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DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS  
[The Forge @ Geneva]

THIS DECLARATION (this "Declaration") is entered into as of the 17<sup>th</sup> day of November, 2017 (the "Effective Date"), by Cottonwood Geneva, LLC, a Delaware limited liability company (the "Declarant"), whose address is 2750 E. Cottonwood Parkway, Suite 560, Cottonwood Heights, Utah 84121.

RECITALS:

WHEREAS, the Declarant is the owner of certain property in the Town of Vineyard, County of Utah, State of Utah (as further defined below, individually, a "Parcel" and, collectively, the "Parcels").

WHEREAS, the Declarant intends to develop an integrated mixed-use development including commercial, retail and multi-family residential housing on the Parcels.

NOW, THEREFORE, in consideration of the premises, the covenants and the agreements herein set forth and in furtherance of the development of the Parcels, the Declarant hereby declares that the Parcels, together with the roadways, easements and rights-of-way owned or controlled by the Declarant and/or serving the Parcels (inclusive of, without limitation, the "Common Roadways" and the "Utility Easement Areas" [each as defined below]), and together with the "Common Areas" (as defined below) (collectively, inclusive of the Parcels and as further defined below, the "Development Property"), are subject to the declarations, easements, covenants and agreements hereinafter contained.

TERMS AND CONDITIONS:

1. Definitions. As used in this Declaration, and except as otherwise defined in this Declaration, capitalized terms shall mean and be defined as follows:

1.1 "Applicable Laws" means any and all applicable laws, rules, ordinances, and regulations, including without limitation any Environmental Laws, to which the Development Property may be subject.

1.2 "Assessment" means any and all Common Areas Expenses, Taxes and other amounts for which an Owner may be liable under the terms and conditions of this Declaration.

NTA 15-1019148

1.3 Association” means the nonprofit corporation to be formed to serve as the association of the Owners as provided in Paragraph 15, below.

1.4 Buildings” means all buildings located on the Parcels which are intended for permanent use or occupancy, including the area directly below such buildings, projections and extensions of, and additions to, such buildings, areas used exclusively by the occupants of such buildings, including, without limitation, drive through areas and trash enclosures, and platforms, ramps, docks and signage affixed to the outside of such buildings. Building” means any of the Buildings.

1.5 Common Areas” means, inclusive of, without limitation, any Improvements therein, the Common Roadways and Related Improvements, the Common Utility Facilities, and the Utility Easement Areas. The Common Areas shall be maintained by the Manager pursuant to Paragraph 4. The Common Areas, as of the Effective Date, are shown and outlined on the Plat attached Exhibit A-1.

1.6 Common Areas Expenses” means, subject to any exclusions under subparagraph 1.7, below, the following: (a) reasonable costs, expenses, fees and other amounts (including reasonably necessary reserves) paid or incurred by the Manager in connection with the improvement, operation, management, maintenance and repair of the Common Areas and the performance of the Manager's duties and rights under Paragraphs 4 or 5, or any other provision, of this Declaration; (b) managerial, clerical and overhead costs, expenses, fees and other amounts, all of which shall be deemed to be equal to fifteen percent (15%) of the total of all other Common Areas Expenses (collectively, the Management Fees”); (c) Common Areas Expenses due, but not paid to, the Manager by any Owner responsible therefor, as and to the extent determined by the Manager not to be legally or practicably recoverable from the responsible Owner or otherwise (after reasonable effort and after exhausting all commercially reasonable remedies), together with all reasonable costs and attorneys’ fees incurred by Manager on behalf of the Association and in connection with any such unpaid Common Areas Expenses not otherwise recovered or reimbursed (collectively, the Unreimbursed Common Areas Expenses”); and (d) any assessment for public improvements levied against all of the Parcels, rather than against individual Parcels, which shall be paid by each Owner in accordance with its Common Areas Expense Share. Notwithstanding the foregoing, Common Areas Expenses” shall not mean, and shall exclude any and all costs and expenses relating to, or associated with or arising from initial construction of the Common Roadways and Related Improvements and/or the Common Utility Facilities (inclusive of any warranty obligations therefor), which, notwithstanding any term or condition of this Declaration, shall remain the sole responsibility and obligation, cost or otherwise, of the Declarant. Further, as and to the extent that any Unreimbursed Common Areas Expenses shall be recovered or reimbursed by Manager, Declarant or the Association, any such amounts shall be paid to each Owner, to the extent such Owner paid the same as part of the Common Area Expenses, according to its Common Areas Expense Share.

1.7 Common Areas Expenses Exclusions.” Notwithstanding any other term or condition of this Declaration, Common Areas Expenses” shall not mean, and shall exclude, the following:

(a) Any payments under a ground lease or master lease relating to the Development Property, in whole or in part.

(b) Except to the extent that that any such costs are fairly allocable to the Development Property and, further, amortized or depreciated, as applicable, to the maximum extent allowed by Applicable Laws (i) costs of a capital nature (including amortization payments and

depreciation of any type), including but not limited to capital improvements, equipment, replacements, alterations and additions, even if such costs were incurred in connection with matters which are reasonably intended to reduce Common Areas Expenses or were required by any governmental authority having jurisdiction under any governmental law or regulation, and rentals for items that, if purchased, rather than rented, would constitute a capital improvement or equipment.

(c) The cost of any item reimbursable by insurance or condemnation proceeds or which would be reimbursable from insurance required to be maintained by the Declarant with respect to the Development Property.

(d) Costs, including permit, license, and inspection costs incurred with respect to the installation of improvements made for Owners or any lessee, licensee or other occupant of all or any part of the Development Property (as applicable, including without limitation any Owner, "Users") or incurred in renovating or otherwise improving, decorating, painting, or redecorating space for Owners or Users of the Development Property (as and to the extent incurred in connection with the improvement of areas of the Development Property other than the Common Areas).

(e) Except as otherwise specified in this subparagraph 1.7, depreciation and amortization.

(f) Marketing, promotional, and advertising costs, including but not limited to leasing commissions, real estate brokerage commissions, and attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases, purchase contracts, and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sale, sublease, and/or assignment negotiations and transactions with present or prospective purchasers, tenants or other occupants of the Parcels.

(g) Costs of services, utilities, or other benefits, which are not offered to Owners or for which Owners are charged directly, but which are provided to another User of the Development Property, including, but not limited to, above exclusive use of any Common Areas.

(h) Costs incurred by the Declarant due to any violation of the terms and conditions of any agreement, lease or other arrangement relating to the Development Property.

(i) Costs and the overhead and profit increment paid to the Declarant, to affiliates or partners of the Declarant, partners or affiliates of such partners, or affiliates of the Declarant for goods and/or services in the Development Property to the extent the same exceeds the costs or the overhead and profit increment, as the case may be, of such goods and/or services rendered by unaffiliated third parties on a competitive basis.

(j) Interest, principal, attorneys' fees, environmental investigations or reports, points, fees, and other lender costs and closing costs on debts or amortization on any deed of trust or mortgage or mortgages or any other debt instrument encumbering any part of the Development Property or any part thereof or on any unsecured debt.

(k) Except as and to the extent covered by, and part of, the Management Fees, the Declarant's general corporate overhead and general and administrative expenses, including (i) costs relating to accounting, payroll, legal and computer services which are partially or totally rendered in locations outside the Development Property; (ii) salaries of officers, executives, or other employees of the Declarant, any affiliate of the Declarant, or partners or affiliates of such partners or affiliates, other than any personnel engaged exclusively in the management, operation,

maintenance, and repair of the Development Property (but not leasing or marketing) and not typically included in the management fee being paid and included in the Common Areas Expenses, and (iii) costs associated with the operation of the business of the partnership or entity which constitutes the Declarant as the same are distinguished from the costs of operation of the Development Property; provided that, in any event, the Management fees shall exclude partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee, costs of selling, syndicating, financing, mortgaging or hypothecating any of the Declarant's interest in the Development Property or any part thereof, costs of any disputes between the Declarant and its employees, disputes of the Declarant with Development Property management or personnel, or outside fees paid in connection with disputes with other Owners.

(l) Any costs for which the Declarant is entitled to be, or has been, reimbursed through other means, including but not limited to warranties, insurance policies, or the contractual obligation of a specific Owner; provided that, if the Declarant receives the same in connection with any costs or expenditures previously included in Common Areas Expenses for a calendar, year, the Declarant shall immediately reimburse Owners for any overpayment in such previous calendar year.

(m) Costs, penalties, fines, or awards and interest incurred as a result of (i) the Declarant's negligence, violations of law, negligence or inability or unwillingness to make payments and/or to file any income tax, other tax or informational returns when due or (ii) the negligence or intentional acts of the Declarant's agents, or any vendors, contractors, or providers of materials or services selected, hired or engaged by the Declarant or its agents.

(n) Except to the extent duplicative of other Common Areas Expenses, recoverable from an Owner, third parties or otherwise, otherwise paid or satisfied, and/or the responsibility of the Declarant under this Declaration, costs and expenses (including all attorneys' fees and collection and enforcement costs payments in lieu thereof) of the Manager arising from claims or disputes with Owner's or third parties (other than the Declarant or any affiliate thereof) regarding (i) the terms, conditions or enforcement of this Declaration or (ii) the administration of the Development Property for the benefit of the Owners.

(o) The cost of correcting defects in the initial design, construction or equipping of the Common Roadways and Related Improvements and/or the Common Utility Facilities by or at the direction of the Declarant, which shall be the sole responsibility, cost or otherwise of the Declarant.

(p) Except to the extent budgeted, designated and disclosed by the Manager, by line-item pursuant to subparagraph 5.1 or otherwise, and, then, used solely for the designated purposes in connection with the maintenance and repair of the Common Areas following the design, engineering and construction of the Common Roadways and Related Improvements by or at the direction of the Declarant as specified hereunder, reserves of any kind, including but not limited to replacement reserves, and reserves for bad debts or lost rent or any similar charge not involving the payment of money to third parties.

(q) Any costs expressly excluded from Common Areas Expenses elsewhere in this Declaration or otherwise included in this Declaration as part of taxes or other obligations for which the Declarant or an Owner may be liable.

(r) Costs for services normally provided by a property manager where Common Areas Expenses already include a management fee.

(s) Costs of traffic studies, environmental impact reports, transportation system management plans and reports, and traffic mitigation measures related to the Declarant's development of the Development Property.

(t) Any costs or expenses relating to any provisions of any development agreements, owner's participation agreements, covenants, conditions, restrictions, conditional use permits, easements or other instruments related to the acquisition, entitlement, financing, construction, and/or development of the Development Property, in whole or in part, including any initial payments or costs or ongoing payments or costs made in connection with any transportation impact mitigation fees, water and sewage conservation, recycling, housing replacement and linkage fees, special assessment districts, infrastructure and transportation assessments, environmental assessments or obligations, percent-for-art programs, or parking requirements and programs.

(u) Any increase in "Controllable Expenses" (as defined below) incurred by or at the direction of the Manager in respect of the Development Property for any calendar year to the extent that the increase in Controllable Expenses exceeds four percent (4%) of the Controllable Expenses for the preceding calendar year. For these purposes, "Controllable Expenses" shall mean those direct costs with respect to which the Manager has reasonable control over the cost or amount charged, incurred, assessed, or paid, and, by way of example and not as any limitation, direct costs which are not Controllable Expenses include routine maintenance and direct cost accounting, insurance premiums, real estate and other taxes, and the cost of utilities (including without limitation surcharges and taxes).

1.8 "Common Areas Expense Share" means the product obtained by multiplying the Common Areas Expenses for the relevant period by a fraction, the numerator of which is the total acreage of the Parcel concerned, and the denominator of which is the total acreage of all Parcels of the Development Property, excluding, for these purposes, any Common Areas. Notwithstanding the above, at such time as the Manager determines, with the consent and approval of the Association (which shall not be unreasonably withheld, conditioned or delayed), the Manager may adjust the calculation of the Common Areas Expense Share to be based upon the product obtained by multiplying the Common Areas Expenses for the relevant period by a fraction, the numerator of which is the Floor Area of all Buildings located on the Parcel concerned, and the denominator of which is the total Floor Area of all Buildings located on all Parcels; provided that, notwithstanding the foregoing, no such adjustment in the calculation of the Common Areas Expense Share shall be made unless, and until, Buildings shall be constructed on all Parcels. In the event the Common Areas Expense Share is based upon the Floor Area of Buildings within the Development Property, the Common Areas Expense Share shall be adjusted from time to time by written notice given by the Manager to each Owner as Buildings are completed. A Building shall be deemed to be "completed" on the earlier of the date on which a certificate of occupancy for such Building is first issued by the appropriate governmental authority or the date on which such Building is first used or occupied.

1.9 "Common Roadways" means the land in Utah County, Utah, as shown on the Plat attached hereto as Exhibit A-1, together with all Improvements on such land, and any real property defined as an additional part of the Common Roadways in any amendment to this Declaration executed and recorded pursuant to Paragraph 12. (The Common Roadways may be located on certain portions of the Parcels and, as and to that extent, are not land in addition to the Parcels.) The Common Roadways shall be used for the purposes set forth in subparagraph 3.1 and shall be maintained as part of the Common Areas by the Manager pursuant to Paragraph 4.

1.10 “Common Utility Facilities” means all pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, communications, sewage, storm drainage and all types of water that are intended, designed or used for the substantial benefit of the Development Property in its entirety, and not individual Parcels, with the understanding that any roadways or utility facilities that do not benefit, in substantial part, the Development Property in its entirety shall be the responsibility, cost or otherwise, of the Owners of the Parcels benefitted thereby.

1.11 “Design Review Board” means a design review board consisting of three individuals or such greater number of individuals as designated from time to time by the Declarant or, to the extent the Declarant ceases to be an Owner of any Parcel within the Development Property, the Association.

