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For RIVER VALLEY DEVELOPMENT, LLC

MASTER DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND
RESERVATION OF EASEMENTS
FOR
1600 PARK AVENUE
(a Utah Expandable Commercial/Residential Community)

August 2019

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**MASTER DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND
RESERVATION OF EASEMENTS
FOR
1600 PARK AVENUE**

This Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for 1600 Park Avenue (“Master Declaration”) is made and executed this 26 of August 2019, by the River Valley Development, LLC, a Utah limited liability company (“Declarant”).

RECITALS

- A. Declarant is the owner of approximately five and fifty-one hundredths (5.51) acres of real property located within the boundaries of the Logan City, Cache County, State of Utah, which real property includes: (1) the real property described in Exhibit “A-1” attached, and (2) the Townhomes located within the subdivision known as 1600 Park Avenue, Phase 1, more particularly described in Exhibit “A-2”). Exhibit “A-1” also contains the “Additional Property” defined below.
- B. Declarant is creating a development that will be known as 1600 Park Avenue (hereinafter “Park Avenue” or the “Project”) on the Property. The Project will contain a mix of commercial and residential buildings in which will be located a mixture of both residential buildings and commercial/residential buildings and consisting of a number owner’s association, herein referred to as Sub-Associations. The Sub-Associations may consist of townhome PUD associations and condominium associations, but no assurance is made regarding the type and number of Associations that will be included within the Property. All Sub-Associations will be subject to this Master Declaration. Sub-Associations will also be subject to governing documents that only apply to each Sub-Association. The Project will also contain other amenities as shown on the Map.
- C. The Additional Property is currently owned by Declarant and Declarant has chosen to record this Master Declaration against the Additional Land. Declarant may remove some of the Additional Property from the Project as may be determined in the sole discretion of the Declarant. Nothing within this Master Declaration shall act as a floor or cap to the number of Lot or Units or Units Declarant may add to or include within the Project.
- D. In furtherance of a common plan of development for the Project, Declarant intends to adopt this Master Declaration affecting the Property and to reserve easements across certain portions of the Property for the benefit of other portions of the Property and the Additional Property. Declarant will develop and convey all Lot or Units and Units in the Project subject to this Master Declaration and subject to and together with such easements, all of which shall run with the title to the Property as hereinafter set forth.

- E. Declarant has created the 1600 Park Avenue Master Association, Inc, to which Declarant in due course will delegate and assign the powers of owning, maintaining and administering any Common Areas and Maintenance Areas and the duties of administering and enforcing this Master Declaration, and collection and disbursing the Common Assessments and charges hereinafter created in connection with the operation, maintenance, repair and replacement of the Common Areas and Maintenance Areas and the functions and obligations of the Master Association created in this Master Declaration.
- F. Sub-Associations will provide for the management and operation of each Sub-Association and may levy and collect Common Assessments on Lots or Units within each Sub-Association, (unless otherwise assessed by the Master Association) and shall administer and enforce the terms of the Sub-Association Declarations for each such Sub-Association, except to the extent enforcement is otherwise retained by the Master Association as set forth herein.
- G. Declarant desires to create an association of homeowners, which entity shall possess the power to maintain and administer any Common Areas and Maintenance Areas, collect and disburse assessments and charges hereinafter provided for, and administer and enforce the provisions of this Master Declaration. It is intended that this Master Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein, is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Master Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Master Association.
- H. The Declarant intends, by recording this Master Declaration in the Office of the County Recorder of Cache County, State of Utah, to impose upon the Property mutually beneficial obligations, rights and restrictions under a general plan of improvement for the benefit of all the Property and all futures owners thereof.

NOW THEREFORE, for the forgoing purpose, the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I DEFINITIONS

When used in this Master Declaration or in the Master Bylaws which are made a part of this Master Declaration and are attached hereto as Exhibit "B", the following terms shall have the meaning indicated.

- 1.1 "Act" shall mean and refer to the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

- 1.2 **“Additional Property”** shall mean those certain lands described in Exhibit “A-1” and shall include the Lots and Units depicted on Exhibit “C”, which Declarant may at some future point construct within the Project. Declarant need not own any of the Additional Property to include it as part of the Project. Declarant makes no representations that the layout and configuration of the buildings, Lots and Units set forth on Exhibit “C” accurately represent the location, type, or number of buildings, Lots and Units that may be constructed within the Project.
- 1.3 **“Articles”** shall mean the Articles of Incorporation of the 1600 Park Avenue Master Association, Inc., as such Articles may be amended from time to time.
- 1.4 **“Association”** shall mean the 1600 Park Avenue Master Association, a Utah nonprofit corporation.
- 1.5 **“Board”** or **“Board of Directors”** shall mean the Board of Directors of the Master Association, elected in accordance with the Articles and Master Bylaws of the Master Association. The Board shall act as the governing body of the 1600 Park Avenue Master Association.
- 1.6 **“Commercial Unit”** shall mean and refer to each physically constructed building that is designated and/or required by a Logan City zoning ordinance to be used primarily for commercial, professional or retail purposes, and is located as an improvement on a Lot or within a Condo Unit.
- 1.7 **“Common Areas”** shall mean and refer to any real property, improvements and facilities maintained by the Master Association. The Common Areas include common areas owned and maintained by Sub-Association, but do not include any land that is part of a Lot or Unit. Declarant does not make any representations, promises or guarantees whatsoever regarding the amount of Common Area that will or may be maintained by the Master Association. The Common Areas may include, to the extent of the Master Association's interest therein, walkways, paths, open space areas, landscaping and landscaping improvements. Any Common Areas shall be located within the Property and shall be identified on a Plat, in a supplemental declaration, or in a Sub-Association Declaration within the Project.
- 1.8 **“Common Expenses”** shall mean and refer to all sums which are expended on behalf of the Master Association and all sums which are required by the Board to perform or exercise the functions, duties, or rights under this Master Declaration, and such Rules and Regulations as the Board may from time to time make and adopt. By way of illustration but not limitation, Common Expenses shall include: (i) expenses of administration, maintenance, operation, repair, and replacement of those elements of Common Areas and Maintenance Areas within Sub-Associations that must be replaced on a periodic basis, and other reserves as may be from time to time established pursuant to the Master Declaration; (ii) expenses agreed upon as Common Expenses by the Master Association and lawfully assessed against the Lot or Unit Owners in accordance with the Master Declaration; (iii) expenses declared Common Expenses by the provisions of the Act, by this Master Declaration, by the Master Bylaws, or by a Sub-Association's Declaration; (iv) any

commonly metered utilities for the Property, including but not limited to culinary water, sanitary sewer, storm sewer and electricity.

- 1.9 **“Common Assessment”** shall mean the charge against each Owner and each Owner’s Lot or Unit.
- 1.10 **“Condo Act”** shall mean and refer to the Condominium Ownership Act, codified beginning at Section 57-8-1, Utah Code Annotated, as amended from time to time.
- 1.11 **“Condo Unit or Unit”** shall mean a unit as shown on a Plat, intended for commercial use or single-family residential use, which unit is subject to the provisions of the Condo Act.
- 1.12 **“Declarant”** shall mean and refer to River Valley Development, LLC, a Utah limited liability company and its successors and assigns.
- 1.13 **“Design Guidelines”** shall mean and refer to the Design Guidelines, as adopted and amended from time to time by the Declarant during the Period of Administrative Control, or thereafter by the Board in accordance with the Master Bylaws and this Master Declaration. The Design Guidelines may contain different standards and requirements for each Sub-Association, with the intent being that the structures and landscaping within each Sub-Association shall be constructed in harmony with the other structures and landscaping within the same Sub-Association.
- 1.14 **“Design Review Committee”** shall mean the Design Review Committee for the 1600 Park Avenue Master Association, created pursuant to Article VI hereof.
- 1.15 **“Dwelling”** shall mean and refer to each physically constructed residential dwelling or building containing a single-family residence located as an improvement on a Lot or Unit.
- 1.16 **“Improvement”** shall mean all structures and appurtenances thereto of every type and kind, including, without limitation, buildings, out buildings, walkways, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, and related fixtures and equipment.
- 1.17 **“Lot”** shall mean a separate parcel of real property as shown on a Plat which is intended for commercial use or single-family residential use.
- 1.18 **“Maintenance Areas”** shall mean any area which the Master Association does not own but has agreed to or is required to maintain for Sub-Associations. Maintenance Areas may include property owned by a Sub-Association for which the Master Association has accepted the responsibility to maintain. Declarant does not make any representations whatsoever regarding the amount of the Maintenance Areas the Master Association may be obligated to maintain.

