Entry No. 414035, in Book 1134, Page 1312; and

(iii) the Soaring Hawk Subdivision Phase 4 Plat, recorded March 25, 2015, as Entry No. 410313, in Book 1125, Page 1498. In the Soaring Hawk Phase, Soaring Hawk Lane and White Tail Court are Limited Common Area appurtenant to the Units in the Soaring Hawk Phase.

(j) Commercial Phase. The Commercial Phase shall consist of all of the Hideout Canyon Commercial Phase Plat, recorded on May 27, 2008, as Entry No. 283647, in Book 767, Page 508. All real property in the Commercial Phase that is not a driveway or specifically identified as part of a Unit, is Common Area and Facilities, except for any roadway which has been dedicated as a public road.

- 3.4 Allocated Interest of Each Unit in the Votes of the Association. The Owner of a Unit shall be entitled to vote his/her Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve. Each Unit shall have an equal Allocated Interest. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Allocated Interest.
- 3.5 Plats. The Plats and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Master Association. If any conflict exists between the Plat and this Master Declaration, the Master Declaration shall control, except to the extent provided for on the Plats, or as otherwise provided by the application of controlling law.
- 3.6 Maintenance of Units. Unless otherwise provided in this Master Declaration or in the governing documents of a Neighborhood Sub-Association, each Owner shall be responsible for maintaining and repairing his or her Unit and all structures, driveways, parking areas, landscaping, and other improvements to the Lot in accordance with this Section and the Community-Wide Standards. If an Owner fails to maintain his/her Unit and structures, driveways, parking areas, and landscaping, the Master Association may, in its discretion, undertake such maintenance obligations and allocate the costs as a Specific Assessment.

#### ARTICLE 4

#### ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

- 4.1 Organization of Association. The Master Association shall serve as the organizational body for all Owners.
- 4.2 Legal Organization. The Master Association has been organized and is operating pursuant to the laws of the State of Utah as a nonprofit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Master Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in this Master Declaration and the Bylaws or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Master Association shall adopt, to the extent possible and subject to any then-existing legal requirements, documents consistent with the terms of the Master Declaration and Bylaws.

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

4.4 Availability of Documents.

- (a) The Master Association shall make available to the Owners copies of the Governing Documents and the corporate records, meeting minutes, books, and financial statements related to the operations of the Master Association consistent with the requirements of the Act and §§ 16-6a-1601 through 1603, 16-6a-1605, and 16-6a-1606 of the Utah Revised Nonprofit Corporation Act.
  - (i) The term “available” as used in Section 4.4(a) above shall mean available for inspection or copying at the Master Association’s principle place of business or the offices of the Manager within five (5) business days after receiving a proper written request, during normal business hours and under other reasonable conditions, except that annual financial statements requested by an Owner may be provided to an Owner within fifteen (15) days of receiving such request.
  - (ii) Notwithstanding anything to the contrary in this Section 4.4, the Master Association may require that the Owner strictly comply with any and all statutory provisions or other legal requirements applicable to providing this information before providing it.
  - (iii) If an Owner elects to have the Master Association produce copies of requested documents or records, the Master Association may assess the Owner reasonable copying costs consistent with § 57-8a-227(4)(b)(ii) of the Act.
- (b) Subject to any legal requirements otherwise, the Master Association shall make available to Lenders and insurers of any Lender, copies of the Governing Documents and copies of corporate records, meeting minutes, books, and financial statements related to the operations of the Master Association within thirty (30) days of receipt of a written request.
- (c) Notwithstanding anything to the contrary in this Section 4.4, the Master Association may redact from any document produced for inspection or copying any information subject to attorney-client privilege and any other information that the Management Committee, in good faith, determines would reveal sensitive personal or financial information of an Owner or agent of the Master Association, including, without limitation, bank account numbers or social security numbers.

4.5 Board of Directors. The governing body of the Master Association shall be the Board elected pursuant to the Bylaws, subject to the Declarant Rights set forth in Article 20 herein. The Board shall consist of not less than three (3), and no more than five (5), members. Except as otherwise provided in this Master Declaration, Bylaws, or the Articles, the Board, in all instances, shall act on behalf of the Master Association. Any reference to an act, right, or obligation of the Master Association in the Governing Documents may only be exerted or complied with through an action of the Board. Except as may be specifically provided in the Master Declaration, Bylaws, Articles, or by applicable law, no Owner or group of Owners other than the Board may direct the actions of the Master Association.

4.6 Board Members.

(a) Qualification.

(i) To serve on the Board, a Person must be an Owner, or the spouse of an Owner, and, if a natural individual, over the age of eighteen years old. Notwithstanding, if an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, the entity's officer, principle, shareholder, partner, member, manager, trustee, or beneficiary, may be a member of the Board.

(ii) As further detailed and explained in the Bylaws, and except during the Declarant Control Period as set forth in Section 20.2 herein, at least two (2) of the Board members, at all times, must have as their primary residence a Unit in the Project. The Bylaws shall provide for procedures to ensure this requirement is maintained and may include, but are not limited to, the expulsion of Board Members.

(b) Reasonable Ongoing Requirements for Board Members. The Bylaws may place reasonable obligations and requirements on existing Board Members to retain their membership on the Board, such as a requirement that a Board Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Board Member who fails to comply with the reasonable requirements, which may include some action of the remaining Board Members. Any Bylaw requirements adopted pursuant to this section shall not apply to any Board Members on the Board during the term of the Board Member being served when they are adopted.

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

(a) Except as provided herein or in the Bylaws, the Board, any individual Owner, and any individual Board Member or Officer shall have no authority to, and may not act on behalf of, the Master Association or the Board to:

(i) amend or terminate any Governing Document;

(ii) elect or remove members of the Board;

(iii) establish or change the qualifications, powers and duties, requirements, or terms of Board Members or of the Board; or

(iv) authorize or agree to any deviation or exception from the Terms and Conditions, except as provided in this Master Declaration.

- 4.8 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Board or anyone else) contrary to the terms of the Governing Documents, regardless of the circumstances under which it is given, and no claim or defense of estoppel, or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Project to verify that anything that the Master Association does, does not do, or authorizes related to the Project or the Master Association is in compliance with the terms of the Governing Documents.
- 4.9 Registration with the State. The Master Association shall be registered with the Utah Department of Commerce, in accordance with Utah Code Ann. § 57-8a-105, and shall update its registration to keep any required information current, as required by the Act.

#### ARTICLE 5

#### GENERAL RIGHTS AND RESPONSIBILITIES OF THE MASTER ASSOCIATION

- 5.1 Rights and Responsibilities of the Master Association. The Master Association shall have the following rights and responsibilities, in addition to any others set forth in the Governing Documents or provided by law.
- 5.2 Maintenance. The Master Association shall make provisions for completing all maintenance, repair, and replacement requirements and obligations of the Master Association. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area and Facilities. The Master Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and Facilities and the Project, in accordance with the general purposes specified in this Master Declaration and the Community-Wide Standards. Nothing in the foregoing provisions of this Section 5.2 shall be construed to prevent the Master Association from taking on obligations of the City pursuant to a written agreement between the City and the Master Association. Notwithstanding anything in this Section 5.2 to the contrary, a Neighborhood Sub-Association shall be responsible for maintenance of the property which it owns, or which its covenants designate as being exclusively or primarily for the benefit of the Neighborhood Sub-Association's members.
- 5.3 Capital Improvements. After the Declarant Control Period, capital improvements shall be governed by and subject to the following conditions, limitations, and restrictions:
- (a) Any capital improvement to the Project that does not materially alter the nature of the Project may be authorized by the Board alone. A material alteration to the Project, for example, is the installation of a previously non-existent and materially significant fixture, or permanent removal of a materially significant fixture such as a trail, fire pit, or benches. Landscaping alterations and the addition or removal of signs or small structures is not material unless they cause other material changes such as those listed above.

- (b) Any capital improvement which would materially alter the nature of the Project, regardless of its cost and prior to being constructed or accomplished, must be authorized by written consent of Owners holding at least thirty percent (30%) of the total Allocated Interests, and must be approved of by the Board and the Design Review Committee.
- 5.4 Paying Expenses. The Master Association shall provide for the payment of Master Association expenses.
- 5.5 Setting and Collecting Assessments. The Master Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
- 5.6 Adopting and Enforcing Rules. The Board may adopt Rules for the regulation and operation of the Project. If Rules are adopted they shall be consistently and uniformly enforced. The Rules may address any issues, including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents, so long as the Rules do not contradict the same. The Board's determination as to whether a particular activity being conducted, or to be conducted, violates, or will violate the Rules, shall be conclusive, subject to a judicial determination, if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.
- 5.7 Hiring Managers and Delegating Responsibilities. The Master Association shall hire a Manager or Managers to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as the Board deems appropriate; provided, however, that only the Board shall have the right to approve Master Association budgets, fines to Owners, and Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. **THE BOARD HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS, OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.**
- 5.8 Other Necessary Rights. The Master Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- 5.9 Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Master Association may: (a) impose fines; (b) collect rents directly from tenants if Owners fail to pay Assessments; and (c) take any other action, or seek any other remedy allowed by the Act or other applicable Utah law.
- 5.10 Discretion in Enforcement.
- (a) Subject to the discretion afforded in this section, the Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.



- (b) The Board shall use its reasonable judgment to determine whether to exercise the Master Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis: (i) whether to compromise a claim made by or against the Board or the Master Association; and (ii) whether to pursue or compromise a claim for an unpaid Assessment.
  - (c) The Master Association may not be required to take enforcement action if the Board, after fair review and acting in good faith and without conflict of interest, determines that under the particular circumstances: (i) the Master Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a technical violation has or may have occurred, and the violation is not material as to a reasonable person, or does not justify expending the Master Association's resources; or (iv) it is not in the Master Association's best interests to pursue an enforcement action based upon hardship, expense, or other reasonable criteria.
  - (d) Subject to Subsection (e), if the Board decides, under Subsection (c) above, to forego enforcement, the Master Association is not prevented from later taking enforcement action.
  - (e) The Board shall not be arbitrary, capricious, or act against public policy in taking, or not taking enforcement action.
- 5.11 Reserve Fund. Subject to the exemption in Section 20.11 herein, the Master Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis, as required in Article 17 of this Master Declaration.
- 5.12 Preventing Conflicts with Service Providers and Vendors. Subject to the exemption in Section 20.15 herein, the Master Association shall not permit any paid services to be performed or materials paid for by the Association to be provided by: (a) any Board Member; (b) any relative of any Board Member, Manager, or of any officer, employee, or owner of the Manager; (c) any business or entity in which any Board Member, Manager, or employee, officer, or owner of any Manager, or any relative of the same is employed or has more than a ten percent (10%) ownership or beneficial interest; or (d) any business, entity, or Person with any familial or financial relationship with any Board Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same without prior written disclosure of the relationship and prior written approval of the Board. For purposes of this Section 5.12, a relative is any natural individual known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include Managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing similar services to the Master Association.
- 5.13 Establishing Hearing Procedures. The Board shall have the authority to create a reasonable hearing process, applicable in case the Master Association shall take adverse action related to any particular Owner or group of Owners, or in case a hearing process is required by law. The Board shall not be under any obligation to offer a hearing process, except as required by law or the Governing Documents, and, in any such process, shall

have the authority to designate the procedure related to any such hearing, and to make any and all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise, or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum, for: (a) at least two weeks' notice of the hearing to the Owner; and (b) a reasonable time period under the circumstances for the Owner to present his/her own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

- 5.14 Annual Meeting. The Master Association shall arrange for and conduct an annual meeting of the Owners, as provided for in the Bylaws, and shall arrange for and conduct such other meetings of the Master Association, as shall be properly requested pursuant to the Governing Documents or the law.
- 5.15 Payoff Information Fees. The Master Association is specifically authorized to establish a fee of \$25.00 to provide payoff information related to the transfer, refinance, or closing of a Unit. The Board may increase or decrease the amount charged if the new amount is identified in the Rules and is consistent with Utah law.
- 5.16 Reinvestment Fee upon Sale or Transfer of Unit. The Master Association may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a "Reinvestment Fee"), as provided for in Utah Code Ann. § 57-1-46, in an amount up to one and one-quarter percent (1.25%) of the value of the Unit at the time of the transfer, or in such other amount as may be determined by the Board and set forth in the Rules, consistent with Utah Code Ann. § 57-1-46. Every Reinvestment Fee collected by the Master Association shall be allocated as follows: seventy-five percent (75%) to the Golf Club, consistent with Utah Code Ann. § 57-1-46(1)(ii), and twenty-five percent (25%) to the Master Association. For purposes of this Section 5.16, a transfer is any change in the ownership of the Unit as reflected in the office of the county recorder, regardless of whether it is pursuant to the sale of the Unit or not, but excluding any transfer by the Declarant to the Builder or to any other entity owned by any interest-holder(s) of the Declarant, and excluding the initial sale of the Unit by the Declarant or the Builder. For purposes of this Section 5.16, the value of the Unit shall be the higher of: (a) the value of the Unit as determined by the property tax assessor on the date of the transfer of title; (b) the purchase price paid for the Unit, related to the transfer; or (c) the value of the Unit on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Board) and paid for by the Master Association using an appraiser selected by the transferor (or the transferee) of the property from a list of five appraisers selected by the Master Association. This reinvestment fee covenant may not be enforced against: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a *bona fide* transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest Master Association's costs directly related to the transfer of the burdened property, not to exceed \$250, or such other amount as may be established by law. The Master Association shall

have authority to record any notice required by law to effectuate this provision. The Master Association shall have the authority to enact Rules that may include: (1) requirements for Owners to provide sales and transfer documents; (2) requirements for the timing of responses to requests, such as the selection of the appraiser; (3) default provisions if no selection is made, such as allowing the Master Association to select the appraiser; and (4) other procedural requirements and rules as the Board deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

- 5.17 Neighborhood Sub-Association Responsibilities Each Neighborhood Sub-Association within the Project is subject to, and bound by, this Master Declaration. Each Neighborhood Sub-Association shall be responsible for administering and enforcing the Additional Covenants applicable to its respective Neighborhood. Each Neighborhood Sub-Association shall be responsible to make provisions for completing all maintenance, repair, and replacement obligations as set forth in that Neighborhood Sub-Association's covenants, in a manner consistent with the Community-Wide Standards.

