



W2889108

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E# 2889108 PG 1 OF 89
Leann H. Kilts, WEBER COUNTY RECORDER
09-Nov-17 10:53 AM FEE \$200.00 DEP JK
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY
ELECTRONICALLY RECORDED

File No.: 95734-DF

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

of

**VILLAGE AT PROMINENCE POINT
a Planned Residential Unit Development**

Dated the 6th day of November, 2017

In Reference to Tax ID Number(s).:

11-014-0004, 11-014-0063, 11-014-0064, 11-014-0066 and 11-014-0065

Declaration of Covenants, Conditions, and Restrictions of Village at Prominence Point
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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
VILLAGE AT PROMINENCE POINT
A Planned Residential Unit Development

THIS DECLARATION is made this 6 day of November, 2017 by Meritage Companies, LLC and Mountain Vista Trails, LLC, Utah limited liability companies hereinafter collectively referred to as "Declarant".

RECITALS:

A. Declarant is the record Owner of certain real property in the County of Weber, State of Utah which is more particularly described in Exhibit "A" hereto (the "Property").

B. Declarant has improved or intends to improve the Property by construction thereon of certain Buildings and other improvements (the "Project"), and to establish thereon a planned residential unit development to be managed, operated and maintained by an incorporated Association of Owners for the benefit of the Project.

C. Declarant intends by this document to impose upon the Property constituting the Project mutually beneficial restrictions under a general plan of improvement for the benefit of the Project and the Owners thereof.

D. Declarant hereby declares that the real property constituting the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and the Project, and every part thereof, in accordance with the plan for the improvement, sale, and operation of the Property as a planned residential unit development. Any subsequent change to the Project shall require the approval of North Ogden City and the appropriate amendment to the City Development Agreement.

E. Declarant further acknowledges that North Ogden City has set forth a Development Agreement concerning the parameters under which the City has allowed for this Project to proceed. Many of the terms thereof concern restrictions on use and scope of architecture which are applicable to this instrument. Therefore, the City Development Agreement is attached hereto as Exhibit "B" and incorporated herein by this reference and is deemed to be further covenants running with the land and binding upon any purchaser of any portion of the Property hereafter.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with, the Property

and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
Definitions

Unless the context clearly indicates otherwise, certain terms used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article I.

1.01 “*Admission Fee*” shall mean the fee charged to an owner of a Unit upon sale from the builder to an end-user.

1.02 “*Apartment Tract*” shall mean Tract 2 as set forth on Exhibit “C” and whose future use shall be multi-family apartment dwellings approved in the City Development Agreement and which will be further amended to reflect the platting of the buildings to be constructed thereon.

1.03 “*Assessments*” shall mean the assessments to fund the Common Expenses and include Regular Assessments, Special Assessments and any other assessments levied by the Association.

1.04 “*Association*” shall mean and refer to VILLAGE AT PROMINENCE POINT HOMEOWNERS ASSOCIATION, INC., a Utah non-profit corporation, its successors and assigns.

1.05 “*Board of Directors*” or “*Board*” shall mean the governing board of the Association which is appointed or elected in accordance with this Declaration and the Articles of Incorporation and the Bylaws of the Association.

1.06 “*Bylaws*” shall mean the Bylaws of the Association.

1.07 “*City Development Agreement*” shall mean that certain agreement approved by North Ogden City on or about November 6, 2017 as amended and which is attached hereto as Exhibit “B”.

1.08 “*Commercial Tract*” shall mean Tract 1 as set forth on Exhibit “C” whose future use shall be for commercial purposes as approved in the City Development Agreement and which will be further amended to reflect detailed platting of the subdivided lots and buildings to be constructed thereon.

1.09 “*Common Area*” shall mean all real property not owned as a Lot (including the improvements thereon) to be used for the common use and enjoyment of the Owners, including the Roadways. The Common Area to be owned by the Association at the time of the conveyance of the first Lot shall constitute all portions of the Project, except the Lots.

1.10 “*Common Expense*” shall mean all expenses of the administration, maintenance, repair or replacement of any Common Area and all other expenses denominated as Common Expenses by this Declaration which shall include but not be limited to all common elements such as private roadways, pedestrian accesses, walkways, swimming pool(s), splash park, shuttling stations, clubhouse, public ball court(s), Bocce ball court, parking areas, playground(s), road maintenance, snow removal, greenbelt, open spaces, etc.

1.11 “*Common Facilities*” shall mean all furniture, furnishings, equipment, facilities, and other personal property within the Project for the use and benefit of all Owners and all furniture, furnishings, equipment, facilities, and other real or personal property acquired in accordance with this Declaration by the Association for the use and benefit of all Owners. Common Facilities shall be deemed to be part of the Common Area except as otherwise expressly provided for in this Declaration.

1.12 “*Cottage Home Tract*” shall mean Tract 4 as set forth on Exhibit “C” and whose future use shall be for single-family Residential Units as approved and/or allowed by the City Development Agreement as amended. Upon recordation of the Plat that incorporates the Cottage Home Tract, all Lots located within the area of the Cottage Home Tract shall be designated for the construction of Cottage Homes. A Residential Unit constructed upon a Cottage Home Lot shall mean a detached, single-family Residential Unit.

1.13 “*Declarant*” shall mean Meritage Companies, LLC (an Alaska limited liability company) and Mountain Vista Trails, LLC, (a Utah limited liability company).

1.14 “*Declaration*” shall mean this Declaration of Covenants, Conditions, and Restrictions for Village at Prominence Point, a Planned Residential Unit Development, Dated November 6, 2017.

1.15 “*Independent Living Tract*” shall mean Tract 5 as set forth on Exhibit “C” and whose future use shall be for an independent living facility and/or age-based condominiums as approved and/or allowed by the City Development Agreement as amended. Upon recordation of the Plat that incorporates the Independent Living Tract, all Lots located within the area of the Independent Living Tract shall be designated for the construction of an independent living facility and/or age-based condominium units, as approved by the City of North Ogden.

1.16 “*Lien*” shall have the meaning assigned to it in this Declaration.

1.17 “*Lot*” shall mean and refer to any one of the numbered plots of land within the boundary thereof as such are shown upon and designated on the Plat for private ownership and individually numbered and are intended to be used and occupied by a single family. A “*Lot*” may either be a “*Townhome Lot*” or a “*Cottage Home Lot*” or Lot for Independent Living Facility.

1.18 "*Lot Number*" shall mean and refer to the number which designates a Lot on the Plat.

1.19 "*Mortgage*" shall mean any first mortgage, first deed of trust, or other security instrument which constitutes a first lien by which a Lot or any part thereof is encumbered.

1.20 "*Mortgagee*" shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage by which the Lot of any Owner is encumbered or (ii) any successor to the interest of such person under such Mortgage.

1.21 "*Owner*" shall mean any person or entity or combination thereof, including the Declarant, who, according to the official records of the County Recorder, Weber County, State of Utah, which are maintained for such purpose, is the Owner of fee simple title to any Lot. The term "*Owner*" shall not refer to any Mortgagee unless such Mortgagee has acquired title for other than security purposes.

1.22 "*Parcel*" shall mean the general division of the Property differentiated by future development use.

1.23 "*Parcel A*" shall mean that portion of Property identified in Exhibit "C" as Parcel A and which shall be reserved for potential access/roadway purposes if so determined by the City in the future. In the meantime, said parcel is part of the Common Area.

1.24 "*Plat*" shall mean that certain subdivision plat entitled Village at Prominence Point, a Planned Residential Unit Development, which plat will be recorded in the official records of the County Recorder, Weber County, State of Utah, which are maintained for such purpose, which Plat shall identify and describe all easements which exist on the Property.

1.25 "*Project*" shall mean all areas within the Parcel, including the Tracts, Lots, and Common Area, and any and all improvements constructed thereon which are the subject of this Declaration and the Plat.

1.26 "*Regular Assessment*" shall have the meaning assigned to it in this Declaration.

1.27 "*Residential Unit*" shall mean each individual dwelling designed for occupancy by a single family (including Cottage Homes, Townhomes or condo units), including any facilities, which is constructed, or shall be constructed, upon a Lot within the Project.

1.28 "*Roadways*" shall mean that portion of the Common Area consisting of the streets within the Parcel for the use and benefit of the Owners as such are identified and depicted on the Plat.

1.29 "*Rules and Regulations*" shall have the meaning assigned to it in this Declaration.

1.30 “*Special Assessment*” shall have the meaning assigned to it in this Declaration.

1.31 “*Townhome Tract*” shall mean Tract 3 as set forth on Exhibit “C” and whose future use shall be for two- or three-story townhome Units, as approved and/or allowed by the City Development Agreement as amended and which will be future amended to reflect the platting of building(s) to be constructed thereon.

1.32 “*Tract*” or “*Tracts*” shall mean one or more of those areas within the Project delineated as a Tract on Exhibit “C” hereto.

1.33 “*Transfer Fee*” shall mean an administrative fee imposed by the Manager on any sale or transfer of any Residential Unit to a subsequent end-user.

1.34 “*Unit*” shall mean any residential living unit, including Residential Units and apartments.

ARTICLE II
Division of Project

2.01 *Project*. The Declarant hereby submits the Property, the Tracts, the Lots, the Common Area, the Residential Units, and all other improvements now existing or hereafter made in or upon the Parcel to the provisions of this Declaration and the Plat. Each and every portion of the Project is and shall hereafter be held, conveyed, devised, mortgaged, encumbered, leased, rented, occupied, improved, and otherwise used as a Planned Residential Unit Development to be known as Village at Prominence Point. All of the Project is, and shall hereafter 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 the Project and in furtherance of a plan for improvement for the Parcel. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, Declarant’s successors and assigns, and to any person or entity acquiring or owning an interest in the real property and improvements comprising the Project, and the heirs, devisees, personal representatives, successors, and assigns of any such person or entity. This submission is made subject to all patent reservations and exclusions, all easements and rights-of-way of sight or record, an easement for each and every pipe, line, cable, wire, utility line, or similar facility which presently does, or in the future may, traverse or partially occupy the Parcel and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

2.02 *Apartment Tract Owner's Duties*. The owner of the Apartment Tract shall also have the responsibility to administer the owner’s association, collect assessment, manage common area property, and administer payment of the common expenses.

2.03 *Division Into Parcels, Tracts, Lots and Common Area.* The Project is hereby divided into six (6) Tracts, each consisting of a fee simple interest in a portion of the real property comprising the Parcel as said portion is defined in the Plat.

This six separate Tracts of this Project include the following:

Tract 1 – commercial parcel with frontage on Washington Blvd., consisting of two commercial pads.

Tract 2 – parcel to be developed for future apartment use consisting of approximately six apartment buildings each with 20 to 30 units per building as approved by the City and a clubhouse as approved by the City

Tract 3 – townhome parcel to be developed for 59 future townhomes consisting of height restricted townhome buildings with 6 to 8 townhomes per building as approved by the City.

Tract 4 – cottage parcel to be developed for future use as single-family patio homes for age restricted occupants consisting of 28 separate footprints as approved by the City.

Tract 5 – independent living parcel to be developed for future use as an independent living facility consisting of 68 residences as approved by the City.

Parcel A – shall mean that portion of Property identified in Exhibit “C” as Parcel A and which shall be reserved for potential access/roadway purposes if so determined by the City in the future. In the meantime, said parcel is part of the Common Area.

The Tracts shall serve as temporary legal descriptions until such time as the actual platting can be approved by the City. Thereafter, once a Tract is platted, the Lots shall be the operative designations.

All portions of the Project not designated as Lots shall constitute the Common Area which shall be owned by the Association for the benefit of all Owners in accordance with the provisions of this Declaration.

Said Lots may be conveyed to the purchaser thereof on the condition that said purchaser will make improvements thereon consistent with the City Development Agreement. When the plat of the individual Lots to be developed on the foregoing parcels is recorded, this instrument shall be amended to include the newly approved legal descriptions.

2.04 *Expansion of Project.*

(a) *Additional Property.* At any time within fourteen (14) years of the filing of this Declaration, Declarant may, in its absolute discretion and without the consent or participation of any Owner, expand the Project from time to time by filing an amendment hereto adding all or any portion of the neighboring real property situated in the County of Weber, State of Utah which are intended to be added to this Project as Townhome Units, Apartments, and Commercial Property (the "Expanded Property" or "Expanded Parcel") (See, Exhibit "D").

(b) *Supplemental Declarations and Supplemental Maps.* Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Weber County, Utah, no later than seven (7) years from the date this Declaration is recorded in said office, a supplement or supplements to this Declaration containing a legal description of the site or sites for new Lots, together with a supplemental Plat or Plats containing the same information with respect to the new Lots as was required on the original Plat with respect to the initial Lots. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion;

(c) *Expansion of Provisions.* In the event of such expansion, the provisions used in this Declaration shall be expanded to encompass and refer to the Project as so expanded and reference to the Amended Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the Project, as expanded, by use of the forms of description set forth herein, with additional references to the supplemental Declarations and the supplemental Plats;

(d) *Declaration Operative on New Lots.* Except as expressly set forth in any Amended Declaration, the new Lots shall be subject to all the terms and conditions of the Amended Declaration and any supplemental Declaration, and the Lots therein shall be subject to ownership with all the incidents pertaining thereto as specified herein, upon filing the supplemental Plat and supplemental Declaration in the office of the Weber County Recorder;

(e) *Improvements, Liens, and Consent.*

(i) All improvements on the Expanded Property to be added shall be approved by North Ogden City before such Expanded Property is added to the Project;

(ii) Liens arising in connection with the Declarant's ownership of, and construction of, improvements upon the Expanded Property to be added must not adversely affect the rights of existing Tract or Lot Owners or the priority of first mortgages on the Lots in the existing Project. All taxes and other Assessments relating to such Expanded Property covering any period prior to the addition of

the Expanded Property must be paid or otherwise satisfactorily provided for by the Declarant;

(f) *Restrictions and/or Limitations.* There shall be no restrictions or limitations as to what portion or portions of Expanded Property may be added to the Project. Portions of Expanded Property may be added without regard to time (except as provided at Section 2.03(a) above) or boundaries. No Assessments are made with regard to the locations of any improvements that may be made on any portion of the Expanded Property.

2.05 *Townhomes.* Townhomes shall be two- or three-story attached units constructed on the Lots located on the Townhome Tract, and shall meet all requirements set forth in the City Development Agreement and approved site plans. Townhome Lots shall be "zero lot line," with yard areas surrounding the Townhome units designated as Common Area, provided, back patios extending from a Townhome shall be for the exclusive use of the occupants of the Townhome to which such patio attaches.

2.06 *Independent Living Facility.* The portion of the Project devoted to a 55 years of age and older community consistent with the City Development Agreements.

2.07 *Cottages.* Cottages shall be detached single-family dwellings constructed on the Lots located on the Cottage Home Tract, and shall meet all requirements set forth in the City Development Agreement and approved site plans. The Cottage Home Tract shall be designated as a "55+ Active Adult Community," and shall meet all statutory requirements for such designation.

2.08 *Commercial Parcels.* All commercial lots will be subject to any proper monetary assessment made by the Board, but shall not be subject to the same use restrictions as the residential portions of the Property.

ARTICLE III **Nature and Incidents of Ownership**

3.01 *Separate Ownership.* Each Lot, together with the Residential Unit and any other improvements constructed thereon, is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, occupied, improved, and otherwise used in accordance with the provisions of this Declaration.

3.02 *Use and Occupancy.* Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Area and the exclusive right to use and enjoy said Owner's Lot.