- 1.19 **“Manager”** shall mean the person, firm or company designated from time to time by the Master Association to manage, in whole or in part, the affairs of the Master Association and the Project.
- 1.20 **“Master Association”** means the 1600 Park Avenue Master Association, Inc. Members of the Matter Association include all Members as defined below.
- 1.21 **“Master Bylaws”** shall mean the Bylaws of the Master Association attached hereto as Exhibit “B” and adopted as the Bylaws of the Master Association, as such bylaws may be amended from time to time.
- 1.22 **“Master Association Declaration” or “Master Declaration”** shall mean and refer to this document, as the same may be amended from time to time.
- 1.23 **Master Community** shall mean that development known as 1600 Park Avenue and all the Lots, Units, Common Areas and Additional Property that are platted as part of and included within 1600 Park Avenue. A map of the projected 1600 Park Avenue development is attached hereto as Exhibit “C”. Declarant makes no representations that the layout and configuration of the buildings, Lots and Units set forth on Exhibit "C" accurately represent the location, type, or number of buildings, Lots and Units that may be constructed within the Project. This map may be amended, changed and modified by Declarant and represents what the Declarant hopes to build, and no representation is made that the Declarant can or will build 1600 Park Avenue as depicted on the map.
- 1.24 **“Member”** shall mean and refer to all Owners of Lot or Unit within the Project and shall include Declarant during any period Declarant owns at least one Lots or Units in the Project or owns any interest in the Additional Property.
- 1.25 **“Mortgage”** shall mean and include both a first mortgage or a first deed of trust or other security instrument by which a Lot or Unit or any part thereof is encumbered.
- 1.26 **“Mortgagee”** shall mean any person, institution or company named as a Mortgagee or beneficiary under or holder of a deed of trust.
- 1.27 **“Owner”** shall mean any fee owner of a Lot or Unit within the Property and whose ownership interest is recorded at the Cache County Recorder’s Office.
- 1.28 **Percentage Interest** shall mean those figures set forth on Exhibit “D”, attached, expressed as a percentage of ownership by Unit Owners in the Common Areas of the Project and shall be for all purposes, including voting and assessments. Common Expenses shall be allocated among the Unit Owners in accordance therewith. The percentage of ownership in the Common Areas and Facilities shall be as set forth in Exhibit “D”. Voting rights in the Association are held solely in connection with the Ownership of a Unit. Owners shall pay their Percentage Interest of Common Expenses as set forth in this Declaration and according to Article IX of the Master Declaration. The aggregate Percentage Interest of ownership in the Common Areas shall equal 100 percent. The Percentage Interest set forth in Exhibit “D” shall be amended in accordance with amendments to the Master Declaration

and upon adding or removing Additional Property in the Master Community. For purposes of the Condominium Ownership Act, Percentage Interest shall be equivalent to par value when used in connection with a condominium project within the Master Community.

- 1.29 **“Period of Administrative Control”** shall mean and refer to a period of time commencing on the date this Master Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) ten (10) years from the effective date of this Master Declaration, or (b) the Declarant executes and records a written transfer of control document.
- 1.30 **“Plans and Specifications”** shall mean plans and specifications to be submitted to the Design Review Committee as provided in Section 6.2.
- 1.31 **“Plat”** shall mean and refer to the record of survey Plats for individual phases or Sub-Associations of the Project recorded with the office of the Cache County Recorder, as may be amended from time to time.
- 1.32 **“Project”** shall mean any of the Property governed by this Master Declaration.
- 1.33 **“Property”** shall mean and refer to the Property described in Exhibit “A-1,” including without limitation the Common Areas and Lot or Units. The term “Property” also includes the Additional Property that is made subject to this Master Declaration.
- 1.34 **“Rules and Regulations”** means those rules and regulations adopted from time to time by the Board that are deemed in the best interest of the Owners for the enjoyment of the Project, provided they do not conflict with the Master Bylaws or the Master Declaration.
- 1.35 **“Special Assessment”** shall mean the charge against each Lot or Unit Owner, representing the portion of the costs to be paid by the Lot or Unit Owner for unbudgeted expenses or expenses in excess of those budgeted.
- 1.36 **“Sub-Association”** shall mean a distinct group of Lots or Units generally in close proximity to each other and usually sharing a common name and/or architectural theme, and which is part of a separate owner’s association formed in connection with the development of the Property. Each Sub-Association shall be governed by its own governing documents (in addition to this Master Declaration).
- 1.37 **“Twin Unit”** shall mean a two-story building containing Commercial Units or Dwellings, located on a Lot, but shall not include or mean a Condo Unit. A Twin Unit may also be referred to as a townhome within a Sub-Association.

ARTICLE II SUBMISSION

- 2.1 The Declarant, as owner of the Property described in Exhibit "A-1", hereby submits the Property and all improvements now or hereafter made in or upon the Property to the provisions of this Master Declaration. The Property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth, herein, each and all of which are declared and agreed to be for the benefit of said Property and in furtherance of a plan of improvement of said Property and division thereof; further, each and all of the provisions hereof shall be deemed to run with the Property and shall be a burden and a benefit on the Property and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing, or owning an interest in the real property and improvements comprising any part of the Property and to their respective personal representatives, heirs, successors, and assigns.

ARTICLE III PROJECT DESCRIPTION AND PURPOSE

- 3.1 **General Purpose.** Declarant owns and intends to develop the Property to be known as Park Avenue, which will contain Sub-Association areas and may include open space, trails, and other amenities. Declarant intends that this Master Declaration establish and provide for the continued maintenance of Park Avenue as an attractive and desirable residential and mixed-use commercial community and development.
- 3.2 **Densities and Entitlements.** While Declarant intends to develop a number of Lots and Units as part of the Project, this Master Declaration will not initially be recorded against all the Lots or Units, and Declarant is under no obligation to create additional Lots or Units as part of the Project. Declarant shall be free to develop any number of Lots or Units in the Project, and nothing contained in this Master Declaration shall require or obligate Declarant to develop, create, or include a specific number of Lots or Units in the Project. Declarant reserves the right to create and record separate Sub-Association declarations and other governing documents for some or all of the Sub-Associations.
- 3.3 **Additional Property.** Declarant reserves the right to subject Additional Property to this Master Declaration by the recordation of one or more supplemental declarations or Sub-Association Declarations. To include property in the Project, no amendment to this Master Declaration will be required nor shall Declarant be required to obtain the permission or consent of any Owner or Sub-Association. Declarant shall identify in each supplemental declaration or Sub-Association Declaration the Additional Property, specify the number of additional Lots or Units to be added to the Project and the number of votes to be allocated to the Additional Property. Upon recordation of the supplemental declaration or Sub-Association Declaration, the subject Additional Property shall be deemed added to the Property and the number of Lots or Units and their accompanying votes shall automatically be adjusted for purposes of this Master Declaration. The supplemental declaration or Sub-Association Declaration may modify any of the covenants, conditions and restrictions otherwise applicable to the Additional Property described in the supplemental declaration or Sub-Association Declaration, where such changes are deemed desirable in the discretion

of the Declarant to address unique conditions effecting or relating to the Additional Property that is the subject of the supplemental declaration or Sub-Association Declaration, or to more fairly allocate the benefits and obligations of membership within the Master Association. Declarant makes no representations whatsoever that the layout and configuration of any of the buildings, Lots or Units that might be created or added on the Additional Property as set forth on Exhibit "C" accurately represents the location, type, or number of buildings, Lots and Units that may be constructed within the Project or included with in the Additional Property.

- 3.4 **Master Association and Sub-Associations.** Declarant has created or will create the 1600 Park Avenue Master Association, Inc. as a Utah nonprofit corporation. Declarant intends to create or cause to be created separate Sub-Associations for some of the buildings or areas included in the Project. No Sub-Association shall have authority to contradict or amend the terms of this Master Declaration. The Members of the Master Association shall consist of the owners of Lots or Units in Park Avenue and Declarant. Declarant intends to delegate and assign the powers of owning, maintaining and administering the Common Areas and Maintenance Areas, the duty of administering and enforcing this Master Declaration, and of collecting and disbursing the Common Assessments and charges, including those within the Sub-Associations hereinafter created, to the Master Association.
- 3.5 **Dedication.** In order to further the general purposes stated above, Declarant hereby declares that all of the Property, and any of the Additional Property hereafter made subject to this Master Declaration by the recordation of a supplemental declaration or Sub-Association Declaration, shall at all times be owned, held, sold, conveyed, occupied, used, and enjoyed subject to the provisions of this Master Declaration and to the covenants, conditions, restrictions, equitable servitudes, reservations, easements assessments, charges, and liens provided, referred to or incorporated herein, all of which shall run with the Property, and all of which shall burden, benefit, and be binding upon Declarant, all other Owners, persons or entities having any right, title or interest in the Property (and any of the Additional Property made subject hereto), or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives.
- 3.6 **Right to Develop.** The foregoing notwithstanding, no provision of this Master Declaration is intended or shall be construed to prevent or limit Declarant's rights to develop Park Avenue as Declarant determines and to exercise the rights reserved by Declarant as hereinafter provided.
- 3.7 **Not a Cooperative.** The creation of the Project shall not constitute the creation of a cooperative.

ARTICLE IV 1600 PARK AVENUE MASTER ASSOCIATION

- 4.1 **Relationship of Associations.** The 1600 Park Avenue Master Association shall be the Master Association for the Property and shall do such things as are within its powers and as may be required to maintain the Property subject to this Master Declaration. The Members of the Master Association shall be Declarant and the Owners of Lots and Units

in the Project. A separate Sub-Association shall be formed for each area of the Property as determined solely by Declarant. The members of a Sub-Association shall be Declarant (as long as a Declarant owns a Lot or Unit within the Sub-Association) and the Owners of Lots or Units in that Sub-Association. The duties and powers of the Master Association shall relate to the Property as a whole, while the duties and powers of a particular Sub-Association shall relate only to its particular Sub-Association.

4.2 **Duties and Powers of Master Association.** The Master Association, acting through the Board, shall have the powers and duties provided in the Articles and Master Bylaws and such additional powers as shall be reasonable and necessary for the Master Association to accomplish the purposes of this Master Declaration.

4.3 **Operation and Maintenance.** The Master Association shall be responsible for the operation, management, regulation, maintenance, repair and replacement of the Common Areas and Maintenance Areas except to the extent any such functions are delegated to a Sub-Association. The Master Association shall not be responsible for the maintenance, replacement or repair of any Common Areas that the Master Association delegates to a particular Sub-Association. In addition, the Master Association may operate, manage, maintain, and repair other areas and facilities within the Project as the Board may determine to be in the best interests of the Owners and the 1600 Park Avenue Master Association generally.

