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CW THE MONROE PARTNERSHIP, L.P.  
610 N 800 W  
Centerville, Utah 84014

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610 N 800 W CENTERVILLE, UT 84014



**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS  
FOR  
MONROE TOWNHOMES  
IN  
SALT LAKE CITY, UTAH**

THIS DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS IN ARTICLE 15, AND IMPORTANT CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION PROVISIONS, MEDIATION AND ARBITRATION REQUIREMENTS, AND WARRANTY LIMITATIONS AND DISCLAIMERS IN ARTICLE 17.

DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS,  
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FOR  
MONROE TOWNHOMES  
IN  
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**RECITALS**

- A. CW THE MONROE PARTNERSHIP, L.P., a Utah limited partnership, with a principal office address of 610 North 800 West, Centerville, Utah 84014 (“Declarant”) is the owner and developer of the that certain planned residential townhome development known as the Monroe Townhomes located in Salt Lake City, in Salt Lake County, Utah (the “Project”).
- B. An integral part of the Project is the formation of a homeowners association to own, administer, and maintain common areas and common elements within the Project and to enforce the restrictive covenants, conditions, and restrictions for the Project.
- C. CW The Monroe Partnership, L.P., as Declarant and developer, hereby establishes and adopts that this Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for the Monroe Townhomes is effective as of the date this instrument is recorded with the Office of Recorder for Salt Lake County, Utah.
- D. The terms and conditions established herein are for the mutual benefit and burden of the Townhome Owners, the Association, and all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Project. The Project and all of the Townhomes therein shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the terms and conditions set forth in this Declaration which shall constitute equitable servitudes, covenants, and conditions running with the land. By acquiring any interest in a Townhome, such Owner consents to, and agrees to be bound by, each and every term and condition herein.
- E. Capitalized terms in this Declaration are defined in Article 1 herein, or in other sections of this Declaration.

**NOW, THEREFORE**, for the reasons recited above and subject to the provisions below, this Declaration is adopted by Declarant, pursuant to the rights and authority described above.

**ARTICLE 1**  
**DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 “Act” shall mean and refer to the Community Association Act codified beginning at § 57-8a-101, Utah Code.
- 1.2 “Articles” shall mean and refer to any Articles of Incorporation for the Association or other chartering document of any other legal entity, if any, formed for the Association.
- 1.3 “Assessment” shall mean and refer to any monetary charge imposed or levied on an Owner and/or a Townhome by the Association, as provided for in this Declaration.
- 1.4 “Association” shall mean and refer to The Monroe Owners Association, Inc., the membership of which shall be comprised of the owners of the Townhomes.
- 1.5 “Building” shall mean and refer to any of the buildings containing the Townhomes, as shown on the Plat.
- 1.6 “Bylaws” shall mean and refer to the Bylaws of the Association.
- 1.7 “City” shall mean and refer to Salt Lake City, located in Salt Lake County, Utah.
- 1.8 “Common Areas” shall mean and refer to Parcel A, B, C, D, E and the private roads and other areas designated as common area on the Plat.
- 1.9 “Common Expenses” shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair of the Common Areas; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, and other providers of services for the Association; (c) insurance and bonds required or allowed by this Declaration; (d) the establishment of reserves; (e) other miscellaneous charges incurred by the Association, as provided for or allowed under the Act or the Governing Documents; and (f) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.10 “Community-Wide Standards” shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Development, or, at a minimum, the standards initially established by Declarant and/or described in this Declaration.
- 1.11 “Governing Documents” shall mean and refer to this Declaration, the Plat, the Bylaws, Rules, any Articles, and any other written instrument by which the Association may exercise power or manage, maintain, or otherwise affect the Townhomes.
- 1.12 “Lender” shall mean and refer to a holder of a first or second mortgage or first or second deed of trust on a Townhome.