3.03 *Exterior of Residential Units.* Excepting the HVAC compressors, the Association shall keep the exterior of the Owners' Residential Units (except Cottage Homes), including

without further limitation, exterior walls, roofs, gutters, drain spouts, all exterior building surfaces, and any and all other exterior improvements to the Lot in a sanitary condition and in a state of good repair. All such maintenance and repair shall be for the purpose of maintaining said Residential Unit in a manner consistent with existing design, materials, colors, and other such items then in use on other Residential Units within the Project unless different materials shall have been previously approved in writing in accordance with the provisions of Section 3.06 hereof. In the event that any Residential Unit should develop an unsanitary condition or fall into a state of disrepair due to the willful or negligent conduct, or lack of conduct, of the Owner of such Residential Unit, the Association shall have the right at the expense of the Owner, and without liability to the Owner for trespass or otherwise, to enter upon said Owner's Lot and correct or eliminate said condition at the Owner's expense.

3.04 *Interior of Residential Units.* Each Owner of a Residential Unit shall, at the Owner's expense, keep the interior of such Residential Unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all interior redecorating and painting which may at any time be necessary to maintain the good appearance of such Residential Units. Except to the extent that the Association is protected by insurance against damage, the Owner shall repair all damages to the Residential Unit or Lot caused by the act, negligence or carelessness of the Owner or that of any tenant, subtenant, member of the Owner's family or of the family of any tenant or subtenant and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work as determined and approved in writing by the Association. In addition to decorating and keeping the interior of the Residential Unit in good repair, the Owner shall be responsible for the maintenance or replacement of any plumbing, fixtures, refrigerators, air conditioning and heating equipment, dishwashers, disposals, ranges and other fixtures that may be in or connected with the Residential Unit.

3.05 *Maintenance of Lots.* The Association shall be responsible to keep and maintain all Lots and Common Areas, including, without limitation, all trees, shrubs, grounds, and lawns, in a sanitary condition and in a state of good repair, free from all accumulations of refuse, rubbish, or abandoned articles of any kind.

3.06 *Common Area Maintenance.* The Association shall be responsible to keep the Common Area in a state of good repair and maintenance, including all detention basins, storm drains, fencing, play areas and Common Area appurtenances, free from all damage and accumulations of snow, refuse, rubbish, and other inappropriate materials of any kind. Notwithstanding the foregoing, the Association may, from time to time, delegate this responsibility to each respective Owner by written notice, so long as such delegation shall be made to all Owners at the same time.

3.07 *Architectural Control.*

(a) No building or other structure on any Lot shall be commenced, erected, or maintained, nor shall any exterior addition to or change (including painting) or alteration therein be made until the Plans and Specifications showing the nature, kind, shape,

height, colors, materials, and location of the same have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board or by an architectural control committee composed of three (3) or more representatives appointed by the Declarant or thereafter by Board. In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said Plans and Specifications have been submitted to it via certified mail, approval will not be required, and this Article will be deemed to have been fully complied with. Any and all construction, improvements or alterations shall meet all requirements of North Ogden City.

(b) No fence or fences of any nature whatsoever shall be constructed, placed upon, or maintained on any Lot or any portion thereof without the express prior written approval of the architectural control committee in accordance with the provisions of this Section 3.08. All fences shall, as a minimum standard, be constructed as follows:

(i) all fencing shall be in compliance with the City Development Agreement.

(ii) Notwithstanding the foregoing, Owners of the Cottage Home Lots may erect fences without the prior written approval of the Board so long as not inconsistent with the City Development Agreement.

(c) All Residential Units on Townhome Lots within the Project shall be part of either a six-plex or a seven-plex building structure. All Residential Units on Cottage Home Lots within the Project shall be a single detached building.

(d) Additional minimum architectural standards shall be consistent with the Development agreement between North Ogden City and the Developer of the Village at Prominence Point. See City Development Agreement Exhibit "B".

3.08 *No Subdivision.* No Owner shall cause a Lot or Residential Unit to be divided in any manner so as to permit the permanent occupancy and ownership thereof by more than one family, and any documents purporting to convey any portion of a Lot or Residential Unit shall be void and of no effect.

3.09 *Party Walls.* Each wall which is built as part of the original construction of a Residential Unit on a Townhome Lot within the Project and placed on the dividing line between two Lots shall constitute a Party Wall and, to the extent not inconsistent with the provisions of this Section 3.09, the general rules of law regarding Party Walls and liability for property damaged due to negligence or willful acts or omissions shall apply thereto. The term Party Wall as used in this section shall refer to and include all structural components thereof, including the foundation thereof; plumbing and electrical components located within the Party Wall; trusses, shingles and other roof components; and any and all other such items normally required for the

construction and use of a Party Wall. Specific provisions with respect to such Party Walls within the Project shall be as follows:

(a) the cost of reasonable repair and maintenance of a Party Wall shall be shared by each Owner who makes use of the Party Wall in proportion to such Owner's use. No change to the exterior or structural elements of a Party Wall may be made without the written consent of all other Owner's having an interest in such Party Wall;

(b) if a Party Wall is destroyed or damaged by fire, or other casualty, any Owner who has used the Party Wall may restore it, and if any other Owner thereafter makes use of the Party Wall, each such Owner shall contribute to the cost of the restoration in proportion to such Owner's use without prejudice, however, to the right of any such Owner to call for a larger contribution from other Owner's under any rule of law regarding liability for negligent or willful acts or omissions;

(c) notwithstanding any other provisions of this Section 3.09, an Owner whose negligent or willful act causes the Party Wall to be exposed to the elements, shall bear the whole cost of repairing any such exposure and of furnishing the necessary protection against such Owners;

(d) right of any Owner to contribution from any other Owner under this Section 3.09 shall be appurtenant to the land and shall pass to such Owner's successors-in-title;

(e) in the event of any dispute arising concerning the Party Wall, or under the other provisions of this Section 3.09, each Party to such dispute shall chose one (1) arbitrator and such arbitrators shall chose an additional arbitrator and the decision of such arbitrators shall be by a majority of all arbitrators so selected and such decision shall be binding upon the Parties to the dispute.

ARTICLE IV

Title to Lots and Common Area

4.01 *Title to Lots.* Title to a Lot within the Project may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including, without limitation, joint tenancy or tenancy in common.

4.02 *Title to Common Area.* Title to the Common Area within the Project shall be held in the name of the Declarant, its assigns or the Association and is subject to the rights of any Owner to the non-exclusive use of the Common Area in any manner that does not hinder or encroach upon the rights of others and is not contrary to the provisions of this Declaration and to any Rules and Regulations promulgated by the Association for the use thereof. All Owners within the Project acknowledge that the ownership of the Common Area by the Association is in

the best interest of the Owners and that North Ogden City will not be responsible for the Common Area, now, or at any future date.

4.03 *Inseparability.* Every devise, encumbrance, conveyance, or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance, or other disposition of the entire Lot, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

4.04 *No Partition.* The Common Area shall be owned by the Association, and no Owner may bring any action for partition thereof.

4.05 *Separate Mortgages by Owners.* Each Owner shall have the right separately to mortgage or otherwise encumber his or her Lot. No Owner shall attempt to, or shall have the right to, mortgage or otherwise encumber the Common Areas or any part thereof. Any mortgage or any encumbrance of any Lot within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure through private power of sale, judicial foreclosure, or otherwise.

4.06 *Separate Taxation.* Each Lot in the Project shall be assessed separately for all taxes, Assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. For purposes of assessment, the valuation of the Common Area shall be assessed separately from the Lots. No forfeiture or sale of any Lot or any Residential Unit constructed thereon for delinquent taxes, Assessments, or other governmental charges shall divest or in any way affect title to any other Lot.

4.07 *Mechanic's Liens.* No labor performed or material furnished for use in connection with any Lot or Residential Unit constructed thereon with the consent, or at the request of, an Owner or his or her agent or subcontractor shall create any right to file a statement of mechanic's lien against a Lot of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Area unless such work shall have been performed upon the express written consent of the Association and the labor performed or material furnished shall have been provided directly for the improvement, repair, or construction of the Common Area.

4.08 *Description of Lot.* Each respective Lot shall be legally described for all purposes by using the applicable Lot Number as established and described on the Plat. Every contract for the sale of a Lot and every other instrument affecting title to the Lot within the Project may describe the Lot by its identifying number or symbol as indicated on the Plat. Such description will be construed to describe the Lot and incorporate all the rights incident to ownership of a Lot within the Project and all of the limitations on such ownership as such ownership is described in this Declaration and/or the Articles of Incorporation and Bylaws of the Association, whether or not such rights are expressly set forth within such instruments.

ARTICLE V
Easements

5.01 *Right to Ingress, Egress, and Enjoyment.* Each Owner shall have the right to ingress and egress over, upon, and across the Common Area and the use of all Common Elements and Facilities and shall have the right of easement and enjoyment in and to the Common Area which shall be appurtenant to and pass with the title to every Lot subject to the terms and conditions of said easements as herein set forth. All Lessees of the Independent Living Facility and Apartment Parcel shall also have access to and right of enjoyment of all common Areas and all Common Facilities.

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

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

5.04 *Easement for Temporary Use by Declarant.* Declarant, for itself, its successors and assigns, and its and their agents, employees, contractors, subcontractors, and other authorized personnel, reserves for a period of ten (10) years following the date of recordation of this Declaration an exclusive easement in gross in, over, and through the Common Area for the purposes of (i) marketing and selling the Lots; (ii) displaying signs; and (iii) showing the Lots. The use of such easement shall not interfere with or diminish the rights of Owners to use and occupy each respective Owner's Lot or interfere with the use and occupancy of the Common Area.

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

5.06 *Easement for Maintenance of Lots.* The Association, its agents, employees, or subcontractors, shall have the right of easement over and across each Lot, but not to any portion of the interior of any Residential Unit, for the purpose of maintaining the Lot in accordance with the provisions of Article III hereof, together for the purpose of maintaining, repairing or replacing, as necessary, any and all land-drain laterals that may traverse said Lots.

ARTICLE VI
Restrictions on Use

6.01 *Residential Uses.* All Tracts/Lots are intended to be used for residential housing and are restricted to such use. No Residential Unit shall be used for business or commercial activities; provided, however, that nothing herein shall be deemed to prevent (i) Declarant, the Association, or its duly-authorized agents from using any Units owned by the Declarant or the Association as sales models; or (ii) any Owner or his or her duly-authorized agent from renting or leasing his or her Residential Unit from time to time.

6.02 *No Noxious or Offensive Activity.* No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may 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. No automobile shall be parked or placed on a street within the Project or at any location within the Project other than a designated parking spot. Trailers, motorhomes, 5th wheels, campers and any other type of recreation vehicle shall not be permitted on the Property.

6.03 *External Improvements.* No dog runs, walls, decks or gazebos shall be allowed without the prior approval of the Architectural Control Committee pursuant to Article III.

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

6.05 *Restrictions on Animals.* No animals other than a maximum of two household pets shall be allowed in any Residential Unit. Whenever a pet is allowed to leave the Lot of its Owner, it shall be on a leash or some other appropriate restraint. Each Owner shall be responsible to keep any and all such household pets confined to said Owner's Lot.

6.06 *Prohibition of Damage and Certain Activities.* Except with the prior written consent of the Association, nothing shall be done or kept in any Residential Unit or upon any Lot which would result in cancellation of any insurance on the Project or any part thereof, nor shall anything be done or kept in any Residential Unit which would increase the rate of insurance on the Project or any part thereof over that which, but for such activity, would be paid. Nothing shall be done or kept in any Residential Unit, upon any Lot, or upon the Common Area, or upon any part of the Project which would be in violation of any statute, ordinance, regulation, rule, permit, or other validly-imposed requirement of any governmental authority. No damage to, or waste of, the Common Area or Common Facilities or any part thereof shall be committed by any

Owner or guest or invitee of any Owner, and each such Owner shall indemnify and hold harmless the Association and the other Owners against all loss resulting from any such damage or waste caused by such Owner, his or her family guests, tenants, licensees, or invitees.

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

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

6.09 *Garbage, Refuse and Debris.* All trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. All containers for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be stored in the garages of each Owner. Such containers may be placed for collection not more than twelve (12) hours prior to the scheduled collection date and shall be removed from the view of the general public and stored in a reasonably prompt manner after collection.

6.10 *Satellite Dishes.* For townhomes and the cottages, no more than one satellite dish may be installed per building. Satellite dishes shall be placed only in locations that have been pre-wired during the construction of the Residential Unit to which it is attached. No wires shall run across roofs, down walls, or through pipes.

6.11 *Antenna.* No antenna may be placed on the exterior of any Residential Unit. Any antenna must be contained within the attic space of the Residential Unit to which it is attached.

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

6.13 *Christmas Lighting.* Christmas Lighting and other seasonal exterior décor to be temporarily attached to a Residential Unit shall only be allowed on the Cottage Units. Christmas Lighting may only be displayed between November 1 and January 30.

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

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

ARTICLE VII The Association

7.01 *The Association.* The administration of this Association shall be through the VILLAGE AT PROMINENCE POINT HOMEOWNER'S ASSOCIATION, INC., a Utah non-profit corporation, which has been organized and will be operated to perform the functions and provide the services contemplated in this Declaration. Said Association shall operate in accordance with the laws of the State of Utah, and with the Articles of Incorporation of the Association and the Bylaws of the Association which have been adopted in accordance therewith. A true copy of the duly-adopted Bylaws of the Association shall be available for inspection and copying by any Owner during regular business hours at the offices of the Association.

7.02 *Third Party Manager.* The intention of the Declarant that the Declarant and/or its successor and/or assigns pertaining to the Apartment Tract will have primary responsibility for administration of the Association. This shall be accomplished by the Owner of the Apartment Tract entering into a third-party management agreement with a professional management company who has background in administering associations and/or apartment complexes. The third-party management company will be responsible to assess the fees to each Residential Unit and to determine the fairness thereof. The Declarant will rely upon the third-party management company to determine the market value of the assessments as well as the proper amounts to be paid in common expenses of the Association. The third-party management company shall obtain bids for services rendered and shall determine the best rates for the Association on Common Area Expenses. The third-party management company shall be allowed to charge fair market value for the services that it provides to the Association and shall further ensure that the shared expenses are evenly and fairly distributed amongst the Owners of the Residential Units.

7.03 *Membership.* Each Owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Lot is held. An Owner shall be entitled to one membership and one vote for each Lot owned

by said Owner. Each Membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association, and any devise, conveyance, or disposition of a Lot shall be construed to be a devise, conveyance, or other disposition, respectively, of that Owner's membership in the Association and all rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

7.04 *Board of Directors.* The Association shall be governed by a Board of Directors as the same shall be established and defined in the Bylaws of the Association. The Board of Directors shall initially consist of persons appointed by the Declarant. At the time of the first annual meeting of the Members, the Members (including Declarant) shall elect, in accordance with the Bylaws, a Board of Directors replacing the initial Board of Directors as defined in the preceding sentence. From and after the first election of the Board of Directors by the Members, not less than one of the Directors shall be elected solely by the votes of the Members other than Declarant pursuant to the election procedures set forth in the Bylaws.

7.05 *Votes.* Each Owner of a lot shall be entitled to one (1) vote for each Lot owned. If a membership is jointly held, all or any holders of the joint membership may attend any and all meetings of the Members of the Association, but such holders of the joint membership must act unanimously to cast the one (1) vote relating to their joint membership.

7.06 *Classes of Membership.* The Association shall have two (2) classes of voting membership, as follows:

(a) *Class A.* Class A Members shall consist of all Owners, except Declarant, and each Class A Member shall be entitled to one vote for each Residential Unit;

(b) *Class B.* Class B Member shall consist of the record title owner of Tract 2 and shall be entitled to a vote deemed to be 51% of the existing ownership interests. The purpose thereof shall be to require the Owner of Tract 2 to obtain some consent of other Residential Unit Owners.