4.4 **Membership in the Master Association.**

- a) **Membership Classes.** Every Owner of a Lot or Unit shall be a Class A Member of the Master Association. Declarant, or Declarant's successor or assign, shall be a Class B Member in the Master Association for so long as it holds title to any Lot or Unit.
- b) **Class A Membership Appurtenant.** The Class A membership of an Owner of a Lot or Unit shall not be assignable, except to the successor-in-interest of the Owner, and every Class A membership in the Master Association shall be appurtenant to and may not be separated from the fee ownership of such Lot or Unit. Ownership of a Lot or Unit shall be the sole qualification for Class A membership in the Master Association.
- c) **Transfer of Class A Membership.** The Class A membership held by any Owner of a Lot or Unit shall not be transferred, pledged, or alienated in any way, except upon the sale of the Lot or Unit giving rise to such membership, and then only to the purchaser of such Lot or Unit. Any attempt to otherwise transfer a Class A Membership shall be null and void and will not be reflected upon the books and records of the Master Association.

4.5 **Voting Classes.** The two (2) classes of membership within the Master Association shall possess the following voting rights:

- a) **Class A.** Every Owner of a Lot or Unit, except Declarant, shall be a Class A Member. Class A Condo Unit Members shall each be entitled to one vote. Because Twin Units have two levels and generally double the size of one Condo Unit, Class A Twin Unit Members shall each be entitled to two votes and shall pay double the assessment paid by Class A Condo Unit Members.
- b) **Class B.** The Class B Member shall be the Declarant, its assigns or successors, and shall consist of Declarant's ownership interest in future (platted) Lots or Units and existing Lots or Units, as reflected on the Records of the Cache County Recorder's Office. For voting purposes Class B Members shall be entitled to ten (10) votes for each Lot or Unit in which Declarant possesses an interest and shall have (10) votes for each parcel of Additional Property owned by Declarant. Class B Membership shall automatically cease and be converted to a Class A Membership upon termination of the Period of Administrative Control.

ARTICLE V IMPROVEMENTS

- 5.1 **Description of Improvements.** Certain improvements common to all of the Property may be located upon the Property as described on the one or more of the Plats. The improvements subject to this Master Declaration may include parking lots, driveways, open spaces and landscaping.
- 5.2 **Common Areas.** Ownership and maintenance of the common areas within each Sub-Association shall be as set forth in the respective declaration for each Sub-Association. The Master Association shall have a blanket easement on, under, over and across the Common Areas in any Sub-Association for the purposes of accessing and maintaining any areas which the Master Association has the duty to maintain.

ARTICLE VI DESIGN GUIDELINES AND CONTROL

- 6.1 **Architectural Intent.** The overall architectural intent for the Project is to create a mixed-use development wherein each portion of the Project compliments and is in harmony with the other portions of the Project. There will be several architectural themes throughout the Project. The various themes for each Sub-Association shall be determined by Declarant.
- 6.2 **Design Guidelines.** Design Guidelines shall be created and amended from time to time (a) by the Declarant during the Period of Administrative Control, and (b) by the Board after the Period of Administrative Control. The Design Guidelines may contain different standards and requirements for each Sub-Association, with the intent being that the structures within each Sub-Association shall be constructed in harmony with the other structures within the same Sub-Association.
- 6.3 **Design Review Committee.** The Master Association shall have a Design Review Committee, which shall consist of not less than three (3) members. The term of office for

Design Review Committee members shall be two (2) years commencing July 1 of each year; provided, however, that the terms of the initial members of the Design Review Committee shall commence on their appointment and continue through June 30, 2021. The members of the Design Review Committee shall be selected by the Declarant until the termination of the Period of Administrative Control. Once the Period of Administrative Control is terminated, new Design Review Committee members shall be selected by the Board. The Design Review Committee shall meet on such schedules as may be established by the Design Review Committee. A majority of its members of the Design Review Committee shall constitute a quorum and the majority vote of a quorum present at the meeting shall be sufficient to approve action. Meetings may occur telephonically, and actions may be approved by unanimous written consent of all Design Review Committee Members. If the Board fails to create a Design Review Committee, the Board shall serve as the Design Review Committee.

- 6.4 **Approval by Design Review Committee.** No improvements of any kind, including, without limitation, any construction or external changes to any Lot or Unit (including the exterior painting of any building), parking areas, fences, walls, garages, driveways and curbs shall ever be erected, altered, or permitted to remain within the Property, including on any Lot or Units within any Sub-Association, unless the complete plans and specifications therefor complying with Design Guidelines requirements (“Plans and Specifications”) are approved by the Design Review Committee prior to the commencement of such work. The Design Review Committee shall consider the materials to be used on the external features of said buildings or structures, including exterior colors, harmony of external design with existing structures within the Project, the location with respect to topography, existing trees and finished grade elevations, and harmony of the natural setting and surroundings, and shall ascertain whether the improvements conform to the Design Guidelines then in effect, this Master Declaration, and the applicable Sub-Association Declaration. The complete Plans and Specifications must be submitted and will be reviewed in accordance with the process described in the Design Guidelines.
- 6.5 **Fee.** The Design Review Committee may charge such fee or fees for its review of Plans and Specifications as shall be determined from time to time by the Board or as provided in the Design Guidelines. Such fee or fees shall be reasonable in relation to the work performed and shall be applied uniformly.
- 6.6 **Inspection by Design Review Committee.** The Design Review Committee shall have the authority and right at any time and from time to time at any reasonable hour to inspect improvements under construction for the purpose of determining whether the same comply in all respects with the applicable Plans and Specifications as approved by it, but it shall have no duty to make such inspections.
- 6.7 **Variiances.** The Design Review Committee has the authority to deviate from the requirements contained in the Design Guidelines in extenuating circumstances, when following this Master Declaration or the applicable Sub-Association Declaration would create an unreasonable hardship or burden for an Owner. An affirmative vote of two-thirds (2/3) of the members of the Design Review Committee must be gained for a variance to be

granted. The Design Review Committee does not, however, have authority to allow deviation from the land management code of the city or county having jurisdiction.

- 6.8 **General Requirements.** The Design Review Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the lands within the Project conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, height, topography, grade and finished grade elevation in keeping with the Design Guidelines, this Master Declaration and any applicable Sub-Association Declaration.
- 6.9 **Ultimate Responsibility.** Each Owner shall at all times conform and comply with all approved Plans and Specifications for the improvements on his Lot or Unit and otherwise conform and comply in all respects with the Design Guidelines, this Master Declaration, and any applicable Sub-Association Declaration, as well as with all applicable laws, ordinances, building codes, rules, regulations, orders and the like of any governmental agency having jurisdiction.
- 6.10 **Plans.** The Design Review Committee shall disapprove any plans submitted to it which are not sufficient for it to exercise the judgment required of it by these covenants.
- 6.11 **Written Records.** The Design Review Committee shall keep and safeguard complete written records of all applications for approval submitted to it (including one set of all Plans and Specifications so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument which records shall be maintained for a minimum of five years after approval or disapproval.
- 6.12 **Procedure for Appeal.** In the event Plans and Specifications or Plans and Specifications submitted to the Design Review Committee are disapproved or deemed disapproved, the Owner may appeal such disapproval or deemed disapproval in writing to the Board; provided, however, a written notice of appeal specifying the grounds for appeal consisting of any alleged failure by the Design Review Committee to properly apply the Design Guidelines or provisions of this Master Declaration shall be received by the Board not more than thirty (30) days following such disapproval or deemed disapproval. Within thirty (30) days following receipt of such notice of appeal, the Board shall render a written decision determining whether the Design Review Committee properly applied the Design Guidelines, or the provision of this Master Declaration. In the event the Board fails to render such decision within said thirty (30) day period, such disapproval or deemed disapproval of the Design Review Committee shall be deemed to have been affirmed by the Board.
- 6.13 **Non-Liability of Design Review Committee Members.** Neither Declarant, the Design Review Committee, any member thereof, nor any duly authorized representative thereof shall be liable to the Master Association, any Sub-Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder unless due to the willful misconduct or bad faith of the Design Review Committee. The Design Review Committee shall review and

approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of compliance with the Design Guidelines, this Master Declaration, any applicable Sub-Association Declaration, aesthetic considerations, and the overall benefit or detriment which would result to the immediate vicinity and the Project generally. The Design Review Committee shall take into consideration the aesthetic aspects of the designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of, any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. This clause shall be inapplicable to the extent necessary if any, to obtain insurance coverage required by Article X.

- 6.14 **Variance in Exterior Appearance and Design in Event of Reconstruction.** Any Owner whose Lot or Unit has suffered damage may apply for approval to the Design Review Committee for reconstruction, rebuilding or repair of any Dwelling or other Improvement on the Owner's Lot or Unit in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete Plans and Specifications showing the proposed reconstruction and the end result thereof. The Design Review Committee shall grant such approval only if the design proposed by the Owner would result in a finished structure in compliance with the then applicable Design Guidelines.

**ARTICLE VII
EASEMENTS AND EMINENT DOMAIN**

- 7.1 **Easement to Board of Directors.** The Board of Directors shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Master Declaration.
- 7.2 **Easement for Utility Services.** There is hereby created a blanket easement upon, across, over and under the Property described in Exhibit "A-1" for ingress, egress, installation, replacing, repairing and maintaining all Common Areas, including by not limited to water utilities, sewer, gas, telephone, electricity and other utility services.
- 7.3 **Easement for use of Recreational Areas and Facilities.** All Owners of Lot or Units are hereby granted a non-exclusive right and easement of enjoyment in common with others of the amenities and recreational facilities constituting a portion of the Common Areas of the Project, including Sub-Associations.
- 7.4 **Eminent Domain.** Whenever all or part of the Common Areas shall be taken, injured or destroyed as the result of the exercise of the power of eminent domain, each Lot or Unit owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, but in any proceeding for the determination of damages, such damages shall be determined for such taking, injury or destruction as a whole and not for each Lot or Unit

Owner's interest therein. After such determination each Lot or Unit Owner shall be entitled to an equal share in the damages, subject, however, to any prior right of the Mortgagee to participate therein.