1.12 “Development” means the design, construction and improvement of the Common Roadways and Related Improvements, the Utility Easement Areas, and the Common Utility Facilities, together with the common and/or shared improvements to, and for, the Development Property as may be necessary, ancillary or incidental to the use, occupancy and enjoyment of the Common Areas and/or the Development Property.

1.13 “Development Guidelines” means the standards, requirements and restrictions which may be adopted from time to time by the Declarant or the Association, as applicable, pursuant to subparagraph 2.4, which, as in effect as of the Effective Date, are attached as Exhibit B.

1.14 “Development Property” means, collectively, the Parcels and the Common Areas, together with the roadways, easements and rights-of-way owned or controlled by the Declarant and/or serving the Development Property, including without limitation the Common Roadways and the Utility Easement Areas, the legal description of which is attached hereto as Exhibit A. The Development Property is more particularly described on Exhibit A attached hereto and shown on the Plat (defined below) attached hereto as Exhibit A-1.

1.15 “Floor Area” means the rentable area of each Building concerned, measured from the exterior surface of the exterior walls of such Building, including all levels of any multi-floor Building, but excluding any basements, mezzanines not generally open to the public and equipment penthouses of such Building.

1.16 “Governing Documents” means: (a) this Declaration; (b) the Articles of Incorporation for the Association; (c) the Bylaws for the Association; (d) the Plat for the Development Property; (e) rules and regulations adopted by the Declarant, Manager or Association, as the case may be, consistent with the terms and conditions of this Declaration; (f) resolutions and actions adopted by the Association, consistent with the terms and conditions of this Declaration; and (g) the Development Guidelines. Nothing in this subparagraph shall preclude any Owner of any Parcel from adopting additional restrictions or provisions that are more restrictive than the provisions of this Declaration and, in any event, such Parcel being subject to any such additional restrictions or provisions, so long as any such additional restrictions or provisions shall only apply to such Parcel, and, in such case, the more restrictive provisions, in addition to the Governing Documents shall control; provided that, in the event of any conflict between the Governing Documents and any such additional restrictions or provisions, the Governing Documents shall control.

1.17 “Improvements” means all Buildings, Landscaping, parking areas, roads, driveways, walkways, curbs, gutters, sidewalks, trails, exterior lighting, fences, walls, signs, utility systems and facilities and other improvements located on the realty concerned and readily visible from the exterior of any Buildings. “Improvement” means any of the Improvements.

1.18 “Intermountain Healthcare” means IHC Health Services, Inc., a Utah nonprofit corporation.

1.19 “Landscaping” means all outdoor areas on the Parcels landscaped with lawn, flowers, ground cover, shrubbery, trees, ponds, fountains, gardens or similar improvements.

1.20 “Manager” means the Declarant, unless and until the Declarant assigns its rights and duties as Manager or, otherwise, shall be replaced by the Association at such time as the Declarant no longer owns, in its entirety, any of the Parcels. The Manager's rights and duties under this Declaration may be assigned at any time to any other Owner by the Declarant, in the Declarant's sole discretion (subject to the assumption and acceptance of the Manager's obligations under this Declaration by any such Owner), or, from and after the date that the Declarant shall no longer own, in its entirety, any of the Parcels, may be assigned at any time to any other person or entity by the Association, which shall be formed pursuant to Paragraph 14, in any case for the purpose of performing the Manager's functions under this Declaration from and after the date of any such assignment. Notice of any such assignment shall be provided to each Owner and, further, recorded in the Official Records and shall, pursuant to Paragraph 16, be effective as an amendment to this Declaration, with no signature other than the signature of the new Manager and, as the case may be, the Declarant or the Association, being required. Notwithstanding any such assignment, the Declarant shall be responsible for the performance of the Manager's obligations under this Declaration as and to the extent accrued to the date of any such assignment. For the period during which the Manager is an Owner (as opposed to the Association), the rights and duties of the Manager under this Declaration shall be an appurtenance to the Parcel owned by the Manager as such Owner and shall run with such Parcel.

1.21 “Mortgage” means any mortgage or a deed of trust or other collateral or security instrument of any kind or nature recorded in the Official Records against the Development Property, in whole or in part, and the lien and indebtedness evidenced thereby, in any case, shall be subordinate to the “Use Restrictions” (as defined below), any right, title or interest of any Owners, the Association and/or the Declarant in and to the Common Areas (including without limitation any Common Areas and Related Improvements) and, except as and to the extent otherwise agreed, in writing by an Owner, any right, title or interest of such Owner in or to any Parcel.

1.22 “Mortgagee” means the mortgagee or the beneficiary under a Mortgage.

1.23 “Official Records” means the official records of the Utah County, Utah Recorder.

1.24 “Owner” means the fee owner of record in the Official Records of the Parcel concerned, as applicable, including without limitation the Declarant. If any Parcel has more than one Owner, the liability of each such Owner under this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a Mortgage, the term “Owner” shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the realty concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure. An Owner transferring all or any portion of its fee interest in the Development Property or a Parcel, by operation of law or otherwise, shall give notice to all other parties and the Manager, if any, of such transfer and shall include in such notice the name and address of the new Owner or Mortgagee, as the case may be. If

a Parcel is owned by more than one person, the person or persons holding at least fifty-one percent (51%) of the ownership interest in the Parcel shall designate one of their number to represent all owners of the Parcel and such designated person shall be deemed the designated representative for such Parcel for purposes of this Declaration (as applicable, the “Designated Representative”). Similarly, if a planned unit development is created with respect to a Parcel, then the individual lots or units into which the Parcel is subdivided shall not constitute Parcels for purposes of this Declaration and, accordingly, the owner(s) of such lots or units shall designate a Designated Representative, subject to the terms and conditions of Paragraph 25, below.

1.25 “Parcels” means the ten (10) parcels of land in Utah County, Utah shown on attached Exhibit A-1, together with all Improvements on such land, and any real property defined as an additional Parcel or as an additional part of any Parcel in an amendment to this Declaration executed and recorded pursuant to Paragraph 16. “Parcel” means any of the Parcels.

1.26 “Permittees” means the Owners of any and all Parcels and:

(a) All of the respective heirs, successors, assigns and grantees of such Owners;

(b) All persons who now hold, or hereafter hold, any interest in any real property within the Development Property, the nature of which does not qualify them to be an Owner, including, without limitation, the owner of a condominium unit, the owner of a unit or lot in a planned unit development, the owner of a partial interest in a Parcel, and the owner of a Parcel which has irrevocably designated its ground lessee to be the Owner of the Parcel for purposes of this Declaration, and all of the respective heirs, successors, assigns, and grantees of all such persons (as applicable, “Persons”);

(c) The respective tenants of the foregoing Owners and Persons, and their subtenants at any level removed; and

(d) The officers, directors, concessionaires, agents, employees, contractors, customers, visitors, and licensees and invitees of the foregoing Owners and Persons.

Notwithstanding the foregoing, the Declarant may establish rules that regulate Persons engaging in advertising, public, charitable or political activities within the Development Property and, in that connection, may deny such Persons the status of a Permittee.

1.27 “Plat” means that certain subdivision plat entitled “The Forge Plat ‘A’ (Vacating all of Lots 1 and 2 of Geneva Park East – Phase One Megaplex)” recorded in the Official Records of Utah County on June 20, 2017 as Entry No. 5688:2017 Map #15378.

1.28 “Taxes” means all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or other public authority on or against the realty concerned.

1.29 “Use Restrictions” means those certain use restrictions and conditions evidenced by that certain Notice of Use Restrictions and Conditions, dated as of November 15, 2017, and recorded in the Official Records.

1.30 “Utility Easement Area” means the land in Utah County, Utah, as shown on the Plat attached hereto as Exhibit A-1, together with all Improvements on such land, and any real property defined as an additional part of the Utility Easement Area in any amendment to this Declaration executed and recorded pursuant to Paragraph 16. (The Utility Easement Area includes, among other real property, the Common Roadway.) The Utility Easement Area shall be used for the



purposes set forth in subparagraph 3.1 and shall be maintained as part of the Common Areas by the Manager pursuant to Paragraph 4.

1.31 “Vehicular and Pedestrian Areas” means all areas located on the Parcels from time to time that are designed to be used for the parking of motor vehicles or for pedestrian or vehicular movement, including, without limitation, parking areas, roads, driveways, walkways, trails and sidewalks, but excluding any platforms, ramps and docks comprising a portion of the exterior of any Buildings.

## 2. Improvements.

2.1 Manager Approval. Except for maintenance and repair of the Common Areas by the Manager in accordance with this Declaration, no excavation, grading or similar work on the Parcels shall be commenced, no Improvement on the Parcels shall be constructed or installed, and no alteration, refurbishing or repainting of the exterior of any Improvement shall be performed, unless and until complete plans (including, without limitation, exterior elevations, exterior building materials and colors and signage) have first been submitted to, and approved in writing by, the Manager or, to the extent such responsibility is allocated to the Association, the Association (or the Design Review Board or any subcommittee thereof designated by the Association), such approval not to be unreasonably withheld, conditioned or delayed; provided that such plan submission and approval requirements shall not apply to repairs or alterations which do not affect the size or the external design or appearance of a pre-existing Improvement. In determining whether to approve or disapprove plans submitted, the Manager or Design Review Board, as the case may be, shall use its reasonable, good faith judgment to assure that all Improvements comply with the other requirements of this Declaration and the Development Guidelines and, as and to the extent reasonably practicable (except as otherwise specified or contemplated under this Declaration), are architecturally and aesthetically compatible with pre-existing Buildings constructed or planned within the Development Property. The Manager or Design Review Board, as the case may be, may, however, approve plans which entail a variance from such requirements so long as, in the reasonable judgment of the Manager or Design Review Board, as the case may be, such variance is reasonably necessary or appropriate. The fact that Improvements comply with Applicable Laws shall not necessarily mean that such Improvements will be permissible under this Declaration. Any plans submitted to the Manager or Design Review Board, as the case may be, shall be approved or disapproved by the Manager or Design Review Board, as the case may be, in writing within thirty (30) days after submission. If the Manager or Design Review Board, as the case may be, fails to take any action within such period, the Manager or Design Review Board, as the case may be, shall be deemed to have approved of the material submitted; provided, however, that to the extent that such material contemplates a material and substantial variance from the requirements of this Declaration or of the Development Guidelines, failure of the Manager or the Design Review Board to timely take action shall be deemed a disapproval thereof. Any disapproval of such material by the Manager or Design Review Board, as the case may be, shall be in writing and shall be accompanied by a reasonably detailed explanation for such disapproval. Review or approval by the Manager or Design Review Board, as the case may be, of any plans shall be solely for its own benefit, and shall not be deemed to be or to result in any warranty, representation or conclusion by the Manager or Design Review Board, as the case may be, relative to the technical adequacy of such plans or the quality, safety, soundness, or compliance with Applicable Laws of the Improvements described by such plans. The Manager or Design Review Board, as the case may be, shall not be liable for damages by reason of any action, inaction, approval or disapproval by the Manager or Design Review Board, as the case may be, with respect to any request made pursuant to this Declaration, so long as such action, inaction, approval or disapproval did not occur as a result of actual malice or intentional misconduct, including, without limitation, any knowing breach of this Declaration.

2.2 Use and Construction; Parking Requirements and Standards. The Parcels may not be occupied for any use which violates any Applicable Laws or which is inconsistent with this Declaration. Buildings shall be used only for commercial or residential purposes now or in the future permitted in The Forge Mixed Use District Zone. All Buildings shall be (a) first-class buildings of the type and quality typically found in first-class, high-quality mixed use developments, (b) architecturally and aesthetically compatible with all other pre-existing Buildings, (c) constructed and operated in such a manner as will preserve the fire insurance rating on any other pre-existing Buildings, and (d) constructed in compliance with all Applicable Laws. Prior to or in conjunction with the construction and completion of any Building, related Landscaping and Vehicular and Pedestrian Areas shall be constructed by the Owner of the Building concerned in accordance with this Declaration. Vehicular and Pedestrian Areas shall be surfaced with asphalt, concrete or pavers, shall be adequately striped or otherwise marked and shall be graded and constructed in such a way as to ensure adequate water drainage, reasonable access and general compatibility with any surrounding Common Roadways and Related Improvements. All parking spaces required under applicable zoning ordinances, development codes or other municipal requirements for all Buildings on any Parcel shall be wholly located within such Parcel and, further, the parking area(s) on each Parcel shall contain a sufficient number of standard automobile size parking spaces in order to comply with all applicable governmental requirements of all governmental authorities for the respective Parcels.

2.3 Maintenance by Owner. Each Owner shall maintain in a clean, orderly and usable condition and in a good state of maintenance and repair, consistent with a first-class mixed use development, all Landscaping and Improvements situated on, and within, such Owner's Parcel, which are not required by this Declaration to be maintained by the Manager or located on, part of or within the Common Areas, including, without limitation, cleaning, sweeping, ice, snow and rubbish removal, resurfacing, restriping, replacing damaged or worn-out Improvements located on, or within, the Owner's Parcel and not part of the Common Areas. No provision of this Declaration shall be construed to mean that any Building cannot be razed or removed at any time or, further, must be restored or reconstructed if damaged or destroyed. However, if an Owner razes or removes any Building, or if any Building is damaged or destroyed, within a reasonable time after such occurrence the Owner of the Parcel on which such Building is or was located shall either cause such Building to be replaced or restored or cause all debris to be removed and the site of such Building to be left in a level, clean and maintained condition pending construction of any other Improvements, or Building, thereon. Notwithstanding the foregoing or any other term or condition of this Declaration, no Owner shall have any obligation, cost or otherwise (except as and to the extent damaged by any such Owner) to maintain or repair any Common Utility Facilities on, or within, such Owner's Parcel, but shall only be obligated to take or cause to be taken such actions as may be commercially reasonable to provide such access as may be reasonably necessary for the respective utility companies to accomplish the same).