## ARTICLE 6 BUDGETS & ASSESSMENTS

- 6.1 Purpose of Assessments. Money collected by the Master Association shall be used for the purposes of promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Master Association.
- 6.2 Budget and Base Assessment.
- (a) The Board is authorized and required to adopt a budget for the following fiscal year prior to the beginning of each fiscal year. The Board may revise that budget from time to time as it deems appropriate.
  - (b) The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably detailed expense categories. Subject to the provisions of Section 20.17 herein, the budget shall include a line item that identifies the amount to be placed into the reserve fund. The budget may include contingencies and estimates as the Board deems appropriate.
  - (c) The Board shall provide a copy of the budget to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget. Posting a copy of the budget on the Master Association's website, if available, shall satisfy the requirement of this Section 6.2(c).
  - (d) The Board shall determine the amount of the Base Assessments by dividing the budget total by the total Allocated Interests, subject to the provisions of Section 20.6 herein, to be paid by the Owners for their respective Unit.

- 6.3 Payment of Base Assessments. Unless otherwise established by the Board and communicated to each Owner, each Owner shall pay to the Master Association the Owner's Base Assessment annually or on such other quarterly or monthly installment basis as the Board or the Manager may determine.
- 6.4 Adjustments to Base Assessments. In the event the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, the Board may then revise the budget and each Owner's proportional share of the new budget total. Upon notice of the adjustment, and unless modified by the Board, each Owner thereafter shall pay to the Master Association the Owner's adjusted Base Assessment.
- 6.5 Personal Obligation for Assessment. Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument, and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Master Association to pay to the Master Association any and all Assessments as provided for in the Governing Documents, including any Assessments assessed to a Unit which remain unpaid as of the date an Owner acquired title to the Unit. All such Assessments, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due.
- 6.6 Capital Improvements. Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Board.
- 6.7 Rules Regarding Billing and Collection Procedures. The Board shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Master Declaration, and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, establishing the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Master Association to send a statement to an Owner, or an error in any such statement (other than a Certificate of Payment), shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 6.8 Certificate of Payment. The Master Association, within ten (10) business days after written demand, shall furnish to any Owner liable for Assessments, or such other Person for whom an Owner has given written permission in a form acceptable to the Master Association, a written statement or certificate signed by an officer or authorized agent of the Master Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of twenty-five dollars (\$25.00), or such other amount allowed by law and set forth in the Rules, may be collected by the Board for the issuance of each such certificate. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.

- 6.9 Special Assessments. Subject to any limitations in this Master Declaration for the particular type of expense, the Master Association is expressly authorized to set and collect Special Assessments, payable as may be determined by the Master Association (in lump sums or over a period of time), to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of Special Assessment, a Special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due. Additionally, Special Assessments may be levied by the Master Association against a particular Unit and its Owner for:
- (a) Costs incurred in bringing an Owner, or the Owner's Unit, into compliance with the provisions of the Governing Documents;
  - (b) Fines, late fees, collection charges, and interest; and
  - (c) Attorneys' fees, costs and other expenses relating to any of the above.
- 6.10 Specific Assessments. Subject to any limitations in this Master Declaration for the particular type of expense, the Master Association is expressly authorized to set and collect Specific Assessments, payable as may be determined by the Master Association, to pay for the cost of providing benefits, items, or services to a Unit, an Owner, or Occupants, or specific to a particular Neighborhood which primarily benefit the Units, Owners, and Occupants of such Neighborhood, such as Unit exterior maintenance, landscape maintenance on non-Common Area or Limited Common Area, and/or snow removal on non-Common Area or Limited Common Area, or private streets within the Neighborhood. The Master Association, in its discretion, shall determine whether costs should be assessed as Specific Assessments or should be classified as Common Expenses. Additionally, the Master Association is expressly authorized to set and collect Specific Assessments, payable as may be determined by the Master Association, to pay for the cost of providing benefits, items, or services to a Unit, or Owner, or Occupant upon request of the Owner, pursuant to a menu of special services which the Board may, from time to time, authorize to be offered to Owners, (which might include, for example, handyman services, landscape maintenance, snow removal, or pest control), and for any other charge designated by the Board as pertaining to an individual Unit consistent with the Governing Documents.
- 6.11 Acceptance of Materials or Services. In the event the Master Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project which benefits individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, impliedly agree that the costs thereof may be assessed as a Specific Assessment pertaining to that Unit, at the discretion of the Board.
- 6.12 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board, in its discretion, may apply the excess to reserves, credit the excess against future Assessments, or refund the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Project, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. The Master Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

- 6.13 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Master Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and power, a claim in the nature of offset or that the Master Association owes the Owner money, or that the Master Association is not complying with its obligations as provided for in the Governing Documents.
- 6.14 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied first to interest, late fees, collection costs, attorneys' fees, and then to the earliest Assessment. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

#### ARTICLE 7

#### NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS

- 7.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board may, at its option, invoke any or all of the remedies granted in this Article 7. The Master Association's choice of one remedy shall not prejudice or constitute a waiver of the Master Association's right to exercise any other remedy.
- 7.2 Collection Charges and Interest. If the Master Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: The Assessments shall be due within thirty (30) days of invoicing. Payments received after thirty (30) days from invoicing may be charged for initial late fee in such amount as may be determined by the Board, in its discretion, and allowed by law. Thereafter, additional late fee charges may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at the rate of two percent (2%) per month, or at such other rate as may be determined by the Board, in its discretion, and allowed by law. The Master Association may also assess to the Owner a collection charge, late fee, and any other reasonable charge charged by a Manager related to collections.
- 7.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. Except as otherwise provided by law, the Owner and any future Owners of a Unit are jointly and severally liable for all Assessments accruing related to that Unit prior to and during the time that an Owner holds title to a Unit. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred the Unit to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation in this Section 7.3 is separate and distinct from any lien rights associated with the Unit.
- 7.4 Lien. The Master Association has a lien on each Unit for all Assessments, which include, but are not limited to, interest, collection charges, late fees, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Master Declaration. The Master

Association's lien shall have priority over each other lien and encumbrance on a Unit, except only: (a) a lien or encumbrance recorded before this Master Declaration is recorded; (b) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Master Association; and (c) a lien for real estate taxes or governmental assessments or charges against the Unit or as otherwise provided by law. The Master Association may, but need not to, record a notice of lien on a Unit. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Master Association provides otherwise in the Notice of Assessment. The Master Association also has a lien on each Unit for all fines imposed against an Owner by the Master Association. This lien shall arise and be perfected when: (a) the time for appeal described in Utah Code Ann. § 57-8a-208(5) has expired and the Owner did not file an appeal; or (b) the Owner timely filed an appeal under Utah Code Ann. § 57-8a-208(5) and the district court issued a final order upholding the fine.

- 7.5 Action at Law. The Master Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay the same. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and such attorneys' fees and court costs will be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner, by taking title to a Unit, vests in the Master Association, or its assigns, the right and power to bring actions at law against such Owner or Owners for the collection of delinquent Assessments.
- 7.6 Foreclosure Sale. The Master Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Declarant appoints Melyssa D. Davidson as trustee, who qualifies under Utah Code Ann. § 57-1-21(1)(a)(i). The Declarant hereby conveys and warrants pursuant to Utah Code Ann. § 57-1-20 and 57-8a-302 to Melyssa D. Davidson, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of the Master Declaration. The Master Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form. Any attorneys' fees and costs incurred in any lien foreclosing shall be assessed against the delinquent Owner and the Owner's Unit, and such attorneys' fees and court costs will be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner, by taking title to a Unit, vests in the Master Association, or its assigns, the right and power of lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 7.7 Homestead Waiver. Each Owner, to the extent permitted by law, by taking title to a Unit, waives, to the extent of any liens created pursuant to this Master Declaration (whether such liens are now in existence or are created at any time in the future) the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 7.8 Termination of Delinquent Owner's Rights. The Master Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to vote.

- 7.9 Requiring Tenant to Pay Rent to Master Association. Pursuant to, and as provided for in the Act, the Master Association shall have a right to demand and collect rent from any tenant in a Unit for which an Assessment is more than sixty (60) days late.
- 7.10 Attorneys' Fees Incurred as a Result of a Default. In addition to any attorneys' fees and costs provided for herein, the Master Association shall be entitled to recover its attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including, but not limited to, attorneys' fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings, including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities, including seeking and responding to discovery, taking depositions or examinations, introducing evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including, as reasonably necessary, related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (h) foreclose of a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Master Association to recover all fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.
- 7.11 Master Association Responsibility after Foreclosure. If the Master Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), the Master Association shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including, but not limited to, obligations to pay assessments or maintain the Unit.

## ARTICLE 8 DESIGN CONTROLS

- 8.1 Design Review Committee. The Design Review Committee shall be composed of at least three (3), but not more than five (5), individuals appointed by the Board. Persons serving on the Design Review Committee shall serve at the pleasure of the Board. The Board may remove a member of the Design Review Committee and appoint a new Design Review Committee member at any time, provided that at all times there shall be a least three (3) persons serving. Members of the Design Review Committee may or may not be Board Members or members of the Master Association, and may include one or more paid professionals, such as an architect, to perform such services. The Design Review Committee shall have the authority to enforce the Design Guidelines for the Association. The Design Review Committee shall have and may exercise all the powers, duties, and responsibilities assigned to it or otherwise set out in this Master Declaration. The Design Review Committee may hire a secretary or other personnel to perform administrative, clerical, and other functions. The operating costs of the Design Review Committee, including the



services of its planning consultants, professionals, and other staff, shall be covered through a fee paid to the Design Review Committee by Owners applying for plan review and approval consistent with § 57-8a-109(2) of the Act. The Design Review Committee shall make available to all Owners a current fee schedule. The Design Guidelines shall also set forth the fee schedule, and the fee schedule may be modified from time to time in accordance with the provisions herein for the amendment and updating of the Design Guidelines. Fees must be paid, in full, before any review by the Design Review Committee commences and the unused portion of such fee, if any, is refundable.

- 8.2 Authority. Except as otherwise provided in this Master Declaration, no improvements of any kind, or changes to the natural condition of any property shall be permitted or allowed to remain on any Units, Lot, or elsewhere in the Project unless complete architectural plans, specifications, and site plans showing the location and orientation for such construction, alteration, or landscaping are approved by the Design Review Committee prior to the commencement of any work. Work subject to Design Review Committee approval may include, but is not limited to, the construction of structures, installation of utility lines, fences, grading, antennas, satellite dishes, flag poles, any renovation, expansion, or refinishing of the exterior of an existing Unit or structure, excavating, clearing, landscaping, or other alterations. Notwithstanding the foregoing, any work performed by the Declarant or Builder, or on behalf of Declarant, to any of the property within the Project, including, but not limited to, the construction of Development Improvements and infrastructure, or the initial construction of the Units by the Declarant or the Builder shall not require approval of the Design Review Committee.
- 8.3 Design Review Committee Review Process. Subject to Section 8.11, the process for reviewing building applications will be defined by the Rules established by the Design Review Committee and adopted by the Master Association and the Design Review Committee.
- 8.4 General Standards. Subject to Section 8.11, the Design Review Committee shall evaluate, among other things: (a) the materials to be used on the exterior of Unit or structures; (b) exterior colors; (c) harmony of architectural design with other Units within the Project; (d) height and other design features; (e) location with regard to topography and finished grade elevations; (f) harmony of landscaping with the structures constructed on the Lot and with the Community-Wide Standard; (g) impact of lighting on night skies and neighboring Units (exterior and interior); and (h) consistency with the Design Guidelines.
- 8.5 Rules. Subject to the exceptions in Section 20.7 herein, the Design Review Committee shall have the authority to promulgate, adopt, amend, and/or replace rules and regulations necessary to implement these design covenants and establish a design review process by the affirmative vote of a majority of the Design Review Committee and notice as may be required under the Act. Individual Neighborhoods within the Project may be subject to additional covenants.

- 8.6 Construction Rules. Except for construction performed by the Declarant and/or the Builder, with regard to any construction of Units, any construction project affecting the exterior of any Unit, including landscaping, the Design Review Committee may impose reasonable rules and regulations to minimize the inconvenience to surrounding Owners during the period of construction and/or to avoid damage to any neighboring Lot or Common Area and Facilities. The Design Review Committee may impose rules requiring pre-construction conferences and regulations regarding portable offices and trailers, construction debris removal, construction area appearance, sanitation facilities, construction vehicles and parking, construction signs, hours of work, soil conservation and dust, removal of mud, and duration of construction. Concurrent with final plan submittal, an Owner shall deposit with the Design Review Committee a performance deposit to be determined by the Design Review Committee. Additionally, the Owner shall execute and deliver to the Design Review Committee, as appropriate, a deposit agreement in the form specified in the Design Guidelines. The performance deposit shall be held in escrow pending the completion (including clean up) of all improvement described in the final, approved plans and constructed on the Owner's Unit. In the event that the Owner, the contractor, or the contractor's respective agents, representatives, or employees: (a) cause any damage; (b) fail to construct the Unit or improvements in accordance with the approved plans; or (c) fail to comply with the Design Guidelines, the Master Declaration, or any Rules, the Design Review Committee may use the performance deposit, among other things, to repair and/or rectify the damage, or enforce the Design Guidelines, the Master Declaration, and any other Rule thus violated, and cure any defect or problem caused by the non-compliance. In the event of the Design Review Committee's use of all or any portion of the performance deposit, the Owner shall immediately pay to the Master Association an amount sufficient to replenish the performance deposit to the sum initially deposited. Failure to replenish the performance deposit within seven (7) days following the Design Review Committee's delivery of written demand shall be deemed a material breach of the Design Guidelines and this Master Declaration and shall entitle the Design Review Committee to deny the Owner's contractors access to the Development (including any of contractor's suppliers, subcontractors, employees, and material men), and lien the Unit in an amount equal to the performance deposit deficiency. Contemporaneous with tendering the performance deposit, the Owner shall execute and deliver to the Design Review Committee a Notice of Voluntary Lien in a form consistent with the Design Guidelines' requirements.
- 8.7 No Liability. Neither the Design Review Committee, the Board, the Master Association or any of its Members, nor the Declarant shall be liable for damages to any Person submitting any plans for approval, or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such plans. The Design Review Committee shall have no liability or responsibility for any representations made to any Owner or prospective owner by any third parties.