7.07 *Power of Attorney and Amendments.* Each Owner makes, constitutes, and appoints the Association the true and lawful attorney in said Owner's name, place, and stead to make, execute, sign, acknowledge, and file with respect to the Project such amendments to this Declaration and the Plat as may be required by law or by vote taken pursuant to the provisions of this Declaration.

7.08 *Membership Upon Expansion.* Upon the expansion of the Project to include more Lots, each Lot and the Owner thereof shall enjoy membership and a vote in the Association on the basis of one (1) vote per Lot as though originally included in this Declaration.

7.09 *Temporary Signage for Marketing.* Declarant and any other owner/developer shall be allowed to erect reasonable temporary signage for marketing purposes.

ARTICLE VIII
Certain Rights and Obligations of the Association

8.01 *The Common Area.* The Association, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management, control, operation, and maintenance of the Common Area, including all improvements thereon (including the Common Facilities), and shall keep the same in a good, clean, attractive, safe, and sanitary order and repair. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund. All Owners within the Project acknowledge that the ownership of the Common Area by the Association is in the best interest of the Owners and that North Ogden City will not be responsible for the Common Area, now, or at any future date.

8.02 *Miscellaneous Goods and Services.* The Association may obtain and pay for out of the Common Expense Fund the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may also obtain or pay for out of the Common Expense fund legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Association may acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the Common Area and insurance, bonds, and other goods and services common to the Lots and necessary to implement the intent of this Declaration.

8.03 *Property Acquisition.* The Association may acquire (by purchase, lease, or otherwise), hold and dispose of real, personal, and mixed property of all types for the use and benefit of all Owners. The costs of acquiring all such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition of such property shall be part of the Common Expense Fund.

8.04 *Rules and Regulations.* The Association may make reasonable Rules and Regulations governing the use of the Common Area, Common Facilities, and Roadways; provided, however, that such Rules and Regulations shall be consistent with the rights and obligations established by this Declaration. The Association shall send by first class U.S. mail, postage prepaid, to each Owner, at the address set forth in the Register of Owners established in the Bylaws, a copy of all such Rules and Regulations, all amendments thereto and any rescissions thereof. Such Rules and Regulations shall take effect fifteen (15) days after adoption by the Association. The Association or any aggrieved Owner may initiate and prosecute appropriate legal proceedings against an offending Owner to enforce compliance with such Rules and Regulations or to recover damages caused by noncompliance therewith as may be permitted

by law. In the event the Association shall initiate any such legal proceedings, the Association shall be entitled to recover from the offending Owner costs and expenses incurred by the Association in connection with such proceedings, including court costs and reasonable attorney's fees both before and after judgment.

8.05 *Creation of Easements.* The Association may, without vote or consent of the Owners or of any person, grant or create, on such terms as it deems advisable, reasonable utility and similar easements over, under, across, or through the Common Area which may be determined by the Association to be reasonably necessary.

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

8.07 *Manager.* The Association may, by written contract, delegate in whole or in part to professional managers such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any manager retained by the Association shall be paid for with funds from the Common Expense Fund. The written contract by which the manager shall be engaged shall:

- (a) authorize and obligate the manager to perform such duties and obligations as the Association intends for the manager to perform;
- (b) provide for the compensation to be paid to the manager;
- (c) provide for a term of not more than three (3) years, except that such provision shall not be construed to prohibit the execution of a new agreement with the same manager upon the completion of such term;
- (d) be subject to termination by the Association as follows:
 - (i) at any time, for cause, upon the vote of two-thirds (2/3) of all members of the Board of Directors;
 - (ii) at any time, with or without cause, if requested by affirmative vote of at least fifty-one percent (51%) of the total votes of the Association;
- (e) provide that the manager may resign only after giving the Association written notice of its intended resignation at least ninety (90) days prior to the effective date thereof; and

(f) provide that, in the event that a dispute shall arise concerning the provisions of the contract, such dispute shall be committed to arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

8.08 *Powers of the Association.* Notwithstanding the powers of the Association as set forth in this Article VIII, neither the Association nor the Manager as delegee of the Association's powers and duties shall enter into a contract with a third person or entity whereby such person or entity shall furnish goods or services for the Project for a term longer than one (1) year unless authorized by at least fifty-one percent (51%) of the Owners, except for:

- (a) the management agreement;
- (b) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Service Commission; provided, however, that the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;
- (c) prepaid casualty and/or liability insurance policies not to exceed three (3) years duration, provided that the policy permits short rate cancellation by the insured; or
- (d) a lease of Common Facilities or other equipment determined to be reasonably necessary for effective operation of the Project.
- (e) a contract with internet and/or satellite providers with longer term preferred rates.

8.09 *Financial Statements.* The Association shall cause financial statements for the Association to be prepared at least annually, or at more frequent intervals if required by a vote of the Owners, and cause copies thereof to be made available to all Owners. Such statements shall be prepared in accordance with normally-accepted accounting procedures and presented in such a manner as to fairly and accurately reflect the financial condition of the Association. The financial books of the Association shall be available for inspection by any Owner or his or her duly-authorized representative at any time during the normal business hours of the Association at such place as the books shall be normally maintained.

ARTICLE IX Assessments

9.01 *Assessments.* The Association shall have the right and responsibility to charge to, and collect from, each Owner of any type of Unit within the Project which are projected to be said Owner's *pro rata* share of all sums which are to be expended and/or reasonably reserved on behalf of all Owners of Cottage Home Lots and all Owners of Townhome Lots and all sums which are required by the Association to perform or exercise the functions, duties, rights and powers of the Association under this Declaration, the Articles of Incorporation of the

Association, or the Bylaws adopted in accordance with the provisions thereof. All such sums which are charged and collected for such purposes shall be collectively referred to herein as "Assessments". The Cottage Home Lot Assessments may be greater than the Townhome Lot Assessments if, upon a reasonable showing, the sums expended by the Association are greater for Cottage Home Lots. The term "Assessments" shall also include each and every annual Regular Assessment and each and every Special Assessment levied in accordance with the provisions hereof.

9.02 *Admission Fees and Transfer Fees.* The Association shall have the right to charge and Admission Fee to any purchaser of a Residential Unit to be paid by the end-user purchaser of any Residential Unit after construction. In addition, any time title to a Residential Unit is transferred for fair market value or inheritance, the Association may also charge a Transfer Fee to the purchaser. The purpose of these funds is to be used for administrative expenses of the Association and for Common Area expenses, maintenance and long term replacement costs.

9.03 *Agreement to Pay Assessments.* Declarant, for each Lot owned by it and each Owner, for each Lot owned, by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all Assessments made for the purposes provided for in this Declaration. Such Assessments shall be fixed, established, and collected from time to time as provided in this Article.

9.04 *Commencement of Assessments.* Regular Assessments shall commence against each respective Lot on the first day of the first calendar month following recordation of a conveyance instrument transferring a Lot within the Project to an Owner. Notwithstanding the foregoing, Declarant and any builder to whom Declarant transfers a Lot, or with whom Declarant contracts for the construction of one or more Residential Units, shall not be required to pay Assessments.

9.05 *Regular Assessments.* A Regular Assessment shall consist of each Cottage Home Lot Owner's *pro rata* share, and each Townhome Lot Owner's *pro rata* share, of the estimated annual total of: (1) the amount which is reasonably anticipated to be expended and/or reserved on behalf of all Owners, and (2) the sum of all amounts which are required to perform or exercise the rights, powers, and duties of the Association during each fiscal year. A Regular Assessment shall be computed and levied annually against each Lot in accordance with the provisions hereof as follows:

(a) *Common Expense.* Each Regular Assessment shall be based upon an advance estimate of the Association's cash requirements to provide for payment of all estimated expenses arising out of, or connected with, maintenance and operation of the Common Area as set forth in Article VIII hereof, the maintenance of the Lots as set forth in Article III hereof, and for the provision of utility services (to the extent not separately metered or billed), and all other common items to the Project for the fiscal year for which the Regular Assessment is being made. Such estimated expenses may include, among

other things, and without limitation, the following: expenses of management; governmental taxes, Special Assessments, and real property taxes attributable to the Common Area; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Area and the Lots; reasonable reserves for the future cost of capital improvements to Common Areas; wages for Association employees, including fees for a manager, if any; utility charges for utility services provided to the Common Area; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of all the Owners or by reason of this Declaration. Such shall constitute the estimated Common Expense, and all funds received from Assessments under this Article IX (9.04) shall be part of the Common Expense Fund;

(b) *Apportionment.* Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among, and assessed to, each Unit on a *pro rata* basis. Notwithstanding the foregoing, the Declarant and any builder during a reasonable construction period shall not be responsible to pay an Assessment otherwise attributable to each Lot which is unimproved, or improved but unoccupied, to which Declarant or builder retains ownership.

(c) *Notice and Payment of Regular Assessment.* Each Regular Assessment shall be made on a January 1 through December 31 fiscal-year basis. On or before December 1 each year, the Association shall give written notice to each Owner as to the amount of the Regular Assessment with respect to his or her Lot for the fiscal year commencing on January 1 immediately following such date. Failure of the Association to give timely notice of any Regular Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, nor shall such failure affect the liability of the Owner of any Lot for payment of such Regular Assessment. Each Regular Assessment shall be payable in one of two options as follows:

(i) the full Regular Assessment may be paid in full prior to the 25th day of January of each respective fiscal year; or

(ii) the Regular Assessment shall be paid in monthly installments due on the first day of each month commencing January 1, and shall be subject to a late charge of Ten Dollars (\$10) for payments received after the tenth (10th) day of each month. After the tenth (10th) day of each month, all unpaid portions of any Regular Assessments then due shall bear interest at the rate of eighteen percent (18%) per annum until paid;

(iii) any monthly Assessment, or a prorata portion thereof, shall become immediately due and payable upon the acquiring of title to a Lot by Owner. The prorata portion to be paid by the Owner shall be payable pursuant to either of the options set forth in this Article IX (9.05 (c)).

(d) *Inadequate Funds.* In the event that the Common Expense Fund proves inadequate during any fiscal year for whatever reason, including non-payment of Owner's Assessments, the Association may either borrow funds and/or levy additional Assessments in accordance with the procedure set forth in Article IX, except that the vote therein specified shall not be necessary. If the Association elects to levy such an additional assessment, then no such assessment or Assessments levied in any fiscal year may, in the aggregate, exceed five percent (5%) of the Common Expense Fund for that fiscal year without the vote or written consent of a majority of voters other than the Declarant;

(e) *Increases in Regular Assessments.* The amount of Regular Assessment shall not exceed twenty percent (20%) of the Regular Assessment amount for the immediately-preceding fiscal year unless a majority of Owners other than Declarant shall consent to a greater increase by vote or written consent pursuant to the procedures set forth in Article VII.

9.06 *Special Assessments.* Subject to Section 7.06 (b), in addition to the Regular Assessments authorized by this Article, the Association may levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the total votes of the Association, Special Assessments, payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in the same manner as other Assessments. The allocation of Special Assessments among the various types of Residential Units may vary if, upon a reasonable showing, the sums expended by the Association are solely reserved to, or are greater for, one type of Residential Unit over another. . Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to the Owners, provided that no payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of such Special Assessments shall bear interest at the rate of one and one-half percent (1.5%) per month from the date such portion become due in accordance with the above-mentioned notice until paid. All funds received from Assessments under this Article IX (9.06) shall be part of the Common Expense Fund. All owners of Residential Units shall have the same access to Project amenities, Common Areas, and Common Elements as do apartment residents.

9.07 *Maintenance and Reserves.* The Association shall be responsible to maintain an adequate reserve for the maintenance, repairs, and replacement of those elements of the Common Area, including Common Furnishings, that must be repaired or replaced on a periodic basis, including the inspection, maintenance, repair, and replacement of all storm drains, catch basins, piping, culverts, curbs and gutters, Roadways, clubhouse maintenance and improvements

(including pool) and any and all such improvements, and for the maintenance, repair and replacement of the exteriors of those Residential Units for which the Association has responsibility. Said reserve funds shall be separately maintained in an interest-bearing account for the benefit of the Association.

9.08 *Lien for Assessments.* All sums assessed to the Owner of any Lot within the Project pursuant to the provisions of this Article IX, together with interest and penalties thereon as provided herein, shall be secured by a Lien on such Lot in favor of the Association as more particularly set forth in Article X (10.03(b)).

9.09 *Personal Obligation of Owner.* The amount of each and every Regular Assessment and Special Assessment against any Lot within the Project shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of his or her Lot, or by waiving any services or amenities provided for in this Declaration. 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 Association in connection therewith, including court costs and reasonable attorney's fees both before and after judgment.

9.10 *Statement of Account.* Upon payment of a reasonable fee not to exceed Twenty-Five Dollars (\$25.00), and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the following: (i) the amount of the unpaid Assessments, if any, with respect to such Lot; (ii) the amount of the current Regular Assessment and Special Assessment, if any, and the date each such Assessment shall become or became due; and (iii) any credit for advance payments or prepaid items, including, without limitation, the Owner's share of prepaid insurance premiums. Such written statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9.11 *Personal Liability of a Purchaser.* Subject to the provisions of Article IX (9.09), a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid Assessments against such Lot; provided, however, that the provisions of this article shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments which were due and payable up to the date of the grant or conveyance.

9.12 *Assessments to Commercial Lots.* The foregoing provisions (9.01 – 9.11) are inapplicable to Commercial Lots. The Association shall, however, assess the Commercial Lots with their portion of applicable expenses. (9.08 applies)

ARTICLE X
Pocket Park

10.01 *Pocket Park.* All owners of Residential Units in the Property shall have and enjoy reasonable access and use of the pocket park in the Project.

ARTICLE XI
Enforcement of Restrictions

11.01 *General.* Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended, modified or adopted from time to time. The Association shall have full power to enforce compliance with this Declaration, the Bylaws, and Rules and Regulations in any manner provided for by law or in equity, including, without limitation, the right to bring an action for damages, an action to recover sums due, an action to enjoin a violation or specifically enforce the provisions thereof. Said action or actions may be maintainable by the Association, or in a proper case, by an aggrieved Owner. In the event of any action by the Association to recover Assessments or other amounts due hereunder, or to enforce the provisions hereof, the Association shall be entitled to recover from the offending Owner all costs and expenses incurred by the Association in connection with such action, including court costs and reasonable attorney's fees. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, as the same may be lawfully amended or supplemented, with respect to the Association and/or the Lots within the Project, shall be enforceable by the Declarant, by the Association, or by an Owner through a proceeding for prohibitive or mandatory injunction. The rights and remedies herein provided shall be in addition to any and all other rights now or hereafter provided by law for enforcement of the provisions of this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, and decisions and resolutions of the Association adopted pursuant thereto.

11.02 *Interest.* Unless otherwise specifically set forth in this Declaration, all sums payable hereunder by an Owner shall bear interest at the rate of eighteen percent (18%) per annum from the due date, or if the amount due has been advanced or incurred by the Association or any other Owner pursuant to authorization contained in this Declaration, interest shall begin to accrue on such amounts ten (10) days after repayment is requested in writing by said Association or Owner.