If an Owner fails to perform any obligation under this subparagraph 2.3, and such failure continues for a period of thirty (30) days after written notice of such failure is given to such Owner by the Manager or, if the performance of such obligation would reasonably require more than thirty (30) days, such other longer period as may be reasonably necessary therefor, so long as such Owner commences such performance within such thirty (30) day period and thereafter diligently prosecutes such performance to completion, the Manager may, on written notice to Owner, perform such obligation in the stead of Owner. In any such event, the Manager shall be reimbursed for such performance by such Owner promptly on receipt of an invoice from the Manager, together with any amount equal to fifteen percent (15%) of the cost thereof for the administration of such work by the Manager, which administrative amount shall be remitted to the Declarant or the Association, as the case may be.

2.4 Development Guidelines. The Manager has adopted and promulgated (and may from time to time as necessary or appropriate, modify), and shall furnish to any interested party on written request, such Development Guidelines as may be reasonably necessary or appropriate, in the judgment of the Manager, to amplify or make more detailed any restrictions and requirements contained in this Declaration for Improvements, to advise interested parties of the standards and policies which will be applied in reviewing plans for such proposed Improvements and to establish appropriate procedural rules with respect to the submissions of plans for approval. As and to the extent that the Development Guidelines, including without limitation those in effect as of the Effective Date and attached as Exhibit B, shall be amended, supplemented or modified, no such amendment, supplement or modification shall result in any material change to the height restrictions, use restrictions or adversely affect the ownership, use or occupancy of any Parcel without the advance, written consent of all of the Owners, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any term or condition of this Paragraph 2, to the extent that any Improvements (including without limitation any building or other exterior elevations and signage) constructed, or to be constructed, by Intermountain Healthcare are architecturally and aesthetically consistent with, as the same may be remodeled from time-to-time, any Intermountain Healthcare healthcare facilities in Salt Lake County or Utah County, Utah, any such Improvements (including without limitation any building or other exterior signage) shall be deemed to be consistent with the Development Guidelines without further need for review, approval, or consent by the Manager or Design Review Board, including any such approval set forth in subparagraph 2.1.

2.5 Building Improvements.

(a) After completion of construction of a Building on a Parcel, each Owner covenants and agrees to maintain and keep the exterior portion of the Buildings located on its Parcel in first-class condition and state of repair, in compliance with all governmental requirements, and in compliance with the provisions of this Declaration, including, without limitation, the exterior architectural concept approved for such Building. Each Owner further agrees to store all trash and garbage on its Parcel in adequate containers, to locate such containers so that they are not readily visible from the Common Roadways, and to arrange for regular removal of such trash or garbage.

(b) In the event any of the Buildings on the Development Property are damaged by fire or other casualty (whether insured or not), the Owner upon whose Parcel such Building is located shall, subject to governmental requirements and/or insurance adjustment delays, immediately remove the debris resulting from such casualty, and within a reasonable time thereafter shall either (i) repair or restore the Building so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this Declaration, or (ii) erect another Building in such location, such construction to be performed in accordance with all provisions of this Declaration, or (iii) demolish the damaged portion and/or the balance of such Building and restore the cleared area to either a hard surface condition or a landscaped condition. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Owner shall be obligated to perform one (1) of such alternatives.

2.6 Common Roadways and Related Improvements. The Declarant has designed, engineered, and constructed, so that the same are suitable for public dedication and otherwise comply with all Applicable Laws, those Common Roadways (inclusive of any and all associated landscaping, hardscaping, lighting, curb cuts, curbs, gutters, sidewalks, and parkways (collectively, the "Common Roadways and Related Improvements"). Any costs and expenses incurred in connection with the initial design, engineering and construction of the Common Roadways and Related Improvements by or at the direction of the Declarant, including without limitation any warranty obligations and permitting, connection or impact fees, shall be the sole

responsibility, cost or otherwise, of the Declarant and, in whole or in part, shall not be part of the Common Areas Expenses.

2.7 Common Utility Facilities; Other Utilities and Related Improvements. In connection with the design, engineering and construction of the Common Roadways and Related Improvements, the Declarant, in compliance with any and all Applicable Laws, has designed, engineered, and constructed the Common Utility Facilities for the Development Property. Any costs and expenses incurred in connection with the design, engineering and construction of the Common Utility Facilities by or at the direction of the Declarant, including without limitation any warranty obligations and permitting, connection or impact fees, shall be the sole responsibility, cost or otherwise, of the Declarant.

In this connection, and subject to the applicable terms and conditions of this Declaration, each Owner shall have the right to install, maintain and repair, within the Utility Easement Area, any utilities, together with any related components and improvements therefor, designed to serve such Owner's Parcel, in whole or in part, and, in furtherance thereof and so long as any such use or connection shall not adversely affect the Common Utility Facilities, to connect to, and use, the Common Utility Facilities (as applicable, "Other Utilities and Related Improvements"). In the event any Owner shall determine to install any Other Utilities and Related Improvements within the Utility Easement Area, the Manager shall have the right to review and approve all plans and specifications therefor, which approval shall not be unreasonably withheld, conditioned or delayed, subject to such Owner's compliance with any and all Applicable Laws. Other than the obligation to cooperate with any Owner in connection with the design, engineering and installation of any Other Utilities and Related Improvements, neither the Manager nor any other Owner shall have any obligation, cost or otherwise, with respect to any such Other Utilities and Related Improvements, except as and to the extent any such Other Utilities and Related Improvements shall be damaged by the Manager or any other Owner, in which event the cost of any repair necessary by reason of any such damage shall be borne by the Manager or the responsible Owner, as the case may be, and payable upon demand, together with reasonably satisfactory evidentiary documentation thereof, by the beneficiary Owner of the Other Utilities and Related Improvements. In any case, except as and to the extent necessary to function properly, any and all Common Utility Facilities, Other Common Utility Facilities and Other Utilities and Related Improvements shall be located underground. Following any damage or disturbance of the surface area of the Utility Easement Area in connection with the installation any Other Utilities and Related Improvements within the Utility Easement Area, such Owner shall promptly restore the Utility Easement Area to its original condition. In addition, such Owner shall promptly repair or replace, at its sole cost and expense, any Common Utility Facilities damaged or injured by the acts or omissions of such Owner in connection with the Other Utilities and Related Improvements.

2.8 Signage and Common Areas Participation Rights. As and to the extent that, other than monument, pylon or other signage that only identifies the Development Property as "The Forge @ Geneva" (or any other reasonably comparable name given to the Development Property as an integrated commercial development), the Declarant or the Association (or the Town of Vineyard) constructs signage, monument, pylon or otherwise, which either benefits the Development Property as a whole or, alternatively, allows any Owner to utilize any such signage for the benefit of such Owner, *i.e.*, informational, marketing, directional, or otherwise, and, further, is visible from 650 North, Mill Road, Geneva Road, and/or the Vineyard Collector, each of the Owners shall have the right and option, but not the obligation, to utilize any such signage on the same general terms and conditions as any other Owner. Further, as and to the extent that the Association or the Declarant (or the Town of Vineyard) constructs any common amenities or areas, such as parks or other aesthetic elements that benefit the Development Property as a whole, or, alternatively, allows any Owner to use any portion of the Development Property that is not part of such Owner's Parcel in a manner that benefits such Owner's Parcel, then all Owners shall have the

right and option, but not the obligation, to utilize any such amenities or areas on the same general terms as any other Owner. Accordingly, in any such events, the Declarant, the Association or the Town of Vineyard, as the case may be, shall give advance, written notice of any such signage, amenities or areas, together with reasonably satisfactory detail thereof, so that each Owner shall have the opportunity to evaluate and, if desired, participate in, and benefit, from any such signage, amenities and/or areas.

### 3. Common Easements.

3.1 Grant of Easements. The Declarant hereby establishes and grants, and each other Person who becomes an Owner shall, immediately upon becoming such an Owner and without further act, shall be deemed to have established and granted to all other Owners and all Permittees, irrevocable, non-exclusive perpetual easements over, across, upon and beneath the Common Areas and Related Improvements for the following purposes:

(a) Access Easement. Each Parcel shall have appurtenant thereto and be benefited by, and the Common Roadways and Related Improvements shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for vehicular and pedestrian ingress and egress on, over and across those areas designed for such use, including but not limited to delivery and service truck and vehicle access to and from the Buildings and the public roadways adjacent to the Development Property, for the delivery of goods, wares, merchandise, and the rendering of services to all Owners, Permittees and/or Users. Each Permittee, Owner and/or User shall use commercially reasonable efforts to have service deliveries made within the areas designated for such purposes by the Declarant or the Association, as the case may be. In the event it is necessary for service deliveries to be made other than in the areas designated by the Declarant or the Association, as the case may be, such deliveries shall be made so as to cause the least amount of interference with the use of adjacent Parcels or the Common Areas, including, without limitation, the Common Roadways and Related Improvements. Notwithstanding the foregoing, except during construction, repair or maintenance of a Parcel or the Common Areas and, then, only as reasonably necessary or appropriate therefor (and subject to the specific limitations hereinafter specified), the Development Property shall not be accessed by or utilized for semi- or double-tractor-trailer vehicles, trucks or heavy machinery; provided that, notwithstanding the foregoing, the Development Property may be accessed or utilized by delivery vehicles, as and to the extent reasonably necessary or appropriate, for incidental or occasional use only; and provided that, subject to the terms and conditions of subparagraph 3.3, below, and, otherwise, exigent circumstances only excepted, the Common Areas shall not be accessed by or utilized for storage or staging of any kind or nature whatsoever. Further, during any construction, repair or maintenance of any portion of the Development Property or Common Areas, the Owner or Owners undertaking any such work or improvements shall take or cause to be taken such actions as may be necessary or appropriate to, without limitation, control dust, mitigate noise, and further, ensure adequate and sufficient drainage of the Development Property or Common Areas, as the case may be, and to prevent damage to any surrounding Parcels as a result of any such work or improvements.

(b) Utility Easement. Each Parcel shall have appurtenant thereto and be benefited by, and the Utility Easement Area shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, any underground Common Utility Facilities and, whether or not the same are part of the Common Utility Facilities, underground pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, communications, sewage, storm drainage and all types of water) under, through and across the Utility Easement

Area. With respect to any use of the Utility Easement Area as provided herein, the Owner intended to be served by the easement concerned shall pay the cost involved with such use, and at such Owner's sole cost, restore to their previous condition any Improvements which may be damaged as a result of such use. Each utility pipe, line, wire, conduit and related facility, including without limitation the Common Utility Facilities, shall be located underground to the extent reasonably possible. Further, any such use shall be subject to the terms and conditions otherwise applicable to the Common Areas and the Development Property as set forth in subparagraph 3.1(a), above.

### 3.2 Intentionally Omitted.

3.3 Temporary Construction. Subject to the prior written consent of the Declarant or the Association, as the case may be, which shall not be unreasonably withheld, conditioned or delayed, an Owner shall have the temporary use of the Common Areas (including for the erection of ladders, scaffolding and barricades) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment, and the use thereof; provided that all such construction, remodeling or repair shall be diligently performed and, upon completion of any such construction, remodeling or repair, any and all such ladders, scaffolding and barricades shall be promptly removed and, further, any affected property shall be restored to a condition equal to, or better than, the condition which existed prior to the commencement of any such work. Such Owner shall use reasonable efforts to minimize interference with any other Owner's use and occupancy of its Parcel and the applicable Common Areas and, subject to subparagraph 3.4, below, shall not prevent the ongoing and continuous use and enjoyment of the Common Areas by any other Owner.

3.4 No Obstruction. Except in exigent circumstances or to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, or for traffic regulation and control, no Owner shall permit to be constructed or placed on any portion of the Common Roadways and Related Improvements, if any, located on such Owner's Parcel any fence, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs vehicular and pedestrian traffic over any part of the Common Roadways and Related Improvements, or otherwise obstructs or interferes with the free flow of such traffic, except to the extent that the Manager reasonably deems it necessary to do so temporarily to prevent a public dedication of, or the accrual of any rights of the public in, the Common Roadways and Related Improvements. In the event of such obstruction as allowed above, advance, written notice shall be provided to the Owners and, to the extent that Intermountain Healthcare (or any successor or assignee thereof) shall use any Parcel for purposes of any healthcare services and/or healthcare-related purposes, together with, as ancillary and incidental to the healthcare services and/or healthcare-related purposes, administrative and/or office (clinical or non-clinical) uses, the Manager shall take or cause to be taken such actions as may be necessary to ensure that access to any such Parcel shall, on a commercially reasonable basis, be available 24/7.

3.5 Entrances and Exits. Subject to all necessary governmental permits and approvals (including without limitation, approval standards applicable to entrances and exits from public roads), each Owner of a Parcel shall be entitled, in its reasonable discretion, to place at least two (2), and as many other entrances and exits from its Parcel to the Common Roadways and Related Improvements as may be necessary or appropriate for the full and complete use and enjoyment of any such Parcel and as approved by the Manager or the Association, as applicable, in its reasonable discretion; provided that, so long as the number, design, and locations of such entrances and exits shall not materially adversely affect the access to, egress from, use, development or occupancy of any other Parcel, neither the Manager nor the Association shall withhold, condition or delay any such approval. Notwithstanding anything set forth in this Declaration to the contrary, the provisions of this subparagraph 3.5 shall not apply to any temporary

entrances and exits approved by the Manager or the Association for use in connection with the use, development, construction, maintenance, repair, and operation of the Parcels.