- 8.8 Written Records. The Design Review Committee shall compile complete and permanent written records of all approved applications, including one set of the final approved architectural and site development plans, and of all actions of approval or disapproval, and all other formal actions taken by it under the provisions of Article 8. The records of the Design Review Committee shall be maintained by the Master Association. Notwithstanding anything to the contrary herein, records of the Master Association may be maintained in electronic format.
- 8.9 Inspection and Compliance. The Design Review Committee shall have no duty or obligation to make inspections of any construction. Nothing herein, however, shall prohibit or prevent the Design Review Committee from making inspections prior to, during, or after construction. Upon the completion of any work for which approved plans and specifications are required, the Owner shall give written notice of completion to the Design Review Committee. Within forty-five (45) days after receipt of such notice, the Design Review Committee may inspect the work to determine its compliance with the approved plans. If the Design Review Committee does not respond within such time, the work shall be deemed approved. If the Design Review Committee finds that the work was not done in substantial compliance with the approved plans, or that any construction or change in natural conditions on any Unit was undertaken without first obtaining approval from the Design Review Committee, written notice shall be sent by the Design Review Committee to such Owner specifying the non-compliance and requiring the Owner to cure such non-compliance within thirty (30) days or any extension thereof granted. If the Owner fails to cure the non-compliance or to enter into an agreement to cure on a basis satisfactory to the Design Review Committee within the time provided, the Board, at its option, may cause the non-complying improvement to be removed, or the non-compliance to be cured. Upon demand, the Owner shall reimburse the Master Association for all costs and expenses incurred by the Design Review Committee and/or the Board in taking corrective action, plus all costs incurred in collecting amounts due, including reasonable attorneys' fees and costs (the "Compliance Assessment"). The Owner shall be personally liable for all such costs and expenses, and the Master Association also shall have a lien against the non-complying Unit for the amount of all such costs and expenses. Any amounts not paid, without waiver of any other right or remedy, may be collected as an Assessment Lien. Such lien may be (a) evidenced by a statement executed by the Master Association and notice of the lien recorded with the Wasatch County Recorder; (b) subordinate only to the first Mortgage; and (c) subject to foreclosure in the manner provided by law. Notwithstanding any other provisions hereof, the Design Review Committee shall not be responsible for: (i) determining that any construction or construction documents conform to applicable building codes, zoning, or other land-use regulations; (ii) the accuracy or content of any construction documents or specifications prepared by any architect, engineer, or any other person; (iii) construction means, methods, techniques, sequences or procedures, safety precautions or subsequent loss, damage or failures due to soil or any other natural or man-made conditions that may exist; or (iv) any failure to carry out any construction in accordance with plans or specifications.

- 8.10 Variances. The Design Review Committee may authorize variances from non-compliance with any of the Design Guidelines or the design provisions of this Master Declaration when circumstances such as topography, natural obstructions, hardship, esthetic or environmental considerations may require, subject to City approval. Such variances must be in writing, and signed by a majority of the Design Review Committee. If such variances are granted, no violation of the covenants, conditions, or restrictions contained in this Master Declaration or the Design Guidelines shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Master Declaration for any purpose except as to the particular property and provision hereof covered by the variance, and shall not affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Unit. The Design Review Committee shall be the final decision-maker on all Design Review Committee and Design Guideline matters.
- 8.11 Design Controls Not Applicable to Declarant. Notwithstanding anything in Article 8 to the contrary, during the Declarant Control Period, the Declarant shall have authority to approve plans for the initial construction of a Unit and initial landscaping.

ARTICLE 9  
RIGHT TO USE COMMON AREA AND FACILITIES

- 9.1 Rights and Nonexclusive License to Use Common Area and Facilities.
- (a) Subject to all other terms of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and Facilities, subject to any restrictions related to such use. Such right and nonexclusive license shall be appurtenant to and shall pass with title to each Unit, and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area and Facilities as an Owner. All such rights shall be subject to any Rules established by the Board.
- (b) The Master Association shall have nonexclusive easements with the right of access over and across each Unit, to make inspections, to prevent or mitigate damage to Common Area and Facilities, and to maintain, repair, replace or effectuate the restoration of the Common Area and Facilities, and any other property or improvements for which the Master Association is responsible for maintaining, which are accessible from such Unit. Such rights shall be exercised only after the notice required in this Master Declaration. The Master Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and Facilities for purposes necessary for the proper operation of the Project.
- 9.2 Public Utilities. Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, water lines, gas lines, sanitary sewer lines, drainage facilities, data lines, video lines and cables, telecommunication fixtures and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Board to be helpful in serving the Project, Units,

or Owners in the Project are hereby reserved to the Declarant and the Master Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and Facilities and the Units by the Owners or Occupants. The Master Association shall have the power to grant and convey, in the name of the Master Association or for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over or under the Common Area and Facilities or Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, irrigation systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, in accepting the deed to a Unit, expressly consents to such easements and rights-of-way and authorizes and appoints the Master Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner, and those claiming by, through, or under an Owner, agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Master Association; provided, however, that no easement may be granted pursuant to this Section 9.2 if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Unit.

- 9.3 Easements for Encroachments. If any portion of the Common Area and Facilities, or any Development Improvement encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area and Facilities, as a result of the manner in which the Development Improvements are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Declarant or the Master Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement.
- 9.4 Limitation on Easement—Suspension of Owner's Rights. An Owner's rights and license for the use and enjoyment of the Common Area and Facilities shall be subject to any other limitation in the Governing Documents and the following:
- (a) The right of the Master Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Area and Facilities; and
  - (b) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or developed open space contained within the Project for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services.
- 9.5 Views. Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project, and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

ARTICLE 10  
USE LIMITATIONS AND CONDITIONS

- 10.1 Rules. The Board shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Master Association in carrying out any of its functions to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners and/or the Community-Wide Standards. Pursuant to 57-8a-218(15) of the Act, the requirements of 57-8a-218, subsections (1) through (12) of the Act, except subsection (1)(b)(ii), are hereby modified and shall not apply to the Master Association.
- 10.2 Signs. Subject to Design Guideline requirements governing posting of certain construction signage, and subject to the exemption in Section 20.12 herein, the Master Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules and Regulations. As used herein, the term “signs” shall include any type of object (including, but not limited to, flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to another Unit.
- 10.3 Nuisance. No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment, or increase the rate of any insurance, or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any applicable federal, state, or local law, ordinance, statute, or regulation.
- 10.4 Temporary Structures. Except as provided in Sections 20.10 and 20.13 herein, or as authorized by the Design Review Committee, no structure or building of a temporary character, including a tent, trailer, or shack, shall be placed upon the Project or used therein, unless it is approved by the Board.
- 10.5 Parking. Unless otherwise permitted by the Master Association in the Rules, or by the Design Review Committee in conjunction with construction, and except for “customary parking” and “temporary parking,” as permitted by this Section 10.5, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, or boats) shall be parked, stored, or located within any portion of the Project. “Customary parking” shall mean the parking of operable automobiles, motorcycles, noncommercial trucks, and vans within the garage, driveway, or designated parking space for the respective Unit. “Temporary parking” shall mean parking on public roadways of operable vehicles belonging to Owners and Occupants and their invitees, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants. The Master Association may adopt Rules relating to the parking of vehicles within and in the area of the Project by Owners, Occupants, and their respective family members, tenants, and invitees, including, without limitation: (a) the right to remove, or cause to be removed, any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles in any customary or temporary parking; (c) restrictions on the time period and duration of temporary parking; and (d) the assessment of fines to Owners who

violate the Rules, or Owners associated with people who violate such Rules. The Master Association may restrict or limit parking on public roadways by Owners, Occupants, and their invitees. Notwithstanding anything to the contrary herein, nothing in this Section 10.5 shall give the Master Association any general police powers over the public portions of the project, or the portion of the Project dedicated to the City.

- 10.6 Outside Speakers and Amplifiers. Except as permitted in the Rules, and subject to any regulations in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on, or directed to, the outside of any Unit shall be permitted.
- 10.7 Repairs. No repairs of any detached machinery, equipment, fixtures, or vehicles, shall be made within the Project, except as may be permitted by the Board in the Rules.
- 10.8 Unightly Items. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units, and shall not be allowed to accumulate therein or thereon. Refuse containers, machinery, and equipment not a part of the Units shall be prohibited on Unit, unless obscured from view of neighboring Units and Common Area and Facilities. Trash and garbage shall be properly and promptly disposed.
- 10.9 No Fires or Fireworks. No fires or fireworks are permitted anywhere in the Project, other than in approved residential fire pits or fire pits constructed as part of the Common Area and Facilities, if any.
- 10.10 Shooting and Hunting. Shooting of any type of firearm or bow is strictly prohibited within the Project. Hunting, including bow-hunting, is strictly prohibited within the Project.
- 10.11 Animals. Animals generally kept in households such as dogs, cats, birds, fish, hamsters, and ferrets may be kept in the Project subject to the rules and requirements of this Master Declaration. No more than three animals of any type may be kept in a Unit. No livestock, poultry, or reptiles, may be kept in any Unit. All animals are subject to the Rules adopted by the Board. Notwithstanding the foregoing, no animal may be kept within a Unit which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) in the good faith judgment of the Board, results in an annoyance or threat of injury, is obnoxious to, or unreasonably causes anxiety to other Owners or Occupants within the Project. The Board may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All fecal matter shall be immediately cleaned up in the Project. The Board may adopt Rules adding further Terms and Conditions related to animals in the Master Association not inconsistent with this Master Declaration, including, but not limited to, requirements for registration, specific fees or deposits for Owners of Units that have animals, the use of leashes, and noise and barking limitations. An Owner who keeps a pet or animal of any kind is liable for any and all damage caused by such pet or animal, and shall indemnify and hold harmless the Master Association and any other Owner from any loss, claim or liability of any kind arising from, or related to, such pet or animal. Incessantly barking dogs will not be permitted.

### 10.12 Residential Occupancy.

- (a) No trade or business may be conducted in or from any Residential Unit unless:
- (i) the existence or operation of the business activity is contained within the interior of the Unit and is not apparent or detectable by sight, sound, or smell, from any other Unit, or the Common Area and Facilities;
  - (ii) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
  - (iii) the business activity does not involve solicitation of Occupants or Owners or utilize any portion of the Common Area and Facilities;
  - (iv) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers, or other individuals coming into the Project who do not reside in the Project, as determined by the Board, in its sole discretion;
  - (v) the business activity is consistent with the primarily residential character of the Project and does not constitute a nuisance, a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Project;
  - (vi) the business activity is disclosed to the Board before business is commenced, along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project;
  - (vii) the business activity will not result in the increase of the cost of any of the Master Association's insurance;
  - (viii) the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted; and
  - (ix) the Board's ongoing requests for information related to the business, as necessary to determine compliance with this paragraph, are responded to fully and completely.
- (b) Except as allowed under Section 10.12(a) above, no Residential Unit may be used for any purpose other than a residential purpose. Notwithstanding anything to the contrary herein, nothing in this Section 10.12 shall apply to any commercial development within the Project.

### 10.13 No Subdivision or Timeshare of Unit or Recording by Owners of Terms and Conditions.

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



or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 10.13 shall be null, void, and of no legal effect.

10.14 Variances. The Board, at its option, and in extenuating circumstances, may grant variances from the Terms and Conditions set forth in Article 10 if the Board determines in its discretion (by unanimous vote): (a) either that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Master Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the Owners or Occupants of the Project, and is consistent with the Community-Wide Standards. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board. No variance may be granted that is inconsistent with the Act. No variance may be granted that relates to the payment of Assessments, unless, after reasonable investigation under the circumstances, it clearly appears that the Owner is incapable of paying the Assessment and the Unit is being, or has been, transferred to a new Owner, either voluntarily or involuntarily, through foreclosure.

10.15 Hazardous Substances.

- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. No Owner shall do, or allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. The foregoing portion of this paragraph shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project.
- (b) Each Owner shall indemnify, defend, and hold the Master Association, and each and every other Owner, harmless from, and against, any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from, or relating to, any Hazardous Substances located under, upon, or migrating into, under, from, or through the Project, which the Master Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation, or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section 10.15 shall survive any subsequent sale by an indemnifying Owner.
- (c) For purposes of this Section 10.15, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law, and the following substances: gasoline, kerosene, other flammable or toxic petroleum

products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. For purposes of this Section 10.15, “Environmental Law” means applicable federal laws and laws of the jurisdiction where the Project is located that relate to health, safety, or environmental protection.