11.03 *Certain Specific Enforcement Powers.* In amplification of, and not in limitation of, the general powers specified in Section 11.01 above, the Association shall have the following rights and powers:

- (a) *Suspension of Privileges.* If any Owner shall be in breach of this Declaration, the Bylaws, or Rules or Regulations, including, but not limited to, the failure of such Owner to pay any Assessment on or before the due date thereof, subject to the

limitations hereinafter set forth in this paragraph, the Association may suspend the Owner's right to occupy the Common Area and to use Common Facilities and the right of such Owner to participate in any vote or other determination provided for herein. The decision as to whether such privileges should be suspended shall be made by a majority of the members of the Board present at a special meeting of the Board duly called and held for such purpose. No suspension under this paragraph shall be effective until written notice has been given to the Owner of the suspension, the reasons therefor, and the actions that must be taken by said Owner to have all suspended privileges reinstated. If such suspension of privileges is based on the failure of an Owner to pay Assessments when due, the suspended privileges of an Owner shall be reinstated automatically at such time as the Owner shall have paid to the Association, in cash or by cashier's or certified check, all amounts past due as of the date of such reinstatement. If such suspension of privileges is based on any act or omission other than the failure to pay Assessments or any other amounts due hereunder when due, no such suspension shall be made except after a meeting of the Board of Directors of the Association at which a quorum of the Board is present, duly called and held for such purpose. Written notice of such meeting shall be given to the Owner whose privileges are being sought to be suspended for any act or omission other than the failure to pay Assessments at least ten (10) days prior to the holding of such meeting. Such Owner shall be entitled to appear at such meeting and present his or her case or provide a written response to the Board no later than the time scheduled for such meeting as to why privileges should not be suspended;

(b) *Enforcement by Lien.* If any Owner shall fail or shall refuse to make any payment of any Assessments when due, the amount thereof shall constitute an encumbrance on the entire interest of the said Owner's Lot against which the Assessment has been levied. All of the rights and powers associated with such encumbrance on an Owner's Lot shall be collectively referred to herein as a "Lien." To evidence a Lien for sums assessed pursuant to Article IX, the Association shall prepare a written Notice of Lien setting forth the amount of the Assessment or Assessments, the due date thereof, the amount or amounts remaining unpaid, the name of the Owner, a legal description of the Owner's Lot, and a statement that the amount of the Lien shall also include all costs and expenses, including attorney's fees, incurred in preparation, perfection, and enforcement of the Lien. Such Notice of Lien shall be signed and acknowledged by a duly-authorized agent of the Association and shall be recorded in the office of the County Recorder of Weber County, State of Utah. No Notice of Lien shall be recorded until there is a delinquency in the payment of an Assessment. Such Lien maybe enforced by sale or foreclosure of the Owner's interest in said Owner's Lot by the Association or its duly-authorized agent. Such sale or foreclosure shall be conducted in accordance with the provisions of Utah law applicable to the exercise of the powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by the laws of the State of Utah. The Lien may be satisfied and released upon payment to the Association, in cash or certified funds, the amount set forth in the Lien, all of the Association's expenses and attorney's fees incurred in the preparation, perfection, and enforcement of the Lien, and any Assessments against the Lot which may have become due since the date of said Lien.

The Association shall have the right and power to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Lot.

11.04 *Priority of Lien.* Upon recordation of the Notice of Lien, the Lien provided for herein shall be a charge or encumbrance upon the Owner's interest in the Lot prior to all other liens and encumbrance, recorded or unrecorded, except only tax and Special Assessment liens on the Lot in favor of any municipal assessing or taxing district and any encumbrances on the interest of the Owner recorded prior to the date when such Notice of Lien is recorded which, by law, would be a lien prior to subsequently-recorded encumbrances.

ARTICLE XII Roadways

12.01 *Limited Use.* Subject to the limitations herein set forth, the Roadways shall be and remain for the use and benefit of all Owners as Roadways for access, ingress and egress to and from the Lots and other improvements on the Project, unless and until the Owners unanimously agree to change such use. No change of use of the Roadways shall be effective unless and until there shall be recorded in the Office of the County Recorder of Weber County, State of Utah, a written instrument duly executed and acknowledged by all Owners agreeing to such change in use.

12.02 *Easements and Rights.* Every Owner shall have a non-exclusive right and easement to use and enjoy the Roadways for access, ingress and egress to and from the Lots and Common Area, except that this grant of easement shall not be construed to grant to any Owner any right of easement for any purpose across the Lot of any other Owner. The right and easement granted hereby shall be appurtenant to and shall pass with title to each and every Lot subject to:

- (a) the right of the Association to levy and collect Regular Assessments and Special Assessments as provided herein;
- (b) the right of the Association to make reasonable Rules and Regulations governing the use of the Roadways pursuant to the authority granted herein;
- (c) the right of the Association to dedicate or transfer all or any part of the Roadways to any public agency, authority or utility subject to such conditions as may be agreed to by the Owners and subject to the Mortgagee's right provided for herein.

12.03 *Delegation of Use.* Any Owner may delegate to the members of his family and to his guests, invitees or licensees, in accordance with the reasonable Rules and Regulations promulgated by the Association, such Owner's right to use and enjoy the Roadways in a manner consistent with the provisions hereof. Any Owner may also assign or delegate to his tenants and shall be deemed to have assigned to any contract purchaser who resides upon the Lot, also in accordance with the reasonable Rules and Regulations promulgated by the Association, such Owner's right and easement to use and enjoy the Roadways.

12.04 *Management of Roadways.* The Association, subject to the rights and duties of Owners as set forth in this Declaration, shall be singularly responsible for the management, control, operation, care, maintenance, repair, replacement and upkeep of the Private Roadways, unless and until such responsibility is transferred to, and accepted by, a public agency, authority or utility in accordance with the provisions hereof. The maintenance, repairs, replacement and upkeep of the Roadways shall include, but is not limited to, plowing of snow, requiring adequate crack sealing, seal coat, patching and overlay.

12.05 *Dedication of Roadways.* Subject to Section 12.04, the Association shall have the right to dedicate or transfer all or any part of the Roadways to any public agency, authority or utility for continued use as access, ingress and egress to and from the Lots and Common Area and subject to such conditions as may be agreed to by the Association and subject to the approval of the Owners and to the rights of Mortgagees as provided for herein, together with the approval of the public agency, authority or utility. Any such dedication shall be approved by the Owners the rights of Mortgagees as provided for herein. Any such dedication shall be approved by a vote of not less than two-thirds (2/3) of all Lot Owners at a meeting called for such purpose and no such dedication or conveyance shall in any way limit any Owner's right to access to the Lots or Common Area or be effective unless and until there shall be recorded in the office of the County Recorder for Weber County, State of Utah, a written instrument duly executed and acknowledged by the Owners of not less than two-thirds (2/3) of all such Lots agreeing to such dedication or conveyance.

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

ARTICLE XIII

Insurance

13.01 *Types of Insurance.* The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

(a) *Fire and Casualty Insurance.* The Association shall obtain a policy or policies of insurance on the Common Area and Common Facilities in such amounts as shall provide for coverage equal to at least eighty percent (80%) of the aggregate full insurable value for replacement of the Common Area and Common Facilities and all improvements located thereon in the event of damage or destruction from casualty against which such insurance is obtained. Said insurance shall also cover the Units from "stud out". Such insurance shall be written on the "All Risk" special form. The

Association may comply with the above requirements by the purchase of blanket coverage and may elect such deductible provisions as, in the Association's opinion, are consistent with good business practice;

(b) *Public Liability and Property Damage Insurance.* The Association shall obtain a broad form of comprehensive general liability insurance coverage to provide adequate protection against liability for personal injury and property damage in amounts not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence with regard to injury or property damage. Coverage shall include, without limitation, liability in connection with the ownership, operation, maintenance, and other use of the Project and the facilities located therein;

(c) *Workmen's Compensation Insurance.* The Association shall obtain and maintain workmen's compensation and employer's liability insurance and all other similar insurance if there are employees of the Association in the amounts and in the forms now or hereafter required by law during any and all time periods that the Association shall have employees, as defined by law or regulation;

(d) *Fidelity Bond.* The Association may purchase, in such amounts and in such forms as it deems appropriate, a fidelity bond to cover against dishonesty of employees, destruction, theft or disappearance of money or forgery.

13.02 *Form of Insurance.* Insurance coverage relating to the Project, insofar as possible, shall be in the following form:

(a) *Casualty Insurance.* Casualty insurance shall be carried in a form or forms naming the Association as the insured. Each policy shall provide a standard, noncontributory mortgagee clause, as needed, in favor of each Mortgagee which from time to time shall give notice to the Association of its Mortgage. Each policy shall also provide that it cannot be cancelled by the insurance company until after ten (10) days' prior written notice is first given to the Association and to each Mortgagee which has requested such notice in writing. The Association shall furnish or cause to be furnished a certificate of insurance coverage to each Owner and to each Mortgagee requesting the same;

(b) *Directors and Officers Insurance.* Directors and Officers insurance shall protect the Association and its Officers and Directors against liability for acts or omissions of the Association in connection with the ownership, operation, maintenance, or other use of the Project or any part thereof. Each such policy shall provide that it cannot be cancelled by the insurance company until after ten (10) days', prior written notice to the Association, its Officers and Directors, to the Declarant, and to each Mortgagee who has requested such notice in writing;

(c) *Policies.* The Association shall make every effort to secure insurance policies that will provide that any "no other insurance" clause in the policy or policies on the Project shall exclude individual Owner's policies from consideration.

13.03 *Insurance Proceeds.* The Association shall receive the proceeds of any casualty insurance payments made under policies obtained and maintained by the Association pursuant to this Article. To the extent that reconstruction or repair is required herein, all proceeds of such insurance shall be made available as a fund for such reconstruction or repair and shall be disbursed by the Association as provided in Article XIV. To the extent that reconstruction or repair is not required herein and there is a determination that the Project shall be not rebuilt, the proceeds shall be disbursed by the Association to the Owners as provided in Article XIV.

13.04 *Additional Coverage.* The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration in such amounts and in such forms as the Association may deem appropriate from time to time.

13.05 *Adjustment and Contribution.* Exclusive authority to adjust losses under policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

13.06 *Owner's Own Insurance.* Notwithstanding any other provisions of this Article, each Owner shall be responsible to obtain insurance at his or her own expense providing coverage upon his or her Lot, Residential Unit, and any and all other improvements located thereon, his or her personal property, for his or her personal liability, and covering such other risks as he or she may deem appropriate; provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article, and the part of the Unit not insured by the Association's blanket policy.

13.07 *Review of Insurance.* The Association shall review annually the coverage and policy limits of all insurance on the Common Area and Common Facilities and adjust the same at its discretion within the limitations set forth within this Article. Such review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Association may select.

ARTICLE XIV **Damage or Destruction**

14.01 *Damage or Destruction of Lot or Residential Unit.* In the event that a Lot or any improvement located thereon, including a Residential Unit, is damaged or destroyed by fire or other casualty, the Owner thereof shall cause such Lot or Residential Unit to be promptly

repaired, restored, or reconstructed to the extent required to restore the Lot or Residential Unit to substantially the same condition in which it existed prior to the occurrence of the damage or destruction. In addition, if any Common Area is damaged or destroyed in connection with the repair, restoration, or reconstruction of a damaged Lot, then the cost of repair, restoration, or reconstruction of the Common Area so damaged shall be paid by the Owner of the said Lot.

14.02 *Damage or Destruction of Common Area.* In the event that the Common Area or any portion thereof, any improvements constructed on the Common Area, or any Common Facilities are damaged or destroyed by fire or other casualty, the Association shall be responsible to promptly repair, restore, replace, or reconstruct same to the extent required to return them to substantially the same condition in which they existed prior to the occurrence of the damage or destruction. The Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract or other instrument and may take all action which may be necessary or appropriate to exercise the powers herein granted and no consent or other action by any Owner shall be necessary in connection therewith.

14.03 *Repair or Reconstruction.* Repair, restoration, replacement, or reconstruction of damaged portions of the Project as used in this Article means restoring, by whatever means, method, or process that shall be necessary, the damage portions of the Project to substantially the same condition in which it existed prior to the damage, with each Lot and the Common Areas having substantially the same boundaries as before. The term "repair" as used herein shall be deemed to include, without limitation, each and every process or procedure necessary to comply with the intent of the Article.

14.04 *Estimate of Costs.* As soon as practicable after an event causing damage to or destruction of any part of the Common Area and Common Facilities, the Association shall obtain complete and reliable estimates of the costs of repair of that part of the Common Area or Common Facilities damaged or destroyed. As soon as practicable after receiving said estimates, the Association shall diligently pursue to completion the repair of that part of the Common Area and Common Facilities damaged or destroyed.

14.05 *Funds for Reconstruction.* The proceeds of any casualty insurance collected by the Association due to damage to the Common Area or Common Facilities shall be available to the Association for the purpose of repair of the Common Area or Common Facilities. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair, the Association may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair. Such Special Assessment shall be allocated and collected as provided in Section 9.05, except that the vote therein specified shall not be necessary. Further levies may be made in like manner if the proceeds of insurance and the Special Assessment collected prove insufficient to pay the costs of repair.

14.06 *Disbursement of Funds for Repair.* The insurance proceeds received by the Association and any amounts received from Special Assessments made pursuant to Section 14.05 shall constitute a fund for the payment of costs of repair after casualty. It shall be deemed

that the first money disbursed in payment for cost of repair shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair, such balance shall be distributed *pro rata* to the Owners.

ARTICLE XV
Condemnation

15.01 *Condemnation of Lot.* If, at any time or times during the continuance of ownership pursuant to this Declaration, all or part of one or more Lots shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of a Lot, but under threat of condemnation, shall be deemed to be taken by power of eminent domain.

15.02 *Proceeds.* All compensation, damages, and other proceeds from any taking of a Lot by power of eminent domain (hereinafter "the Condemnation Award") shall be made payable to the Owner of each respective Lot so condemned.

15.03 *Termination of Membership.* If all of a Lot is taken by condemnation, or if such a portion of a Lot is taken by condemnation such that the remaining portion of the Lot may not practically or lawfully be used for any purpose permitted in this Declaration, then the membership, vote, easement rights, liability for payment of the Assessments, and all other rights and duties granted by this Declaration which are appurtenant to such Lot shall be and are automatically terminated upon such taken.

15.04 *Remaining Portion of Lot.* If any portion of a Lot shall remain after a complete taking as set forth in Section 15.03, then the remaining portion thereof shall be subject to purchase by the Association, at the sole election of the Association, at the fair market value thereof after such condemnation is complete and less any portion of the Condemnation Award paid to the Owner of such Lot which is properly allocated to such remaining portion of the Lot. Any portions of a Lot so purchased by the Association shall be Common Area.

ARTICLE XVI
Condemnation of Common Area

16.01 *Condemnation of Common Area.* If, at any time or times during the continuance of ownership pursuant to this Declaration, all of any part of the Common Area or Common Facilities shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Area or Common Facilities in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain.

16.02 *Proceeds.* All compensation, damages, and other proceeds from any such taking of Common Area or Common Facilities by power of eminent domain (hereinafter "the

Condemnation Award") shall be made payable to the Association and shall be distributed by the Association as provided herein.

16.03 *Complete Taking.* In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate, and the Condemnation Award shall be allocated among, and distributed to, the Owners in proportion to their respective undivided interests in the Common Area and Common Facilities. For the purposes of this Article, the undivided interest owned in common which shall appertain to each Owner shall be that percentage obtained by dividing one hundred (100) by the number of Lots existing in the Project immediately prior to the condemnation as such number is set forth in the Plat.

16.04 *Partial Taking.* In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) *Allocation of Award.* If apportionment of allocation is established by applicable negotiations, judicial decree, or statute, the Association shall employ such apportionment and allocation to the extent appropriate. Otherwise, as soon as practicable, the Association shall, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) the total amount apportioned to taking of or injury to the Common Area shall be allocated and distributed to all Owners (including Owners whose entire Lots have been taken) in proportion to their respective undivided interests in the Common Area;

(ii) the total amount apportioned to severance damages shall be allocated among, and distributed to, the Owners of those Lots that have not been taken in the proportion that said Owners' undivided interests in the Common Area bears to the total of all such Owners' undivided interests in the Common Area;

(iii) the respective amounts apportioned to the taking of or injury to the particular Lot shall be allocated and distributed to the Owner or Owners of such Lot;

(iv) the total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) distribution of allocated proceeds shall be made by check payable jointly to the each Owner and his or her respective Mortgagees, as appropriate.