3.6 General Construction Requirements. To the extent any Owner performs, or authorizes to be performed, any construction, excavation, demolition, or any other similar activities on a Parcel, any such activities shall not:

(a) Cause any unreasonable increase in the cost of constructing Improvements on any other part of the Development Property;

(b) Unreasonably interfere with construction work being performed on any other part of the Development Property;

(c) Unreasonably interfere with the use, occupancy or enjoyment of any part of the Development Property by, or under, any other Owner or its Permittees;

(d) Cause any Building located on another Parcel to be in violation of any Applicable Laws;

(e) Involve access to such Parcel by semi- or double-tractor-trailer vehicles except as reasonably necessary or appropriate (and as otherwise specified in this Declaration); and/or

(f) Be undertaken without such actions as may be necessary or appropriate to, without limitation, control dust, mitigate noise, and further, ensure adequate and sufficient drainage of the Parcel and to prevent damage to any surrounding Parcels as a result of any such work or improvements.

Each of the Owners and the Declarant, subject to the limitations set forth in Paragraph 8, below, shall defend, protect, indemnify and hold harmless each other Owner or the Declarant, as the case may be, from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by such indemnifying party; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act, fault or omission of such indemnified party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through or under any of them. Further, each Owner shall diligently complete all construction activities within its Parcel in a commercially reasonable manner, shall regularly clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris and, upon completion of all construction activities, shall promptly restore such affected roadways and driveways to a condition equal to, or better than, the condition which existed prior to the commencement of any such construction work.

3.7 Taxes for Common Areas.

(a) The Declarant shall have the right, in its sole and absolute discretion, to petition all applicable Governmental Authorities for the creation of separate tax parcels for the Common Areas that are subject to Taxes.

(b) The Declarant or Manager shall have the right to collect from the Owners of all Parcels or, if an interest in a full Parcel shall be vested in more than one Person, from the Designated Representative with respect to such Parcel, the Parcel's share of any Taxes with respect to the Common Areas; provided that, as and to the extent any part of the Common Areas

within a Parcel are non-taxable, the Owner of such Parcel shall be entitled to, and receive, a corresponding, and proportionate, reduction in the amount of any such Taxes otherwise attributable to any such non-taxable Common Areas. Each Parcel's share shall be reasonably determined by the Manager in accordance with subparagraph 1.8. The Manager may invoice such Owners or Designated Representatives, as applicable, in accordance with the terms and conditions set forth in subparagraph 5.1.

(c) Only the Declarant or Manager shall have the right to contest the Taxes with respect to the Common Areas. An Owner (or any other Permittee, if such Permitted has the right under its lease or occupancy agreement to contest Taxes) shall only have the right to contest the amount of Taxes owing with respect to its Parcel on which Common Areas are located with the consent of the Declarant, which consent may be reasonably withheld. In all events the Owner (or other Permittee described above) protesting such Taxes shall take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any Parcel within the Project upon which any Common Areas are located, including, immediately following the written request of Manager, paying the taxes under protest and seeking a refund or recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien.

4. Manager's Duties. The Manager shall timely perform or cause to be performed (for example, through subcontractors, including affiliates of the Manager) the duties set forth in this Paragraph 4, for which the Manager shall be reimbursed in accordance with this Declaration. Except as and to the extent otherwise specified in this Declaration, all costs, expenses, fees and other amounts incurred or payable by the Manager in connection with the duties set forth in this Paragraph 4, whether or not such costs, expenses, fees or other amounts are properly capitalized under generally accepted accounting principles, are part of the Common Areas Expenses payable by the Owners under Paragraph 5 of this Declaration. The Manager shall have no obligation to perform, and no liability for failure to perform, any obligation set forth in this Declaration, the cost of which is to be reimbursed (in whole or in part) by the Owners, if the funds to pay for such obligation are not timely received by the Manager pursuant to Paragraph 5 of this Declaration; provided that, in the event the Manager shall fail to do so except by reason of the failure of Owners to reimburse any such funds, any non-defaulting Owners shall have the rights and remedies otherwise specified in subparagraph 4.5, below.

4.1 Maintenance of Common Areas by Manager. After the Common Areas are initially improved and installed, the Manager shall keep the Common Areas in a reasonably clean, orderly and usable condition and in a good state of maintenance and repair, consistent with a first-class, mixed-use development (except that as regards the Common Utility Facilities, the Manager shall be obligated to accomplish the foregoing only to the extent that such matters are not the responsibility of or accomplished by the respective utility companies involved and, otherwise, shall only be obligated to take or cause to be taken such actions as may be commercially reasonable to ensure that the respective utility companies involved accomplish the same). The foregoing shall include, without limitation, maintenance, repair and replacement, as necessary and appropriate (as determined by the Manager in the Manager's sole discretion), of all Landscaping and other Improvements located on the Common Areas, including, without limitation, cleaning, sweeping, ice, snow and rubbish removal, resurfacing, restriping, replacing damaged or worn-out Improvements located on, part of or within, the Common Areas.

4.2 Water Matters. Notwithstanding anything contained in this Declaration to the contrary, each Owner shall provide, and pay for, the water reasonably necessary to maintain the Landscaping located on, and within, such Owner's Parcel, excluding any Landscaping located on, or within, the Common Areas.



4.3 Damage. If all or any part of the Common Areas is damaged or destroyed through casualty, the Manager shall, as soon as reasonably possible, restore the same to substantially the same condition as existed prior to the damage or destruction. In any such event, and except as otherwise specified in this Declaration (with respect to initial construction and any applicable warranties), each Owner shall, within thirty (30) days after notice of the amount due, contribute an amount equal to the product obtained by multiplying the Common Areas Expense Share of such Owner by the cost of such restoration (net of any insurance proceeds or recoveries from persons causing such damage actually received by the Manager). Appropriate additional payments by, or refunds to, each Owner shall be made on completion of such restoration.

4.4 Condemnation. If all or any part of the Common Areas is taken through condemnation or are conveyed to a condemning authority under threat of condemnation, the entire condemnation award or proceeds shall be paid to the Manager; provided, however, that any such award or proceeds relating to the value of the land (as opposed to any Improvements on the land) shall be paid to the Owner of such land. The Manager shall, as soon as reasonably possible, restore the remaining Improvements in compliance with all Applicable Laws; provided that, in the event no such restoration shall be required, any award or proceeds relating to the Improvements on the land shall be paid to the Owner of the land. Such restoration shall be of equal or better quality in materials and workmanship as the original Improvements, and the cost of such restoration, in excess of the condemnation award and proceeds available, shall constitute Common Areas Expenses. Any condemnation award or proceeds for the Improvements remaining after such restoration shall be distributed to the Owner of the land or, in the event that the Common Areas are not part of the land of any Owner, to each Owner on the basis of such Owner's Common Areas Expense Share.

4.5 Default. If the Declarant or the Manager fails to perform any obligation under this Paragraph 4, and such failure continues for a period of thirty (30) days after written notice of such failure is given to the Declarant or the Manager by any Owner or Mortgagee or, if the performance of such obligation would reasonably require more than thirty (30) days, such other longer period as may be reasonably necessary therefor, so long as the Declarant or the Manager commences such performance within such thirty (30) day period and thereafter diligently prosecutes such performance to completion, the Owner or Mortgagee giving such notice may, on written notice to the Declarant or the Manager, perform such obligation in the stead of the Declarant or the Manager. Such Owner or Mortgagee shall be reimbursed for such performance by the Declarant, if the Declarant was the "Manager" failing to so perform or, alternatively, the all of the other Owners in accordance with each Owner's Common Areas Expense Share, together with an amount equal to fifteen percent (15%) of any such reimbursed amount, and together with, in the event any such amounts shall not be so reimbursed within ten (10) business days following demand therefor (inclusive of reasonably satisfactory evidentiary documentation thereof), interest at the rate of eighteen percent (18%) per annum on any unreimbursed amounts.

4.6 Rules and Regulations. Subject to the terms and conditions of this Declaration, the Manager may promulgate reasonable rules and regulations of general application for the supervision, control, and use of the Common Areas, in which event the Manager shall make or permit to be made and use its reasonable efforts to enforce the same or cause the same to be enforced uniformly (as applicable, the "Rules and Regulations"). The Rules and Regulations in effect as of the Effective Date are attached as Exhibit C and, as and to the extent that any such Rules and Regulations shall be modified or amended, copies of any such modifications or amendments shall be furnished promptly to the Owners.

## 5. Common Areas Expenses.

5.1 Collection. The Manager is expressly authorized by each Owner to incur all costs, expenses, fees and other amounts included within the definition of "Common Areas Expenses" set forth in subparagraph 1.6, and each Owner shall contribute such Owner's Common Areas Expense Share in the manner described in this Paragraph 5. The Manager shall make reasonable, good faith efforts to collect from each Owner such Owner's Common Areas Expense Share and may, at its option, do either of the following: (a) invoice each Owner for such Owner's Common Expense Share on a monthly, quarterly, annually or other periodic basis as the actual amount of the Common Areas Expense Share becomes known (in which event, the Common Areas Expense Share shall be due and payable within thirty (30) days after the delivery of such invoice); or (b) invoice each Owner in advance based on the Manager's reasonable estimate of the Common Areas Expense Share for the period concerned, which estimate shall be provided to each Owner at least annually. If the Manager adopts the second alternative, each Owner shall pay such Owner's Common Areas Expense Share in equal installments on the first day of each month, and within ninety (90) days after the end of each calendar year, the Manager shall furnish each Owner with a reasonably detailed final statement of the actual amount of such Owner's Common Areas Expense Share for such calendar year, together with reasonably satisfactory evidentiary documentation thereof. If such final statement reveals that the monthly installments made by an Owner aggregate less than such Owner's Common Areas Expense Share for such calendar year, such Owner shall pay the amount owing to the Manager within thirty (30) days after such final statement is furnished. If such final statement reveals that an Owner's payments aggregate more than such Owner's Common Areas Expense Share for such calendar year, the excess amount shall, at the option of the Manager, either be returned to such Owner or be applied by the Manager to amounts next due from such Owner under this Paragraph 5. Any amount required to be paid under this Paragraph 5 which is not timely paid shall accrue interest on and after the date due until paid in full, before and after judgment, at the rate of eighteen percent (18%) per annum. In addition, a late charge of five percent (5%) of such payment may be charged by the Manager for any payment not made within ten (10) days after the date due. Such late charge is payable not as a penalty, but in order to compensate the Manager for the additional expense involved in handling the delinquent payment. The acceptance by the Manager of any payment that is less than the entire amount then due shall be on account only and shall not constitute a waiver of the obligation to pay such entire amount. All records and accounts maintained by the Manager which relate to the Common Areas Expenses shall be open to examination and audit by any Owner on or at least ten (10) days' prior written notice to the Manager. Further, from and after the date that the Manager shall be the Association, and to the extent relating to period from and after any such date, the Association board of directors shall have the right, and option, to require, and request, such audits as may be necessary or appropriate to confirm and verify any such Common Areas Expenses, whether from third parties or otherwise.

The prorata share of each Parcel is subject to change upon the subdivision of any Parcel (or Parcel combination). In the event an existing Parcel is subdivided (or combined), the party causing such subdivision (or combination) shall, at its expense, prorate the allocation of its costs payable hereunder attributable to the original Parcel between the newly created Parcels, file a recorded declaration confirming such allocation, and deliver a copy of such declaration to Developer and each other Owner. The declaration only needs to be executed by the party whose Parcel is being subdivided.

5.2 Certain Obligations and Rights. The obligations of each Owner under subparagraph 5.1 and all other provisions of this Declaration are the personal obligations of such Owner and may be enforced by the Manager or, on written notice to the Manager and each Owner, by any other Owner. No Owner may avoid or diminish the personal nature of such obligations by abandonment of such Owner's Parcel or any Improvements on such Owner's Parcel or by waiver of any of the services or amenities provided for in this Declaration. Suit to recover a money judgment

for any amount due may be maintained without foreclosing or waiving the lien described in subparagraph 5.3. All remedies set forth in this Paragraph 5 are cumulative and are in addition to any remedies otherwise available at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation of this Declaration and to compel by decree specific performance, it being agreed that the remedy at law for breach may be inadequate.

5.3 Liens. If not paid when due, the amounts payable under this Paragraph 5 or any other amounts payable to the Manager under this Declaration may be secured by a lien against the delinquent Owner's Parcel (as applicable, an "Assessment Lien"). Such lien shall be evidenced by a notice of lien recorded by the Manager in the Official Records. A copy of such notice of lien shall be given to such Owner and any Mortgagee holding a Mortgage covering such Parcel within ten (10) days following recordation. Such notice of lien shall set forth the unpaid amount, the date such amount was due, the name of such Owner and a description of the property subject to such lien, and shall be signed and acknowledged by the Manager. Any such lien may be foreclosed in the same manner as is provided under Applicable Laws for the foreclosure of mortgages covering real property, and shall be subject and subordinate to (a) each lien or encumbrance recorded at the time such notice of lien is recorded, (b) a lien or encumbrance recorded before this Declaration is recorded, (c) this Declaration, (d) each (recorded or unrecorded) utility right-of-way or easement existing at the time such notice of lien is recorded, (e) the interests of each tenant or lessee under each lease (whether recorded or unrecorded) existing at the time such notice of lien is recorded, (f) the Use Restrictions and the other terms, conditions and restrictions set forth in Paragraph 12, below, (g) the rights, terms and conditions set forth in Paragraph 3, above, and (h) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests, whether recorded or unrecorded at the time such notice of lien is recorded. In connection with the foreclosure, judicially or nonjudicially, of any such lien, the responsible Owner of the Parcel foreclosed, as the case may be, shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the Assessment Lien being foreclosed. The Manager and each Owner shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Parcels purchased at such sale. In furtherance hereof, the Declarant hereby appoints NATIONAL TITLE AGENCY, LLC, a Utah limited liability company ("National Title Agency"), as a trustee who qualifies under U.C.A. subsection 57-1-21(1)(a)(iv) and, further, the Declarant hereby conveys and warrants, pursuant to U.C.A. Sections 57-1-20 and 57-8a-302, to National Title Agency, with power of sale, the Parcels and all Improvements to the Parcels solely for the purposes specified in this subparagraph 5.3 and securing payment of Assessments under the terms of this Declaration. Except as hereinabove specified, and notwithstanding any other term or condition of this Declaration, National Title Agency, and any successor trustees hereunder, shall not have any other right, title or interest in the Development Property or any Improvements beyond those rights and interests specified in this subparagraph 5.3 and necessary to foreclose any Assessment Lien against Parcels arising pursuant to this subparagraph 5.3.