ARTICLE VIII ASSOCIATION MANAGEMENT

- 8.1 **Enforcement.** The Board of Directors may impose a Special Assessment, applicable only to that Lot or Unit, upon any Lot or Unit Owner which violates the Master Declaration, in an amount equal to the actual out-of-pocket expenses incurred by the Board to remedy the violation, including attorney fees.
- 8.2 **Status & General Authority of the Board.**
- a) A Board of Directors, composed of at least (3) persons, elected by the Master Association, shall govern the affairs of the Master Association. The Board of Directors shall have the power to manage the Master Association in accordance with the Act and Condo Act, this Master Declaration and the Master Bylaws. The Declarant may appoint and remove all members of the Board, and exercise all powers and responsibilities delegated by this Master Declaration and the Act toward the Master Association, its officers and the management Committed until the termination of the Period of Administrative Control.
 - b) The Common Areas and Maintenance Areas shall be managed, operated, and maintained by the Master Association through the Board of Directors exclusively as agent of, and in the name of, the Master Association and any act performed by the Board of Directors pursuant to this Master Declaration or the Master Bylaws, as the same may be amended from time to time, shall be deemed to be performed by the Master Association as its agent. The Master Association shall be responsible to keep any such Common Areas and Maintenance Areas in good, clean, attractive, safe and sanitary condition, order, and repair. The Board of Directors shall have, and is hereby granted, the following authority and powers to perform their duties:
 - i) The authority, without the vote or consent of the Lot or Unit Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar non-exclusive easements over, under, across and through the Common Areas.
 - ii) The authority to execute and record, on behalf of all the Lot or Unit Owners, any amendment to the Master Declaration or Plat which has been approved by the vote or consent necessary to authorize such amendment as set forth in this Master Declaration.
 - iii) The power to sue and be sued.

- iv) The authority to enter into contracts which in any way concern the Project, so long as any vote or consent of the Lot or Unit Owners, if necessitated by the subject matter of the agreement and as required herein, has been obtained.
- v) The power and authority to convey or transfer any interest in real property authorized by the Owners having an interest therein.
- vi) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances.
- vii) The authority to promulgate such reasonable Rules and Regulations, Design Guidelines, and procedures as may be necessary or desirable to aid the Board of Directors in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with the interest of the Sub-Associations.
- viii) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions as agent of the Master Association.

8.3 **Manager.** The Board may carry out any of its functions, which are capable of delegation, through a Manager. Any Manager retained for such purposes must be an individual or entity experienced and qualified in the field of property management. The Manager so engaged shall be responsible for managing the Project for the benefit of the Owners and shall, to the extent permitted by law and the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board. Any agreement for such professional management of the Project which may be entered into by the Board or the Master Association, shall call for a term not to exceed two (2) years, if negotiated by Declarant, or one (1) year if negotiated by the Board of the Master Association and shall provide that for cause such Agreement may be terminated by the Board or by the Master Association upon at least thirty (30) days written notice.

ARTICLE IX ASSESSMENTS

9.1 **Covenant to Pay Assessment.** Each Lot and Unit Owner shall be subject to the Articles, the Master Bylaws and this Master Declaration, including the obligation to pay the Common Assessments and Special Assessments levied by the Master Association pursuant to this Master Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

- a) **Proportionate Share for Common Assessments.** Each Lot or Unit Owner shall be responsible to begin paying Common Assessments at such time as a Lot or Unit Owner receives fee title to a constructed Lot or Unit. Common Assessments and Special Assessments shall be fixed at a uniform rate for Common Expenses

incurred in connection with Master Association Maintenance Areas according to the Percentage Interest set forth in Exhibits to the Sub-Association Declarations. Twin Units, because they contain an upstairs and a ground level Unit, shall pay double the Common Assessments paid by Condo Units. Commercial Units shall pay 125% more than the Common Assessments paid by non-Commercial Units. The initial monthly Common Assessments are projected to as follows:

- \$125.00 Condo Unit (Residential)
- \$250.00 Twin Unit (Residential)
- \$156.25 Condo Unit (Commercial)
- \$312.50 Twin Unit (Commercial)
- \$125.00 Condo Unit (Residential- located above a street level Commercial Unit)

- b) **Notice of Common Assessments and Time for Payment.** Annual Common Assessments shall be determined on a fiscal year basis beginning January 1 and ending December 31; provided the first fiscal year shall begin on the date of this Master Declaration and end on December 31. Except with respect to the first fiscal year, the Board shall give written notice to each Lot or Unit Owner as to the amount of the annual Common Assessment with respect to his Lot or Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next fiscal year. Such Common Assessment shall be due and payable in twelve equal monthly installments on the first day of each and every calendar month of each year; provided, however, that the first annual Common Assessment for the first fiscal year shall be based upon such portion of the first fiscal year remaining after the date fixed by the Board as the date of commencement of the Project. Such Common Assessment shall be due and payable in monthly installments on the first day of each and every month and no separate notices of such monthly installment shall be required.
- c) **Special Assessments.** In addition to the Common Assessments, the Board may levy a Special Assessment, payable by a Lot or Unit Owner over such a period as the Board may determine. Special Assessments may be levied for the purpose of covering the cost of any construction or reconstruction, repair, replacement or improvement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Master Declaration. Unless otherwise provided herein, Special Assessments shall be assessed to Lot or Unit Owners equally. The Board shall provide written notice of the nature of and the amount of the Special Assessments and the time for payment thereof. No payment shall be due less than thirty (30) days after such notice shall have been given. Special Assessments shall be subject to the same late fees and penalties as are prescribed for Common Assessments.
- d) **Specific Assessments.** The Board shall have the power specifically to assess all Lot or Unit Owners pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall

not be ground for any action against the Master Association or the Board and shall not constitute a waiver of the Board's rights to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board have not previously exercised their authority under this Section.

- e) **No Waiver.** No Lot or Unit Owner may waive or otherwise exempt itself from liability for the Common Assessments of fees provided herein, including, by way of illustration, but not limited to, non-use or abandonment of the Common Areas.
- f) **Duty to Pay Independent.** No reduction or abatement of Common Assessments shall be claimed or allowed by reason of any alleged failure of the Master Association or Board to take some action or perform some function required to be taken or performed by the Master Association or Board under this Master Declaration or the Master Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Master Association, or any action taken to comply with any law, ordinance, or with any order of directive of any municipal or other governmental authority, the obligation to pay Common Assessments being a separate and independent covenant on the part of each Owner.

9.2 **Declarant's Obligations.** Notwithstanding the preceding provisions of this Article IX or any language in this Master Declaration to the contrary, Declarant or Declarant's successor in interest or assigns shall not be obligated to pay any Common Expense assessment or any other assessment to the Maser Association. Assessments shall become due from Declarant only after the Lot or Unit has been conveyed to a third party and a building has been constructed on the Lot or Unit.

9.3 **Lien for Assessments.** All sums assessed to the Owner of any Lot or Unit within the Project pursuant to the provisions of this Article IX, together with interest thereon as provided herein, are secured by virtue of this Master Declaration as a lien on such Lot or Unit in favor of the Master Association. To evidence a lien for sums assessed pursuant to this Master Declaration, the Master Association may prepare a written notice of lien in conformance with Utah law. Each Owner shall be deemed to have consented to the filing of a notice of lien against such Owner's Lot or Unit. Such notice shall be signed and acknowledged by a duly authorized officer of the Master Association or its attorney and may be recorded in the office of the Cache County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by nonjudicial foreclosure by the Master Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall also be required to pay to the Master Association any assessments against the Lot or Unit which shall become due during the period of foreclosure and the costs and expenses of such proceeding, the costs and expenses of filling the notice of lien, and all reasonable attorney fees.

9.4 **Personal Obligation of Owner.** The amount of any regular or Special Assessment against any Lot or Unit shall be the personal obligation of the Owner of such Lot or Unit to the

Master Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Master Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver or the use and enjoyment of any Common Area or by abandonment of his Lot or Unit, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder the involved Owner shall pay the costs and expenses incurred by the Master Association in connection therewith, including reasonable attorney fees.

- 9.5 **Non-Judicial Foreclosure.** All costs, expenses, assessments and fees owed to the Master Association for Common Expenses may be secured by a lien, which lien may be foreclosed in the same manner as foreclosures of deeds of trust under Utah law. The lien shall also secure and the Owner shall also be required to pay to the Master Association any assessments against the Lot or Unit which shall become due during the period of foreclosure. The Master Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney fees, and a reasonable rental for the Lot or Unit during the pendency of the foreclosure action. The Master Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. If the Master Association elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot or Unit hereby irrevocably appoints the attorney of the Master Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title, and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein. Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to Taylor R. Jones, as trustee, an attorney licensed in the State of Utah, with power of sale, the Lot or Unit and all improvements to the Lot or Unit for the purpose of securing payment of assessments under the terms of the Declaration. The Master Association may appoint a substitute trustee by executing a substitution of trustee as authorized in Utah Code Annotated, Section 57-1-22, without amending this paragraph.
- 9.6 **Statement of Account.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot or Unit and payment of any reasonable fee assessed as authorized by law, the Master Association shall issue a written statement setting forth the following: (a) the amount of the unpaid assessments, if any, with respect to such Lot or Unit, and (b) the amount of the current regular assessment with respect to such Lot or Unit and the date such assessment becomes or became due. Such statement shall be conclusive upon the Master Association in favor of persons who rely thereon in good faith.
- 9.7 **Personal Liability of a Purchaser.** In a voluntary conveyance, the purchaser of a Lot or Unit shall be jointly and severally liable with the seller thereof for all unpaid assessments

against such Lot or Unit up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller of the amount of such assessments paid by the purchaser for such assessments.