## ARTICLE 11 INSURANCE

- 11.1 Insurance Requirement. The Master Association shall obtain insurance as required in this Master Declaration and as required by applicable law. The Master Association may obtain insurance that provides more or additional coverage than the insurance required in this Master Declaration. Different policies may be obtained from different insurance carriers, and standalone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies.
- 11.2 Attached Dwellings. Notwithstanding anything in this Article 11 to the contrary, insurance obligations related to attached dwellings and common elements that are part of a Neighborhood Sub-Association shall be the responsibility and the obligation of that Neighborhood Sub-Association provided, however, that the Master Association may carry such insurance if the Neighborhood Sub-Association fails to do so. To the extent the Master Association bears any legal obligation for directly insuring any attached dwellings or common elements that are part of the Neighborhood Sub-Association, this Master Declaration shall constitute an assignment of such obligation to the Neighborhood Sub-Association. Each Neighborhood Sub-Association, by recording governing documents subject to this Master Declaration, hereby accepts such assignment.
- 11.3 Property Insurance.
- (a) Hazard Insurance.
- (i) Blanket Policy of Property Insurance. The Master Association shall maintain a blanket policy of property insurance covering the entire Project, to include the Common Area and Facilities and the physical structure of all attached dwellings, limited common areas appurtenant to such attached dwellings, fixtures, betterments, and the structures’ service equipment, except to the extent such property is insured by a Neighborhood Sub-Association. Pursuant to § 57-8a-405(4) of the Act, the blanket policy of property insurance shall not apply to single-family detached dwellings that are not physically attached to any other dwelling or to a Common Area and Facilities structure. An Owner of a Unit that is a single-family detached dwelling shall be responsible to obtain property insurance coverage for his or her own Unit.
- (ii) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies, including, without limitation, any detached single-family Unit. The blanket policy shall be an “all in” or “all inclusive” insurance, as those terms are used in the insurance industry, and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit, or any Limited Common Areas or otherwise

permanent part of or affixed to Common Areas and Facilities, Units, or Limited Common Areas, including, but not limited to, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, and windows.

- (iii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all other perils normally covered by “special form” property coverage.
  - (iv) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) 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.
  - (v) The blanket policy shall include either of the following insurance endorsements to assure full insurable value replacement cost coverage: (1) a “Guaranteed Replacement Cost Endorsement” under which the insurer agrees to replace the insurable property, regardless of the cost; or (2) a “Replacement Cost Endorsement” under which the insurer agrees to pay up to one hundred percent (100%) of the property’s insurable replacement cost, but not more. If the policy includes a coinsurance clause, it must include an “Agreed Amount Endorsement,” which must waive or eliminate the requirement for coinsurance.
  - (vi) Each property policy that the Master Association is required to maintain shall also contain or provide for the following: (1) “Inflation Guard Endorsement,” if available; (2) “Building Ordinance or Law Endorsement” (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) “Equipment Breakdown,” if the project has central heating or cooling, other equipment, or other applicable fixtures, equipment, or installations, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000), or the insurable value of the building containing the equipment.
- (b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner, or if the Owner is self-insured:
- (i) the Master Association’s policy provides primary insurance coverage; and
  - (ii) notwithstanding Subsection 11.3(b)(i), and subject to Subsection 11.3(b)(3), the Owner is responsible for the Master Association’s insurance deductible, and the property insurance portion of the Owner’s

insurance policy applies to that portion of the loss attributable to the Master Association's insurance policy deductible.

(iii) As used in this Subsection (3):

(1) An Owner who owns a Unit that has suffered Unit Damage (as defined in the Act) as part of a Covered Loss (defined in the Act) is responsible for an amount calculated by applying the Unit Damage Percentage (defined in the Act) for that Unit to the amount of the deductible under the Master Association's property insurance policy.

(2) If an Owner does not pay the amount required under Subsection (11.3)(b)(iii)(2) within thirty (30) days after substantial completion of the repairs to the Unit or the Limited Common Area appurtenant to the Unit as may be applicable, the Master Association may levy an Assessment against the Owner for that amount.

(c) Flood Insurance.

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

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

(d) Earthquake Insurance. The Master Association may purchase earthquake insurance as the Board deems appropriate for Common Area and Facilities and buildings or structures for which the Master Association has a legal obligation to obtain property insurance. If the Board elects not to purchase earthquake insurance, the affirmative vote of a majority of the Owners present at the annual meeting shall be required to confirm this decision. If the majority of the Owners present at the annual meeting do not confirm the Board's decision to not purchase earthquake insurance, the Board shall purchase earthquake insurance within sixty (60) days of the vote.

- (e) Master Association's Obligation to Segregate Property Insurance Deductible. The Master Association shall keep segregated 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.
- (f) Master Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board determines that a covered loss is likely not to exceed the Master Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Master Association's property insurance deductible, and a claim is submitted to the Master Association's property insurance insurer: (i) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the Master Association's policy deductible; (ii) the Master Association is responsible for any loss to any Common Area and Facilities; and (iii) an Owner who does not have a policy to cover the damage to that Owner's Unit is responsible for that damage and the Master Association may, as provided in section 11.3(b)(3)(ii), recover any payments the Master Association makes to remediate that Unit; and (iv) the Master Association need not tender the claim to the Master Association's insurer.
- (g) Notice Requirement for Deductible for Policies Covering Attached Units. The Master Association shall provide notice to each Owner of an attached Unit or condominium of the Owner's obligation under this Article 11 for the Master Association's policy deductible, and of any change in the amount of the deductible. If the Master Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Master Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Master Declaration. Notwithstanding anything to the contrary herein, the obligations imposed by this Subsection 11.3(6) apply only to policies required pursuant to Utah Code Ann. § 57-8a-403(1).
- (h) Neighborhood Sub-Association to Assume Insurance Obligations. A Neighborhood Sub-Association formed to operate and maintain dwellings and common property with a condominium form of ownership shall have the obligation to obtain insurance consistent with the requirements of the Utah Condominium Ownership Act (57-8-43).
- 11.4 Comprehensive General Liability ("CGL") Insurance. The Master Association shall obtain CGL insurance insuring the Master Association, the agents and employees of the Master Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and Facilities and the Owner's membership in the Master Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000), covering all claims for death of, or injury to, any one individual, or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement, or equivalent coverage, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Master Association or another Owner.

- 11.5 Director's and Officer's Insurance. The Master Association shall obtain Director's and Officer's liability insurance protecting the Board, the officers of the Master Association, and the Master Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing law or similar state or federal statute, or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager, and any employees of the Manager, and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 11.6 Insurance Coverage for Theft and Embezzlement of Master Association Funds. The Master Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three months' regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (i) Officers and Board members of the Master Association; (ii) employees and volunteers of the Master Association; (iii) any Manager of the Master Association; and (iv) officers, directors, and employees of any Manager of the Master Association.
- 11.7 Workers' Compensation Insurance. The Board shall purchase and maintain in effect workers' compensation insurance for all employees of the Master Association, to the extent that such insurance is required by law.
- 11.8 Certificates. Any insurer that has issued an insurance policy to the Master Association shall issue a certificate of insurance to the Master Association, and, upon written request, to any Owner or Lender.
- 11.9 Named Insured. The named insured, under any policy of insurance, shall be the Master Association. Subject to Sections 11.1 and 11.3(a)(1), each Owner shall also be an insured under all property and CGL insurance policies.
- 11.10 Master Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Master Association's property insurance policy shall be payable to an Insurance Trustee (defined below), if one is designated, or to the Master Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Master Association, shall hold any insurance proceeds in trust for the Master Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Master Declaration. After any repair or restoration is complete, and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the 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 Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Master Association is required, under

this Master Declaration or the law, to provide insurance coverage for the Unit. Each Owner hereby appoints the Master Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents, and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner. In the discretion of the Board, or upon written request executed by Owners holding fifty percent (50%) of the total Allocated Interests, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Master Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this Section, as the Owners or Board (as the case may be) shall require.

- 11.11 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of, and under direct authorization of, the Master Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.12 Waiver of Subrogation against Owners and the Master Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Master Association, the Owners, any person residing with a Unit Owner if an Owner resides in the Unit, and the Master Association's agents and employees.
- 11.13 Right of Action. Nothing in this Master Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 11.14 Applicable Law. This Master Declaration is specifically subjecting the Master Association to the applicable insurance requirements and provisions of Part 4 of the Utah Community Association Act, and any amendments thereto enacted by law. It is the intent of this Section that any future changes to the insurance law applicable to community associations shall apply to this Master Association.

## ARTICLE 12 EMINENT DOMAIN

- 12.1 Taking of Common Area. If the portion of the Common Area and Facilities is taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit, the Board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Master Association.
- 12.2 Taking of Entire Project. In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Master Declaration shall apply.
- 12.3 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints

the Master Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof.

### ARTICLE 13 AMENDMENTS

- 13.1 General Amendment Requirements. Except as otherwise provided herein, and subject to the exception in Sections 20.7 and 20.11 herein, this Master Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose or by written consent. The vote of approval of any one Owner of a Unit is sufficient if there are multiple owners of the Unit.
- 13.2 Scope of Amendments. Subject to Article 20 herein, this Master Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Master Declaration. This Master Declaration may be amended to make a particular section of the Act applicable to the Master Association, including a section that would not otherwise be applicable to the Master Association.
- 13.3 Execution and Effective Date of Amendments. An amendment that has been adopted as provided in Section 13.1 shall be executed by the president of the Master Association and the secretary of the Master Association shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Master Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Wasatch County, Utah.
- 13.4 Changes to Plat or Boundaries of the Master Association. Subject to Sections 20.5, 20.7 and 20.11 herein, the Master Association may adopt an amended plat, supplemental plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit, or Units, upon the approval by vote of sixty-seven percent (67%) of Owners in the same manner as required to amend this Master Declaration. Any such plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area and Facilities, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit, that Unit Owner must consent. If the approval required herein is obtained, each and every other Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of, or consented to, the change in the Plat; and (b) grants the Master Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.
- 13.5 Amendment to Conform to Law. The Board may, without the approval of the Owners, amend this Master Declaration to conform it to any applicable legal requirements otherwise applicable to the Master Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties



as a matter of law. This procedure may also be used to change the Master Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA, or similar programs, or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:

- (a) The members of the Board must unanimously agree to the proposed amendment prior to the time it is recorded.
- (b) The Board must provide to the Owners: (i) the proposed amendment instrument; (ii) the language of this section of the Master Declaration; (iii) the law that conflicts with the existing Master Declaration language or the provisions that must be complied with to permit owners to obtain financing; (iv) the attorney opinion letter required for the amendment; and (v) a notice in which the Master Association: (1) notifies the Owner that it intends to amend the Master Declaration pursuant to this section; (2) provides the Owner a right to object to the amendment within thirty (30) days; and (3) provides instructions on how, when, and where to properly return the objection. The Board may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.
- (c) Such an amendment shall be effective upon the recording of the instrument in the office of the recorder of Wasatch County.

ARTICLE 14  
INTERPRETATION, CONSTRUCTION, AND APPLICATION OF MASTER  
DECLARATION

- 14.1 Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, this Master Declaration, the Plats, the Articles, the Bylaws, and then the Rules. If there is a conflict between the Governing Documents and any Additional Covenants (or rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control.
- 14.2 Interpretation of Master Declaration and Applicability of the Act. The Declarant intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Master Association has included specific provisions in this Master Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Master Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Master Declaration and the Act, to the extent the Act does not legally allow this Master Declaration to contain provisions contrary to the Act, the Act shall control and this Master Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 14.3 Cumulative Remedies. All rights, options, and remedies of the Master Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Master Association and the Owners shall have the right to pursue any

one or all of such rights, options and remedies, or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.

- 14.4 Severability. Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 14.5 Construction. The provisions of this Master Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a mix-use master-planned community, and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Master Declaration to article and section numbers herein, unless otherwise expressly provided, are to the article and section in this Master Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against, or strictly for or against, the Master Association, any Owner, or any other Person subject to their terms.
- 14.6 Applicable Law. Except as otherwise expressly provided in this Master Declaration related to Part 4 of the Act, this Master Association is specifically made subject to the Act and the law as it is constituted, and exists at the time this Master Declaration is recorded. Amendments to the Act after the date of recording of this Master Declaration shall not be applicable to the Master Association or the Project unless they are applicable as a matter of law, or unless the Master Association makes those amendments applicable by amendment to the Master Declaration.
- 14.7 Gender and Number. Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 14.8 Effect of Master Declaration. This Master Declaration is made for the purposes set forth in the Recitals in this Master Declaration, and the Master Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Master Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations, and the like, applicable thereto. The Master Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

## ARTICLE 15

### NOTICE

- 15.1 Notices. Any notice to be given to an Owner, a Lender, or the Master Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:
- (a) Notice to an Owner from the Master Association.
- (i) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
- (1) by a written notice delivered personally to the Owner, which shall be effective upon delivery;

- (2) by a written notice placed in the United States mail, first-class postage prepaid, to the most recent address furnished by such Owner, in writing, to the Master Association for the purpose of giving notice, or, if no such address shall have been furnished, to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
  - (3) by email correspondence to an Owner: (a) sent to an email address provided by the Owner for the purpose of Master Association communications, or (b) emailed to an email address from which the Owner has communicated related to Master Association matters, so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered immediately upon sending;
  - (4) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner sent to a facsimile number provided by the Owner for the purpose of Master Association communications so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered immediately upon sending; or
  - (5) by any other method that is fair and reasonable as provided for in the Act, or otherwise provided for by law.
- (ii) Notwithstanding anything to the contrary in this Section 15.1, the Master Association shall send all notices to an owner by U.S. Mail if such Owner, by written demand, demands to receive notices from the Master Association by mail.
  - (iii) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Master Association shall not be required to give more than one notice per Unit. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Unit address.
  - (iv) In case posting of a notice on the Unit is permitted, such posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Master Association the sooner of either (1) two (2) days after the event or action for which notice was given; or (2) ten (10) days after the posting.
- (b) Notice to a Lender. Notice to a Lender shall be delivered by United States mail, first-class postage prepaid, to the most recent address furnished by such Lender, in writing, to the Master Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

- (c) Notice to Master Association from an Owner. An Owner's notice to the Master Association shall be effective upon the satisfaction of any of the following delivery methods:
- (i) by a written notice delivered personally to the Manager or President of the Master Association, which shall be effective upon delivery;
  - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the current registered business address of the Master Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
  - (iii) by written email correspondence to the Master Association: (1) that is sent to an email address provided by the Master Association in the prior twelve (12) months for the purpose of Master Association communications, or (2) that is emailed to an email address from which the Manager or the President of the Master Association has communicated related to Master Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent; or
  - (iv) by facsimile (whether to a machine or by other means) to the Master Association sent to a facsimile number provided by the Master Association for the purpose of Master Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

ARTICLE 16  
ATTORNEYS' FEES AND COSTS

16.1 Legal Costs Associated with Disputes with Owners.

- (a) Owners Liable for Fees Incurred in Dispute. If the Master Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Master Association intends to enforce the Term and Condition, or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Master Association may assess all attorneys' fees and costs associated with such enforcement to the Owner as a Specific Assessment, regardless of whether a lawsuit is initiated or not.
- (b) Costs. The term "costs," as used in this section, shall include all costs, including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Master Declaration to be broader and to include items that are not included in "costs", as the term is used in the Utah Rules of Civil Procedure.
- (c) Exception to Owner's Liability for Fees and Costs. If, related to a request of an Owner for direction on the application of a Term and Condition, the Master Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that the Master Association could not establish an initial position on without having incurred the fees and costs, or that results in a

substantial modification to a prior position taken by the Master Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Master Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner, and the issues arise as part of the lawsuit.