5.4 Default. Except as set forth in subparagraph 4.4, if any Owner fails to perform any obligation under this Declaration and such failure continues for a period of fifteen (15) days after written notice of such failure is given to such Owner by the Manager, or if the performance of such obligation would reasonably require more than fifteen (15) days, if such Owner fails to commence such performance within such fifteen (15) day period or thereafter diligently prosecute such performance to completion, subject to "force majeure" in any case, the Manager may, on written notice to such Owner, perform such obligation in the stead of such Owner. The Manager shall be reimbursed by such Owner on demand for all costs and expenses (including attorneys' fees) incurred in connection with such performance, with interest on such costs and expenses, both before and after judgment, at the rate of eighteen percent (18%) per annum.

6. Taxes. Each Owner shall pay, prior to delinquency, all Taxes on such Owner's Parcel, unless the collection of such Taxes and any sale or forfeiture of such Parcel for non-payment of such Taxes is prevented or suspended through appropriate legal proceedings. If any Parcel is not assessed and taxed as an independent parcel for tax purposes, the Taxes allocable to such Parcel shall be an equitable proportion of the Taxes for all of the land and Improvements included within each relevant tax parcel assessed, such proportion to be determined by the Manager from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

7. Insurance. Each Owner shall maintain commercial general liability insurance providing coverage against bodily injury, death and property damage occurring, or by reason of activities, on or about the Parcels. Such insurance shall be carried with a responsible company and shall afford at least the coverage provided by a "combined single limit" of not less than \$3,000,000.00 per occurrence, and not less than \$5,000,000 in the aggregate, for bodily injury, death and property damage. With the prior written approval of the Manager, any Owner may comply with the requirements of this Paragraph 7 by the purchase of blanket coverage, and may elect such deductible provisions as are consistent with good business practices. Each Owner shall, on request furnish the Manager with a certificate issued by its insurer evidencing that insurance is in force which complies with the requirements of this Paragraph 7. Such amounts shall be increased over time so as to maintain comparable coverage amounts as dollar values erode with inflation or if reasonably required under then-prevailing industry standards for comparable mixed use developments in the area. Notwithstanding the foregoing or anything to the contrary set forth in this Declaration, to the extent permitted by Applicable Laws, Intermountain Healthcare, if an Owner, may, at its option, satisfy its insurance obligations hereunder through its self-insurance and risk management program; provided that (a) in no event shall any such self-insurance election be deemed or constitute an obligation by Intermountain Healthcare to provide insurance coverage beyond the scope of that required hereunder or coverage amounts in excess of those stated above or customarily maintained by owners of similarly configured buildings or improvements situated in Utah County, Utah; and (b) in the event of such self-insurance election, Intermountain Healthcare reserves the right to claim, as a credit against Intermountain Healthcare's payment of any prorata share of Common Areas Expenses, an amount equal to providing similar comprehensive public liability insurance coverage through a third-party insurance provider.

Commencing not later than the time of the first conveyance of a Parcel to an Owner, the Manager shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Property insurance on the Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, as determined by the Manager; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Manager, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas;

(c) Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

(d) Such other insurance as the Manager shall determine from time to time to be appropriate to protect the Association or the Owners;

The premiums for any insurance obtained by the Association pursuant to this Declaration shall be included in the budget of the Common Areas Expenses and shall be paid by the Association.

8. Indemnification; Limitation on Damages. Each Owner shall indemnify, defend and hold harmless the Manager and each other Owner from and against all losses, damages, claims, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorneys' fees, whether incurred with or without the filing of suit, on appeal or otherwise), liabilities, judgments and liens, of whatever kind or character, which are caused by the use, deposit, storage, disposal, transportation or release of any hazardous substances, hazardous wastes, pollutants or contaminants on any Parcel by the indemnifying Owner or any person leasing or occupying the Parcel owned by such indemnifying Owner, or by any agent, employee, contractor, invitee or licensee of the indemnifying Owner or any person leasing or occupying the Parcel owned by such indemnifying Owner. Notwithstanding the foregoing, or any other term or condition of this Declaration, any obligation or liability whatsoever of the Declarant, an Owner, a Permittee, or a User, which may arise at any time under this Declaration, or any obligation or liability which may be incurred by it pursuant to any other instrument, transaction, or undertaking contemplated hereby, shall not be personally binding upon, nor shall resort for the enforcement thereof be had to the property of, the directors, shareholders, officers, employees or agents thereof, as the case may be, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise. In addition, notwithstanding any provision in this Declaration to the contrary and except as and to the extent caused by the intentional misconduct of a Person, neither the Declarant nor any Owner, User or Permittee, or their respective agents, representatives, affiliates, employees, or contractors, shall be liable to the other for incidental, lost profits, consequential, reliance, special, punitive, exemplary, or indirect damages arising out of this Declaration, whether by reason of contract, indemnity, strict liability, negligence, breach of warranty or from breach of this Declaration, and regardless of whether the parties knew of the possibility that such damages could result, each party hereby releases the other parties of such claims.

9. Dedication of Common Roadways. The Manager shall have the right at any time, with the prior consent and approval of the Declarant or, in the event the Declarant no longer owns any of the Parcels, the Association, to dedicate the Common Roadways and Related Improvements to the public for purposes of vehicular ingress and egress by conveyance to the appropriate governmental authority, and any other Owner, Mortgagee or other person having any right, title or interest in or to the Common Roadways and Related Improvements shall join in such dedication on the request of the Manager, without compensation. On such dedication, this Declaration shall cease to apply to the Common Roadways and Related Improvements, except as and to the extent accrued to the date of any such dedication, and such governmental authority shall thereafter be responsible for maintenance and repair of the Common Roadways and Related Improvements, as and to the extent accruing from and after the date of any such dedication.

10. Title and Mortgage Protection. Except as set forth in subparagraph 5.3 or otherwise in this Declaration, any breach of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in any Parcel, and shall not defeat, impair or render invalid the lien of, or other rights under, any Mortgage covering any Parcel. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interest under any Mortgage affecting any Parcel shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this

Declaration (other than those provisions, if any, concerning a consent to be given by a Mortgagee, if a Mortgagee's failure to give such consent is wrongful).

11. Covenants to Run with Land. This Declaration shall constitute a covenant running with the land, and shall be binding on and shall inure to the benefit of the Manager, each Owner, any other party holding any interest in any Parcel and their respective successors and assigns, all of which persons may enforce any obligation created by this Declaration. This Declaration shall be binding on each Parcel, and all interest in or occupying any Parcel, the person so coming to have such interest or occupying agrees to be bound by this Declaration; provided, however, that no such person shall have liability under this Declaration for any acts committed prior to the time such person became an Owner.

12. Restrictions.

12.1 Uses. No use shall be permitted in the Development Property, which is inconsistent with the operation of a first-class, mixed use development and those permitted in The Forge Mixed Use District Zone. Without limiting the generality of the foregoing, the following uses shall not be permitted:

(a) Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any Building in the Development Property;

(b) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of (1) construction trailers during periods of construction, reconstruction, or maintenance, or (2) all or any part of a Parcel for staging during construction);

(c) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors or receptacles located near the rear of any Building);

(d) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(e) Any automobile, truck, trailer, or recreational vehicles sales, leasing, display, body shop or repair operation;

(f) Any mortuary or funeral home;

(g) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant;

(h) As an adult book store, night club or discotheque, massage parlor, or any other establishment which provides live entertainment or which sells, rents or exhibits pornographic or obscene materials;

(i) Any "second hand" store, "surplus" store, flea market, pawn shop, government surplus store, Goodwill Store, salvage store, Salvation Army Store or liquidation store;

(j) Any central laundry, dry cleaning plant, or laundromat unless in compliance with all environmental laws;

(k) Any animal raising or boarding facilities (except that this shall not prohibit pet shops or a veterinary clinic);

(l) any carnival or circus, gamer room or arcade (unless incidental to a permitted use;

(m) any unemployment agency or employment office; and

(n) Any unlawful or illegal purpose.

No Party shall use, or permit the use of "Hazardous Materials" (as that term is defined herein) on, about, under or in its Parcel or the Development Property, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws (as that term is defined herein). For the purpose of this Paragraph 12, the term (i) "Hazardous Materials" shall mean: asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean: all federal, state, county, municipal, local or other statutes, laws, ordinances and regulations which relate to or deal with the environment, all as may be amended from time to time.

12.2 Additional Restrictions. Each Owner further agrees that any construction activities performed or authorized by it shall not:

(a) Cause any unreasonable increase in the cost of constructing improvements upon another Owner's Parcel;

(b) Unreasonably interfere with construction work being performed on any other part of the Development Property;

(c) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Development Property;

(d) Involve access to any Parcel by double-tractor-trailer vehicles, except as reasonably necessary or appropriate; and/or

(e) Be undertaken without such actions as may be necessary or appropriate to, without limitation, control dust, mitigate noise, and further, ensure adequate and sufficient drainage of the Parcel and to prevent damage to any surrounding Parcels as a result of any such work or improvements.

13. Compliance and Enforcement.

(a) Every Owner and Permittee with respect to a Parcel shall comply with any and all Applicable Laws, this Declaration and the Governing Documents.

(b) The Manager or the Association, acting through the board of directors of the Association, may enforce all applicable provisions of this Declaration and the Governing Documents. Without limiting other remedies available at law, the Manager or the Association, as applicable, may assess an Owner to cover costs incurred by the Association to bring a Parcel into compliance with this Declaration and the other Governing Documents. Except as and to the

extent otherwise specified in this Declaration, no Owner or Permittee may enforce the provisions of this Declaration.

(c) In addition, the Manager, any Owner or the Association, as applicable, may take the following enforcement procedures to ensure compliance with this Declaration and the other Governing Documents:

(i) exercising self-help in any emergency situation or situation requiring immediate compliance with Governmental Requirements: or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(d) All remedies set forth in this Declaration or the other Governing Documents shall be cumulative of and in addition to any remedies available at law or in equity.

(e) In any action to enforce this Declaration or the other Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action. Any recovery against the Manager shall be paid by the Association and shall be assessable to the Owners, unless such recovery is due to the gross negligence or willful misconduct of the Manager.

(f) The decision to pursue enforcement action in any particular case shall be left to the discretion of the Manager, an Owner or the Association, as applicable, except that the Manager, any Owner or the Association, as applicable, shall not be arbitrary or capricious in taking enforcement action.

(g) Without limiting the generality of the foregoing, the Manager or the Association, as applicable, may determine that, under the circumstances of a particular case:

(i) The position of the Manager or the Association, as applicable, is not strong enough to justify taking any or further action;

(ii) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with Applicable Laws;

(iii) Although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's or the Manager's resources to enforce; or

(iv) That it is not in the best interest of the Project, based upon hardship, expense or other reasonable criteria, to pursue enforcement action; and

(v) Any such a decision shall not be construed as a waiver or estoppel of any right or remedy of the Manager or the Association, as applicable, or prevent the Manager or the Association, as applicable, from enforcing such provisions for any subsequent default(s) at a later time and under other circumstances.

#### 14. Dispute Resolution.

14.1 Disputes between Owners. Any disputes between Owners, the Declarant or the Association concerning the interpretation, compliance or enforcement of the provisions of



this Declaration shall be submitted to a mutually agreeable mediator or mediator service prior to the institution of any action. The mediation shall be nonbinding, and the parties to the mediation shall bear the costs equally.

14.2 Arbitration. Unless any disputes are otherwise resolved pursuant to subparagraph 14.1, above, of this Declaration, any such disputes shall be resolved by binding arbitration, before a single arbitrator reasonably designated by the Declarant or, if the Declarant no longer owns any part of the Development Property, by the Association, or such neutral, independent arbitration service that the Declarant or the Association, as the case may be, shall designate (in any case, the "Arbitrator"), in Salt Lake City, Utah. If an Owner objects to the Arbitrator, the Owner must inform the Declarant in writing within ten (10) days of Owner's receipt of written notice informing Owner of the appointed Arbitrator and, then, if the parties are unable to agree on another arbitrator, then either party may, pursuant to the applicable provisions of the Utah Uniform Arbitration Act, U.C.A. Section 78B-11-101, et seq., as amended, apply to a court of competent jurisdiction to designate an arbitration service provider, which designation shall be binding upon the parties. Selection of the arbitrator shall be the responsibility of Arbitrator or the appointed arbitration service, as applicable. The rules and procedures of the arbitration service that are in effect at the time the request for arbitration is submitted will be followed unless the parties expressly agree otherwise, and the applicable discovery and other time periods thereunder may be adjusted, as determined by the arbitrator, in order to permit the prompt conclusion of the arbitration proceeding. The arbitration service designated or finally appointed as aforesaid shall administer the arbitration or any and all Disputes required to be joined under the law.