(b) *Continuation and Reorganization.* If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate, but shall continue.

(c) *Reconstruction or Repair.* Any reconstruction or repair necessitated by condemnation shall be governed by the procedures specified in Article XIV hereof for cases of damage or destruction.

ARTICLE XVII Mortgage Protection

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

17.02 *Priority of Liens.* No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, Assessments, and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Lot in good faith and for value and recorded prior to the date on which any such assessment became due.

17.03 *Prior Liens Relate Only to Individual Lots.* All taxes, Assessments, and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Lot and not to the Project as a whole.

17.04 *Mortgage Holder Rights in Event of Foreclosure.* Whenever the Mortgagee of a Mortgage of record obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, then such Mortgagee or any purchaser at a foreclosure sale shall take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer except for claims for *pro rata* share of such Assessments or charges resulting from a *pro rata* reallocation of such Assessments or charges to all Lots in the Project, including the mortgaged Lot. Such unpaid share of Assessments shall be deemed to be Common Expenses collectible prospectively *pro rata* from all of the Lots in the Project, including the Lot which has been acquired in accordance with the provisions of this Section.

17.05 *Notice to First Mortgage Holders.* The Association shall give the applicable first Mortgagee, if any, prompt notice of any default in the Lot Mortgagor's obligation under the Declaration not cured within thirty (30) days of default.

17.06 *Matters Requiring Mortgagee Approval.* Notwithstanding any other provision contained within this Declaration, at least two-thirds (2/3) (based upon one vote for each first Mortgage owned per Lot) of the first Mortgagees of any Lot as then appear on the official Records of Weber County, Utah, shall have given their prior written approval before the Association shall be entitled to:

- (a) by act or omission, seek to abandon or terminate the Project;
- (b) change the *pro rata* interest or obligations of any individual Lot for the purpose of levying Assessments or charges or allocating distributions of hazard insurance proceeds or Condemnation Awards;
- (c) by act or omission, seek to abandon, encumber, sell, or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area and Common Facilities by the Project shall not be deemed a transfer within the meaning of this clause); or
- (d) use hazard insurance proceeds for losses to the Project (whether to Common Area or Common Facilities) for other than the repair, replacement, or reconstruction of such property.

17.07 *Amendment.* No provision of this Article XVII shall be amended without the prior written consent of at least two-thirds (2/3) (based on one vote for each Mortgage) of all first Mortgagees as appear on the official records of Weber County, State of Utah, as of the date of the vote regarding such amendment.

ARTICLE XVIII
General Provisions

18.01 *Intent and Purpose.* The provisions of this Declaration and any supplemental or subsequent Declaration or amendments thereto shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of this Planned Residential Unit Development. Failure to enforce any provision, restriction, covenant, or condition of this Declaration, or in any supplemental or subsequent Declaration or amendments hereto shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

18.02 *Interpretation.* Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise limit or affect the content, meaning, or intent of this Declaration or any Article, Section, or provision hereof. The provisions hereof shall be deemed independent and

severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

18.03 *Registration of Mailing Address.* Each Owner shall register from time to time with the Association his or her current mailing address. All notices or demands intended to be served upon any Owner may be sent by First Class U.S. Mail, postage prepaid, addressed to the Owner at his or her last registered mailing address, or, if no address has been registered, to the mailing address of the Lot of such Owner. All notices or demands intended to be served upon the Association may be sent by First Class U.S. Mail, postage prepaid, addressed to the Association at the address of its offices as may be furnished to the Owners in writing from time to time. Any notice or demand referred to in this Declaration shall be deemed given when deposited in the U.S. Mail, postage prepaid, and in the form provided for in this Section.

18.04 *Audit.* Any Owner may, at any reasonable time, upon appointment and at his or her own expense, cause an audit or inspection to be made of the books and records maintained by the Association.

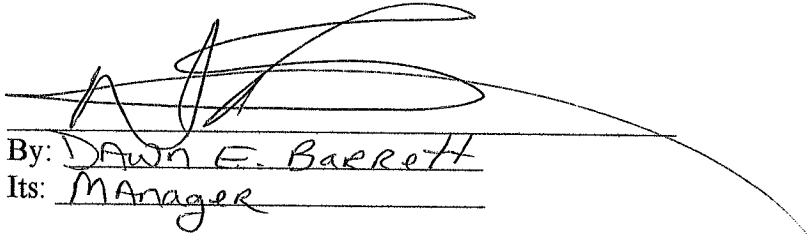
18.05 *Amendment.* Except as otherwise provided herein, this Declaration may be amended if Owners holding at least two-thirds (2/3) of the total votes of the Association consent and agree to such amendment by instruments duly recorded in the office of the County Recorder for Weber County, State of Utah. For purposes of amending these covenants by two-thirds vote, the Owner of Tract 2 shall be deemed to hold 51% of the votes of the Association with the other 49% being deemed to be held by the remaining Owners pro rata. Notwithstanding the foregoing, the Declarant reserves the right to unilaterally amend any of the provisions of this instrument without the consent of any owner of any Tract or Lot in the Property until December 31, 2027, except that for any amendment exercised under said power, Declarant shall obtain the written consent of VH Prom, LLC which consent shall not be unreasonably withheld by VH Prom, LLC.

18.06 *Owner's Obligations.* All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that said Owner may be leasing, rent, or selling his or her Lot. The Owner of a Lot within the Project shall have no obligation for expenses or other obligations (except interest on prior obligations) accruing after the conveyance of such Lot to a subsequent Owner.

18.07 *Effective Date.* This Declaration and every provision hereof shall take effect upon recording.

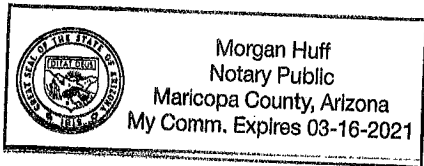
DECLARANT:

MOUNTAIN VISTA TRAILS, LLC


By: Dawn E. Barrett
Its: Manager

STATE OF Arizona)
)
COUNTY OF Maricopa)
)
:SS

On this 06 day of November, 2017, personally appeared before me Dawn Barrett, known to me to be the Manager of Mountain Vista Trails, LLC, and known to me to be the person who executed the within instrument on behalf of said entity.



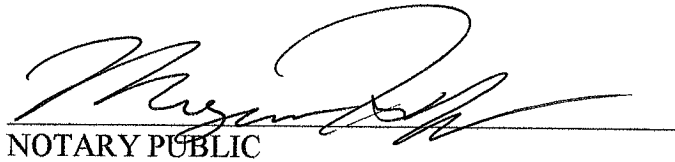

NOTARY PUBLIC

EXHIBIT "A"

EXHIBIT "A"**LEGAL DESCRIPTION
PHASE 1, PROMINENCE POINT SUBDIVISION**

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

BEGINNING AT A POINT THAT LIES S00°20'01"W ALONG THE LINE BETWEEN THE NORTHWEST CORNER AND THE SOUTHWEST CORNER OF SAID SECTION 5, 281.36 FEET AND S89°39'59"E 3072.55 FEET AND N00°20'01"E 345.08 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 5; AND RUNNING THENCE ALONG THE SOUTHERLY LINES OF ROYLANCE FARMS P.R.U.D. PHASE 2, 3rd AMENDMENT THE FOLLOWING TWO (2) COURSES; (1) N20°28'01"E 31.66 FEET; (2) N89°04'38"E 230.59 FEET TO THE SOUTHWEST CORNER OF ROYLANCE FARMS PHASE 4; THENCE ALONG THE SOUTHERLY LINES OF ROYLANCE FARMS PHASE 4, THE FOLLOWING FOUR (4) COURSES; (1) N88°01'08"E 377.46 FEET; (2) N88°36'08"E 543.60 FEET; (3) N00°48'08"E 3.79 FEET; (4) S89°44'26"E 169.02 FEET TO A POINT ON THE WESTERLY LINE OF ROYLANCE FARMS COMMERCIAL SUBDIVISION; THENCE ALONG THE BOUNDARY OF ROYLANCE FARMS COMMERCIAL SUBDIVISION THE FOLLOWING TWO (2) COURSES; (1) S00°50'00"W 59.79 FEET; (2) S89°42'34"E 57.72 FEET; THENCE SOUTH 58.10 FEET; THENCE WEST 599.29 FEET; THENCE ALONG A NON-TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 847.10 FEET, AN ARC LENGTH OF 96.01 FEET, A DELTA ANGLE OF 06°29'37", A CHORD BEARING OF S14°16'43"W, AND A CHORD LENGTH OF 95.95 FEET; THENCE WEST 347.95 FEET; THENCE N00°00'01"E 96.45 FEET; THENCE WEST 4.66 FEET; THENCE S87°51'30"W 10.97 FEET; THENCE S87°51'30"W 146.26 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 17.23 FEET, AN ARC LENGTH OF 1.86 FEET, A DELTA ANGLE OF 06°10'23", A CHORD BEARING OF S84°46'18"W, AND A CHORD LENGTH OF 1.86 FEET; THENCE S83°00'00"W 156.50 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 5.26 FEET, A DELTA ANGLE OF 10°03'02", A CHORD BEARING OF S77°58'29"W, AND A CHORD LENGTH OF 5.26 FEET; THENCE N50°00'00"W 121.70 FEET TO THE POINT OF BEGINNING.

CONTAINING 173,038 SQUARE FEET OR 3.972 ACRES MORE OR LESS

TOGETHER WITH THE FOLLOWING TWO (2) RECIPROCAL ACCESS EASEMENTS:

RECIPROCAL ACCESS EASEMENT A

PART OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 6 NORTH, RANGE 1 WEST, AND ALSO PART OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 7 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. A 13' ACCESS AND UTILITY EASEMENT, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT LIES S00°20'01"W ALONG THE LINE BETWEEN THE NORTHWEST CORNER AND THE SOUTHWEST CORNER OF SAID SECTION 5, 282.26 FEET AND S89°39'59"E 3491.26 FEET AND N00°20'01"E 108.93 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 5; AND RUNNING THENCE WEST 115.32 FEET; THENCE S84°41'03"W 150.65 FEET; THENCE S89°54'06"W 76.55 FEET; THENCE ALONG A NONTANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 8.56 FEET, A DELTA ANGLE OF 16°21'23", A CHORD BEARING OF N81°49'19"W, AND A CHORD LENGTH OF 8.54 FEET; THENCE N73°38'37"W 38.01 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 10.74 FEET, A DELTA ANGLE OF 20°30'51", A CHORD BEARING OF N63°23'12"W, AND A CHORD LENGTH OF 10.68 FEET; THENCE N53°07'46"W 6.98 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 27.82 FEET, A DELTA ANGLE OF 53°07'46", A CHORD BEARING OF N26°33'53"W, AND A CHORD LENGTH OF 26.83 FEET; THENCE NORTH 19.96 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 20.94 FEET, A DELTA ANGLE OF 40°00'00", A CHORD BEARING OF N20°00'00"E, AND A CHORD LENGTH OF 20.52 FEET; THENCE N40°00'00"E 106.80 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 22.51 FEET, A DELTA ANGLE OF 43°00'00", A CHORD BEARING OF N61°30'00"E, AND A CHORD LENGTH OF 21.99 FEET; THENCE N83°00'00"E 156.50 FEET; THENCE ALONG A NON-TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 17.23 FEET, AN ARC LENGTH OF 1.86 FEET, A DELTA ANGLE OF 06°10'23", A CHORD BEARING OF N84°46'18"E, AND A CHORD LENGTH OF 1.86 FEET; THENCE N87°51'30"E 135.29 FEET; THENCE N87°51'30"E 21.94 FEET; THENCE EAST 4.66 FEET; THENCE S00°00'01"W 13.00 FEET; THENCE WEST 4.41 FEET; THENCE S87°51'30"W 21.70 FEET; THENCE S87°51'30"W 135.29 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 4.23 FEET, AN ARC LENGTH OF 0.55 FEET, A DELTA ANGLE OF 07°30'48", A CHORD BEARING OF S84°06'06"W, AND A CHORD LENGTH OF 0.55 FEET; THENCE S83°00'00"W 156.70 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 17.00 FEET, AN ARC LENGTH OF 12.76 FEET, A DELTA ANGLE OF 43°00'00", A CHORD BEARING OF S61°30'00"W, AND A CHORD LENGTH OF 12.46 FEET; THENCE S40°00'00"W 106.80 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 17.00 FEET, AN ARC LENGTH OF 11.87 FEET, A DELTA ANGLE OF 40°00'00", A CHORD BEARING OF S20°00'00"W, AND A CHORD LENGTH OF 11.63 FEET; THENCE SOUTH 19.96 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 17.00 FEET,

AN ARC LENGTH OF 15.76 FEET, A DELTA ANGLE OF 53°07'46", A CHORD BEARING OF S26°33'53"E, AND A CHORD LENGTH OF 15.21 FEET; THENCE S53°07'46"E 6.98 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 17.00 FEET, AN ARC LENGTH OF 6.09 FEET, A DELTA ANGLE OF 20°30'51", A CHORD BEARING OF S63°23'12"E, AND A CHORD LENGTH OF 6.05 FEET; THENCE S73°38'37"E 38.01 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 17.00 FEET, AN ARC LENGTH OF 4.84 FEET, A DELTA ANGLE OF 16°19'26", A CHORD BEARING OF S81°48'20"E, AND A CHORD LENGTH OF 4.83 FEET; THENCE N89°54'06"E 75.95 FEET; THENCE N84°41'03"E 150.66 FEET; THENCE EAST 115.92 FEET; THENCE S00°00'01"W 13.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 11,761 SQUARE FEET OR 0.270 ACRES MORE OR LESS

RECIPROCAL ACCESS EASEMENT B

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

BEGINNING AT A POINT THAT LIES S00°20'01"W ALONG THE LINE BETWEEN THE NORTHWEST CORNER AND THE SOUTHWEST CORNER OF SAID SECTION 5, 282.26 FEET AND S89°39'59"E 3859.22 FEET AND N00°20'01"E 282.09 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 5; AND RUNNING THENCE ALONG A NON-TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 847.10 FEET, AN ARC LENGTH OF 13.27 FEET, A DELTA ANGLE OF 00°53'50", A CHORD BEARING OF N11°28'50"E, AND A CHORD LENGTH OF 13.27 FEET; THENCE EAST 599.29 FEET; THENCE NORTH 13.00 FEET; THENCE EAST 65.10 FEET; THENCE SOUTH 119.94 FEET; THENCE S89°10'16"E 101.48 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF WASHINGTON BOULEVARD; THENCE SOUTH ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 26.00 FEET; THENCE N89°10'16"W 127.48 FEET; THENCE NORTH 119.56 FEET; THENCE WEST 641.02 FEET TO THE POINT OF BEGINNING.