- 9.8 **Collection from Sub-Associations.** The Master Association shall collect assessments owed to the Master Association and owed by the Members of each Sub-Association to the Sub-Association of which they are a Member. Each Sub-Association Board shall notify the Master Association Board of its annual assessment and the amount it is requiring its members to pay in monthly assessments. Upon receiving the assessment amount from each Sub-Association, the Master Association shall combine the monthly assessments owed to the Master Association and to each Sub-Association and collect such amount from the Members. If a Member pays some, but not all of the total amount assessed by the Master Association, The Master Association shall distribute to the Sub-Association a pro-rata share of the amount received (including late fees and interest), which pro-rata amount shall be computed based on the relative amount assessed monthly by each association (e.g., if the monthly Master Association assessment is \$75.00 and the monthly Sub-Association assessment is \$100.00, and a Member pays \$150, then the Master Association shall receive 42.86%, or \$64.29, and the Sub-Association shall receive 57.14%, or \$85.71). The Master Association and the Sub-Association shall likewise share pro-rata in the payment of any uncollected collection expenses incurred by the Master Association. The Master Association shall provide a monthly a list of those Members who have paid their monthly assessment. The Master Association shall forward to each Sub-Association any payment it receives within 10 days of receiving a payment.

ARTICLE X RESTRICTIONS ON USE

- 10.1 **Mixed Uses.** Lots and Units in the Project are intended to be used for mixed commercial, business and residential purposes.
- 10.2 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on, in, or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.
- 10.3 **Restriction on Recreational Vehicles.** No boats, trailers, recreational vehicles, commercial vehicles or inoperable vehicles shall be parked or stored on the Common Area, a driveway, or in any area in front of any building, Unit or Lot. If such vehicles are parked or stored on a Lot, driveway or Common Area, they shall be immediately towed by the Association without notice. No automobile, recreation or commercial vehicle, other motorized vehicle, or any portion thereof shall be dismantled, rebuilt, serviced, repaired or repainted on or in the Common Area, driveway or on any Lot unless performed within a completely enclosed garage or other structure located on the Lot or Unit which screens the sight and sound of such activity from the public streets and neighboring Lot or Units.

- 10.4 **No Obstructions.** There shall be no obstruction of the Common Area, if any, by any Owner. Owners shall neither store nor leave any of their property in any Common Area, except with the prior written consent of the Master Association
- 10.5 **Prohibition of Damage and Certain Activities.** Except with the prior written consent of the Master Association, nothing shall be done or kept in or on any Lot or Unit or in any Common Area which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. Nothing shall be done or kept in or on any Lot or Unit or Dwelling or in any Common Area or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner or guest or invitee of any Owner, and each Owner shall indemnify and hold the Master Association and other Owners harmless against all loss resulting from any such damage or waste caused by such Owner, his guests, lessees, licensees, or invitees.
- 10.6 **Pets and Animals.** No more than two (2) domestic pets may be kept on any single Lot or Unit unless a variance is granted in writing by the Board. Each Owner or their tenant with a pet or pets at their Lot or Unit or within the Project shall abide strictly by the letter and spirit of any pet rules and regulations adopted by the Board from time to time. Pet owners shall be respectful of their neighbors, and will not permit their pets to create excessive noise or create any other nuisance within the Project. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Owners and residents shall clean up immediately after their pets and failure to do so shall subject the offending Owner or resident to a fine as established by the Board and set forth in the Master Association's rules. Pets outside the Lot or Unit shall be kept on a leash at all times and under the control of a responsible person. Pets which constitute a nuisance in the opinion of the Board (e.g., dogs running loose about the Project and without a leash and not under the control of a responsible person, dogs not immediately cleaned up after, barking, whining, howling, scratching, etc.) will not be tolerated and shall be permanently removed from the Project no later than ten (10) days after written notice to do so is sent by the Board.
- 10.7 **No Short-Term Rentals or Leases.** Owners may freely rent or lease their Lot or Units provided that such rental or lease shall comply with applicable laws, rules ordinances and regulations and such rental or lease period shall not be less than six (6) months in duration. No nightly or short-term rentals of less than six (6) months are permitted. All leases, lessees, tenants and guests shall be subject to the provisions of this Master Declaration and the rules and regulations adopted by the Master Association.

ARTICLE XI INSURANCE

- 11.1 **Insurance.** The Board shall secure and at all times maintain the following insurance coverage:

- a) **Common Areas.** The Master Association shall maintain fire and extended coverage insurance for no less than one hundred percent (100%) of the maximum insurable value of insurable improvements on the Common Areas. The insurance coverage shall name as the insured the Master Association for the benefit of the Owners. Premiums for all insurance carried by the Master Association are Common Expenses and shall be included in the Common Assessment made by the Master Association. The Master Association shall not insure any Lot or Unit or Dwelling. Each Lot or Unit Owner shall be responsible to insure his or her own real and personal property. Insurance coverage requirements for any building, Lot or Unit within a Sub-Association shall be set forth in each Sub-Association Declaration.
- b) **Fidelity Coverage.** The Master Association shall maintain fidelity coverage against dishonest acts on the part of managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Members. The fidelity bond or insurance must name the Master Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Master Association's estimated annual operating expenses and total reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.
- 11.2 **Waiver of Subrogation.** The Master Association hereby waives and releases all claims against the Board, the Owners, the Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.
- 11.3 **Liability Insurance.** The Master Association shall maintain a comprehensive policy of public liability insurance covering all of the Common Areas, if any. Such insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Master Association or other Owners. Coverage shall have limits of liability of not less than \$2,000,000 per occurrence for personal injury and/or property damage.
- 11.4 **Other Insurance and General.** The Master Association shall also maintain Workmen's Compensation Insurance as required by law and may maintain other liability insurance as it may deem desirable, insuring each Owner and the Master Association, Board and any manager; from liability in connection with the Common Areas, the premiums for which are Common Expenses included in the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Master Association or other Owners.

**ARTICLE XII
DECLARANT**

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- 12.1 **Certain Provisions Applicable to Declarant.** Notwithstanding any other provision herein contained, until the expiration of the Period of Administrative Control, the following provisions shall be deemed to be in full force and effect as to each Lot or Unit owned by Declarant in accordance with the Master Declaration.
- a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Master Declaration except as specifically set forth herein or in any agreement for sale of a Lot or Unit, or no person shall rely upon any warranty or representation not so specifically made therein.
 - b) No amendments to the Master Declaration, Master Bylaws, any Sub-Association Declaration, or other enabling documentation may be made by the Lot or Unit owners during the period of Administrative Control without the written consent of Declarant.
 - c) Notwithstanding the foregoing, The Declarant shall relinquish all special rights, expressed or implied, through which the Declarant may directly or indirectly control, direct, modify, or veto any action of the Master Association, its Board, or a majority of Lot or Unit Owners, and control of the Master Association shall pass to the owners of the Lot or Units within the project, not later than the date of the termination of the Period of Administrative Control.

**ARTICLE XIII
DECLARANT'S SALES PROGRAM**

- 13.1 **Declarant's Right to Promote and Sell Lot or Units.** Notwithstanding any other provisions of this Master Declaration, during the Period of Administrative Control, Declarant, its successor or assigns, shall have the following rights in furtherance of any sales, promotional or other activities designed to accomplish or facilitate the sale of Lot or Units owned by Declarant:
- a) **Sales Offices and Model Lot or Units.** Declarant, its successors and assigns, shall have the right to maintain sales offices, including a trailer, and model homes on Lot or Units. Sales offices may be located on any Lot or Unit (at any location) owned by Declarant or may be located on any of the Common Area. Declarant shall have the right to maintain any number of model homes it may desire using the Lot or Units Declarant owns.
 - b) **Promotional Devices.** Declarant, its successors and assigns, shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners and similar devices at any place or places on any Common Area or Lot or

Units owned by Declarant, but any such devices shall be of sizes and in locations as are reasonable and customary.

- c) **Right to Use any Common Area.** Declarant shall have the right to use any Common Area of the Project to entertain prospective purchasers or to otherwise facilitate Lot or Unit sales, provided said use is reasonable as to both time and manner.

- 13.2 **Declarant's Rights to Relocate Sales and Promotional Activities.** Declarant shall have the right from time to time to locate or relocate its sales offices, trailer, model homes and signs, banners and similar devices, but in connection with each such location or relocation Declarant shall observe the limitations imposed by the preceding portions of this Article.

ARTICLE XIV EXPANSION

- 14.1 **Declarant's Option to Expand.** During the Period of Administrative Control, Declarant hereby exclusively reserves the option to expand the Project (the "Option to Expand") upon the terms and provisions set forth in this section without the prior consent of the Owners, the Master Association, or any Sub-Association. Only Declarant and its assigns may exercise the Option to Expand, and Declarant and its assigns shall have the right to expand the Master Association even if the Declarant no longer owns any Lot or Unit within the Project. If the Option to Expand is exercised by Declarant or its assigns, it may do so at any time after the recording of this Master Declaration. There is no obligation of any kind whatsoever for the Declarant or its assigns to exercise the Option to Expand. When exercised, the terms and conditions of the Option to expand shall be as follows:

- a) The real property subject to the Option to Expand shall consist of Property described in Exhibit "C". Whenever the Option to Expand is exercised by Declarant, additional Common Areas and/or Maintenance Areas may be added to the Project which either the Master Association or a Sub-Association shall be required to maintain.
- b) The Option to Expand may be exercised at different times as to all or any portions of any Additional Property. In the event the Option to Expand is exercised with respect to a portion of the Additional Property, the Option to Expand may subsequently be exercised with respect to any other portion of Additional Property. There are no limitations or restrictions as to when portions of the Additional Property may be added or if Additional Property may be added.
- c) Declarant shall not be restricted in the location of improvements on the Additional Property or in the number or kind of buildings, structures, Lots or Units that may be created on the Additional Property.
- d) The buildings constructed on the Additional Property shall be subject to the same uses as provided in this Master Declaration, as applicable. Declarant reserves the

right to exercise all developmental rights reserved or afforded in this Declaration with respect to any building or construction located on the Additional Property.