These arbitration provisions shall be governed by and interpreted under Utah law pursuant to the Utah Uniform Arbitration Act, U.C.A. Section 78B-11-101, et seq., now in effect and as it may be hereafter amended, and in accordance with the Utah Rules of Civil Procedure, Rules 16, 26, 30, 33, 34, 36, and 56, unless the parties mutually agree to alternative arbitration procedures, and the applicable discovery and other time periods thereunder may be adjusted, as determined by the arbitrator, in order to permit the prompt conclusion of the arbitration proceeding. The parties to the arbitration shall share equally in the arbitrator's fees and expenses. The award of the arbitrator shall be final and may be entered as a judgment in a court of competent jurisdiction. Unless otherwise recoverable by law or statute, each party shall bear its own costs (including expert's costs) and expenses, including attorneys' fees and paraprofessional fees for any arbitration. Notwithstanding the foregoing, if a party unsuccessfully contests the validity or scope of arbitration in a court of law or equity, the non-contesting party shall be awarded reasonable attorneys' fees and paraprofessional fees and expenses incurred in defending such contest, including such fees and costs associated with any appellate proceedings. In addition, if a party fails to abide by the terms of a settlement or arbitration award, the other party shall be awarded reasonable attorneys' fees, paraprofessional fees and expenses incurred in enforcing such settlement or award.

These arbitration provisions are a self-executing arbitration agreement. Any dispute concerning the interpretation or the enforceability of these arbitration provisions, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity hereof, or these alternative dispute resolution provisions, or the scope of arbitrable issues thereunder, and any defense relating to the enforcement of these alternative dispute resolution provisions, including, without limitation, waiver, estoppel, or laches, shall be decided by an arbitrator in accordance with these arbitration provisions and not by a court of law.

The parties to this Declaration expressly consent and agree that arbitration of any Dispute may, at the option of the Declarant, include consolidation, joinder, or any other means to provide for joint participation of all parties involved in the Dispute and who are necessary in order to provide for the complete resolution of such Dispute.

14.3 Waiver of Litigation Rights. All persons bound and subject to the provisions of this Declaration acknowledge and agree that by being bound to binding arbitration as provided herein: (a) such person, including each Owner, is giving up any rights it might possess to have a dispute litigated in a court or jury trial (see Paragraph 33, below); (b) such person's discovery and appeal rights will be limited; (c) an Owner's election to purchase a Parcel to this Declaration and these arbitration provisions is voluntary and the Owner understands its provisions; (d) the Declarant and each Owner and will take all actions reasonably necessary to secure participation by such other necessary and proper parties in the dispute resolution procedures set forth herein; and (e) the Declarant would not have sold the Parcels without each Owner being bound to these arbitration provisions.

14.4 Choice of Law and Scope of Arbitrator's Authority. All disputes shall be governed, interpreted and enforced according to the Utah Uniform Arbitration Act, U.C.A. Section 78B-11-101, et seq., as amended, which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy court proceedings. Interpretation and application of these procedures shall conform to Utah court rulings interpreting and applying the Uniform Arbitration Act. The arbitrator shall apply the laws of the State of Utah, and the arbitrator's award may be enforced in any court of competent jurisdiction. The arbitrator shall have the authority to try and shall try all issues, whether of fact or law, including without limitation, the validity, scope and enforceability of these arbitration provisions, and may issue any remedy or relief that the courts of the State of Utah could issue if presented the same circumstances.

14.5 Acknowledgment. BY ACCEPTANCE OF A DEED TO A PARCEL, EACH OWNER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE FOREGOING AND AGREES TO SUBMIT ANY DISPUTES OR CLAIMS OR CONTROVERSIES ARISING OUT OF THE MATTERS INCLUDED WITHIN THESE ARBITRATION PROVISIONS TO NEUTRAL BINDING ARBITRATION AS SPECIFIED IN THESE ARBITRATION PROVISIONS.

## 15. Association.

15.1 General. The Declarant shall organize an association of the Owners of the Parcels within the Development Property (as defined above, the "Association"). The Association shall be organized under the name "Forge Owners' Association" or such similar name as the Declarant shall reasonably designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit, and burden, of the Development Property and all Owners and Users.

15.2 Organization. The Declarant, before the first Parcel is conveyed to an Owner, shall organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Utah. The Articles of Incorporation of the Association shall provide for its perpetual existence, but, in the event the Association is at any time dissolved, whether voluntarily or involuntarily, by operation of law or otherwise, the Association shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association. The Declarant shall cause the Association to register with the Utah Department of

Commerce, as prescribed by Utah Code Ann. § 57-8a-105, within ninety (90) days following the recording of this Declaration in the Official Records.

15.3 Membership. Every Owner of one or more Parcels within the Development Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Parcels within the Development Property, be a member of the Association (individually, a "Member" and, collectively, "Members"). Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

15.4 Voting Rights. The Association shall have two classes of voting membership:

(a) Class A Members shall be all Owners of Parcels within the Development Property, including, so long as the Declarant shall own the entirety of any Parcel, the Declarant.

(b) The Class B Member shall be the Declarant; provided that the Class B membership shall terminate upon the happening of any of the following events, whichever occurs earlier: (i) upon the sale of all Parcels within the Development Property to ultimate purchasers (excluding builders purchasing for development and resale); or (ii) such earlier date as the Declarant may elect to terminate such membership; provided that, in any such event (but with the understand that the failure to do so shall not affect, or delay, any such termination), the Declarant shall provide written notice thereof to the Owners.

Until the Class B membership is terminated as provided above, all voting rights in the Association shall belong to the Class B Member, except to the extent otherwise expressly provided herein (including without limitation Paragraph 16, below). Upon termination of the Class B membership, all voting rights in the Association shall belong to the Class A Members. On all matters upon which the Class A Members are entitled to vote, each Class A Member shall have one vote for each Parcel owned within the Development Property; provided that, in the event more than one person holds an interest in any Parcel, the vote for such Parcel shall be exercised by such persons as they among themselves determine, but in no event shall more than one vote be cast with respect to any Parcel.

15.5 Powers and Obligations. The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah.

(c) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant, and subject, to this Declaration or otherwise promoting the general benefit of the Development Property or the Owners within the Development Property.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the

provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah. Further, the Association may delegate, by majority vote, any of its powers and duties to the Manager.

15.6 Liability. Except as and to the extent resulting from the intentional misconduct or gross negligence of any such person, any individual Member of the Association shall not be liable to the Association or any Member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of the Association's duties. In the event any Member of the Association is made a party to any proceeding because the individual is or was a Member, director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

15.7 Interim Board; Turnover Meeting. The Declarant shall have the right to appoint an interim board of one to three directors, who shall serve as the board of directors of the Association until replaced by the Declarant or their successors have been elected by the Owners at the turnover meeting described in this paragraph. The board of directors of the Association shall have the right, but not the obligation, to appoint such officer(s) as may be necessary or appropriate to oversee the day-to-day administration of the Association, who shall serve for term, and subject to any limitations, as may be imposed by the board of directors of the Association; provided that, in the event the board of directors of the Association shall not appoint any such officer(s), the board of directors of the Association shall be responsible for the day-to-day administration of the Association. The Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Development Property to the Association not later than 120 days following the termination of the Class B membership in accordance with this Declaration. At the turnover meeting, any existing directors or officers of the Association shall resign and, concurrently therewith, the Owners shall elect and ratify a board of directors of the Association as provided in this Declaration and the Bylaws of the Association, which board of directors then shall have the right, but not the obligation, to appoint such officer(s) as may be necessary or appropriate to oversee the day-to-day administration of the Association, who, again, shall serve for term, and subject to any limitations, as may be imposed by the board of directors of the Association. If the Declarant fails to call the turnover meeting as required by this paragraph, any Owner of one or more Parcels may call the meeting by giving notice as provided in the Bylaws.

15.8 Limitations. Nothing contained in this Declaration shall permit the Association from modifying the provisions of subparagraph 12.3 pertaining to the Use Restrictions for the Development Property.

15.9 Annual Budget. The Bylaws shall provide for the preparation and approval of an annual budget for the Association, consistent with any and all Applicable Laws.

15.10 Restricted Use Criteria Properties. As described in attached Exhibit D, certain of the Common Roadways and Related Improvements (as applicable, the "Restricted Use Criteria Properties") are subject to that certain Final Site Management Plan for Site Development - The Forge at Geneva, dated August 15, 2017 (the "Site Management Plan") and any applicable use restrictions part of, or described in, the Site Management Plan and that certain Environmental Covenant, recorded October 13, 2017 the Office of the Utah County Recorder as Entry No. 101323:2017 (collectively, the "Restricted Use Criteria") and, accordingly, the Association has the right, and obligation, to (A) establish, from to time, reasonable rules and regulations to ensure that the "Environmental Remediation Work" and/or the "SVOC-Impacted Soils" (each as defined below) are not disturbed or adversely affected by reason of the use, operation, maintenance and/or

repair, routine or otherwise, of the Common Roadways and Related Improvements, including without limitation the Restricted Use Criteria Properties, by any Owner and, as necessary or appropriate, all other Users (as applicable, the "Restricted Use Rules and Regulations") and (B) take or cause to be taken such actions as may be reasonably necessary or appropriate to ensure that each Owner and, as necessary or appropriate, all other Users observe, and comply with, the Restricted Use Criteria, the Restricted Use Rules and Regulations, and any and all Applicable Laws, including without limitation any Environmental Laws applicable to the Restricted Use Criteria Properties by reason of the Environmental Remediation Work, the Restricted Use Criteria or otherwise. Except as and to the extent caused or exacerbated by any such Owner, or except due to the neglect, fault or omission of any such Owner, no Owner shall be individually responsible, cost or otherwise, for the Association's obligations set forth in this subparagraph 15.10.

In connection with the use, operation, maintenance and/or repair, routine or otherwise, of any part or all of the Common Roadways and Related Improvements, including without limitation the Restricted Use Criteria Properties, each Owner and, as and to the extent applicable, each User shall comply with, and observe, the Restricted Use Criteria, the Restricted Use Rules and Regulations, and any and all Applicable Laws, including without limitation any Environmental Laws applicable to the Restricted Use Criteria Properties by reason of the Environmental Remediation Work, the Restricted Use Criteria or otherwise.

For purposes of this subparagraph 15.10, "Environmental Remediation Work" shall mean, consistent with the requirements of Applicable Laws including without limitation any Environmental Laws applicable to the Restricted Use Criteria Properties by reason of the Environmental Remediation Work, the Restricted Use Criteria or otherwise, and the Site Management Plan (v) the removal by the Declarant of all soils in excess of the single family residential Site-Specific Screening Levels established for the former Geneva Steel facility, as more particularly described and shown in the Limited Subsurface Investigation Report and the Interim Site Management Plan (the "SVOC-Impacted Soils") from, and within, the part of the Development Property not to be used for purposes of the Common Roadways and Related Improvements and (vi) the handling, location, encapsulation, and/or covering by the Declarant of all SVOC-Impacted Soils used for purposes of the Common Roadways and Related Improvements in compliance with any and all such Applicable Laws and the Site Management Plan.

16. Amendment. Except as expressly provided otherwise in this Declaration, this Declaration may be amended only by an instrument recorded in the Official Records which is executed by each Owner of the Parcels, except as follows:

(a) any amendment to this Declaration which changes the metes and bounds description of the Common Roadways, the Utility Easement Area or one or more existing Parcels or which adds one or more additional Parcels only needs to be executed by the Manager and the Owner(s) of the realty concerned, and shall set forth a metes and bounds description of the realty concerned; and

(b) any instrument effective as an amendment to this Declaration pursuant to which any Manager assigns its rights and duties under this Declaration to another Manager must be executed by a majority of the Members of the Association and, if the new Manager is an Owner, shall set forth a metes and bounds description of such Owner's Parcel.

Unless under the foregoing provisions of this Paragraph 16 it is a necessary party to the amendment in question, no other person holding an interest in or occupying any Parcel needs to execute an amendment to this Declaration in order to make such amendment in all respects effective, valid, binding and enforceable; provided, however, that no amendment to this Declaration shall affect the rights of any Mortgagee holding a Mortgage which constitutes a lien on the realty

directly involved in such amendment (if such lien is recorded prior to the recordation of such amendment) unless such Mortgagee consents to such amendment in writing. Further, notwithstanding any other provision of this Declaration, the Association may not amend this Declaration to expand the powers of the Manager or Association beyond those expressly granted herein with respect to property owned by an Owner without the consent of the Owner.

17. Attorneys' Fees. If any action is brought because of a default under or to enforce or interpret this Declaration, in addition to the relief to which such party is entitled, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

18. Release on Transfer. On and after the date an Owner transfers (other than merely for purposes of security) or is otherwise divested of such Owner's interest in any Parcel, such Owner shall be relieved of all liabilities and obligations under this Declaration related to such Parcel, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture.

19. No Merger. The easements, covenants, restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that one or more Parcels may be owned by the same person from time to time, it being the intention of the Manager to create a common scheme for the development and operation of the Parcels which will not be terminated by the doctrine of merger or otherwise, unless this Declaration is terminated in accordance with Paragraph 22.

20. Force Majeure. Any Owner or other person obligated under this Declaration shall be excused from performing any obligation set forth in this Declaration, except the payment of money and any other financial liability, so long as (but only so long as) the performance of such obligation is prevented or delayed by an act of God, weather, avalanche, fire, earthquake, flood, explosion, act of the elements, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause reasonably beyond the control of the Owner or other person prevented or delayed (financial inability excepted).