ARTICLE 17  
RESERVES

- 17.1 Requirement for Reserves. Subject to the exemption Section 20.14 herein, the Master Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Facilities, pursuant to the following provisions:
- (a) Collection. Reserve funds may be collected as part of regular or Special Assessments or by Specific Assessments if such funds are intended to benefit a particular Neighborhood or particular group of Units.
  - (b) Amount. In formulating the Master Association's annual budget, the Master Association shall include a reserve fund line item in an amount the Board determines, based on the reserve analysis and any other factors deemed to be material by the Board, in its business judgment, to be prudent. For purposes of this Section 17.1, a reserve fund line item means the line item in the Master Association's budget that identifies the amount to be placed into the reserve fund.
  - (c) Owner Veto. Within forty-five (45) days after the day on which the Master Association adopts the budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the total Allocated Interests in the Master Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Master Association that was not vetoed, the Master Association shall fund the reserve account in accordance with that prior reserve fund line item.
  - (d) Surplus Monies Applied to Reserves. The Master Association may retain surplus Master Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
  - (e) Segregation of Reserves. The Master Association shall segregate money held for reserves from regular operating and other accounts.
  - (f) Reserve Analysis. The Master Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Master Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (ii) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (iii) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (iv) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis

during the component's useful life and at the end of the component's useful life; and (v) a reserve funding plan that recommends how the Master Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.

- (g) Qualifications for Person Preparing Reserve Analysis. The reserve analysis shall be prepared by a Person with: (i) experience in current building technologies; (ii) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (iii) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar professional associations establishing that the Person has some formal training related to preparing a reserve analysis.
- (h) Summary and Copies of Reserve Analysis. The Master Association shall annually provide Owners a summary of the most recent reserve analysis or update and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. A copy posted on the Master Association's website, if available shall satisfy the requirement of this subsection. The Master Association shall provide a copy of the complete reserve analysis or update to an Owner who makes a written request for a copy.

## ARTICLE 18 LEASING AND NON-OWNER OCCUPANCY

- 18.1 Master Declaration and Rules Govern Non-Owner Occupancy. Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-owner occupancy of a Residential Unit shall be governed by this Article 18, the Rules, and procedures adopted as provided herein.
- 18.2 Definitions. For the purpose of Article 18, the following definitions shall apply:
- (a) "Non-Owner Occupied" means:
- (i) For a Residential Unit owned in whole or in part by a natural Person or Persons, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner's primary residence; or
  - (ii) For a Residential Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.
- (b) "Family Member" means:
- (i) the parent, sibling, or child of an Owner and that Owner's spouse and/or children, or
  - (ii) in the case of a Unit owned by a trust or other entity created for estate planning purposes, a Person occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of: (1) a current Occupant of the Unit; or (2) the parent, child, or sibling of the current Occupant of the Unit.

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

18.4 Permitted Rules. The Board may adopt Rules requiring:

- (a) reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units other than those found in this Article 18, including requiring informational forms to be filled out by Owners and Occupants identifying Occupant vehicles, Occupant contact information, and the like.
- (b) other reasonable administrative provisions consistent with, and as it deems appropriate, to enforce the requirements of this Master Declaration.

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

- (a) Any lease or agreement for otherwise allowable occupancy of Non-Owner Occupied Residential Unit must be in writing, must be for an initial term of at least three (3) months, and shall provide as a term of the agreement that the Occupant shall comply with the Governing Documents, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for occupancy of a Non-Owner Occupied Residential Unit (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Occupant;
- (b) If required in the Rules or requested by the Board, a copy of any lease or other agreement for non-owner occupancy shall be delivered to the Master Association within the time period provided for in the Rules or required by the Board;
- (c) An Occupant may not occupy any Unit for transient, short-term (less than three (3) months), hotel, resort, vacation, or seasonal use (whether for pay or not);
- (d) Except as an invitee of an Owner while the Owner is occupying the Unit, daily and weekly occupancy by Non-Owner Occupants is prohibited (whether for pay or not); and
- (e) The Owner of a Unit shall be responsible for the Occupant's or Occupant's invitee compliance with the Governing Documents. In addition to any other remedy for non-compliance with this Master Declaration, the Master Association shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Occupant. The Master Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this Subsection 18.5(e), and the Owner shall indemnify and pay the defense costs of the Master Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this Subsection.

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

- (a) Subsections 18.5(a), 18.5(c), and 18.5(d) above shall not apply to that occupancy;

- (b) No written agreement regarding occupancy needs to be created between the Family Member and the Owner; and
  - (c) Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Board until an Occupant has violated a provision of the Governing Documents, and, if requested, may only be requested related to remedying or taking action as a result of such a violation.
- 18.7 Exceptions for Future Resort Development Phases. Notwithstanding anything to the contrary in this Article, the requirements and restrictions set forth in Sections 18.3 through 18.5 above shall not apply to future phases annexed into the Project pursuant to Section 2.3 above by the Declarant as a resort development.

#### ARTICLE 19 GENERAL PROVISIONS

- 19.1 Enforcement. The Master Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions, including the right to prevent the violation of any such Terms and Conditions, and the right to recover damages and other sums for such violation.
- 19.2 No Liability of Officers. To the fullest extent permitted by applicable law, neither the Board nor any officer of the Master Association shall be liable to any Owner or the Master Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.
- 19.3 Use of Funds Collected by the Master Association. All funds collected by the Master Association, including, specifically, Assessments and contributions to the Master Association paid by the Owners, shall be held by the Master Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Master Association in managing, maintaining, and preserving the Common Area and Facilities, and for other permitted purposes as set forth in this Master Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Master Association managing, maintaining, and preserving the Common Area and Facilities, and other than as a result of expenditures made for other permitted purposes as set forth in this Master Declaration).
- 19.4 Owner Liability and Indemnification. Each Owner shall be liable to the other Owners and to the Master Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner, or any intentional or negligent act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the insurance deductible of the Master Association or not covered by the Master Association's insurance. Each Owner, by acceptance of a deed to a Unit, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Master Association's or such other Owner's liability insurance carrier; or



(b) the injury or damage occurred by reason of the intentional act of the Master Association.

- 19.5 Areas of Owner Responsibility. Except as otherwise may be provided in a Neighborhood Sub-Association's governing documents, and except as provided in Subsection 19.5(a) below, each Owner shall be responsible for the maintenance, repair, and upkeep of his/her Unit. If an Owner's Unit includes a Lot, the Owner shall be responsible for the landscape maintenance for his/her Lot and, also, for the maintenance and upkeep of any landscaped park strip area adjacent to the Owner's Lot, unless the Master Association assumes the obligation for maintenance of the park strip.
- (a) Notwithstanding anything to the contrary in this Master Declaration, the Master Association shall have the obligation to maintain in accordance with the Community-Wide Standard the landscaping, driveways, entry walkways, and the exterior surfaces, excluding the roofs, for the Units in Phase I Overlook Village, Lots 1-39 and T1-T8. The Master Association shall be responsible for reasonable snow removal for driveways and entry walkways (up to the front door, including the front porch steps, if any) in the Overlook Village Neighborhood.
- (b) For purposes of Subsection 19.5(a) above, exterior surfaces for Overlook Village Units shall not include: roofs, exterior doors, door frames, door jambs and casings, door hardware, thresholds, any exterior door weather-stripping, garage doors, garage door casing and molding, garage door hardware and openers, windows, window frames, window casing, window hardware, window weather-stripping, exterior light fixtures, exterior electrical outlets, lightbulbs, HVAC installations, plumbing installations, and electrical installations. However, the Master Association shall be responsible for staining or painting of the exterior side of exterior doors and window frames (if constructed of wood).
- 19.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant consents to the rights reserved to the Declarant and the Master Association in this Master Declaration, including, but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements, and to make necessary and appropriate amendments of this Master Declaration, the Plat, and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same. Such acceptance shall be deemed an appointment of the Master Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Master Association's reserved rights as set forth in this Master Declaration, and shall not be affected by the disability of any such Owner or Occupant.
- 19.7 Security. Neither the Declarant nor the Master Association, in any way, shall be considered an insurer, guarantor, or provider of security from criminal conduct within, or relating to, the Project. Neither the Declarant nor the Master Association shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of any security measures

undertaken. Each and every Owner and Occupant in the Project acknowledges that neither the Declarant nor the Master Association has any duty to any Owner or Occupant related to security or criminal conduct, and further acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By taking title to a Unit and/or residing in the Project, Owners and Occupants agree that neither the Declarant, nor the Master Association, nor the Board are insurers of the safety or well-being of Owners or Occupants or of their personal property as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

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

ARTICLE 20  
DECLARANT RIGHTS

- 20.1 Special Declarant Rights. Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have all rights and powers provided for in this Article 20. If any other article in this Master Declaration contains the words “notwithstanding anything to the contrary,” or words of similar import, the article shall all nonetheless be subject to the terms in this Article 20.
- 20.2 Right to Appoint the Board During Declarant Control Period. The Declarant shall have the right to appoint and remove all Board Members during the Declarant Control Period. In the appointment of Board Members, the Declarant shall not be bound by any qualifications for Board Members in the Governing Documents.
- 20.3 Declarant Control Period. For purposes of this Article 20, and as used in this Master Declaration, the “Declarant Control Period” shall mean and refer to the period of time during which the Declarant owns any land within the Project subject to the Development

- Agreement or identified in the master plan for the Project. Pursuant to Utah Code Ann. § 16-6a-801(2)(b)(i), during the Declarant Control Period, the Declarant is authorized to exercise the power and control of all decision-making ability or authority for the Master Association and/or the Project. The Declarant shall determine whether to hire professional management during the Declarant Control Period.
- 20.4 Easement Rights. The Declarant shall have, and hereby retains, an easement for access over, under, across, and through the entire Project, and may utilize, allow anyone else to utilize, or may grant easements over, under, across, and through any easement right reserved to anyone in the Master Declaration.
- 20.5 Right to Amend Plat. Subject to necessary approvals from any applicable municipality or government agency, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat. During the Declarant Control Period, no Plat may be amended without the written authorization of the Declarant.
- 20.6 Assessment Exemption. The Declarant shall be exempt from any Assessment on any unoccupied Unit (regular or special).
- 20.7 Right to Amend Master Declaration, Bylaws, Articles of Incorporation, and Rules. Until the expiration of the Declarant Control Period, the Declarant shall have the right to amend, revise, and modify this Master Declaration, the Bylaws, Articles of Incorporation, and the Rules in any way, and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone, including, but not limited to, the Owners. Any such amendment to the Bylaws or Master Declaration shall be effective upon the recordation by the Declarant of an amendment duly signed by an authorized officer of the Declarant, with such signature acknowledged. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein, including Owners. Additionally, during the Declarant Control Period, neither this Master Declaration, the Bylaws, the Rules, nor the Design Guidelines may be amended without the written authorization of the Declarant.
- 20.8 Expansion of Project/Additional Land. The Declarant may add land to or withdraw land from the Project, and expand or contract the Project at any time, and for any reason.
- 20.9 Assignment of Special Declarant Rights. The Declarant, at any time, by recording a written notice, may assign or transfer all or some of its control, power, authority, or decision-making ability to the Master Association, or any other Person, prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Master Declaration, the rights of the Declarant, as provided for in this Master Declaration, may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project.
- 20.10 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in the Master Declaration as it relates to the Units owned by the Declarant.
- 20.11 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents and, specifically, in this Article 20, shall not be substantively or procedurally altered without the written consent of the Declarant during the Declarant Control Period

after which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be *void ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of Article 20, without the consent of the Declarant. Any consent to waive, change, or alter any provisions of Article 20 by any future Declarant (as a result of any voluntary or involuntary assignment of Declarant rights) shall effect a change to those provisions only as to that Declarant and shall not be applicable to any prior Declarant without that prior Declarant's specific consent.

- 20.12 Use of Units and Common Areas and Facilities for Sales Activities. During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas and Facilities in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas and Facilities as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only, or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners, or similar structures or devices.
- 20.13 Facilities Open to the Public. The Declarant shall have the right to establish certain facilities and areas within the Project for the use and enjoyment of the public. Such facilities and areas may include, by way of example, open space, trails, paths, parks, and other neighborhood areas conducive to public gatherings. The Declarant may designate such facilities and areas as open to the public at the time the same is made the responsibility of the Master Association, or the Board may so designate at any time thereafter.
- 20.14 Right to Use Common Area and Facilities for Special Events. The Declarant may use the Common Area and Facilities to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions: (a) the availability of the Common Area and Facilities; (b) payment of costs and expenses incurred, and indemnification of the Master Association against any loss or damage resulting from the special event; (c) return of the Common Area and Facilities in the same condition as existed prior to the special event.
- 20.15 Exemption from Service Provider and Vendor Conflict Provision. The restrictions set forth in Section 5.12 of this Master Declaration shall not apply to service providers or vendors engaged by the Master Association during the Declarant Control Period.