- e) Declarant reserves the right to add additional Common Areas and Maintenance Areas to the Project without limitation.
- f) The votes in the Project shall be changed at the time Declarant records a supplemental declaration and an additional or supplemental Plat reflecting Declarant's exercise of the Option to Expand in accordance with the provisions set forth in the article.
- g) Each Owner, by acceptance of a deed to a Lot or Unit in the Project, shall be deemed to have consented to all provisions of this Article, including the procedure for adjustment of Lot or Unit ownership interest. After the filing for record of any amendment to this Declaration, the supplemental declaration and/or supplemental Plat reflecting Declarant's exercise of the Option to Expand, or any other part thereof, legal and equitable title to each Lot or Unit thereby created within the Additional Property shall be vested in and held by Declarant and none of the other Owners shall have any claim or title to or interest in such Lot or Unit, nor any interest in any Common Area upon which a building, Lot or Unit shall be created.
- h) Declarant shall not be required to obtain the consent of any Owners or of any other person or entity having any right or interest in all or any portion of the Project prior to or subsequent to adding all or portions of the Additional Property.
- i) During the Period of Administrative Control, no provision of this Article shall be amended without the prior written consent of Declarant.

- 14.2 **Expansion of Additional Property.** In addition to the provisions for annexation specified in this Article and subject to the applicable laws in effect from time to time, the Additional Property may be expanded to include additional real property, not as yet identified, and may include property that is not owned by Declarant. Such property may be annexed to the Additional Property in accordance with the then current applicable laws.

ARTICLE XV AMENDMENTS

- 15.1 **Amendment.** Except as provided below, the vote of at least two thirds 2/3 of the Lot or Unit Owners, at a meeting of the Master Association at which a quorum of Owners is present, in person or by proxy, shall be required to amend this Master Declaration. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board. In such instrument the Board shall certify that the vote required by this Article XV has occurred. The foregoing right of amendment shall be subject to the following paramount rights:

- a) Notwithstanding any other provision of this Master Declaration, until the Period of Administrative Control terminates, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Master Declaration or any Plat. Such right shall apply without regard to the subject matter of amendment, so long as the amendment involved is consistent with law and does not attempt to divest any vested property rights of any Owner or Mortgagee. Furthermore, during the Period of Administrative Control, this Master Declaration shall not be amended without the written consent of Declarant.
- b) Notwithstanding anything to the contrary contained in the Master Declaration, including in the immediately preceding Section 15.1(a), neither the insurance provisions of Article XI nor the Mortgagee Protection provisions of Article XVI shall be amended without the written approval of sixty-seven percent (67%) of all Mortgagees having a recorded interest.

ARTICLE XVI MORTGAGEES

16.1 **Mortgagee Protection.** Notwithstanding anything to the contrary contained in the Master Declaration:

- a) An adequate reserve fund for repair, maintenance and replacement of those elements of any Common Areas and Maintenance Areas that must be replaced on a periodic basis must be established and shall be funded by regular monthly payments rather than by Special Assessments. However, Special Assessments shall be permitted as necessary in the determination of the Board. Amounts of such reserve funds shall be used only for the purpose for which collected and may not be used to reduce operating Common Assessments or deficits or for costs of capital Common Assessments not provided for as part of such funds unless voted on and approved by the Owners as provided by Utah law. A reserve fund shall not be required during the Period of Administrative Control, and if established, shall not require contributions from Lots, Units or Additional Property owned by Declarant;
- b) All taxes, Common Assessments and charges, which may become liens prior to the first Mortgage under local law shall relate only to the individual Lot or Units and not to the Project as a whole;
- c) Any mortgage holder which comes into possession of the Lot or Unit pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage or deed (or assignment in lieu of foreclosure) shall be exempt from any claim of right or other provisions which may exist relating to sale or lease of the Lot or Units in the Project, and nothing herein shall impair the rights of any first mortgage to: (i) foreclose or take title to a Lot or Unit pursuant to the remedies provided in the Mortgage, or (ii) interfere with a subsequent sale or lease of the Lot or Unit so acquired by the Mortgagee.

- d) No Owner's association, or any other party, shall have priority over any rights of the first Mortgagee of the Lot or Unit pursuant to its Mortgage in the case of a distribution to such Lot or Unit owner of insurance proceeds or condemnation awards for losses to or a taking of Lot or Units and/or Common Areas.
- e) In the event of damage to or destruction of any part of the Common Areas, which loss exceeds \$10,000, the institutional holder of any first Mortgage on a Lot or Unit shall be entitled to timely written notice of any such damage or destruction.
- f) If any Lot or Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the institutional holder of any first Mortgage of a Lot or Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition.
- g) Each holder of a first mortgage lien on a Lot or Unit who obtains title to a Lot or Unit by virtue of foreclosure of the mortgage, shall take the Lot or Unit free of unpaid charges and shall not be liable for any unpaid claims or Common Assessments and charges against the Lot or Unit which accrue prior to the acquisition of title of such Lot or Unit by Mortgagee.
- h) Any lien, accruing after the placement of a mortgage on a Lot or Unit, which the Board may have on any Lot or Unit in the Project for the payment of Common Assessments attributable to such Lot or Unit, will be subordinate to the lien or equivalent security interest of any mortgage on the Lot or Unit, unless such provision is contrary to Utah Law.
- i) Any institutional holder of a first Mortgage (or trust deed) of a Lot or Unit in the Project will, upon request be entitled to examine the books and records of the Project during normal business hours.

ARTICLE XVII INDEMNIFICATION

- 17.1 **Indemnification of the Association and The Board.** The Master Association and the Board shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Master Association hereunder, or for the injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project. Nor shall the Board or the Master Association be liable for damage or injury resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of any building or Common Area or its drains, pipes, conduit, appliances or equipment, or from any other place, unless caused by the abatement of any Common Assessment under this Master Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of

this Master Declaration or with the laws, ordinances, regulations, rules or order of any governmental authority.

ARTICLE XVIII DISPUTE RESOLUTION

- 18.1 **Statement of Intent.** Prior to purchasing a Lot or Unit, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Lot or Unit and Dwelling the Owner is purchasing regarding any aspect of the Project. Moreover, if any warranty is provided, it identifies only those items warranted by the Declarant. Having had the ability to inspect prior to purchasing a Lot or Unit, having received a written warranty if any warranty is provided, and having paid market price for a Lot or Unit in the condition the Lot or Units and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any builder or subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot or Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lot or Units for years, unfairly prejudicing those Owners who must or want to sell their Lot or Unit during any period when litigation is pending. For this reason, the Owners by purchasing a Lot or Unit and the Declarant agree and acknowledge that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners, as set forth herein. In addition, the Master Association and the Owners agree that they take ownership and possession of the Lot or Units and any Common Area AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.
- 18.2 **Arbitration.** To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Master Association may have involving the Declarant (including its successor and assigns), or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer, builder or contractor involved in the design or construction of the Project, which arises from or is in any way related to a Lot or Unit, Dwelling, Common Area, or any other component of the Project (a "Dispute"), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant and the Master Association. Arbitration proceedings shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 18.3 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include:

- a) Any allegation that a condition in any of the Lot or Units, Dwellings, or Common Area is a construction defect or is not constructed according to current building codes;
- b) Any disagreement as to whether an alleged construction defect has been corrected;
- c) Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;
- d) Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;
- e) Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;
- f) Any alleged violations of consumer protection, unfair trade practice, or other statutes;
- g) Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
- h) Any allegation that any condition existing in the Project or created by the Declarant, including construction-related noise, dust, and traffic, is a nuisance;
- i) Any disagreement concerning the issues that should be submitted to binding arbitration;
- j) Any disagreement concerning the timeliness of performance of any act to be performed by Declarant;
- k) Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;
- l) Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of the Lot or Units, Dwellings, or Common Areas.

18.3 **Pre-Arbitration Requirements.** An Owner, the Master Association or a Sub-Association may only pursue a claim against the Declarant (including its successor and assigns), or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer, builder or contractor involved in the design or construction of the Project, to the extent described herein or by law after the following dispute resolution efforts have been completed:

- a) **Right to Cure:** the Owner shall provide to the Declarant a written 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 the builder or the appropriate

subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings;

- b) 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 or commencing arbitration. 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 or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.
 - c) "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged condition, if applicable, (5) samples of any alleged defective conditions or materials, (6) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
- 18.4 If a claim or dispute has not been resolved after satisfying and complying with the above-described "Pre-Arbitration Requirements," then the claimant (Owner, Master Association or any Sub-Association) shall have the right to proceed with binding arbitration; however, the Master Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the total votes of the Master Association after first obtaining a written opinion from legal counsel advising the Master Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Master Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a member of the American Arbitration Association's Panel of Construction Arbitrators, or by a different arbitrator or arbitration service provider if mutually approved by the parties. The binding arbitration shall be conducted according to the rules and procedures set forth in the Construction Industry Arbitration Rules promulgated by the American Arbitration Association. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.
- 18.5 Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitrator shall not award attorney fees or expert witness fees to the prevailing party. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties.

- 18.6 If any Owner, the Master Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration of that or any other Dispute and such court shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein.
- 18.7 The Master Association and each Owner waives any right to subrogation against the Declarant and any builder and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Master Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the engineer, and builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Master Association and Owners hereby release Declarant, the Project engineer, and builder, their respective officers, employees, owners, 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, their officers, employees, owners, and representatives. The Master Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Master Association or any Owner to recover thereunder. The Master Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their 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.
- 18.8 Nothing in this Declaration or in this Article XIII shall grant or otherwise create a right of action by the Master Association against the Declarant, the developer or the builder, that does not otherwise already exist under Utah law.
- 18.9 The requirements of this Article XIII are intended to be in addition to those requirements set forth in Section 57-8a-229 of the Act and Section 57-8-58 of the Condo Act. After expiration of the Period of Administrative Control the Association may not bring a legal action against a Declarant or a Board, employee, independent contractor, or agent of the Declarant or the previous Board related to the Period of Administrative Control unless the Association first complies with the requirements found in Section 57-8a-22 of the Act and Section 57-8-58 of the Condo Act.