21. Certain Agreements. The purpose of this Declaration is to create certain easements, covenants, restrictions and other provisions which are to apply among the Parcels and which are to define and govern the rights and obligations as between those persons interested in a given Parcel, on the one hand, and those persons interested in other Parcels, on the other. Accordingly, this Declaration shall not alter any agreements which allocate rights and obligations of persons having an interest in the same Parcel among such persons or third parties, but such agreements shall not limit the liability or obligation of any person under this Declaration.

22. Effective Dates and Duration. This Declaration and any amendment to this Declaration shall take effect as of the date on which it is recorded in the Official Records. This Declaration shall remain effective until terminated and extinguished by an instrument recorded in the Official Records and executed by each Owner of the Parcels and the Mortgagee under each Mortgage then affecting the Parcels.

23. Interpretation. The captions which precede the paragraphs or subparagraphs of this Declaration are for convenience only and shall in no way affect the manner in which this Declaration is construed. This Declaration shall be governed by and construed in accordance with

the laws of the State of Utah. The invalidity or unenforceability of any part of this Declaration shall not affect the validity or enforceability of the remainder of this Declaration, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

24. No Third Party Beneficiaries. Except as herein specifically provided in this Declaration, no rights, privileges or immunities set forth herein shall inure to the benefit of any Owner or Permittee with respect to any Parcel, nor shall any Owner or Permittee be deemed to be a third party beneficiary of any of the provisions contained herein.

25. Designated Representative. Notwithstanding anything to the contrary in this Declaration, if, at any time, that an interest in a full Parcel, or portions thereof, shall be vested in more than one Person, then the Persons owning or holding interests such Parcel shall be required to designate in a written notice to the Declarant one Person to receive all notices, pay all Assessments, and give all necessary consents and approvals required by the terms of this Declaration with respect to all of the Owners of such Parcel (a "Designated Representative"). The Designated Representative must be one of the following Persons: (i) if there is no owners' or condominium association, the Designated Representative shall be one (1) Person which is the owner or holder of some interest in such Parcel; (ii) if there is an owners' or condominium association with respect to such Parcel, then the only Person that may be the Designated Representative shall be the owners' association or condominium association, as applicable. The name and contact information of the Designated Representative shall be provided to the Manager in writing in a manner reasonably satisfactory to the Manager. Whenever notice is to be provided to the Owners of such Parcel under this Declaration, the Manager or Person giving such notice may deliver such notice only to the Designated Representative and need not give notice to any other Person. Whenever the consent, approval or payment of the Owners of such Parcel is required under this Declaration, the Manager or any other Person may rely on the consent, approval or payment of the Designated Representative and the Manager or such other Person need not obtain the consent, approval or payment of any other Person. The Designated Representative shall have absolute discretion to make the decisions on behalf of the entire Parcel. In the event the name and contact information of a Designated Representative is not properly provided to the Manager, the Manager shall not be held liable for failure to provide notice to or seek approval from such Designated Representative or the Owners of the applicable Parcel. The Manager may rely on the name and contact information of the Designated Representative provided to the Manager, regardless of whether the information is, in fact, incorrect or is disputed by the Owners of the applicable Parcel. The Manager is under no duty to verify the authority or power of the Designated Representative or any other information given to the Manager regarding the Designated Representative. Each Owner of an interest in a Parcel owned by more than one Person agrees to indemnify, defend, and hold harmless the Manager in the event the Manager contracts with, or gives notice to, a Designated Representative and that Designated Representative, for any reason, is not, or is disputed to be, the Designated Representative designated by such Owners.

26. Estoppel Certificates. The Manager shall deliver to any Owner, with payment of a reasonable charge established by the Manager or the Association to cover cost of issuance (which shall not exceed FIVE HUNDRED AND NO/100 DOLLARS [\$500] in any such event), within ten (10) business days after request therefor, a written statement setting forth that, as of the date of any such statement, the requesting Owner is not in default in the performance of any of its obligations under this Declaration (or, if in default, setting forth the nature of such default), that there are no outstanding liens against the requesting Owner's Parcel in connection with the assessment of Common Areas Expenses or stating the amount of any such lien(s), that this Declaration is in full force and effect according to its terms (or, if not, setting forth the extent to which this Declaration has been amended, terminated or modified), and, as and to the extent requested by an Owner or any

Mortgagee, such other matters, to the extent commercially reasonable, as may be reasonably necessary or appropriate.

27. Further Limitations. This Declaration shall be strictly limited to the purposes expressed herein, subject to (a) the limitation that the Parties' rights hereunder shall not be exercised in any manner which substantially and unreasonably interferes (i) with the purposes for which the Common Areas are to be used as provided herein, or (ii) subject to the terms and conditions of this Declaration, with the rights and easements of any other grantee; (b) the right of any other governmental or quasi-governmental body having jurisdiction over the Parcels at any time and from time to time, and any other private or public utility company serving the Parcels, of access to, and rights of ingress and egress over and across, any of the Access Easement Areas for purposes of providing any governmental, municipal or utilities services; and (c) except to the extent the same will interfere with the Owners' rights hereunder, the right of the Declarant or the Association, as the case may be, in its sole discretion, to use and/or to grant permits, licenses and easements over, across, through and under the Utility Easement Areas to any governmental or quasi-governmental authority, to any other public or private utility company or to any other person or entity, for the purpose of installing, maintaining or providing utilities and related facilities or for any other lawful purpose.

28. Authority of Signers; Costs and Expenses. If a party is a corporation, limited liability company, partnership, trust, estate or other entity, the person executing this Declaration on its behalf, warrants his or her authority to do so and bind such party. Except as otherwise expressly provided in this Declaration, each Party to this Declaration shall pay its own costs and expenses (including, without limitation, professional fees and expenses) incurred in the preparation and execution, and the performance, of this Declaration.

29. Counterparts; Fax Signatures. This Declaration may be executed in multiple counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same document and Declaration. A copy or electronic transmission of this Declaration, including the signature page, shall have the same force and effect as an original.

30. Governing Law. To the fullest extent possible, this Declaration shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah, without regard to any conflicts of law issues.

31. Exhibits. The above recitals and the exhibits attached to this Declaration shall be and hereby are incorporated in and an integral part of this Declaration by this reference.

32. Severability. In the event that any provision of this Declaration shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity and unenforceability shall not be construed to have any effect on, the remaining provisions of this Declaration.

33. WAIVER OF JURY TRIAL. EACH PARTY TO THIS DECLARATION IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS DECLARATION OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING UNDER COMMON LAW OR ANY APPLICABLE LAWS. FURTHER, EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

*[Signature Page to Follow]*



THE DECLARANT has executed this Declaration on the date set forth below, to be effective as of the date first set forth above.

COTTONWOOD GENEVA, LLC, a Delaware limited liability company

By: *Jeffrey L. Gochnour*  
Name: Jeffrey L. Gochnour  
Title: Vice President

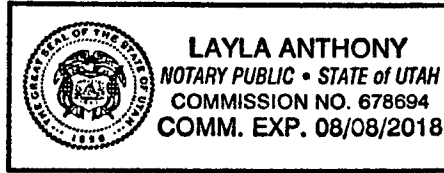
STATE OF UTAH                    )  
  : ss.  
COUNTY OF UTAH                )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2017, by Jeffrey L. Gochnour, the Vice President, of Cottonwood Geneva, LLC, a Delaware limited liability company.

*L.A.*  
NOTARY PUBLIC

Residing at: Salt Lake City

My Commission Expires: August 8, 2018



**EXHIBIT A****Legal Description of Development Property**

All of Lots 1 through 10, The Forge Plat 'A', according to the official plat thereof as recorded in the office of the Utah County Recorder, more particularly described as follows:

A parcel of land located in the Southeast Quarter of the Southeast Quarter of Section 8, Township 6 South, Range 2 East, Salt Lake Base & Meridian, said property being more particularly described as follows:

Beginning at the Southeast Corner of said Section 8; thence North  $00^{\circ}47'32''$  West a distance of 1598.34 feet along the section line; thence West a distance of 204.63 feet to the real point of beginning; thence South  $08^{\circ}05'53''$  East a distance of 795.08 feet; thence South  $86^{\circ}38'27''$  West a distance of 36.41 feet to a point of curvature of a 1600.00-foot radius tangent curve to the right; thence Southwesterly along the arc of said curve a distance of 89.76 feet, said curve having a Central Angle of  $03^{\circ}12'51''$  and a chord that bears South  $88^{\circ}14'47''$  West a distance of 89.74 feet; thence South  $89^{\circ}51'16''$  West a distance of 126.74 feet; thence North a distance of 792.35 feet; thence South  $89^{\circ}59'58''$  West a distance of 1193.19 feet to a point of curvature of a 899.00-foot radius nontangent curve to the left; thence Northwesterly along the arc of said curve a distance of 171.33 feet, said curve having a Central Angle of  $10^{\circ}55'09''$  and a chord that bears North  $46^{\circ}48'33''$  West a distance of 171.07 feet; thence North  $52^{\circ}16'08''$  West a distance of 320.41 feet to a point of curvature of a 801.00-foot radius tangent curve to the right; thence Northwesterly along the arc of said curve a distance of 516.45 feet, said curve having a Central Angle of  $36^{\circ}56'31''$  and a chord that bears North  $33^{\circ}47'52''$  West a distance of 507.55 feet to a point of curvature of a 87.00-foot radius tangent curve to the right; thence Northwesterly along the arc of said curve a distance of 34.73 feet, said curve having a Central Angle of  $22^{\circ}52'11''$  and a chord that bears North  $03^{\circ}53'31''$  West a distance of 34.50 feet; thence North  $07^{\circ}32'34''$  East a distance of 48.47 feet; thence North  $08^{\circ}00'00''$  West a distance of 120.28 feet; thence North  $35^{\circ}52'37''$  East a distance of 123.08 feet to a point of curvature of a 7928.00-foot radius non-tangent curve to the right; thence Northeasterly along the arc of said curve a distance of 147.28 feet, said curve having a Central Angle of  $01^{\circ}03'52''$  and a chord that bears North  $87^{\circ}15'29''$  East a distance of 147.28 feet to a point of curvature of a 7929.29-foot radius non-tangent curve to the right; thence Northeasterly along the arc of said curve a distance of 237.88 feet, said curve having a Central Angle of  $01^{\circ}43'08''$  and a chord that bears North  $88^{\circ}10'05''$  East a distance of 237.87 feet to a point of curvature of a 7930.00-foot radius non-tangent curve to the right; thence Northeasterly along the arc of said curve a distance of 134.12 feet, said curve having a Central Angle of  $00^{\circ}58'09''$  and a chord that bears North  $89^{\circ}59'38''$  East a distance of 134.12 feet; thence South  $89^{\circ}31'18''$  East a distance of 1268.07 feet; thence South  $08^{\circ}05'53''$  East a distance of 1050.79 feet to the point of beginning.

A Portion of Tax ID: 40-468-0001 ,40-468-0002

**EXHIBIT A-1**

**Plat**

**(see attached)**



## EXHIBIT B

### Development Guidelines

The following Development Guidelines have been adopted for The Development Property. Subject to the terms and conditions of the Declaration, no project shall be approved until design and landscaping standards are submitted to and approved by the Vineyard Town Council.

#### 1. Introduction

The Development Property is approximately 45 acres located on the southwest corner of Vineyard Connector and Mill Road. The proposed project will consist of up to 1.8 million square feet of building space, including retail, services, offices, medical, entertainment and hotels. It will also contain a range of residential uses in order to provide vitality day and night, and opportunities to live close to work and to accommodate the multiple housing needs of the region.

The Development Property is intended to complement the adjacent Megaplex commercial development and to jointly provide dining, entertainment and convenience for both workers, visitors, and residents.

The Development Property will be implemented over time by a variety of individual builders. The urban design framework for the Development Property will guide future development to ensure consistency and a high level of urban design quality. To be successful as a high energy, high density center, it will be important that fundamental principles of good urban design be followed in each project.

The following Development Guidelines are intended to foster a rich urban environment that will assure The Development Property retains a human scale through change, contrast, intricacy, color and materials. Block structure, building massing and architectural character will define a private realm that will shape public space, offer additional connectivity, frame views and celebrate key gathering places. The streets, plazas and parks of the public realm will foster lively pedestrian activity, support commercial vitality and facilitate community pride.

#### 2. Design Intent

The general, overall character of the Development Property should reflect the multi-layered history of the site. This character will bring about a familiar, traditional setting for users while allowing a diversity of building styles that is both timeless and contemporary.

#### 3. Urban Design Framework

The Urban Design Framework is a summary of the key physical constraints and building placement objectives.

#### 4. Block Structure

4.1. **Block Size:** Typical block size will not exceed 500' in length with the length of the block running along an east-west axis to ensure the maximum potential for south-facing facades.

4.2. **Mid-Block Alleys and Passages:** The walkability of a community is defined by how well the pedestrian network is connected. To ensure a high walkability for The Development Property, mid-block alleys and passages are envisioned to break down block scale allowing for greater accessibility for both pedestrian and automobile circulation.

4.3. **Continuous Building Frontage:** A continuity of building frontage, not interrupted by parking lots or deep setbacks, encourages a more active involvement between building uses and pedestrians. Blocks B, C, E and F shall have continuous building frontage which will include not less than eighty percent (80%) of the block length or at least seventy-five percent (75%) of the total block perimeter of these blocks.

4.4. **Ground Floor Building Setback:** The street frontage of all habitable buildings shall be built within the designated zero foot (0') minimum and ten foot (10') maximum front setback ("Build-to Zone") from the right of way to support a strong, continuous "street wall" to reinforce an urban form. Exceptions may be made for publicly accessible outdoor plazas. [Note: The maximum building setback may be increased along major streets such as Mill Road or Geneva Road to provide additional buffering of pedestrians from busy traffic.]