- 20.16 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article 20 shall not be construed to impose any obligation, legal or equitable, related to the issues to which they might apply. The Master Association and each Owner, by purchasing a Unit, waive and disclaim any such duty, and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.
- 20.17 Declarant Exemption from Statutory Obligations. Pursuant to § 57-8a-217(6) of the Act, Declarant is hereby exempt from the provisions of § 57-8a-217 of the Act. Pursuant to § 57-8a-211(10) of the Act and Article 17 herein, § 57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period, and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.
- 20.18 Declarant Exemption from Board Member Compensation Prohibition. Notwithstanding anything in this Declaration or the Bylaws to the contrary, during the Declarant Control Period, some or all of the Board Members may receive reasonable compensation, approved by the Declarant, for their services, as Board Members and/or Officers, for the Association.

## ARTICLE 21

### CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION

- 21.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Unit that Owner is taking title, or any aspect of the Project; all prior to taking title to a Unit. Having had the ability to inspect prior to taking title to a Unit, and having paid market price for a Unit in the condition it and other Units and the Common Areas and Facilities are in at the time of taking title, it is acknowledged that it is unfair and improper thereafter to seek to have the Declarant and/or the Builder, or any subcontractor performing work in the Project, change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by taking title to a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for taking title of Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, the Owners, by taking title to a Unit, and the Declarant, agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms, and only after full disclosure, right to cure periods, and knowing approval of the Owners. Consistent with this dispute avoidance intent and mandate, and in an effort to provide an avenue of recovery against the party responsible for faulty construction, the Declarant may obtain and provide warranties to the Master Association from subcontractors that the Master Association may enforce related to the development and construction of the Project. It is the intent of the parties hereto, as agreed to by the Owners by and upon the taking title of a Unit, that these warranties (from subcontractors), if they are obtained, whatever they might cover and whomever they are from, are the sole remedy to the extent permitted by law, in case of any defects or damages of any kind arising from, or related to, construction or development of the Project. The intent of this Article 21 is to eliminate, to the extent

possible, claims against or involving the Declarant, and claims related to the construction of the Development Improvements, the Common Area and Facilities, and the Units in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Master Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

- 21.2 Master Association Warranties. The Declarant may, but is not obligated to, provide for certain warranties from subcontractors to the Master Association related to the construction of the Project. The Master Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.
- 21.3 Owner Warranties. The Declarant may, but is not obligated to, provide certain warranties to the Owners related to the Units constructed by the Declarant or Builder. The first Owner of a Unit to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty and only consistent with the warranty itself. The Master Association shall have no right to seek the performance of, or take assignment of any rights in any warranties from, the Declarant to an Owner, and the Owner shall have no right to assign any rights of any kind to the Master Association related to pursuing litigation against the Declarant.
- 21.4 Waiver of Subrogation and Release. The Master Association and each Owner waives any right to subrogation against the Declarant and the Builder 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 Master Association, from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant and Builder (including their respective principles, officers, managers, shareholders, members, employees, agents, and representatives). To the full extent permitted by law, the Master Association and Owners hereby release the Declarant and Builder (including their respective principles, officers, managers, shareholders, members, employees, agents and representatives) from any and all liability to the Master 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 or any of its respective principles, officers, managers, shareholders, members, employees, agents and representatives. The Master Association and each Owner agree 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 Master Association or any Owner to recover thereunder. The Master Association and all Owners shall indemnify and defend the Declarant and the Builder, and any of their respective officers, employees, owners, or representatives, from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

## 21.5 Declarant and/or Builder Litigation.

- (a) An Owner may only make a claim against the Declarant or the Builder, to the extent allowed herein, or by law, after the following efforts at dispute resolution have been completed: (i) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get its contractor or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; (ii) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant 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, including any mediation or arbitration, shall be stayed for the 180-day period.
- (b) For any claim allowed by law or by this Master Declaration, the parties agree to binding arbitration of all claims asserted against the Declarant, the Builder, or subcontractor by either the Master Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. The parties to any such arbitration mutually shall work, in good faith, to agree upon the arbitrator, mediator, arbitration service, and all aspects of the arbitration and mediation proceedings. In case of any disagreement regarding the mediation or arbitration service, the American Arbitration Association shall administer the mediation and arbitration, and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Master Declaration and shall be modified accordingly in case of any conflict between the Rules and this Master Declaration.
- (c) "Notice of Claim" shall mean and include the following information: (i) the nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a specific description of the claim, along with any supporting opinions, information, or other factual evidence upon which the claim is based; (iv) photographs of any alleged condition, if applicable; (v) samples of any alleged defective conditions or materials; (vi) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom; and (vii) the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
- (d) Notwithstanding any other provision in this Master Declaration, except as to an Owner Warranty, and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant, the Builder, or any of their respective principles, officers, managers, shareholders, members, employees, agents and representatives, for any reason, including, but not limited to, alleged construction defects or any damages arising therefrom.

- (e) Notwithstanding any other provision in this Master Declaration, and to the fullest extent permitted by the law, the Master Association shall not, and cannot, commence or maintain any litigation, arbitration, or other action against the Declarant or its principles, officers, managers, shareholders, members, employees, agents and representatives, for any reason, including, but not limited to, for alleged construction defects, any related claims, or any damages arising therefrom.
- (f) The Master Association shall indemnify and defend the Declarant and its principles, officers, managers, shareholders, members, employees, agents and representatives, against any litigation, arbitration, or the assertion of any claim arising out of any alleged construction defect in, or related to, the Declarant's development and/or construction of the Project, and/or any damages arising therefrom. By taking title to a Unit, the Owner specifically disclaims and releases the Declarant from any claim, known or unknown, related to any defect in the Project not specifically covered by either a Master Association Warranty or an Owner Warranty, except only as limited by law. The Master Association and each Owner acknowledges and agrees that these warranties, if provided, and whatever coverage they might provide, are the sole remedy of the Master Association related to any alleged or actual construction defects. In case of any claim or litigation asserted related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant (which shall permit the Declarant to select counsel and require the Owner to advance all costs and fees related to any such claim) from any such claim, and to indemnify both the Declarant and the Builder from any liability arising therefrom.
- (g) Subject only to the provisions in the Owner Warranties (if any) and any Master Association Warranties (if any), the Master Association and the Owners take ownership and possession of the Units and Common Areas and Facilities "AS IS," with all faults and with no warranties of any kind, except as otherwise required by law. **THE DECLARANT SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OF HABITABILITY, TO THE FULL EXTENT ALLOWED BY LAW.**
- (h) If otherwise allowed by law, notwithstanding the terms of this Master Declaration, or if allowed in this Master Declaration prior to the Master Association making any demand or commencing any mediation, arbitration, or litigation (any "action") against a Declarant or any contractor or subcontractor involved in the original construction of the Project, other than a claim made solely upon a Master Association Warranty against a subcontractor, the Master Association must have a meeting of the Owners, with proper notice, and have all attorneys, experts, and other Persons expected to be involved in the claim, present at the meeting. Those Persons present, including the Board, must permit discussion among the Owners and questions from the Owners, and must respond to all reasonable questions of the Owners related to the proposed claims. The notice for the aforesaid meeting must include the following information:



- (i) a statement must be made on the first page of such notice in bold, upper case, and not less than 22-point font: “The Master Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments, and will likely impact the resale value of your Unit, and your ability to sell your Unit, while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue.”;
- (ii) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation, including a breakdown of any costs and fees to be advanced by anyone, including any attorney or other representative of the Master Association, under any contingency arrangement, and all those costs and fees to be paid directly by the Master Association, all of which shall assume the litigation will last five (5) years (unless it is reasonably expected to last longer, in which case the longer period shall be used for this estimate), and require a trial on the merits;
- (iii) a detailed explanation of where any money to be paid by the Master Association will be obtained, including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five years;
- (iv) a written statement of each Board member indicating that member’s position on the litigation;
- (v) a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;
- (vi) all terms of the agreement between the Master Association and the attorney or law firm prosecuting the action, including a copy of any engagement letter, contract, or agreement related to that representation;
- (vii) a detailed description of the alleged claims against the Declarant and of all efforts by the Master Association to resolve those claims prior to commencing any action.

In addition to the requirements above, and before commencing any action, the Master Association must obtain the approval of 85% of the total Allocated Interests (not 85% of those Owners present), by vote, at a lawfully called and properly noticed special meeting for that purpose only. Such a special meeting must occur no sooner than thirty (30) days, and not later than sixty (60) days, after the meeting required above. The Master Association cannot special assess, borrow money, or use any reserve funds to fund any such action, or to pay for any costs associated with any such action, including, but not limited to, copying costs, deposition costs, expert witness costs, and filing fees.

- (i) Any agreement with a law firm or attorney under which the law firm would represent the Master Association in an action (as defined in the prior subsection) must have, at a minimum, the following terms: (i) the law firm or attorney will apply sufficient resources, attorneys, time, and administrative support to the action, as necessary, to prosecute the action as quickly as the court system will allow; (ii) the attorney or law firm will provide monthly status reports, in writing, describing at a minimum (1) the work that was completed in the last month, (2) the time, in hours and minutes, incurred by each attorney or billable staff member in the last month, broken down by time entry, person performing the work, and a description of each time entry, (3) the costs incurred by the attorneys and any experts in the prior month, (4) a running tally of all costs and time, by attorneys and staff members, since the beginning of the action, and updated monthly, (5) a list of what is needed to move the action toward resolution, (6) the projected dates for each action that is needed to move the action toward resolution, (7) an explanation of why any projected action cannot be completed immediately; (iii) the attorney or law firm will provide an opinion letter regarding the Master Association's claims prior to commencing any action that will, at a minimum, explain each claim, cite the law supporting the claim, cite the facts supporting the claim, provide an application of the law to the facts and analysis of each claim, cite any potential defenses or weaknesses to any claim, including an analysis of each potential defense or weakness, an opinion of the lawyer or law firm as to the Master Association's likelihood of success on each claim, an analysis of potential damages, including citations to the law and facts supporting that analysis, and an opinion of the lawyer or law firm on the damages the Master Association would likely be awarded for each claim; and (iv) a requirement that the Master Association be permitted to terminate the engagement of the law firm or attorney at any time, with no requirement to pay any attorneys' fees incurred under a contingency arrangement up to that date if, in the Master Association's sole discretion, (a) the attorney or law firm is not prosecuting the action as rapidly as the court system will allow, (b) the burden of the action on the Owners through the inability to sell or refinance, through costs, or through any disruption to the operations of the Master Association, is not worth the continuation of the action, (c) the Master Association determines, at any time, that the legal and factual risks associated with the action are such that the action should not be pursued further, (d) the law firm or attorney fails to keep the Master Association informed as to the course of the action and effect of proceedings on the likelihood of success, including any failure to provide required monthly reports.
- (j) The existence of procedures and/or requirements in this Article 21 applicable to claims against the Declarant, or its contractor or subcontractors, that are barred or limited in other provisions of this Master Declaration, shall not be construed as permitting any such claims or as contradictory to a prohibition or limit on such claims in other provisions in this Master Declaration. The procedures and requirements to assert a claim (including, but not limited to, the right to cure requirements, the meeting and Owner approval requirements, the mediation requirement, and the arbitration requirements) that is prohibited by this Master

Declaration are provided solely in case any such claim is permitted by law, notwithstanding the terms of this Master Declaration.

- (k) Prior to engaging any lawyer or firm to represent the Master Association related to any litigation described in this section, the Master Association shall obtain independent counsel to review the engagement letter governing that representation and advise the Master Association to ensure that the requirements in this Master Declaration are satisfied related to that engagement. The Master Association shall continue the representation of independent counsel to monitor the representation by that counsel and to ensure that any proceeding is prosecuted diligently, competently, and consistent with the requirements of the engagement letter and this Master Declaration.

- 21.6 Land Owners. All Persons owning land that is initially or subsequently incorporated into the Project, and who sign the Master Declaration or any amendment thereto subjecting that land to the Master Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Article 21.

## ARTICLE 22 PRIVATELY-OWNED AMENITIES

- 22.1 No Rights to Use of Privately-Owned Amenities. Ownership of a Unit does not create any interest in, or rights to, the Golf Course, Golf Club, or any other Privately-Owned Amenities. Use of and access to any Privately-Owned Amenities shall be subject to, and governed by, the rules and requirements of the Private Amenity owner. Nothing in this Master Declaration shall be construed to grant any right of entry, license, or authorization to use the Privately-Owned Amenities. Rights to use the Privately-Owned Amenities will be granted only to such Persons, and on such terms and conditions as the Privately-Owned Amenities owner may determine. The Privately-Owned Amenities owner shall have the right, in its sole discretion, with or without notice, to amend, waive, or revoke the terms and conditions of use of the Privately-Owned Amenities, and any unauthorized entry on, to, or use of the Privately-Owned Amenities by any Owner, Occupant, or third Person may constitute trespass.
- 22.2 No Representation or Warranty. The Declarant and the Master Association specifically disclaim any and all representations and warranties, of every kind and nature, regarding the Golf Course or other Privately-Owned Amenities, and any rights to and/or use thereof.
- 22.3 Easements for Golf Club and Golf Course.
- (a) Every Unit and the Common Areas and Facilities surrounding or neighboring the Golf Course are burdened with an easement permitting golf balls unintentionally to come upon such Common Area and Facilities and Units, and for golfers, at reasonable times, and in a reasonable manner, to enter onto the Common Area and Facilities or a Lot to retrieve errant golf balls. Nothing in the foregoing easement grant, however, shall operate to relieve any golfer of liability for damage caused by errant golf balls. Notwithstanding anything in this Section 22.3 to the contrary, neither the Declarant, the Builder, the Master Association, the

Master Association members, nor the Privately-Owned Amenities owner shall be liable to any Owner, Occupant, invitee or guest for any injury or damage arising from, or related to, errant golf balls or the exercise of this easement.