- 1.13 “Limited Common Area” shall mean and refer to those portions of the Common Areas designated on the Plat as Limited Common Area serving one or more but less than all of the Townhomes.
- 1.14 “Lot” shall mean and refer to any of the separately identified parcels labelled on the Plat, which may be independently owned and conveyed, and is intended for development, use and occupancy as a single-family residence or a live/work unit. A Lot is included as part of a Townhome, as defined below.
- 1.15 “Board of Directors” or “Board” shall mean and refer to the body with primary authority to manage the affairs of the Association.
- 1.16 “Manager” shall mean and refer to any Person engaged by the Board to manage the Townhomes.
- 1.17 “Occupant” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Townhome within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.
- 1.18 “Owner” shall mean and refer to the Person or Persons, who are vested with record title to a Townhome, and whose interest in the Townhome is held (in whole or in part) in fee simple, according to the records of the Office of Recorder for Salt Lake County, Utah. The term “Owners” shall mean and refer to more than one Owner. The terms “Owner” and “Owners” shall not include a mortgagee or trustee for or beneficiary of a deed of trust.
- 1.19 “Person” shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity.
- 1.20 “Plat” shall mean and refer to the Monroe Townhomes plat recorded with the Office of Recorder for Salt Lake County, Utah on \_\_\_\_\_, 2024, as Entry No. \_\_\_\_\_, and all recorded amendments and supplements thereto and shall include any additional recorded plats adding Townhomes to the Project.
- 1.21 “Rules” shall mean and refer to the rules and regulations adopted by the Association for the Townhomes.
- 1.22 “Supplement to Declaration” shall mean and refer to any recorded supplement to the Declaration for additional Lots that may be added to the Project.
- 1.23 “Townhome” shall mean and refer to any of the attached, single-family dwellings and/or any of the work/live units, as identified on the Plat, which may be independently owned and conveyed, and is intended for development, use and occupancy as a single-family residence or a work/live unit, as the case may be. The term “Townhome” shall include the Lot. The term “Townhome” does not include any Common Area or property dedicated to the City or the public. More than one townhome and/or all townhomes is referred to “Townhomes.”

**ARTICLE 2**  
**THE PROJECT**

- 2.1 **Nature of the Project.** The Project is a mixed-use development and is comprised of the attached single-family Townhomes and the attached work/live units, as set forth on the Plat. The Project is not a cooperative and is not a condominium.
- 2.2 **Project Name.** The Project is known as The Monroe Townhomes. Notwithstanding, the name used for the Project on the Plat or by the Association may be different than the name identified in this Declaration.
- 2.3 **Registered Agent.** The registered agent of the Association shall be as provided for in entity filings of the Association with the Utah Division of Corporations and Commercial Code, if any, and/or with the Utah Department of Commerce Homeowner Associations Registry.

**ARTICLE 3**  
**DESCRIPTION OF THE TOWNHOMES, COMMON AREAS,**  
**AND ALLOCATED INTERESTS**

3.1 **The Townhomes**

- (a) The distinct Lot number or number that identifies the Townhome on the Plat may or may not be consistent with the mailing address of the Townhome.
- (b) Subject to further specification herein and/or on the Plat, each Townhome generally consists of all structures on or within the boundary of the Townhome, including, but not limited to, all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures, exterior and interior doors, door jams, windows, garage doors, and all installations related thereto. For all walls shared with or abutting another Townhome, the Townhome shall extend to the center of said wall, which shall form the boundary of the Townhomes sharing that wall. Subject to dividing lines between Townhomes, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Townhome is part of the Townhome if it: (i) is an integral part of the Townhome structure (such as a porch, landing, patio, balcony or deck); or (ii) was constructed as part of the original construction of the Townhome.
- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Townhome, shall be part of the Townhome. Additionally, any mechanical equipment, systems or other appurtenances located outside of a Townhome, but designated and designed to serve only that Townhome, shall be considered part of the Townhome.
- (d) Variances between the Plat and as-built construction. The original construction shall be the controlling dimension for any Townhome. The original construction shall be the first installation of foundations, framing, wallboard, etc.

- 3.2 Limited Common Area. The right to the exclusive use of the Limited Common Area shall be appurtenant to the respective Townhome or Townhomes where so identified and may not be severed from the ownership of the Townhome.
- 3.3 Allocated Interest of Each Townhome in the Total Voting Interest of the Association and Common Expenses. The voting interests in the Association and liability for the Common Expenses shall be allocated equally among the Townhomes (the “Allocated Interest”). Any difference in square footage, location, size, value, or other aspect of any Townhome shall not be a reason to alter or change any Allocated Interest. The Owner of each Townhome shall be entitled to exercise their voting interest on all matters related to the Association that Owners are permitted or required to vote or approve, subject to any suspension of voting rights for unpaid Assessments as provided in this Declaration.
- 3.4 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association. If any conflict exists between the Plat and this Declaration, the Plat shall control, except to the extent provided for on the Plat, or as otherwise provided by the application of controlling law.