CONTAINING 15,252 SQUARE FEET OR 0.350 ACRES MORE OR LESS

LEGAL DESCRIPTIONS
PHASE 2, PROMINENCE POINT SUBDIVISION

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

BEGINNING AT THE SOUTHEAST CORNER OF LOT 25, ROYLANCE FARMS P.R.U.D. PHASE 2, 3rd AMENDMENT SAID POINT BEING S00°20'01"E ALONG THE LINE BETWEEN THE NORTHWEST CORNER AND THE SOUTHWEST CORNER OF SAID SECTION 5, 281.36 FEET AND S89°39'59"E 3072.55 FEET AND N00°20'01"E 345.08 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 5; AND RUNNING THENCE S50°00'00"E 121.70 FEET; THENCE ALONG A NON-TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 17.25 FEET, A DELTA ANGLE OF 32°56'58", A CHORD BEARING OF S56°28'29"W, AND A CHORD LENGTH OF 17.02 FEET; THENCE S40°00'00"W 106.80 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 20.94 FEET, A DELTA ANGLE OF 40°00'00", A CHORD BEARING OF S20°00'00"W, AND A CHORD LENGTH OF 20.52 FEET; THENCE S00°00'00"E 19.96 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 27.82 FEET, A DELTA ANGLE OF 53°07'46", A CHORD BEARING OF S26°33'53"E, AND A CHORD LENGTH OF 26.83 FEET; THENCE S53°07'46"E 6.98 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 10.74 FEET, A DELTA ANGLE OF 20°30'51", A CHORD BEARING OF S63°23'12"E, AND A CHORD LENGTH OF 10.68 FEET; THENCE S73°38'37"E 38.01 FEET; THENCE ALONG A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 8.56 FEET, A DELTA ANGLE OF 16°21'23", A CHORD BEARING OF S81°49'19"E, AND A CHORD LENGTH OF 8.54 FEET; THENCE N89°54'06"E 76.55 FEET; THENCE N84°41'03"E 150.65 FEET; THENCE N90°00'00"E 115.32 FEET; THENCE N00°00'01"E 91.02 FEET; THENCE N90°00'00"E 347.95 FEET; THENCE ALONG A NON-TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 847.10 FEET, AN ARC LENGTH OF 40.86 FEET, A DELTA ANGLE OF 02°45'49", A CHORD BEARING OF S18°54'26"W, AND A CHORD LENGTH OF 40.86 FEET; THENCE S69°42'39"E 88.96 FEET; THENCE S26°44'46"W 140.99 FEET TO A POINT ON THE NORTH LINE OF THE VILLAGE AT PROMINENCE POINT; THENCE WEST ALONG THE NORTH LINE OF VILLAGE AT PROMINENCE POINT, 980.15 FEET TO THE SOUTHEAST CORNER OF LOT 32, ROYLANCE FARMS P.R.U.D. PHASE 2, 3rd AMENDMENT; THENCE ALONG THE EASTERLY LINES OF ROYLANCE FARMS P.R.U.D. PHASE 2, 3rd AMENDMENT THE FOLLOWING FIVE (5) COURSES; (1) NORTH 72.15 FEET; (2) N85°09'01"E 12.61 FEET; (3) N08°23'50"E 118.26 FEET; (4) N55°25'02"E 197.79 FEET; (5) N20°28'01"E 44.18 FEET TO THE SOUTHEAST CORNER OF LOT 25, ROYLANCE FARMS P.R.U.D. PHASE 2, 3rd AMENDMENT, SAID POINT ALSO BEING THE POINT OF BEGINNING.

CONTAINING 171,386 SQUARE FEET OR 3.934 ACRES MORE OR LESS

TOGETHER WITH THE FOLLOWING RECIPROCAL ACCESS EASEMENT:

A 26 FOOT RECIPROCAL ACCESS EASEMENT BEING PART OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 6 NORTH, RANGE 1 ~~EAST~~, WEST SALT LAKE BASE AND MERIDIAN, U.S. SURVEY AND BEING 13 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT, SAID POINT BEING S00°20'01"W ALONG THE LINE BETWEEN THE NORTHWEST AND NORTHEAST CORNERS OF SECTION 5, 172.78 FEET AND S89°39'59"E 3585.19 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 5; THENCE EAST 29.03 FEET; THENCE S78°51'48"E 125.92 FEET; THENCE S63°31'54"E 49.53 FEET; THENCE ALONG A NON-TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 847.10 FEET, AN ARC LENGTH OF 66.92 FEET, A DELTA ANGLE OF 04°31'33", A CHORD BEARING OF S29°51'59"W, AND A CHORD LENGTH OF 66.90 FEET; THENCE ALONG A COMPOUND CURVE TURNING TO THE RIGHT WITH A RADIUS OF 847.10 FEET, AN ARC LENGTH OF 56.63 FEET, A DELTA ANGLE OF 03°49'48", A CHORD BEARING OF S34°02'40"W, AND A CHORD LENGTH OF 56.62 FEET; THENCE ALONG A REVERSE CURVE TURNING TO THE LEFT WITH A RADIUS OF 744.61 FEET, AN ARC LENGTH OF 217.39 FEET, A DELTA ANGLE OF 16°43'38", A CHORD BEARING OF S24°16'16"W, AND A CHORD LENGTH OF 216.61 FEET; THENCE ALONG A COMPOUND CURVE TURNING TO THE LEFT WITH A RADIUS OF 1420.00 FEET, AN ARC LENGTH OF 354.19 FEET, A DELTA ANGLE OF 14°17'29", A CHORD BEARING OF S07°02'19"W, AND A CHORD LENGTH OF 353.27 FEET; THENCE SOUTH 100.50 FEET TO THE POINT OF TERMINUS. THE SIDES OF SAID EASEMENT EXTENDING TO OR TERMINATING AT GRANTOR'S PROPERTY LINE.

EXHIBIT "B"

Amended Agreement # A29-2017

THE VILLAGE AT
PROMINENCE POINT
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, hereinafter ("Agreement"), is made and entered into this 6th day of November, 2017, by and among Meritage Companies, LLC, an Alaskan limited liability company (Alaska Entity #10014218) and Mountain Vista Trails, LLC, a Utah limited liability company (Utah Entity #10420822-0160), (hereinafter collectively "Developer") as the owner and developer of certain real property located in North Ogden City, Weber County, Utah, at approximately 1750 North 200 East, and NORTH OGDEN CITY, (hereinafter "the City"), a Utah Municipal Corporation. Developer and the City shall hereinafter be collectively referred to as "Parties" and sometimes individually as a "Party".

RECITALS:

A. Developer is the owner of approximately 34 +/- acres of real property ("Parcel A") located in North Ogden City, Weber County, Utah, which it intends to develop as a Mixed Use Development. A legal description of the property is attached hereto as Exhibit "A".

B. SITE INFORMATION

Tax Lots:	110140048, 110140069, 110140070, 110140071, 110140072, 110140016, 110140062, 110140066, 110140065, 110140064, 110170063
Current Zoning:	Commercial (C-2), County A1-A2 Agricultural
General Plan:	Southtown Mixed Use (SMU), County Mixed Use and Residential
Location:	The subject property is located within the North Ogden City limits and in an unincorporated island

of Weber County entirely surrounded by North Ogden City corporate limits. The proposed project is located on the west side of Washington Blvd, north of 1700 North.

The property is more specifically located within North Ogden City's general plan and identified as MU or mixed use. The existing zoning for the site is C-2 but the proposal is based upon a rezone to include MPC Masterplan Community Zone

- C. The subject property is zoned Master Plan Community by North Ogden City and A1-A2 Agricultural by Weber County and is designated as mixed use (MU) zone on the North Ogden City General Plan Map and mixed use and residential in the Weber County General Plan.
- D. The subject property is bounded on the west by the R-4 future independent living, assisted living and memory care facility. The other adjacent lots are agricultural in nature.
- E. Developer also has acquired rights to purchase adjoining property currently owned by the Hales Trust which will be developed as part of Parcel A.
- F. The Parties jointly agree that the City will benefit from all aspects of this proposed development.
- G. The Parties desire to enter into terms relevant to Developer's proposed development as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and considerations as more fully set forth below, Developer and The City hereby agree as follows:

1. **Recitals.** The above recitals are incorporated herein by reference and made a part hereof.
2. **Rezone.** The City agrees to rezone only the subject property as described in the

legal description in Exhibit "A" to Master Planned Community (MPC) zone.

3. **Intended Use.** The Developer agrees that only the proposed Mixed Use Development will be allowed or authorized under the terms of this Agreement or on Parcel A as approved by the City under the MPC zone.
4. **Development Terms.** The following constitutes terms for development of the Parcels.
 - a. Concept Approval. The North Ogden City Council has approved the Developer's proposed concept and has entered into this agreement to facilitate the Developer to develop the subject Property as proposed.
 - b. Compliance with Subdivision Standards. Developer agrees to comply with all of the conditions of approval, the ordinances, rules, regulations, requirements, and standards of the City with respect to the preparation, submission, and recording of the subdivision application. All preliminary and final plats, the construction and completion of said development, particularly to the installation and completion of all required subdivision improvements and the provision of the financial guarantee guaranteeing completion of such improvements (the "Subdivision Guarantee"), will be consistent with current City Ordinances.
 - c. Phasing and Project Division. The Parcels may be developed in any order or phasing as best seen fit by the Developer. However, all terms related to the completion of landscaping and commercial space remain in force as describe in other locations of this document. For purposes of this development agreement the project shall be divided into the following

five development areas as shown on Exhibit B:

- i. Commercial Area, which is the area directly adjacent to Washington Blvd.
- ii. Apartment Area, which is the area directly west of the Commercial Area and includes all 24 individual apartment buildings.
- iii. Townhome Area, which is the area directly west and north of the Apartment Area and includes all 107 townhome units.
- iv. Age Restricted Cottages, which is the northwestern most corner of the project and includes 28 patio home units.
- v. Independent Living Facility, which are one building containing four stories and 68 units.

5. **Vesting.**

- a. The Developer shall have the vested right to develop Parcel A in accordance with the applicable land use ordinances of North Ogden City as established on the date of this Agreement as well as per the terms of this Agreement. Except as set forth in 5.b., the City's future laws are not applicable to the Project.
- b. Exceptions:
 - i. The restrictions on the applicability of the City's Future Laws to the Project as specified in Section 5(a) are subject to only the following exceptions:
 - ii. Developer Agreement. City's Future Laws that Developer agrees

- in writing to the application thereof to the Project;
- iii. State and Federal Compliance. City's Future Laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;
 - iv. Building Codes. City's Future Laws and safety standards that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet countervailing public safety concerns related to public health, safety or welfare.
 - v. Roads. Reasonable requirements for roadway grades, widths, access points, maintenance, and standards.
 - vi. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
 - vii. Fees. Changes to the amounts of fees for the processing of Development Applications, or impact fees that are generally applicable to all development within the City (or a portion of the

City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law. Developer is vested in the fees in place at the time a complete application is submitted.

Specifically, Developer will only pay impact fees legally in place on the date a complete building permit application is submitted to the City.

- viii. Compelling, Countervailing Interest. Laws, rules, or regulations that the City's land use authority finds on the record are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code.

6. Existing On-Site Conditions.

- a. There are two distinct areas of the proposed project. They are as follows:
 - i. The 18.26 acre parcel "Southern Property" is largely undeveloped but is currently under construction with the proposed subdivision improvements with the construction of 1700 North. Smaller dilapidated structures along Washington Blvd. have been removed and the property is within the corporate limits of North Ogden City.
 - ii. The 14.8 + or - acres of largely undeveloped ground "Northern Property" is currently in the process of being annexed into the North Ogden City Limits.

- b. The subject property slopes generally downhill from the northeast to the southwest at an average slope of about 1%. The vegetation present on the property includes native shrubs and grasses.
7. **Conformance with North Ogden General Plan.**
- a. Residential Density.
 - i. This proposal consists partly of multi-family housing, which is listed as a permitted use in the MPC zone. It is also consistent with the desire to provide increased density along Washington Blvd. and a mix of housing types. The multi-family housing complex will contain amenities for residences, including a clubhouse, pool, large greenspace, and associated smaller pocket parks. Developer will provide for at least one pathway with public access to connect to the public sidewalks on the north at 300 East and south at 1700 North, and east at Washington Blvd. and west at the assisted living facility.
 - ii. The setbacks are approved as shown on the Preliminary Master Plan for the individual buildings/groups of buildings which may be different than is currently anticipated in the MPC zone. Preliminary Master Plan dated 10-3-17 attached as Exhibit L
 - iii. The subject property is within the North Ogden Southtown area and is allowed as a MPC zone based upon satisfying the 5 acre minimum parcel development. The density in the amended MPC zone will result in 404 apartment units in 24 multifamily

buildings; 107 Town Home units; 28 single family age restricted Patio Home lots; and 68 units of Independent Living Facility resident units as shown on Exhibit B, F, and L..

- iv. The density allowed shall not override the setbacks between buildings and property lines as approved on the Preliminary Master Plan dated 10-3-17 and attached as Exhibit L. Any unidentified setbacks and distances shall be rounded up to the closest ½ foot as measured on a 24x36 plan sheet.

8. **Conformance with MPC Requirements**

- a. The Development has been shown to be in compliance with the terms and conditions expressed in the MPC Zone under 11-7K-2. Any modifications to the MPC zone or any other development standards are clearly identified in this Agreement pursuant to 11-7K-5. Any standards which are not specifically waived by this Agreement, or subsequent agreements, will be complied with by Developer and City. The modification of the standards is acceptable under the MPC zone to accommodate favorable design and other concessions of the Parties.
- b. The City Council has considered the items outlined in 11-7K-2 to assess the suitability of Parcel A to be zoned under the MPC zone and finds that the majority are in favor of this Project and Agreement moving forward.

9. **Building Height.**

- a. The subject property is within the MPC zone, an area that contains special height allowances based upon setbacks and separations. In the

Apartment Area the Developer will build mostly three-story structures; however, some four-story end units have been included to provide variety in exterior elevation design. The building height of the three-story apartments is approximately 42' to the ridgeline. Four-story units have approximately 51' of overall height to the peak ridgeline. There will be a maximum number of 5 (five) 51' buildings.

- b. The maximum building height in the Townhome Area directly adjacent to the northern property line is thirty-one (31) feet with a corresponding twenty (20) foot setback from the property line. All other Townhomes Areas are allowed to build to forty five (45) feet with setbacks between buildings and property lines as shown on Exhibit L.
- c. The maximum building height in the Age Restricted Cottages is twenty-four (24) feet, or must comply with the one foot (1') additional setback over twenty feet (20') for each one foot (1') in height up to a maximum of thirty five feet (35')
- d. The maximum building height in the Independent Living Area is forty (40) feet for the western portion and fifty (50) feet for the eastern portion.
- e. The maximum building height in the Commercial Area is thirty-five (35) feet.

10. **Architectural Design Standards.**

a. Commercial Area.

- i. All site plans, landscape plans, and building elevations shall be approved by the City Council as identified in section 23.

b. Apartment Area.

- i. All buildings shall incorporate design features such as offsets, balconies, projections, window reveals, or similar elements to preclude large expanses of uninterrupted building surfaces. Recesses (e.g., deck, patios, courtyards, entrances, or similar features) shall have a minimum depth of six feet. All building elevations adjacent to a public street right-of-way are provided with doors, porches, balconies, sidewalks, approaches, and/or windows to give the appearance of the building fronting on the public street. Unit entries are from breezeways typical on all units. All buildings have units that front facing units. There are no backyards or rear yards for ground floor units. Units that front along 1700 North have front yards and may not have ground floor decks and/or enclosed ground floor patios.
- ii. The building design incorporates offsets, decks and windows. Larger building masses will be divided into varying heights and sizes by breaking up building sections, or by the use of such elements as variable planes, projections, bays, dormers, setbacks, roof canopies, and changes in the roofline. Each building elevation has been designed and approved as shown in Exhibit "E". Building designs may be used in multiple locations throughout the Project; however, no two identical buildings shall

be constructed next to each other unless clearly identified on Exhibit "B".