- (b) The Golf Club and Golf Course owners, including their respective officers, directors, members, employees, agents, assigns and successors in interest, shall, at all times, have a right and non-exclusive easement of access and use over those portions of the Common Areas and Facilities reasonably necessary, with or without the use of maintenance vehicles and equipment, for the operation, maintenance, repair and/or replacement of the golf course.
- (c) All Units and Common Area and Facilities immediately adjacent to the Golf Course are burdened with a non-exclusive easement in favor of the Golf Club and Golf Course owners (including their respective agents, successors, assigns, and transferees) for overspray of water, fertilizer, or other material or effluent from any irrigation system serving the Golf Course. Notwithstanding anything in this Section 22.3 to the contrary, neither the Declarant, the Builder, the Master Association, the Master Association members, nor the Golf Course owner shall be liable to any Owner, Occupant, invitee or guest for any injury or damage arising from, or related to, the exercise of this easement.
- (d) The Golf Club and Golf Course owners (including their respective agents, successors, assigns, and transferees) shall have a perpetual, exclusive easement of access over all adjacent properties within the Project for the purpose of retrieving golf balls from the Water Feature and other areas lying reasonably within range of golf balls hit from the Golf Course.
- (e) The Golf Club and Golf Course owners (including their respective agents, successors, assigns, and transferees), and their guests, invitees, employees, and authorized users of the Golf Course, shall at all times have a right and non-exclusive easement of access and use over all roadways and golf cart paths, if any, located, or to be located, within the Project at reasonable times before, during, and after golf tournaments, and other functions held at the Golf Course.
- (f) The Golf Club and Golf Course owners (including their respective agents, successors, assigns, and transferees) shall have a perpetual non-exclusive easement, to the extent reasonably necessary, on the Property, for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigation systems and equipment, including, without limitation, wells, pumps, and pipelines serving all or portions of the Golf Course.
- (g) The Golf Club and Golf Course owners (including their respective agents, successors, assigns, and transferees) shall have a perpetual, non-exclusive easement, to the extent reasonably necessary, on the Property, for the installation, maintenance, repair, replacement, and monitoring of utility lines, wires, drainage pipes, and pipelines serving all or portions of the Golf Course.

- (h) The Project is hereby burdened with easements in favor of the Golf Course for natural drainage of storm water runoff from the Golf Course.
  - (i) The Project is hereby burdened with easements in favor of the Golf Club and Golf Course owners for golf cart paths serving the Golf Course. Under no circumstances shall the Master Association, or the Owner of the Golf Course, be held liable for any damage or injury resulting from the exercise of this easement.
  - (j) The Golf Club or Golf Course owner shall have the right to erect fencing on some or all of the Golf Course.
- 22.4 Easement for Cross-Drainage. Every Unit and the Common Area and Facilities shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties, provided no Person shall alter the natural drainage on any Unit so as to materially increase the drainage of storm water onto adjacent portions of the Property without the consent of the Owner of the affected property.
- 22.5 Right of Entry. The Master Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance authorized by this Master Declaration, and to inspect, for the purpose of ensuring compliance with this Master Declaration, any Supplemental Declaration, Bylaws, and Rules, which right may be exercised by the Board, the Master Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Master Association to enter upon any Unit to cure any conditions which may increase the possibility of a fire or other hazard, in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any detached single-family dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.
- 22.6 Assumption of Risk and Indemnification: Maintenance. Each Owner, by his/her purchase of a Lot or Unit in the vicinity of the Golf Course, hereby expressly assumes the risk of noise, personal injury, or property damage caused by maintenance and operation of the Golf Club and Golf Course, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that maintenance typically takes place around sunrise and/or sunset); (b) noise caused by golfers; (c) use of pesticides, herbicides, and fertilizers; (d) use of effluent in the irrigation of the Golf Course; (e) reduction in privacy caused by golf traffic on the Golf Course, or the removal or pruning of shrubbery or trees on the Golf Course; (f) errant golf balls and golf clubs; and (g) design of the Golf Course.

Each such Owner agrees that neither Declarant, the Master Association, the Golf Club or Golf Course owners, nor any of their affiliates or agents shall be liable to such Owner or any other person claiming any loss or damage, including, without limitation, indirect destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of an Owner's Lot or Unit to the Golf Course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the Master Association, the Golf Club and Golf Course owners, or any of their affiliates or agents. The Owner hereby agrees to indemnify and hold harmless the Declarant, the Master Association, the Golf Club and Golf Course owners, and their affiliates and agents from, and against, any and all claims by such Owner's tenants, guests or invitees, or others upon such Owner's Lot or Unit.

### ARTICLE 23 EASEMENTS

- 23.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and Facilities and between adjacent Units due to the unintentional placement or settling or shifting of the improvement constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Master Association.
- 23.2 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area and Facilities for the purposes of enjoyment, use, access, and development of the property subject to the Development Agreement (the "Additional Property"), whether or not such property is made subject to this Master Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area and Facilities for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area and Facilities as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property, or any portion thereof, is not made subject to this Master Declaration, the Declarant, and its successors or assigns, shall enter into a reasonable agreement with the Master Association to share the cost of maintenance of any access roadway serving such property.

IN WITNESS WHEREOF, Master Association has executed this Master Declaration this 7 day of November, 2016.

THE COMMUNITY PRESERVATION MASTER ASSOCIATION

By: [Handwritten Signature]  
Signature

ROBERT MARTINO  
Printed

Its: CHAIRPERSON BOARD DIRECTORS

STATE OF UTAH )  
COUNTY OF Summit ) ss.  
)

On this 7<sup>th</sup>, day of November, 2016, personally appeared before me Robert Martino, whose identity is personally known to me (proven on the basis of satisfactory evidence), and who by me duly sworn/affirmed, did say that he/she is the Chairperson, of The Community Preservation Master Association and that said document was signed by him/her in behalf of the aforementioned corporation with all necessary authority, and acknowledged to me that said corporation executed the same.



Jenni Hadlock  
Notary Public

EXHIBIT A  
LEGAL DESCRIPTION

Lots 1 through 13, FOREVERMORE PLAT "A" AMENDED, recorded May 29, 2013, as Entry No. 390318, in the office of the Wasatch County Recorder.

Lots 31 through 35, HIDEOUT CANYON PHASE 1 – POD 4 RESIDENTIAL PLAT AMENDED, recorded September 29, 2009 as Entry No. 352738, in the office of the Wasatch County Recorder.

Lots 50 through 75, HIDEOUT CANYON PHASE 5 RESIDENTIAL PLAT, recorded April 16, 2009, as Entry No. 346911, in the office of the Wasatch County Recorder.

Lots C1 through C5, HIDEOUT CANYON COMMERCIAL PHASE, recorded May 27, 2005, as Entry No. 283647, in the office of the Wasatch County Recorder.

Lots 16, 17 and Open Space, Plat A, HIDEOUT CANYON LOTS 16 & 17, recorded September 23, 2013, as Entry No. 394141, in the office of the Wasatch County Recorder.

Lots 36 through 39, HIDEOUT CANYON PHASE 1 AMENDED AMENDING POD 9 RESIDENTIAL PLAT, recorded April 3, 2008, as Entry No. 334044, in the office of the Wasatch County Recorder.

Lots 1 through 30, and Lots T1 through T8, HIDEOUT CANYON AMENDED PHASE 1, FIRST RESIDENTIAL PLAT, recorded January 10, 2008, as Entry No. 330592, in the office of the Wasatch County Recorder.

Lots 50 through 53, and Lots R-19, R-20 and R21, HIDEOUT CANYON PHASE 2A RESIDENTIAL PLAT, recorded November 21, 2008, as Entry No. 342228, in the office of the Wasatch County Recorder.

Lots 1 through 9 and Lots R-1 through R-6, HIDEOUT CANYON PHASE 8 RESIDENTIAL PLAT, recorded June 5, 2009, as Entry No. 348949, in the office of the Wasatch County Recorder.

Lots 1 through 9, HIDEOUT CANYON PHASE 8A RESIDENTIAL PLAT, recorded August 25, 2015, as Entry No. 415529, in the office of the Wasatch County Recorder.

Lots 2 through 5, Lots 9 through 15, Lots 23 through 49, POD 1, POD2, POD 3A, POD 3E, and POD 3C and Lots R-1 through R-18, HIDEOUT CANYON PHASES 2 AND 4 RESIDENTIAL PLAT, recorded January 17, 2006, as Entry No. 295335, in the office of the Wasatch County Recorder.

Lots 1 through 20, RUSTLER PLAT "A" AMENDED, a Planned Unit Development, recorded June 12, 2012, as Entry No. 379673, in the office of the Wasatch County Recorder.



Lots 21 through 31, RUSTLER PLAT "B" AMENDED, a Planned Unit Development, recorded April 26, 2013, as Entry No. 389202, in the office of the Wasatch County Recorder.

Lots 41 through 66, RUSTLER PLAT "C" 1<sup>ST</sup> AMENDED, a Planned Unit Development, recorded November 23, 2015, as Entry No. 418531, in the office of the Wasatch County Recorder.

Lots 67 through 88, RUSTLER PLAT "D", a Planned Unit Development, recorded March 26, 2015, as Entry No. 410327, in the office of the Wasatch County Recorder.

Lots 1 through 47, SOARING HAWK SUBDIVISION PHASE 1, recorded September 26, 2014, as Entry No. 404842, in the office of the Wasatch County Recorder.

Lots 48 through 108, SOARING HAWK SUBDIVISION PHASE 2, recorded July 16, 2015, as Entry No. 414035, in the office of the Wasatch County Recorder.

Lots 109 through 140, SOARING HAWK SUBDIVISION PHASE 3, recorded May 3, 2016, as Entry No. 424009, in the office of the Wasatch County Recorder.

Lots 141 through 154, SOARING HAWK SUBDIVISION PHASE 4, recorded March 25, 2015, as Entry No. 410313, in the office of the Wasatch County Recorder.

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**AMENDED BYLAWS  
OF  
COMMUNITY PRESERVATION ASSOCIATION**

These Amended Bylaws of the Community Preservation Master Association (the “Bylaws”), having been approved and adopted by the written consent of more than fifty-one percent (51%) of the total voting interests in the Community Preservation Association (the “Master Association”) in accordance with Utah Code Ann. § 57-8a-104, are hereby established as the Bylaws of the Master Association. These Bylaws, and any amendments thereto, shall apply to the Master Association upon their recording and shall bind all present and/or future Owners and Occupants.

**ARTICLE I: DEFINITIONS**

- 1.1 **Definitions.** Except as otherwise provided herein, or as may be required by the context, all terms defined in the Amended and Restated Master Declaration of Covenants, Conditions, and Restrictions for (“the Master Declaration” or “Declaration”), as amended, shall have the same defined meanings when used in these Bylaws.
- 1.2 **Notice.** Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

**ARTICLE II: OWNERS**

- 2.1 **Annual Meetings.**
- (a) **Requirement.** An annual meeting of the Owners shall be held no less than once each calendar year.
- (b) **Date and Time.** The date and time for the annual meeting shall be determined by the Board, in its discretion.
- (c) **Purpose.** The Annual Meeting shall be held for the following purposes.
- (i) electing members of the Board;
- (ii) distributing any annual insurance checklist if it was not distributed before the meeting, announcing the current deductible for the Master Association’s property insurance and the Owners’ potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage;
- (iii) if no earthquake insurance has been obtained, voting to confirm the Board’s decision to forego such insurance; and
- (iv) transacting such other business as may properly come before the meeting.
- (d) **Approval of Minutes.** The minutes of the annual meeting shall be approved by the Board within ninety (90) days of the annual meeting.
- (e) **Election of Board Members.** If the election of the Board members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

## 2.2 Special Meetings.

- (a) Who May Call. Special meetings of the Owners may be called by the Board, the President, or upon the written request of Owners holding not less than twenty-five percent (25%) of the Allocated Interest of the Master Association.
- (b) Requirements for Request of Owners. Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request, along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose, or purposes, of the meeting, and shall be delivered to the Manager, or the President, who shall then call, and provide notice of, such special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

2.3 Place of Meetings. The Board may designate the office of the Manager, or any place within the City or Wasatch or Summit Counties, as the place of meeting for any annual or special meeting.

2.4 Notice of Meetings. The Board shall cause written notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners (whether annual or special) to be delivered, not more than thirty (30), nor less than ten (10), days prior to the meeting.

2.5 Owners of Record. For the purpose of determining Owners entitled to notice of, or to vote, at any meeting of the Owners, or any adjournment thereof, the Board may designate a record date, which shall not be more than thirty (30), or less than ten (10), days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of, or to vote, at the meeting. The persons or entities appearing in the records of the Master Association on such record date as the Owners of record of Units in the Property shall be deemed to be the Owners of record entitled to notice of, and to vote, at the meeting of the Owners.

2.6 Quorum. At any meeting of the Master Association members, the Owners present at the meeting shall constitute a quorum for the transaction of business.

2.7 Proxies. At each meeting of the Master Association members, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner, or by the Owner's attorney, when duly authorized in writing. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit, or that Owners' attorneys when duly authorized in writing. Such instrument authorizing a proxy to act may set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Secretary of the Master Association or to such other officer or person who has been authorized by the Master Association to accept proxies at the meeting.