#### **ARTICLE 4** **ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

- 4.1 Organization of Association. The Association shall serve as the organizational body for the Owners. The Association may be organized as a Utah non-profit corporation. In any organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents to the extent possible under the applicable law, shall be consistent with the terms in this Declaration.
- 4.2 Membership. Membership in the Association at all times shall be comprised exclusively of the Owners. Each Owner shall be a member of the Association for so long as such Owner has an ownership interest in a Townhome, and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Townhome. Upon the transfer of an ownership interest in a Townhome, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Townhome is held by more than one Person, the membership appurtenant to that Townhome shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Townhome is held.
- 4.3 Availability of Documents. Unless otherwise allowed by law, the Association shall make available to the Owners copies of the Governing Documents and the corporate books and records related to the operations of the Association consistent with the requirements of the Act and §§ 16-6a-1601 through 1603, 16-6a-1605, and 16-6a-1606 of the Utah Revised Nonprofit Corporation Act.
- 4.4 Board of Directors. The governing body of the Association shall be a Board of Directors elected by the Owners. The Board shall consist of three (3) members (each a “Board Member” and director). Except as otherwise provided in this Declaration, Bylaws, or Articles, the Board, in all instances, shall act on behalf of the Association. Any reference

to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board. Except as may be specifically provided in this Declaration, the Bylaws, Articles, or by applicable law, no Owner or group of Owners other than the Board may direct the actions of the Association.

- 4.5 Board Member Qualifications. To be eligible to serve on the Board, an individual must be: (a) at least 18 years old; (b) an Owner, or the spouse of an Owner, or an officer, principle, shareholder, partner, member, manager, trustee, or beneficiary of an Owner (*i.e.*, an authorized representative) if such Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, as the case may be; and (c) current on Assessments.
- 4.6 Registration with the State. In accordance with Utah Code § 57-8a-105, the Association shall be registered with the Utah Department of Commerce Homeowner Associations Registry and shall update its registration to keep any required information current as required by law.
- 4.7 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Board or anyone else) contrary to the terms of the Governing Documents, regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or taking title to a Townhome, to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association, is in compliance with the terms of the Governing Documents.

## ARTICLE 5

### GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 5.1 Rights and Responsibilities of the Association. The Association shall have the rights and responsibilities in this Article 5 in addition to any others set forth in the other Governing Documents or required by law.
- 5.2 Maintenance. The Association shall make provisions for completing all maintenance, repair, and replacement requirements and obligations of the Association, including landscape maintenance landscaped Common Areas and maintenance of Building roofs and/or exteriors, if assumed by the Association as provided in Section 8.3 below.
- (a) Maintenance Allocation Chart. A maintenance allocation chart has been attached hereto as Exhibit C, which further defines and clarifies Association and Owner maintenance, repair, and replacement responsibilities. If there is a conflict between Exhibit C and this Article, the allocations in Exhibit C shall control. The Board may alter the maintenance allocations set forth in Exhibit C by Rule, Board resolution, or similar document without the need for Owner vote or amendment of this Declaration.
- 5.3 Snow Removal. The Association shall be responsible for removal of snow and ice accumulating on the Common Areas.

- 5.4 Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary for the operation of the Project and administration of the Association.
- 5.5 Paying Common Expenses. The Association shall provide for the payment of Common Expenses.
- 5.6 Adopting and Enforcing Rules. The Board may adopt Rules for the regulation and operation of the Project. Rules, if adopted, shall be consistently and uniformly enforced. Rules may address any issues affecting the Project and may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents, so long as the Rules do not contradict the same.
- 5.7 Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (a) impose fines; (b) collect rents directly from a tenant if an Owner fails to pay Assessments; (c) suspend voting rights; and (d) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- 5.8 Hiring Manager and Delegating Responsibilities. The Association shall hire a Manager to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the manager, employees, or other agents, as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause.
- 5.9 Annual Meeting. The Association shall arrange for, and conduct, an annual meeting of the Owners and shall arrange for, and conduct, such other meetings of the Association, as shall be properly requested, pursuant to the Governing Documents or required by law.
- 5.10 Payoff Information and Fees. The Association is specifically authorized to establish a fee for providing payoff information related to the transfer, refinance, or closing of a Townhome. Unless otherwise provided in the Rules and allowed by law, the fee amount shall be \$50.00.
- 5.11 Written Statement of Payment and Fees. The Association, within ten (10) business days after proper written demand by an Owner or such other Person for whom an Owner has given written permission, shall furnish a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Townhome have been paid and the amount of delinquency, if any. Each written statement or certificate is conclusive in favor of a Person who relies on the written statement in good faith. The Association is authorized to charge a reasonable fee for issuance of a written statement or certificate of payment. Unless otherwise provided in the Rules and allowed by law, the amount of the fee shall be ten dollars (\$10.00).
- 5.12 Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.