4.4.A. **Side and Rear Setbacks:** There shall be no minimum side setback requirement from property lines. Rear setbacks along alleys shall range from zero feet (0') adjacent to pedestrian ways to five feet (5') adjacent to travel lanes.

4.4.B. **Building Height and Stepbacks:** Buildings can range from a minimum of twenty feet (20') to a maximum of one hundred-twenty five feet (125') for flat roofs or one hundred forty feet (140') for pitched roofs. Any stories above the fourth story should stepback a minimum of ten feet (10') from the right of way line.

4.5. **Perceived Building Length:** Individual buildings along the street edge should not appear to exceed one hundred fifty feet (150'). If a longer building is necessary, its perceived length should incorporate stepback or material changes.

#### 5. Building Orientation and Climate Protection

5.1. **Energy and Climate Orientation:** Buildings are highly encouraged to include passive solar and passive wind strategies.

5.2. **Protective Porticos and Awnings:** Architectural elements that provide shade are encouraged to provide pedestrians a pathway that is enjoyable to use year round and foster walking and social interaction. The climate in Utah Valley is such that in the summer months shade is preferred, and in the winter months protection from snow is preferred. Awnings that extend over the public right of way require a revocable permit and shall have at least eight feet (8') clearance above the adjacent sidewalk at all points, and shall not extend more than six feet (6') into the public right-of-way..

#### 6. Ground Floor Activation

6.1. **Transparency:** The first floor elevation facing a street shall not have less than sixty percent (60%) transparent surfaces. All first floor glass will be non-reflective. Display

windows that are three-dimensional and are at least 2 feet deep are permitted and may be counted toward the sixty percent (60%) transparency requirement. If the ground level of a building is occupied by residential uses, the sixty percent (60%) transparency requirement may be reduced to thirty-five percent (35%). Upper floors will maintain a minimum of thirty-five percent (35%) transparency.

6.2. Entrances: Provide at least one operable building entrance per elevation that faces a public street. Buildings that face multiple streets are only required to have one door on either street.

6.3. Wall planes: The maximum length of any continuous ground floor wall surface, uninterrupted by a change in material, setback or protrusion, will be thirty feet (30').

6.4. Screening: All building equipment and service areas, including on-grade and roof mechanical equipment and transformers that would be visible from the public right of way, shall be screened from public view, or enclosed as to appear to be an integral part of the architectural design of the building.

## 7. Architectural Character and Materials

7.1. Building Character Organization: All buildings shall generally have a "base, middle, and top" character to avoid monotonous uniformity of single-material building walls. Differentiating buildings into these three components gives human scale and variety through change, contrast, and intricacy in facade form, color and/or material. Other scaling elements such as insets and projections are encouraged to break up flat or monotonous facades.

7.2. Exterior Three-Dimensional Details: Three-dimensional details are encouraged along the publicly-visible exterior of buildings, including:

7.2.A. Cornices, fascia, visible substantial window sills and headers, projecting bay windows, inset doors and windows and balconies.

7.2.B. Recessed windows (all windows are encouraged to be recessed a minimum of three inches)

7.3. Building Materials: All materials shall be durable in nature and build on the multi-layered history of the site. The following is a non-exhaustive list of materials that would meet this objective:

- Sandstone-based brick material - this is desired as a base material for the entire development and is of regional significance to the area;
- Brick with accent banding and symbols of various colors and patterns;
- Visible steel support such as I-beam columns and spandrels, steel cable or rod suspension, decorative steel railings;
- Corrugated steel siding;
- Concrete foundations, columns, lintels, sills, loading docks;
- Large expanses of multi-paned glass windows, glass block, large display windows, skylights, greenhouses;
- Heavy wood timber columns and spandrel beams; and
- Wood, stone, corrugated metal, etc.

- Local materials are encouraged, whether as reclaimed materials from nearby projects or manufactured locally and support sustainable building practices.
- Other materials can be considered to minimize costs while achieving a similar aesthetic (e.g., concrete with an applied texture versus a brick wall) while out-of-character materials will be considered in special circumstances - such as iconic architecture - to bring additional variety and contemporary influences.

7.4. Iconic Architectural Elements: Selected use of iconic architectural elements is encouraged at key locations that serve as focal points for the district. Examples might include:

- 7.4.A. Tower buildings fronting open spaces, plazas, or other gathering spaces.
- 7.4.B. Architectural signage and marquees.

7.5. Gateway Buildings: Buildings at major road intersections and gateways carry additional significance and should have the highest design quality.

- 7.5.A. These buildings should present front facades and entries to the public, and should incorporate visible public gathering spaces and provide the visual interest to frame the intersection.
- 7.5.B. Building corners fronting onto intersections should be defined with appropriate retail uses and architectural treatment. Gas station canopies, fast-food restaurants with drive-throughs and other services shall not be allowed in these locations.

8. Signage

(RESERVED) - See the Declaration and Rules and Regulations.

9. Lighting

9.1. Street Lights: Consistent street light fixtures will be used throughout The Development Property for both automobile and pedestrian safety.

9.2. Architectural Lighting: Building illumination will be limited to:

- Highlighting of specific building features
- Building and ground floor business names
- Lighting of public walkways
- Lighting of architectural features above the ground floor

10. Streets

10.1. Prototypical Sections and Plans:

- 10.1.A. Commercial Street
- 10.1.B. Retail “Stroll Street”
- 10.1.C. Frontage Street



#### 10.1.D. Alley

10.2. Roadways: The portion of the right of way - from flow line to flow line - is envisioned to accommodate parallel and/or diagonal parking lanes on either side of the street adjacent to the outside edge of two travel lanes - one in each direction.

10.3. Bulb-outs/Flush Curbs/Bollards: These items help to facilitate pedestrian and automobile circulation through universal design, and are envisioned to occur in the parking lane at intersections and at mid-block crossings where strong desire lines occur.

10.4. Crosswalks and Mid-Block Crossings: On private streets, crosswalks will be ten feet (10') minimum in width and will occur no greater than three hundred (300') apart along any block. Crosswalks should include two directions at every corner. On public streets, crosswalks shall be located and constructed in accordance with adopted City Standards.

10.5. Sidewalks: Sidewalks serve multiple purposes within an urban environment and should incorporate different activities including seating, outdoor dining, lighting, trash and recycling receptacles, bus stops and shelters, newsstands, utility boxes and shade trees between pedestrian walkways and traffic. A minimum eight feet (8') ADA accessible, unobstructed pedestrian walkway is required.

10.5.B. Pedestrian Zone – Five feet to nine feet (5'-9') in width, this portion of the sidewalk occurs adjacent to the furniture zone and is intended to provide a comfortable clear path of travel for pedestrians.

10.5.C. Activity Zone – Four feet to seven feet (4'-7') in width, this portion of the sidewalk is adjacent to the building edge and is intended to provide an activity zone for commercial businesses to serve customers or show their wares on the street.

#### 11. Interior Block Connections (Alleys)

11.1. Prototypical Alley Section: Alley rights of way can range in width between thirty and forty feet (30'-40') feet (Figure 6.6).

11.2. Multi-Purpose Connections: Alleys are encouraged to provide necessary connections for service/delivery, fire protection and pedestrian access. Since alleys and interior connections are envisioned to accommodate off-street loading as well as serve as pedestrian connections the following includes preferred and minimum guidelines:

##### 11.2.A. Preferred Guidelines

- i. Roadway - Twenty-one foot (21') unobstructed automobile pathway (which combined with the adjacent rear-yard building setback provides twenty-six feet (26') clear for fire equipment).
- ii. Sidewalk – 10-16 feet wide, consisting generally of:
  1. Pedestrian Zone – Six to ten feet (6'-10') wide
  2. Furniture Zone – Four to six feet (4'-6') wide (for shade trees, benches, trash cans, lighting).

##### 11.2.B. Minimum Guidelines

- i. Roadway – Twenty one foot (21') unobstructed vehicular way
- ii. Sidewalk – Five foot (5') unobstructed pedestrian way

11.3. Overhead and Underground ROW: Developments that include interior alleys or service lanes - whether dedicated or privately owned with a public easement - may use the overhead and underground right-of-way of the new mid-block street as part of their developable area, subject to design evaluation and approval of the final legislative authority.

11.4. Service and Storage: Consideration should be given to loading, delivery and transfer of merchandise, garbage collection, recycling, fire and utilities. Loading areas should be provided when appropriate. However, these functional needs should not compromise the visual character of the overall development or adjacent properties and will be subject to design evaluation and approval of the final legislative authority.

11.5. Drive-thru Lanes: Typical drive-thru lanes break up the continuity of block building facades and conflict with pedestrians. Drive-thru facilities at The Forge will be subject to careful design evaluation and approval of the final legislative authority. Any drive-thru lanes adjacent to roadways in the Development Property are encouraged to be designed with one or more of the following conditions:

- Be limited to 3 bays or less
- Occur at the end of a block façade
- Be masked within a building form
- Feed into a single exit lane
- Be screened from view through a combination of low screen walls (“knee walls”), berming, and landscaping.

11.6. Screening: Screening techniques should be utilized throughout The Development Property for any activity or storage that should be kept from public view. This may include any combination of building design, landscaping and berming, and/or location and will be subject to design evaluation and approval of the final legislative authority. Typical areas that should require screening may include:

- Outdoor Storage
- Refuse Containers
- Surface Parking
- Loading Areas (adjacent to roadways)
- 

11.7. Enclosures: Enclosures should be located to provide easy access for users, adequate space for servicing by refuse trucks, and visibility for safe vehicle circulation.

11.7.A. Enclosure materials and colors should be consistent with, and complementary to, building materials and finishes.

11.7.B. Refuse containers should be conveniently located throughout the project, yet sufficiently buffered from project entries, main building entries, and main pedestrian paths.

## 12. Parking

12.1. On-Street Parking: The Development Property, at the sole cost and expense of the Declarant or following the initial design, engineering and construction of the Common Areas and Related Improvements by the Declarant, the Association, will provide on-street parking along all streets:

12.1.A. Parallel parking will occur along all streets throughout the development.

12.1.B. Diagonal parking will be an optional element of the "Stroll Street" condition where elevated sidewalks atop podium parking (sub-grade parking facilities) may occur.

12.2. Sub-grade Parking Facilities: No special design and setback restrictions will apply to parking facilities built below grade.

12.3. Parking Structures: Parking structures are envisioned as the primary parking strategy for The Development Property and will meet the following conditions:

12.3.A. Unbundled parking will be provided as an option for development at the block level and will accommodate all potential uses

12.3.B. Structures, in general, will be located in block interiors behind principal buildings

12.3.C. Structures adjacent to street rights-of-way will maintain the continuity of the pedestrian experience along the ground level by providing either:

- i. Wrapped retail, offices and/or restaurants to maintain an active ground-floor edge;
- ii. Liner retail (e.g., shallow building that can house news stand flower shop, small offices, etc.); or
- iii. Façade articulation or screening that masks the parking interior

**EXHIBIT C****Rules and Regulations**

The following Rules and Regulations apply to the use and/or occupancy of Common Areas at the Development Property. Owners are responsible for ensuring that all of their employees, representatives, invitees, contractors, visitors, agents, sub-lessees, sub-permittees and other individuals or entities under their control are informed of and fully comply with these Rules and Regulations.

1. Common Areas: Except as provided in the Declaration, the Common Areas, including without limitation any lawns and walkways, shall not be used for storage or parking or be obstructed in any way. No bicycles, toys, trash cans or recycle bins, or other personal property shall obstruct entrance ways, walkways, parking or other Common Areas.
2. Unlawful and Disturbing Noises/Practices: No Owner shall make or permit any unreasonable noise that will disturb or annoy other Owners, or permit anything to be done which will interfere with the rights, comfort and convenience of other Owners.
3. Defacing of property: Except as provided herein, signs, notices, advertisements, or any alteration of exterior surfaces shall not be placed, inscribed, or exposed on any window, door, or other exterior parts of any Parcel buildings and, in no event, within the Common Areas. Specifically excluded from this regulation are signs contemplated under subparagraph 2.4 of the Declaration, otherwise allowed in accordance with the Declaration, or as approved in writing by the Manager or the Association.
4. Vandalism: Owners and their tenants, and guests shall not deface, remove, or destroy, or permit the defacing, removing or destruction of any element of the Common Areas.
5. Insurance: Nothing shall be done or maintained in any Common Areas, which will increase the rate of insurance on the Common Areas, or result in the cancellation thereof, without prior written approval of the Manager or the Association.
6. Violation of Law: Nothing shall be done or maintained on the Common Areas, which is in violation of any Applicable Laws.
7. Animals: The maintenance, keeping, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited within any Parcel or Common Areas, except that this shall not prohibit the keeping of small dogs, cats, and/or caged birds as domestic pets, provided they are not maintained, kept or bred for commercial purposes. All pets shall be kept leashed and under the control of their owner whenever they are on the Common Areas, and shall not be allowed to run free or unleashed at any time, or to otherwise interfere with the rights, comfort or convenience of other Owners. Owners are responsible for all damages caused by their pets to Common Areas and to the property of others.
8. Vehicles: Except as provided in the Declaration, no junk vehicle or other vehicle on which current registration plates are not displayed, no trailer, truck, camper, house trailer, or boat may be kept on any Common Areas. Likewise, no repair or extraordinary maintenance of automobiles or other vehicles may be undertaken on any of the Common Areas.
9. Parking: Except as provided in the Declaration, vehicles shall be prohibited from parking upon the Common Areas.

**EXHIBIT D**

**Restricted Use Criteria Properties**

THE FORGE AT GENEVA – LOTS 1, 2, 3, 4, 6, 7, 10, AND A PORTION OF LOT 5 as more particularly set forth in the Site Management Plan.