ARTICLE XIX MISCELLANEOUS

- 19.1 **Covenant to Run With Land: Compliance.** This Master Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitude, as the case may be; and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot or Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and

assigns. Each owner or occupant of a Lot or Unit shall comply with, and all interests in all Lot or Units shall be subject to, the terms of the Act or Condo Act, the terms of this Master Declaration, the Master Bylaws, and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Master Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of Lot or Unit Owners, or, in a proper case, by an aggrieved Lot or Unit Owner. By acquiring any interest in a Lot or Unit or in the Project, the party acquiring such interest consents to, and agrees to, be bound by each and every provision of this Master Declaration.

- 19.2 **Duty of Owner to Pay Taxes on Lot or Unit Owned.** It is understood that under the Act and Condo Act each Lot or Unit (and its interest in the Common Areas) in the Project is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that as a result thereof, no taxes will be assessed or levied against the Project as such, except for certain personal Property thereof. Accordingly, each Lot or Unit Owner will pay and discharge any and all taxes and assessments, which may be assessed against them on their Lot or Unit.
- 19.3 **Service of Process.** The Board shall have the right to appoint a process agent. An appropriate instrument filed in the office Department of Commerce, State of Utah, shall specify such successor or substitute agent and his address.
- 19.4 **Invalidity.** The invalidity of any provisions of this Master Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect the remainder of this Master Declaration and, in such event, all of the other provisions of this Master Declaration shall continue in full force and effect as if such invalid provision has never been included herein.
- 19.5 **Waiver.** No provision contained in this Master Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breeches, which may occur.
- 19.6 **Gender.** The use of the masculine gender in this Master Declaration shall be deemed to refer to the feminine gender and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.
- 19.7 **Topical Headings.** The numbers and headings appearing at the beginning of the sections of this Master Declaration are only for convenience of reference and are not intended to describe, interpret, define, limit, extend, or otherwise affect the content, meaning or intent of this Master Declaration or any paragraph or provision hereof.
- 19.8 **Effective Date.** This Master Declaration shall take effect upon recording in the office of the County Recorder of Cache County, Utah.

[Signature on Next Page]

EXHIBIT "A-1"

Ent 1225845 Bk 2090 Pg 1378

LEGAL DESCRIPTION

LOT 2, DAVIS SUBDIVISION, LOGAN CITY, CACHE COUNTY, UTAH.

EXHIBIT "A-2"

LEGAL DESCRIPTION

1600 PARK AVENUE, PHASE 1, LOGAN CITY, CACHE COUNTY, UTAH

Parcel numbers: 04-234-0001 thru 0012

MASTER BYLAWS

1600 PARK AVENUE MASTER ASSOCIATION

ARTICLE I NAME AND LOCATION

- 1.1 The name of the corporation is the 1600 Park Avenue Master Association, Inc., ("Master Association"). The principal office of the Master Association shall be located at 470 N 2450 W, Tremonton, Utah, but the meetings of Members and the Board may be held at such places in Cache County, State of Utah, as may be designated by the Board.

ARTICLE II APPLICATION OF MASTER BYLAWS

- 2.1 All present and future owners, mortgagees, lessees and occupants of any Lot or Unit or building and any other persons who may use the facilities or the Project in any manner are subject to these Master Bylaws, the Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Park Avenue ("Master Declaration") and all rules made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Lot or Unit shall constitute an agreement that the provisions of the Master Declaration and these Master Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with. Certain capitalized terms in these Master Bylaws shall be defined in accordance with the definition for such terms set forth in the Master Declaration.

ARTICLE III MEETINGS OF MEMBERS

- 3.1 **Annual Meetings.** The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Master Association, and each subsequent regular meeting of the Members shall be held, at least annually, at the time fixed by the Board, either at the Project or at some other reasonable location in Cache County, Utah.
- 3.2 **Special Meetings.** Special meetings of the Members may be called at any time by the President or by the Board, or upon written request of the Members who are entitled to vote twenty-five percent (25%) of all of the votes of the membership.
- 3.3 **Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Master Association or person authorized to call the

- 3.4 meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Master Association, or supplied by such Member to the Master Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.
- 3.5 **Quorum.** The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, twenty-five percent (25%) or more of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles, the Master Declaration, or these Master Bylaws. If, however, such a quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, and at the meeting announced, which shall not be less than 3 days nor more than 14 days from the date of adjournment, the Members present in person or represented by proxy shall constitute a quorum.
- 3.6 **Voting.** At all meetings of Members, each Member may vote in person or by proxy.
- 3.7 **Action Taken Without a Meeting.** Any action that may be taken at any regular or special meeting of the Master Association may be taken without a meeting if the following requirements are met:
- a) A written ballot or Unit is distributed to every Member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the Member to return the ballot or Unit to the Master Association.
 - b) The number of votes cast by ballot or Unit within the specified time under Subparagraph 3.6(a) equals or exceeds the quorum required to be present at a meeting authorizing the action.
 - c) The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot or Unit.
 - d) The written ballot or Unit distributed to Members affords an opportunity for the Member to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the Master Association and further provides that the vote of the Members shall be cast in accordance with the choice specified.
- 3.8 **Proxies.** At each meeting of the Members, each Member 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 Member himself or by his attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act shall meet the requirements set forth in Subparagraph 3.4 above and shall indicate the name of the secretary of the Master Association, or such other officer

or person or who may be acting as the secretary at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent Member's vote as specified in the form of proxy. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Master Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

ARTICLE IV BOARD, SELECTION, TERM OF OFFICE

- 4.1 **Number.** The affairs of the Master Association shall, during the Period of Administrative Control, be managed by a Board of Directors composed of not less than three (3) individuals who are appointed by the Declarant, and who do not need to be Lot or Unit Owners. Following the Period of Administrative Control, the affairs of the Master Association shall be controlled by a Board of Directors composed of an odd number of Board members, consisting of at least (3) Members but not more than seven (7) Members, elected by the Owners.
- 4.2 **Qualification.** After the Period of Administrative Control, only individual Owners or officers or agents of organizational Owners other than individuals shall be eligible for Board Membership. Only one Owner per Lot, Unit or ownership entity (e.g., a trust or LLC) shall serve on the Board at any given same time.
- 4.3 **Election and Term of Office of the Board.** The term of office of membership on the Board shall be two (2) years and each member shall serve on the Board until such time as his successor is duly qualified and elected. During odd numbered years an odd number of board members shall be elected and during even years an even number of board members shall be elected.
- 4.4 **Removal.** Any Board member may be removed from the Board, with or without cause, by a majority vote of the Members of the Master Association. In the event of death, resignation or removal of a Board member, his successor shall be selected by the Member which elected such Board member and shall serve for the unexpired term of his predecessor.
- 4.5 **Compensation.** No Board member shall receive compensation for any service he may render to the Master Association. However, any Board member may be reimbursed for his actual expenses incurred in the performance of his duties.
- 4.6 **Action Taken Without a Meeting.** The Board shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of the entire Board. Any action so approved shall have the same effect as though taken at a meeting of the Board.
- 4.7 **Vacancies.** Vacancies in the Board caused by any reason other than removal of a member by a vote of the Master Association shall be filled by vote of the majority of the remaining members of the Board at a special meeting of the Board held for that purpose promptly

after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the members of the Master Association at a special meeting called for that purpose shall be filled by the election and vote of the members of the Master Association at said meeting.

ARTICLE V NOMINATION AND ELECTION OF THE BOARD

- 5.1 **Nomination Process.** After the Period of Administrative Control, the process for the nomination and election of the Board of Directors shall proceed as set forth herein.
- 5.2 **Nominating Committee.** After the Period of Administrative Control, nominations for election to the Board shall be made by a Nominating Committee, whose purpose is to seek out and locate qualified individuals as candidates for election to the Master Association's Board of Directors. The Nominating Committee shall consist of a Chairman, who shall be a member of the existing Board, and two or more additional members of the Master Association, who may or may not be current members of the Board. The Nominating Committee shall be appointed by the Board not less than 20 days prior to each annual meeting of the Master Association at which an election will be held. The Nominating Committee shall serve for a term of one year. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of vacant Board seats to be filled. The Nominating Committee may notify members that it is seeking qualified candidates and interview all candidates interested in serving on the Board to determine if, in the Nominating Committee's sole discretion, the potential candidate has the proper demeanor, experience, ability and character to serve the interests of the Master Association if elected. The Nominating Committee shall submit to the Board those names as candidates which a majority of the Nominating Committee recommend be placed on the Master Association ballot or Unit. Those nominated as candidates shall have the opportunity to communicate their qualifications to the members and to solicit votes. Should the Board fail to follow the procedures outlined in this Article 5.2, then nominations shall be made from the floor at the annual meeting or any special meeting.
- 5.3 **Nomination Approval.** Anyone nominated as a candidate prior to or at the Master Association's election meeting should have first granted their approval and affirmatively stated that he or she is willing to serve for the term if elected.
- 5.4 **Nominations.** The names of the candidates recommended by the Nominating Committee shall be included in the Notice of the annual meeting sent to members of the Master Association and may be included on proxy and absentee ballot or Units sent to members. Write-in candidates are permitted. Nominations may also be received from members of the Master Association from the floor at the annual meeting of the members.

- 5.5 **Election.** At the annual meeting for the election of new Board members, the Board shall prepare and distribute a ballot or Unit to each Owner. Owners who do not attend the meeting may vote by proxy ballot or by written ballot. Each Lot or Unit is entitled to vote as provided in the Declaration and Bylaws.