- iii. Exterior materials, color, or textures on vertical surfaces shall be of cementitious siding and stone veneer, with the exceptions of windows and doors. Developer has provided material specifications identifying the grade of materials, a color palette has been submitted as shown on Exhibit "G", and a detail of the maintenance set aside with the lending institution to the City. The building scale shall be broken down with vertical board and batten compendious panel on the second and third floors. The ground floor shall have cementitious siding combined with stone piers to help establish more permanence and offset and screen garage door locations.
 - a. After installation, all stone veneer and similar products shall be sealed with a product designed for commercial application to prevent weathering and fading. Landscaping shall be consistent with section 15.
 - b. All cementitious siding and wood trim shall be primed on all six sides, or otherwise properly sealed, to provide for long lasting workmanship.
 - c. All roofing material shall be 30 year minimum warranty with an architectural tab.

- iv. Private open space areas shall be provided. These spaces will be enclosed with metal railings and all apartment housing units will have balconies or decks. The windows shall be Millguard Montecito or similar grade. All vents, or cavities in vertical surfaces shall be similar in color to the buildings and in no case shall be white.
 - v. A preliminary signage plan is attached as Exhibit "I". Final signage shall be approved by the Planning Commission.
- c. Townhome Area:
- i. Exterior materials, on vertical surfaces shall be of cementitious siding, hardboard, and stone veneer, with the exceptions of windows and doors.
 - a. After installation, all stone veneer and similar products shall be sealed with a product designed for commercial application to prevent weathering and fading. Natural stone is not required to be sealed. Landscaping shall be consistent with section 15.
 - b. All cementitious siding and wood trim shall be primed on all six sides, or otherwise properly sealed, to provide for long lasting workmanship.
 - c. All roofing material shall be 30 year minimum warranty with an architectural tab.

- ii. The building elevations, colors, and site plans shall be approved by the City Planner and Mayor, provided that all setbacks as shown on Exhibit L and outlined in Subsection 7 are maintained and the number of parking stalls is not reduced.
- d. Age Restricted Cottages.
 - i. Exterior materials, on vertical surfaces shall be of cementitious siding, hardboard, and stone veneer, with the exceptions of windows and doors.
 - a. After installation, all stone veneer and similar products shall be sealed with a product designed for commercial application to prevent weathering and fading. Natural stone is not required to be sealed. Landscaping shall be consistent with section 15.
 - b. All cementitious siding and wood trim shall be primed on all six sides, or otherwise properly sealed, to provide for long lasting workmanship.
 - c. All roofing material shall be 30 year minimum warranty with an architectural tab.
 - ii. The building elevations, colors, and site plans shall be approved by the City Planner and Mayor, provided that all setbacks as shown on Exhibit L and outlined in Subsection 7 are maintained and the number of parking stalls is not reduced.
- e. Independent Living Area.

- i. All site plans, landscape plans, and building elevations shall be approved by the City Council and shall utilize similar materials, colors, plants, and themes as identified in the Apartment Area.
11. **Density.** The maximum number of dwelling units shall be up to 607 units as indicated in section 7 above. Buildings shall be laid out as identified on Exhibit L and as clarified under subsection 7 above. All Area Site Plans for phasing purposes shall comply with the standards and requirements of this Development Agreement and any subsequent amendments.
12. **Design.** Developer shall provide a variety and mixture of unit types and densities in a coordinated neighborhood layout. Developer shall install street, sidewalks, and building locations as outlined in the attached site plan to create streetscapes that are safe and accessible for all modes of transportation and to allow for convenient pedestrian and bicycle circulation to all trail connections. Trash receptacles shall have lids and are located next to parking, and shall have walls of 7'-0" feet in height, and shall be screened on at least three sides with an evergreen hedge material. Receptacles will be located on the site for easy access by trash pick-up vehicles.
13. **Streets.** All streets are being improved in association with North Ogden City requirements. No public streets will be required internally in the development; however, 1700 North and Washington Boulevard provide public access to the development and private streets shall service the internal development needs. The North/South road which runs into 300 East will have a public access easement should a connection to 300 East ever be made. No private streets may

be closed to access by the general public, or fire and emergency vehicles. Notwithstanding the foregoing developer may restrict access to the Cottage Development Area as approved by the First Marshal. The design shows a private road with 26 feet of pavement width and the dimension as shown on Exhibits "B" & "H". The final plat shall include language prohibiting the landowner from restricting the use of the private streets or sidewalks. Pedestrian right-of-ways that connect all building entrances within the development to one another shall be created. Developer shall connect to all parking areas, storage areas, recreational and common areas, and adjacent development to the building's entrances and exits throughout the development site, and connect to all future phases of development. Developer shall include public paths to connect the North/South and East/West property lines, along with a public park in the detention basin. Developer shall provide pedestrian facilities within developments that are safe, accessible, reasonably direct, and convenient connections between primary building entrances and all adjacent streets that do not involve a significant amount of out-of-direction travel for users. Developer shall create bicycling and pedestrian routes that are free from hazards and safely designed by ensuring no hidden corners, sight-obscuring fences, dense vegetation or other unsafe conditions. All pedestrian access routes will comply with all applicable accessibility requirements. Where walkways are parallel and abut a driveway or street (public or private), they shall be raised six inches and curbed, or separated from the driveway/street by a five-foot minimum, landscaped strip.

14. **Access.** The proposal shall include a total 3 main road access points and one future secondary access point. All of the main access points are proposed on private local streets whose entry point begins at both 1700 North and Washington Boulevard which are both public roads. The secondary access point may be provided via connection to 300 East, such that no structure shall be placed within twenty (20) feet of the proposed future connection point and a public easement for roadway purposes shall be recorded during the subdivision phase of the Townhome Area. Private roads, parking, and access points shall be constructed according to necessary engineering standards as shown and approved in Exhibit M. The proposed access points are on internal private streets with public access and thus will not adversely impact the transportation system. Also, as designed, the access points are well spaced to accommodate the proposed development and (orientated across from one another) improve site circulation.

A fire equipment access drive shall be provided for any portion of an exterior wall of the first story of a building that is located more than 150 feet from an existing public street or an approved fire equipment access drive as measured around the building. A Fire Plan to be attached as Exhibit "H" shall be approved by the Technical Review Committee and Fire Marshal. Driveways, required parking areas, aisles, and turn-around shall be paved with asphalt, concrete, or comparable surfacing.

15. **Landscaping.**
- a. Plant selection and native vegetation shall be planted where practical. A combination of live deciduous and evergreen trees, shrubs, and ground

covers shall be used for all planted areas, the selection of which shall be based on local climate, exposure, water availability, and drainage conditions. Ground-level areas for passive pedestrian use, such as sidewalks and plazas cover approximately 207,924 GSF or roughly 13 percent of the site area. Developer shall provide approximately 297,982 GSF of drivable surfaces or roughly 37.5% of the site area. Developer shall provide at least 20% of the site in landscaping as shown on the attached approved Preliminary Landscaping Plan as Exhibit "C". A final Landscape Plan shall be approved by the Planning Commission which includes the number of plants, size, species, and other technical information for each phase and/or development area of the Project.

- b. All yards, parking lots, and required street tree planters landscaping shall provide erosion control, visual interest, buffering, privacy, open space and pathway identification, shading and wind buffering based on the following standards. Based on the proposed use of the site, Developer shall provide visual screening and privacy within side and rear yards, while leaving front yards and building entrances mostly visible for security purposes.
- c. Developer shall include pedestrian pathways and open space areas with landscape materials and provide focal points within the development, such as signature trees (i.e., large or unique trees), hedges, and flowering plants. Developer shall use landscaping to generally screen outdoor storage and mechanical equipment areas, and to enhance graded areas

such as berms, swales, and detention/retention ponds. The proposal will include a mix of native and nonnative vegetation, all of which can tolerate the harsh condition of the high desert environment. An irrigation system will be provided to accommodate the type and species of all planted areas, including ground covers.

d. Preliminary tree species include:

1. Trees with Low Mature Tree Height (25 feet or less), for use in areas under power lines or in small planting areas:	
Amur Maple/Acer ginnala	Hawthorn/Crataegus 'variety'
Canada Red Cherry/Prunus virginiana 'Shubert'	Japanese Lilac Tree/Syringa reticulata
Eastern Redbud/Cercis canadensis	Serviceberry/Amelanchier
Flowering Crabapple/Malus 'variety'	
2. Trees with Medium Mature Tree Height (30 to 45 feet):	
American Hornbeam/Carpinus caroliniana	Hedge Maple/Acer campestre
Callery Pear/Pyrus calleryana	Mountain Ash/Sorbus acuparia 'variety'
3. Tall Mature Tree Height (50 feet or larger):	
Green Ash/Fraxinus pennsylvanica	Pin Oak/Quercus palustris
Honey Locust/Gleditsia tricanthos 'variety'	Red Maple/Acer rubrum 'variety'
Littleleaf Linden/Tilia cordata	Red Oak/Quercus rubra
Norway Maple/Acer platanoides 'variety'	Pin Oak/Quercus palustris
Green Ash/Fraxinus pennsylvanica	

A refined species list shall be approved as part of the final Landscape Plan approved by the Planning Commission.

e. Growth Characteristics: Trees shall be selected based on growth characteristics and site conditions, including available space, overhead clearance, soil conditions, exposure, and desired color and appearance to provide a broad canopy tree variety unless limited by overhead clearance.

Developer shall use narrow or "columnar" trees where awnings, other building features, or narrow sidewalks limit growth, or where greater visibility is desired between buildings and the street. Developer shall avoid using trees that are highly susceptible to insect damage, and using trees that produce excessive seeds or fruit. Developer will use deciduous trees for summer shade and winter sun and will select trees for their seasonal color, as desired.

- f. Street trees shall be selected and planted according to current City ordinances and shall be planted within existing and proposed planting strips or in City-approved sidewalk tree wells on streets without planting strips. Small stature trees shall be planted no closer to the curb or sidewalk than three feet; medium trees – three feet; and large trees – four feet.
- g. All irrigation shall be designed to eliminate overspray on structures, fences, or other vertical materials. Drip irrigation shall be used in any areas which are directly adjacent to vertical materials to avoid discoloration.
- h. All final landscape plans shall be approved by the group or persons authorized to approve the building elevations in Subsection 10.

16. **Vehicle Parking, Loading, and Bicycle Parking.**

- a. Parking spaces in the project may include spaces in garages, carports, parking lots, private side streets, and/or driveways so long as vehicles are not parked in a vehicle travel lane (including emergency or fire access

lanes), and meet the minimum size required by North Ogden City code of nine (9) feet by nineteen (19) feet. This will be verified during the site plan review process for each of the Development Areas and approved by those authorized to approve the site plan in this Agreement.

- b. Vehicle parking is allowed only on approved streets, within garages, carports, and other structures; or on driveways or parking lots that have been developed.
- c. Although the proposal includes a clubhouse, a pool, and green space; these uses are accessory and only intended for residents of the complex unless otherwise designated, thus additional traffic and associated parking will not be generated from them.
- d. The project shall provide 1204 residential parking spaces and 148 commercial parking spaces on site as shown on the Site Plan on Exhibit B & F. The foregoing parking spaces include 19 commercial spaces along Washington Blvd. ADA Accessible Parking Spaces. Accessible parking shall be provided for disabled persons, in conformance with the Federal Americans with Disabilities Act (ADA). Accessible parking is included in the total minimum number of required parking spaces. Accessible parking facilities shall comply with the design requirements of the current building code as adopted by the State of Utah.
- e. A snow removal plan shall be approved by those authorized to approve the site plan.

17. **Bicycle Parking.**

- a. Each required bicycle parking space shall be on asphaltic concrete, Portland cement, or similar hard surface material and each space shall be at least two feet wide by six feet long.
- b. The location of the rack and subsequent parking shall not interfere with pedestrian passage, leaving a clear area of at least 36 inches between bicycles and other existing and potential obstructions. Customer spaces may or may not be sheltered. When provided, sheltered parking (within a building or under an eave, overhang, or similar structure) shall be provided at a rate of one space per 10 employees, with a minimum of one space per use.
- c. Bicycle parking will be conveniently located to both the street right-of-way and at least one building entrance. Bicycle parking shall be visible to cyclists from street sidewalks or building entrances, so that it provides sufficient security from theft and damage. There will be at least 43 bike parking stalls, 35 near apartments and an estimated 8 near retail. Every residential building will be within 100 feet of bicycle parking. The number of commercial bike parking will be reviewed as part of the commercial site plans and be consistent with 11-7K-5 (J).

18. **Transportation Improvement Standards.**

- a. Washington Blvd. will be improved in accordance with the Utah Transportation Authority (UTA) and approved UDOT access points.
- b. All new and/or existing streets and alleys shall be paved according to North Ogden City Standards and Specifications. Sewers and Water mains

are required. Sanitary sewers and water mains shall be installed to serve each new development and to connect developments to existing mains in accordance with the City's construction specifications as described in the pre-application meeting. The City shall be granted easements for any publicly owned utilities which run through the development.

19. **Storm Drainage Improvements.**

- a. Drainage facilities shall be designed and constructed to accommodate increased runoff so that discharge rates existing before the proposed development shall not be increased, and accelerated channel erosion will not occur as a result of the proposed land disturbance or development activity.
- b. Effect on Downstream Drainage. Where it is anticipated by the City Engineer that the additional runoff resulting from the development will channel to the new park existing drainage facilities, appropriate new facilities shall be installed by Developer to maintain existing discharge rates from this project.
- c. The detention basin on the parcel identified in Exhibit "K" shall be improved by Developer as a public park for the benefit of all residents, in addition to any park impact fees to be paid. Developer acknowledges that this park and the improvements are satisfying the City's concerns related to the quality of the project and open space requirements and not to offset the burden of new residents moving into the City. A final site plan shall be reviewed and approved by the Planning Commission.

20. **Site Lighting.** All outdoor lighting fixtures subject to this section shall be designed as a full cut-off fixture or have a shielding method to direct light emissions down onto the site and not shine direct illumination or glare onto adjacent properties. A Lighting Plan shall be approved by the Planning Commission prior to construction.
21. **Preliminary Grading and Drainage Plan.** A preliminary grading and drainage plan will be prepared by a registered professional engineer. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. This plan shall be reviewed by and be subject to approval of the City Engineer.
22. **Building Permits.** The City will process building permits in accordance with established policy. The City shall not unreasonably delay issuance of building permits.
- a. Building Permits. Building permits will only be issued after completion of any necessary subdivisions and final plat recording as approved by the Planning Commission in a regularly scheduled meeting.
- b. A Technical Review Committee is required for all phases/Development Areas of the Project. All utility designs shall be approved by the City Engineer prior to issuance of a building permit.
23. **Commercial Development.** The Developer is not required to complete any commercial development prior to the completion of the residential portion of this Project. However, within one (1) year after the completion of all phases of the

residential portion of the Project, Developer shall landscape and maintain all vacant portions of the commercial property in accordance with City standards regardless of whether or not the area will eventually become a commercial space or parking lot. The City envisions that the Commercial Development will be the southerly entrance to North Ogden with a prominent "gateway building" at the northeast corner of 1700 N and Washington Blvd. Conceptual commercial building elevations are provided in Exhibit "J", though the ultimate design will be determined by Developer at the time suitable tenants are located. The Mayor shall determine if the proposed commercial elevations are significantly modified enough to require an amendment to this Agreement.

- a. **Uses to be allowed in the commercial area:** Developer agrees to the list of uses which are considered "Permitted Uses" in the North Ogden C-2 zone and which are entirely contained within the building in which the use occurs. No outdoor storage or other uses are allowed except for outdoor seating associated with a café, restaurant, or other similar eating establishment.
- b. **Uses not allowed in the commercial area.** The uses not allowed in the commercial area of this development despite being listed as a "permitted use" in the C-2 zone:

- Adult themed stores
- Agricultural use
- Auto Sales or Repair
- Bail Bond Companies
- Bars or Taverns except as associated with a restaurant.
- Bed and Breakfast
- Boarding Houses
- Boat/Recreational Vehicle Sales and Service

Bowling Alley
Christmas Tree Sales
Drive-in Refreshment Stands
Drive-thru businesses where the drive-thru lane is located
between the building and the public street
Educational Institutions similar to K-12 public schools
Hotel/Motel
Heavy Equipment Sales/Repair
Medical Supply/Sales
Monument/Mortuary Services
Pawn shop
Temporary Businesses
Thrift stores
Used Restaurant Supply store

Any other use that is not specifically permitted under the current
C-2 zoning designation.