- 2.8 Votes. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one vote for each Unit of such Owner. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Revised Nonprofit Corporations Act. The election of Board Members shall be by secret ballot. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit.
- 2.9 Ballots and Written Consent. The Master Association may utilize written consents and/or ballots consistent with the requirements of the Revised Nonprofit Corporation Act.
- 2.10 Minutes of Meetings. The secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (a) the identification of the Persons present at the meeting in person and by proxy, (b) the date of the meeting, (c) the identification of any issue that is voted on or decided in the meeting, (d) the number of votes cast for and against any issue decided upon, (e) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section 2.10 does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be provided to all Owners within thirty (30) days of the annual meeting. Posting of the draft meeting minutes to the Master Association's website, if available, shall satisfy the requirement of this section 2.10.

### ARTICLE III: BOARD

- 3.1 Number, Tenure, Qualifications, and Election.
- (a) Number of Members. The Board shall be composed of not less than three (3), and no more than five (5), individual meeting the qualifications stated in the Declaration, subject to the Declarant Rights set forth in the Declaration.
- (b) Member Requirements. At all times after the end of the Declarant Control Period and turnover of the Project from the Declarant, at least two (2) of the Board Members must have as their primary residence a Unit in the Project. All candidates for the Board shall indicate either in a written statement provided prior to the meeting or verbally at the meeting whether his or her Unit in the Project is that person's primary residence. Any candidate whose election or appointment would contravene this requirement shall be ineligible for election or appointment. In determining which of multiple candidates elected shall serve if only one can serve and maintain the requirements of this provision, the highest vote getter shall prevail. If both have equal votes, then the issue shall be resolved by a coin toss.
- (c) Term. Except during the Declarant Control Period, and except for the initial Board Members elected upon turnover of the Master Association from the Declarant the term for Board Members shall be two (2) years. The terms of the Board Members shall overlap so that an odd number of Board Members shall be

elected in odd number years and an even number of Board members elected in even number years.

- (d) Nominations. At or before the annual meeting, or any subsequent meeting at which the election is held, any Owner may submit his/her own name or the name of any other willing and otherwise qualified individual to serve on the Board. If the Master Association gives advance notice of any individuals seeking election to the Board, it shall include the names of every individual from whom it has received the written affirmation. If the name of an individual is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Board Members unless it is submitted with a written statement signed by the individual indicating that he/she is willing to serve.
- (e) Disqualification. If any Board Member is alleged to not meet the qualification requirements in the Declaration, and any Board Member is notified of or discovers this alleged lack of qualification, the Board shall promptly investigate and verify whether the Board Member is qualified or not, and during this investigation period the Board Member whose qualification is in question shall not vote on Board matters. If the Board Member is not qualified, the Board Member's membership on the Board shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Master Association or, if no notice was provided, to the date that the Board established that the Board Member was not qualified. If a Board Member becomes unqualified, or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Board, the decisions and actions of the Board and that Board Member are not subject to challenge on this basis up to the time that the Master Association is notified in writing as provided for in this Section, or until the Board Member is disqualified if no such notice is provided.
- (f) Removal for Failure to Participate. If any Board Member shall fail to appear at four (4) successive regular Board meetings in a row, or fifty percent (50%) or more of the regular Board meetings within any calendar year, after having received proper notice of the meetings and after the Board has attempted in good faith to schedule meetings consistent with all of the members' schedules, the other Board Members may, by unanimous vote, remove that member and appoint a new member.

### 3.2 Meetings.

- (a) Regular Meetings. The Board shall hold regular meetings at least quarterly, and more often at its discretion.
- (b) Who Is Entitled to Attend. Consistent with Utah Code Ann. § 57-8a-226, Owners may attend meetings and may be present for all discussion, deliberation, and decisions, except when the Board is in executive session.
- (c) Special Meetings. Special meetings of the Board may be called by, or at the request of, any two Board Members or the President of the Master Association. Notice of any special meeting shall be given at least forty-eight (48) hours prior



thereto to each Board Member. Except as provided by law, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.

- (d) Quorum and Manner of Acting. Two Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present, and for which proper notice was provided to the Board Members, shall be the act of the Board. The Board Members shall act only as a Board, and individual Members shall have no powers as such.
- (e) Place and Notice of Meetings. The Board may designate any place in the City or in Wasatch or Summit Counties as the place of meeting for any regular meeting called by the Board, but shall in good faith attempt to hold meetings at the office of the Manager or in as close a proximity to the Project as reasonably possible. All Board Members and Owners shall be given at least ten (10) days' notice of regular meetings.
- (f) Executive Session.
  - (i) The Board or a Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session and, if they enter executive session, shall discontinue any executive session by motion and a vote. A member of the Board who is not a member of a Sub-Committee shall not be entitled to attend executive sessions of the Sub-Committee or inspect attorney-client privileged minutes of the Sub-Committee without approval of the Board.
  - (ii) The minutes of the meeting at which an executive session is held shall include:
    - (1) The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: "to discuss the terms of a management contract with XYZ Company," "To discuss the pending litigation with XYZ" or "to discuss a complaint of a Rule violation."
    - (2) Any decisions made during executive session. Decisions made in executive session that cannot be properly and fully documented without disclosing attorney-client privileged information shall be recorded in the minutes of the meeting as "Decision made regarding attorney-client privileged issues that are recorded in Separate and attorney-client privileged minutes of the Executive Session," and separate executive session minutes shall be created that shall fully describe the decision as would normally be required in regular minutes. The separate executive session minutes shall state on their face that they contain attorney-client privileged information and shall be disclosed to non-committee members only

as required by law for the disclosure of attorney-client privileged information.

- (iii) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting, except as authorized by the Board or the Sub-Committee. Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.
- (iv) Executive sessions may be held to discuss and make decisions related to the following matters:
  - (1) Pending or prospective legal proceedings and issues related to the Master Association, its operations, or its governance, including, but not limited to, meetings with the Master Association's counsel;
  - (2) Contracts and purchases related to the Master Association, including, but not limited to, the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
  - (3) Master Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment; and
  - (4) Rule violations by Owners, including, but not limited to, the discussion of complaints, and whether to impose fines or utilize any particular remedy to address particular violations.
- (v) The Board or the Sub-Committee holding the executive session shall determine who, outside of that committee, shall be allowed to be present in executive session, and no one else is entitled to be present. All members of the Board shall be entitled to be present at executive committee meetings of the Board. All members of a Sub-Committee shall be entitled to be present in executive sessions of the Sub-Committee.

### 3.3 Informal Action and Action by Committee Members without a Meeting.

- (a) Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting if each and every Board Member, in writing, either:
  - (i) votes for the action, or
  - (ii) votes against or abstains from voting, and does not exercise his/her the right to demand that action not be taken without a meeting.
- (b) An action taken pursuant to this Section shall not be effective unless the Master Association receives writings:
  - (i) describing the action taken;
  - (ii) signed by each Board Member; and
  - (iii) not revoked pursuant to subsection 3.3(d).

- (c) Action taken under this section is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Board members then in office were present and voted.
- (d) A Board Member may revoke consent to any action given pursuant to this section by communicating in writing that the Board Member has changed his/her vote with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.
- (e) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Master Association.
- (f) Action taken pursuant to this section has the same effect as action taken at a meeting of the Board, and may be described as an action taken at a meeting of the Board Members in any document.
- (g) For purposes of this section:
  - (i) “Signed” or “signature” is any indication on the document (whether paper or electronic) that the document is from and consented to by the person who is purported to have sent it. For example, a typed name at the bottom of an email satisfies the requirement for a signature.
  - (ii) “Writing” shall refer to an email, letter, facsimile, or any other physical or electronic document.
  - (iii) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
  - (iv) Any response to any electronic communication shall be:
    - (1) to the address of the sender using the same address and means of communication as was used to send the request for consent of an action; or
    - (2) to any address in regular use (electronic, telephonic, or physical) by the person sending the request.
  - (v) A communication shall satisfy the requirement to “describe the action taken” if:
    - (1) it is in the form of an email and it includes with the email the content of prior emails in the email chain that describe or include the proposed action;
    - (2) it is in the form of a facsimile and it includes either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
    - (3) the writing from the Board Member sufficiently describes or restates the proposed action.

- 3.4 Compensation. Subject to the exception in Section 20.18, no Board Member shall receive compensation for any services that he/she may render to the Master Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in the performance of his/her duties as to the extent such expenses are approved by the Board.
- 3.5 Resignation and Removal. A Board Member 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. An oral resignation attempt is not effective. Any Board Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty percent (50%) of the Allocated Interest of the Master Association at a special meeting of the Owners duly called for such purpose.
- 3.6 Vacancies. If vacancies shall occur in the Board by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Board Member, the Board Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board Members then in office, even though less than a quorum may be available. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election by the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her predecessor.

#### ARTICLE IV: OFFICERS

- 4.1 Officers. The officers of the Master Association shall be a President, Vice President, Secretary, and Treasurer.
- 4.2 Election, Tenure and Qualifications. The officers of the Master Association shall be chosen by the Board annually at the first meeting of the Board following the annual meeting. Each such officer shall hold such office until a successor has been elected, or until such officer's death, resignation, disqualification, or removal, whichever first occurs. No person shall hold more than one office, except that the Vice President may also serve as Treasurer or Secretary if there are fewer than five (5) Board Members. All officers must be members of the Board during the entire term of their respective offices.
- 4.3 Subordinate Officers. The Board may, from time to time, appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. Subordinate officers need not be members of the Master Association.
- 4.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Board Member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Board at any time, with or without cause.
- 4.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting. During the time that any office is vacant and no other

officer is available to perform the duties of that office as required below, the Board shall ensure that the duties and responsibilities of the office are performed.

- 4.6 The President. The President shall preside at meetings of the Board and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting, including, but not limited to: (a) the right to control the order of the meeting; (b) the right to arrange for the removal of any disruptive persons who may include, but not be limited to, any person who: (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (c) the right to impose and enforce reasonable rules and procedures related to the meeting, such as those found in “Robert’s Rules of Order” or “The Modern Rules of Order;” and (d) the right to designate the Manager or any other person to preside over any meeting at which the President is present. The President shall sign on behalf of the Master Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board. The President shall have the general authority to implement decisions of the Board and shall oversee the operations of the Master Association. The President shall have authority in case of emergency to take action without Board approval, as is necessary and prudent to preserve and protect property. The President shall be responsible for the duties of any other office while that office is vacant.
- 4.7 The Vice President. The Vice President shall also act in the place and stead of the President in the event of the President’s absence or inability or refusal to act. The Vice President shall perform such other duties as required by the Board.
- 4.8 The Secretary. The Secretary shall keep the minutes of the Master Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Board may require such person to keep. The Secretary shall also act in the place and stead of the President in the event of the President and Vice President’s absence, or inability or refusal to act. The Secretary shall perform such other duties as required by the Board.
- 4.9 The Treasurer. The Treasurer shall have the custody and control of the funds of the Master Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Master Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall have authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Master Association. The Treasurer shall also act in the place and stead of the President in the event of the President, Vice President, and Secretary’s absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Board.
- 4.10 Compensation. No officer shall receive compensation for any services rendered to the Master Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer, to the extent such expenses are approved by the Board.

## ARTICLE V: SUB-COMMITTEES

- 5.1 Designation of Sub-Committees. The Board may, from time to time, by resolution, designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Sub-Committee designated hereunder shall include at least one (1) Board Member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any Sub-Committee at any time.
- 5.2 Proceedings of Sub-Committees. Each Sub-Committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Sub-Committee may, from time to time, determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.
- 5.3 Quorum and Manner of Acting. At each meeting of any Sub-Committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such Sub-Committee. The members of any Sub-Committee designated by the Board hereunder shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Board.
- 5.4 Resignation and Removal. Any member of any Sub-Committee designated hereunder by the Board may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may, at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.
- 5.5 Vacancies. If any vacancy shall occur in any Sub-Committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the Sub-Committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

## ARTICLE VI: INDEMNIFICATION

- 6.1 Indemnification. No Board Member, officer, or member of a Sub-Committee shall be personally liable for any obligations of the Master Association or for any duties or obligations arising out of any acts or conduct of said Board Member, officer, or Sub-Committee member performed for, or on behalf of, the Master Association. The Master Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer of the Master Association, or a member of a duly formed Sub-Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member,

officer of the Master Association, or member of a Sub-Committee, or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Board Member, officer, or Sub-Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Master Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against, or be reimbursed for, or be defended against, any expense or liability incurred in connection with any claim or action arising out of such person's intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Master Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.

- 6.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Board Members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, Sub-Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.
- 6.3 Settlement by Master Association. The right of any person to be indemnified shall be subject always to the right of the Master Association by the Board, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Master Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

#### ARTICLE VII: AMENDMENTS

- 7.1 Amendments. Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners holding at least sixty-seven percent (67%) of the Allocated Interest in the Master Association at a meeting called for that purpose provided, however, that during the Declarant Control Period, any such amendment of the Bylaws by the Owners shall require the approval of Declarant. Nothing in this Section 7.1 shall be construed to limit the Declarant's unilateral right to amend these Bylaws (or the Declaration or Rules) during the Developer Control Period, as set forth in Section 20.7 of the Declaration.
- 7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Master Association, who shall certify that the amendment has been properly adopted to as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Wasatch County, Utah.

## ARTICLE VIII: WAIVER OF IRREGULARITIES

- 8.1 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 ascertaining 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 – they are waived if no objection to the particular procedural issue is made at the meeting.
  - (b) if the objecting person was not in attendance at the meeting but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the date the meeting is held,
  - (c) if the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the date of the meeting,
  - (d) if the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting.
  - (e) for any action, vote, or decision that occurred without a meeting, within one hundred and twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.
- 8.2 Requirements for Objections. All objections, except those made at a meeting, shall be in writing. Whenever made, objections must be specific, shall include identification of the specific provision of the Governing Document or other Law that has been violated, and shall include a brief statement of the facts supporting the claimed violation.
- 8.3 Irregularities that Cannot Be Waived. The following irregularities cannot be waived under the prior subsection:
- (a) Any failure to comply with the provisions of the Declaration.
  - (b) Any failure to obtain the proper number of votes required to pass a particular measure.