ARTICLE VI BOARD MEETINGS

- 6.1 **Regular Meetings.** The Board shall hold a regular meeting at least quarterly, without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.
- 6.2 **Special Meetings.** Special meetings of the Board shall be held when called by the President of the Master Association, or by any two (2) Board members, after not less than three (3) days' notice to each member of the Board.
- 6.3 **Quorum.** A majority of the members of the Board shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Board present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII POWERS AND DUTIES OF THE BOARD

- 7.1 **Powers.** The Board shall have power to:
- a) Adopt and publish rules and regulations governing the use of the Common Areas, and the personal conduct of the Members and their guests thereon, and to establish penalties of the infraction thereof;
 - b) Suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any Common Assessment levied by the Master Association. Such rights may also be suspended after notice and an opportunity for hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;
 - c) Exercise for the Master Association all powers, duties and authority vested in or delegated to this Master Association and not reserved to the membership by other provisions of these Master Bylaws, the Articles, or the Master Declaration;
 - d) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and
 - e) Employ a Manager, an independent contractor, and such other employees as they deem necessary, and to prescribe their duties.

7.2 **Duties.** It shall be the duty of the Board to:

- a) Cause to be kept a complete record of all its acts and corporate affairs;
- b) Supervise all officers, agents and employees of this Master Association, and to see that their duties are properly performed;
- c) As more fully provided in the Master Declaration, to:
 - i) Fix the amount of the annual Common Assessment against each Lot or Unit at least thirty (30) days in advance of each annual Common Assessment period;
 - ii) Send written notice of each Common Assessment to every Owner subject thereto at least thirty (30) days in advance of each annual Common Assessment period; and
 - iii) Foreclose at its discretion the lien against any Lot or Unit for which Common Assessments are not timely paid and/or to bring an action at law against the Owner personally obligated to pay the same.
- d) Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Common Assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states a Common Assessment has been paid, such certificate shall be conclusive evidence of such payment;
- e) Procure and maintain adequate liability and hazard insurance on property owned by the Master Association, and adequate officers and Board member indemnity insurance, and all other insurance required by the Master Declaration;
- f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- g) Cause the Common Areas and Maintenance Areas to be maintained;
- h) Permit First Mortgagees of Lot or Units in the Project to pay taxes or other charges which are in default and which may or have become a charge against the Common Areas of the Master Association, and such First Mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property, and such First Mortgagees, upon making such payments, shall be owed immediate reimbursement therefor from the Master Association;

- i) Assess and collect all Common Assessments referred to or authorized in the Master Declaration.

**ARTICLE VIII
OFFICERS AND THEIR DUTIES**

- 8.1 **Enumeration of Officers.** The officers of this Master Association shall be a President and Vice President, who shall at all times be Members of the Board, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.
- 8.2 **Election of Officers.** The election of officers shall take place annually at a meeting of the Board.
- 8.3 **Term.** The officers of this Master Association shall hold office for one (1) year or until his or her successor is elected and has qualified, unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.
- 8.4 **Special Appointments.** The Board may elect such other officers as the affairs of the Master Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.
- 8.5 **Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- 8.6 **Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.
- 8.7 **Multiple Offices.** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.4 of this Article.
- 8.8 **Duties.** The duties of the officers are as follows:
 - a) **President:** The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, promissory notes, checks, deeds and other written instruments.
 - b) **Vice President:** The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

- c) **Secretary:** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of the Members; keep the corporate seal of the Master Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Master Association together with their addresses; and shall perform such other duties as required by the Board.
- d) **Treasurer:** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Master Association and shall disburse such funds as directed by resolution of the Board; shall, together with the President, sign all checks and promissory notes of the Master Association; keep proper books of account; cause an annual audit or review of the Master Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures, and deliver a copy of each to the Members.

ARTICLE IX INDEMNIFICATION OF OFFICERS AND THE BOARD

The Master Association shall provide any indemnification required or permitted by the laws of Utah and shall indemnify the Board, officers, agents and employees as follows:

- 9.1 **Third Party Litigation.** The Master Association shall indemnify any Board member or officer of the Master Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Master Association) by reason of the fact that he is or was a Board member or an officer or an employee or agent of the Master Association, or is or was serving at the request of the Master Association as a Board member, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he was not grossly negligent or acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Master Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, and in a manner which he reasonably believed to be in or not opposed to the best interest of the Master Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.
- 9.2 **Master Association Litigation.** The Master Association shall indemnify any Board member or officer of the Master Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Master Association to procure a judgment in its favor by reason of the fact that he is or

was such a Board member or officer of an employee or agent of the Master Association, or is or was serving at the request of the Master Association as a Board member, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he was not grossly negligent or acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Master Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or wanton misconduct in the performance of his duty to the Master Association unless and only to the extent that the court in which such action or suit was brought, or any other court having jurisdiction in the premises, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court shall deem proper.

- 9.3 **Expenses.** To the extent that a Board member or officer of the Master Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 9.1 or 9.2 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by him in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 9.4 below.
- 9.4 **Determination of Right to Indemnity.** Any indemnification under Sections 9.1 or 9.2 of this Article IX (unless ordered by a court) shall be made by the Master Association only as authorized in the specific case upon a determination that indemnification of the Board member or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 9.1 or 9.2 above. Such determination shall be made (i) by the Board of the Master Association by a majority vote of a quorum consisting of Board members who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, and such a quorum of disinterested Board members so directs, by independent legal counsel (who may be regular counsel for the Master Association) in a written opinion; and any determination so made shall be conclusive.
- 9.5 **Advance of Expenses.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Master Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the Board member or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Master Association as authorized in this Article IX.
- 9.6 **Other Indemnification Rights.** Agents and employees of the Master Association who are not Board members or officers of the Master Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board of the Master Association.

- 9.7 **Benefitted Parties.** Any indemnification pursuant to this Article IX shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a Board member or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

ARTICLE X COMMITTEES

- 10.1 **Appointments.** After the Period of Administrative Control, the Master Association shall appoint a nominating committee, as provided in these Master Bylaws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XI BOOKS AND RECORDS

- 11.1 **Accounting.** The books and accounts of the Master Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.
- 11.2 **Inspection of Records.** The membership register, books of account and minutes of meetings of the Master Association, of the Board and of committees of the Board and all other records of the Project maintained by the Master Association or Manager shall be made available for inspection and copying by any members of the Master Association or his duly appointed representative at any reasonable time and for a non-commercial purpose reasonably related to his interest as a Member, at the office where the records are maintained. Upon receipt of an authenticated written request from a Member along with the fee prescribed by the Board to defray the costs of reproduction, the Manager or other custodian of records of the Master Association shall prepare and transmit to the Member a copy of any and all records requested. The Board shall establish reasonable rules with respect to:
- a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;
 - b) Hours and days of the week when such an inspection may be made; and
 - c) Payment of the cost of reproducing copies of documents requested by a Member.

Every member of the Board, subject to the conditions set forth above, shall have the absolute right at any reasonable time to inspect and make copies of all books, records and documents of the Master Association and to inspect all real and personal properties owned or controlled by the Master Association.

ARTICLE XII ASSESSMENTS

- 12.1 The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Board in assessing Common Expenses against the Lot or Units and Owners, the Treasurer shall keep an accurate record of such Common Assessments and of the payments thereof by each Owner.

ARTICLE XIII AMENDMENTS

- 13.1 **Amendment Procedure.** These Master Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of the authorized Members in person or by proxy. So long as Declarant is in control of the Master Association, no amendment to these Master Bylaws shall be effective without prior approval of Declarant. Furthermore, until the Period of Administrative Control terminates, Declarant shall have, and is hereby vested with, the right to unilaterally amend these Bylaws. Such right shall obtain without regard to the subject matter of amendment, so long as the amendment involved is consistent with law and does not attempt to divest any vested property rights of any Owner or Mortgagee.
- 13.2 **Conflict.** In the case of any conflict between the Articles of Incorporation and these Master Bylaws, the Articles shall control; and in the case of any conflict between the Master Declaration and these Master Bylaws, the Master Declaration shall control.

ARTICLE XIV TRANSFER OF CONTROL BY DECLARANT

- 14.1 The Declarant shall relinquish all special rights, express or implied, through which Declarant may directly or indirectly control, direct, modify or veto any action of the Master Association or a majority of the Lot or Unit Owners, and control of the Master Association shall pass to the Lot or Unit Owners within the Project not later than the termination of the Period of Administrative Control.

ARTICLE XV MISCELLANEOUS

- 15.1 **Compliance.** These Bylaws are set forth in compliance with the requirements of the Master Declaration.
- 15.2 **Conflict.** These Bylaws are subordinate to and are subject to all provisions of the Master Declaration, except in those cases where the provisions of the Bylaws are clearly intended to govern (administrative matters). All of the terms hereof, except where clearly repugnant

to the context, shall have the same meaning as they are defined to have in the Master Declaration.

- 15.3 **Severability.** If any provisions of these Bylaws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.
- 15.4 **Waiver.** No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.
- 15.5 **Captions.** The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.
- 15.6 **Construction.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; the use of any gender shall be deemed to include both masculine and feminine, and the term “shall” is mandatory and “may” permissive.

EXHIBIT "C"

TENTATIVE MAP

EXHIBIT "D"

PERCENTAGE INTEREST

PERCENTAGE INTEREST

MASTER ASSOCIATION

1600 Park Avenue Townhomes HOA # 1
(Sub-Association)

Unit No.	Percentage Interest in Common Areas	Voting Interest Percentage
1	8.33 %	8.33 %
2	8.33 %	8.33 %
3	8.33 %	8.33 %
4	8.33 %	8.33 %
5	8.33 %	8.33 %
6	8.33 %	8.33 %
7	8.33 %	8.33 %
8	8.33 %	8.33 %
9	8.33 %	8.33 %
10	8.33 %	8.33 %
11	8.33 %	8.33 %
12	8.33 %	8.33 %