24. **Construction.** Developer shall provide the contact name and number of the on-site foreman for the project to respond to issues and concerns immediately. During construction of the Project the Developer will following the approved SWPPP Plan. Additionally, Developer agrees to fully comply with landscape maintenance standards and mow or remove any weeds or plants which grow taller than twelve (12) inches, which are not designed and/or planted to do so, within fourteen (14) days of being notified in writing by the code enforcement officer. Any failure to meet these requirements will expose Developer to abatement remedies available under City and State codes.
25. **Technical Review.** Developer shall be required to address any technical requirements related to engineering and building standards which are typically addressed during the technical review process in the City. The Parties have not yet made the required determinations for design of facilities including, but not limited to, water, sewer, electrical, storm drain, fire suppression, etc.

26. **Other Conditions.** If any condition, covenant, or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be modified in writing by both parties to conform to the law. Should the parties be unable to agree upon a modification of the condition, covenant, or provision the contract becomes voidable by either party.

a. Management of Property. The Developer shall establish a Home Owners Association or other entity to maintain and manage on behalf of ownership of all common areas and collect dues for the maintenance of all landscaping, exterior building treatments, private streets, parking, snow removal, underground utilities, sidewalks, plazas, and other similar improvements. The Mayor and City Planner shall verify the CC&R's are in place prior to final approval of the Development Areas.

27. **Successors and Assigns.**

a. Binding Effect. This Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the Project.

Assignment. Neither this Agreement nor any of the provisions, terms, or conditions hereof can be assigned to any other party, individual, or entity without assigning the rights as well as the responsibilities under this Agreement, and without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such request for assignment may be made by letter addressed to the City and the prior written consent of the City may also be evidenced by letter from the

Mayor of the City to Developer or its successors or assigns. This restriction on assignment is not intended to prohibit or impede the sale of parcels of fully or partially improved or unimproved land by Developer prior to construction of buildings or improvements on the parcels, with Developer retaining all rights and responsibilities under this Agreement.

28. **General Terms and Conditions.**

- a. Term. This Agreement shall be in effect until December 31, 2025.
- b. No Joint Venture, Partnership or Third Party Rights. This Development Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto, nor any rights or benefits to third parties.
- c. Severability. If any part or provision of this Agreement shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid, or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- d. Attorney's Fees. If this Development Agreement or any of the Exhibits hereto are breached, the party at fault agrees to pay the attorney's fees and all costs of enforcement of the non-breeching party.
- e. Counterparts. This Agreement and any originals of Exhibits referred to

herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed) shall be an original, but all of which shall constitute one and the same instrument.

29. **General Terms and Conditions.**

- a. Construction of Agreement. This Agreement shall be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling countervailing public interest.
- b. State/Federal Law. The parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be amended in writing by both parties. Should the parties be unable to agree upon a modification of the condition, covenant, or provision the contract becomes voidable by either party.
- c. Relationship of Parties and No Third-Party Rights. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto; nor, unless otherwise stated, create any rights or benefits to third parties.
- d. Laws of General Applicability. Where this Agreement refers to laws of general applicability to the Project, this Agreement shall be deemed to

refer to other laws of North Ogden City and the State of Utah.

- e. Integration. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions, or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto.
- f. Applicable Law. This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with the laws of the State of Utah.
- g. Arbitration. All disputes under this Agreement shall be resolved through binding Arbitration. If the City and Developer are unable to resolve an issue through discussions, the parties shall attempt within ten (10) business days to appoint a mutually acceptable expert in the professional discipline(s) of the issue in question. If the parties are unable to agree on a single acceptable arbitrator, they shall each within ten (10) business days appoint their own individual appropriate expert. These two experts shall, between them, choose the single arbitrator. Developer shall pay the fees of the chosen arbitrator. The chosen arbitrator shall within fifteen (15) business days, review the positions of the parties regarding the arbitration issue and render a decision. The arbitrator shall ask the prevailing party to draft a proposed order for consideration and objection by the other side. Upon adoption by the arbitrator and consideration of such objections, the arbitrator's decision shall be final and binding upon

both parties. If the arbitrator determines as a part of the decision that the City's position was not only incorrect but was also maintained unreasonably and not in good-faith, then the arbitrator may order the City to pay the arbitrator's fees.

- h. Notices. Any notices, requests, or demands required or desired to be given hereunder shall be in writing and shall either be delivered personally, by certified mail, or express courier delivery to the parties at the following addresses:

If to the City:

North Ogden City
S. Annette Spendlove, City Recorder
505 E. 2600 N.
North Ogden, Utah 84414

If to Meritage Companies, LLC

c/o Jack Barrett
34806 North 80th Way
Scottsdale, AZ 85266

If to Mountain Vista Trails, LLC

c/o Dawn Barrett
4144 North 250 West
Pleasant View, UT 84414

WITH A COPY TO:

M. Darin Hammond
SMITH KNOWLES, P.C.
2225 Washington Blvd., Suite 200
Ogden, UT 84401

Any party may change their address by giving written notice to the other party in accordance with the provisions of this section.

DATED this 7th day of November, 2017.

MERITAGE COMPANIES, LLC

By: [Signature]
Its: Scott W. Burch

DATED this 7th day of November, 2017.

MOUNTAIN VISTA TRAILS, LLC

By: [Signature]
Its: Manager

DATED this 6th day of November, 2017.

NORTH OGDEN CITY

By: [Signature]
Its: Glen R. Taylor

S. Annette Spindlove
Attest: S. Annette Spindlove

TABLE OF CONTENTS FOR EXHIBITS

- A: Legal Description – Included.**
- B: Preliminary Site Plan – Included.**
- C: Preliminary Landscape Plan – Included with specific plans to be approved by planning commission as presented prior to building permit approval.**
- D: Floor Plans – Included for Apartment Area and not required for other development areas as outlined above.**
- E: Building Elevations – Included for Apartment Area. Individual development area approvals are provided as outlined above.**
- F: Site Data – Included.**
- G: Color Palette and Building material board.**
- H: Fire Plan to be approved by Fire Marshal during technical review of the development.**
- I: Signage – to be approved by Planning Commission at a later public meeting.**
- J: Commercial Elevations – to be approved by City Council at a later public meeting.**
- K: Detention Basin Park – to be approved by Parks Department at a later date.**
- L: Preliminary Master Plan – Included.**
- M: Private Street Cross section – Included.**

EXHIBIT A

NORTH OGDEN CITY LEGAL DESCRIPTION

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

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

CONTAINING 18.26 ACRES

ANNEXATION AREA LEGAL DESCRIPTION

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

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

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



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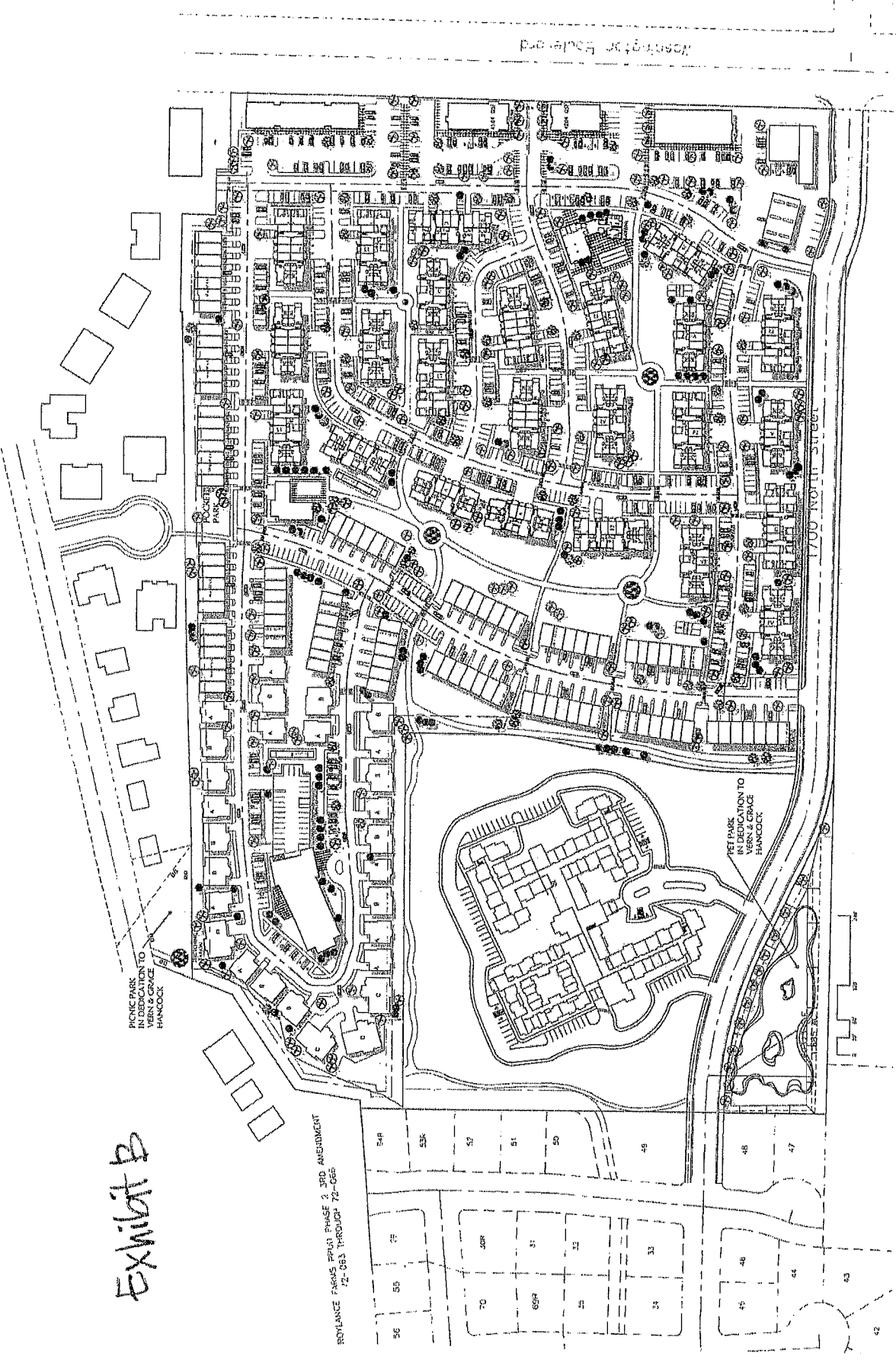


Exhibit B

ROYALTY FARMS POINT PHASE 2 3RD AMENDMENT
72-065 THROUGH 72-068

VILLAGE AT PROMINENCE POINT PRELIMINARY MASTER PLAN 10.03.2017
NORTH OGDEN, UTAH

EXHIBIT "C"

EXHIBIT "D"

EXHIBIT "D"**BOUNDARY DESCRIPTION
(Prominence Point Subdivision)**

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

BEGINNING AT A POINT ON THE EAST LINE OF LOT 54-R, MYSTERY MEADOWS SUBDIVISION PHASE 2, SAID POINT LIES S00°20'01"W ALONG THE MONUMENT LINE BETWEEN THE NORTHWEST CORNER AND THE SOUTHWEST CORNER OF SAID SECTION 5, 281.23 FEET AND S89°39'50"E 2866.43 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 5; AND RUNNING THENCE NORTH ALONG THE EAST LINE OF SAID LOT 54R, 72.15 FEET TO A POINT ON THE SOUTH LINE OF LOT 32, ROYLANCE FARMS P.R.U.D. PHASE 2, 3RD AMENDMENT; THENCE ALONG THE EASTERLY LINES OF ROYLANCE FARMS P.R.U.D. PHASE 2, 3RD AMENDMENT, THE FOLLOWING FIVE (5) COURSES: (1) N85°09'01"E 12.61 FEET; (2) N08°23'50"E 118.26 FEET; (3) N55°25'02"E 197.79 FEET; (4) N20°28'01"E 75.84 FEET; (5) N89°04'38"E 230.59 FEET TO THE SOUTHWEST CORNER OF LOT 401, ROYLANCE FARMS PHASE 4; THENCE ALONG THE SOUTH LINES OF ROYLANCE FARMS PHASE 4, THE FOLLOWING FOUR (4) COURSES; (1) N88°01'08"E 377.46 FEET; (2) N88°36'08"E 543.60 FEET; (3) N00°48'08"E 3.79 FEET; (4) S89°44'26"E 169.02 FEET TO A POINT ON THE WEST LINE OF LOT 1, ROYLANCE FARMS COMMERCIAL SUBDIVISION; THENCE ALONG THE BOUNDARY OF ROYLANCE FARMS COMMERCIAL SUBDIVISION THE FOLLOWING FOUR (4) COURSES; (1) S00°50'00"W 59.79 FEET; (2) S89°42'34"E 79.91 FEET; (3) SOUTH 25.00 FEET; (4) S89°42'34"E 132.80 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF WASHINGTON BOULEVARD; THENCE S00°49'44"W ALONG SAID WESTERLY RIGHT-OF-WAY LINE, 1061.50 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF 1700 NORTH STREET; THENCE ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF 1700 NORTH STREET THE FOLLOWING SIX (6) COURSES: (1) N89°03'50"W 65.82 FEET; (2) S87°39'51"W 71.84 FEET; (3) ALONG A NON-TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 283.00 FEET, AN ARC LENGTH OF 91.39 FEET, A DELTA ANGLE OF 18°30'07", A CHORD BEARING OF N80°14'00"W, AND A CHORD LENGTH OF 90.99 FEET; (4) ALONG A REVERSE CURVE TURNING TO THE LEFT WITH A RADIUS OF 283.00 FEET, AN ARC LENGTH OF 103.39 FEET, A DELTA ANGLE OF 20°55'59", A CHORD BEARING OF N78°35'51"W, AND A CHORD LENGTH OF 102.82 FEET; (5) N89°03'50"W 792.06 FEET; (6) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 317.00 FEET, AN ARC LENGTH OF 30.04 FEET, A DELTA ANGLE

OF $05^{\circ}25'47''$, A CHORD BEARING OF $N86^{\circ}20'55''W$, AND A CHORD LENGTH OF 30.03 FEET TO THE EASTERLY LINE OF THE VILLAGE AT PROMINENCE POINT; THENCE ALONG THE BOUNDARY LINES OF THE VILLAGE AT PROMINENCE POINT, THE FOLLOWING SIX (6) COURSES: (1) $N00^{\circ}56'10''E$ 127.98 FEET; (2) ALONG A TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 480.00 FEET, AN ARC LENGTH OF 80.01 FEET, A DELTA ANGLE OF $09^{\circ}33'03''$, A CHORD BEARING OF $N05^{\circ}42'42''E$, AND A CHORD LENGTH OF 79.92 FEET; (3) $N10^{\circ}29'13''E$ 253.53 FEET; (4) ALONG A NON-TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 420.00 FEET, AN ARC LENGTH OF 75.99 FEET, A DELTA ANGLE OF $10^{\circ}21'58''$. A CHORD BEARING OF $N05^{\circ}10'59''E$, AND A CHORD LENGTH OF 75.88 FEET; (5) NORTH 159.56 FEET; (6) WEST 649.05 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,433,216 SQUARE FEET OR 32.902 ACRES MORE OR LESS