**ARTICLE 6**  
**BUDGETS & ASSESSMENTS**

- 6.1 Purpose of Assessments. Money collected by the Association shall be used for the purposes of management, maintenance, care, and operation of the Project, protecting and preserving the value of the Project, promoting the health, safety and welfare of the Owners and quality of life in the Project, and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 6.2 Budget and Regular Assessment.
- (a) The Board is authorized and required to adopt a budget for the following fiscal year not later than thirty (30) days prior to the beginning of each fiscal year.
- The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year, which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund and may include contingencies and other estimates, as the Board deems appropriate.
- (b) The Board shall make available a written copy of the budget to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.
- (c) The Board shall determine the amount of the regular Assessments to be paid by the Owners of each Townhome by dividing the total budgeted amount for the Common Expense by the total number of Townhomes in the Project.
- 6.3 Payment of Assessments. Unless otherwise established by the Board, and communicated to each Owner, each Owner shall pay to the Association the Owner's regular annual Assessment on such monthly or quarterly installment basis as the Board or the Manager may determine.
- 6.4 Adjustments to Budget and Regular Assessments. In the event the Board determines that the estimate of total charges for the current fiscal year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Board, each Owner thereafter shall pay to the Association the Owner's adjusted regular Assessment.
- 6.5 Personal Obligation for Assessment. Each Owner, by taking title to a Townhome, and regardless of any lien rights or lack thereof, personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments, as provided for in the Governing Documents. Such Assessment, together with such interest, collection charges, costs, and attorneys' fees, shall be the personal obligation of the Owner of such Townhome at the time the Assessment becomes due.

- 6.6 Special Assessments. Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 6.7 Special Assessments to a Particular Townhome. Special Assessments may be levied by the Association against a particular Townhome and its Owner for:
- (a) Costs incurred in bringing an Owner or Townhome into compliance with the provisions of the Governing Documents;
  - (b) Fines, late fees, collection charges, and interest; and
  - (c) Attorneys' fees, costs and other expenses relating to any of the above.
- 6.8 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project which benefits an individual Townhome, and which can be accepted or not by the Townhome's Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Townhome, at the discretion of the Board.
- 6.9 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board, in its discretion, may apply the excess to reserves, credit the excess against future Assessments, or refund the excess to the Owners in proportion to the Allocated Interests of each Townhome in the Common Expenses of the Project, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. The Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 6.10 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 6.11 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

**ARTICLE 7**  
**NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS**

- 7.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board may, at its option, invoke any or all of the remedies granted in this Article 7. Each Owner, by taking title to a Townhome, vests in the Association, or its assigns, the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 7.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: The Assessments shall be due within thirty (30) days of invoicing. Payments received after thirty (30) days from invoicing may be charged an initial late fee of ten dollars (\$10.00). Thereafter, additional late fee charges of ten dollars (\$10.00) per month may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorneys' fees, interest, late fees, and Assessments, at one-and-a-half percent (1.5%) per month. Delinquent accounts may be turned over for collection and may be assessed additional collection charges and attorneys' fees and costs.
- 7.3 Joint and Several Liability for All Past and Presently Accruing Unpaid Assessments. To the extent permitted by law, the Owner, and any future Owners of a Townhome, are jointly and severally liable for all Assessments accruing related to that Townhome prior to, and during the time, that an Owner holds title to a Townhome. An Owner is not liable for any Assessments accruing after they have lawfully transferred the Townhome to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the Townhome shall not be considered a legal conveyance of title. The obligation in this Section 7.3 is separate and distinct from any lien rights associated with the Townhome.
- 7.4 Lien. The Association has a lien on each Townhome for all Assessments, which include, but are not limited to, late fees, interest, collection charges, attorneys' fees, court costs, and other costs of collection (which shall include all costs, and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration, and shall have priority over all encumbrances recorded after this Declaration is recorded, unless otherwise limited by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment.
- 7.5 Action at Law. The Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay the same. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Townhome, and will be added to the amount in delinquency (plus judgement interest and collection costs, if appropriate).

- 7.6 Foreclosure Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Association may appoint a qualified trustee by executing and recording a trustee form.
- 7.7 Attorneys' Fees Incurred as a Result of a Default. In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including, but not limited to, attorneys' fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings, including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities; and (h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.
- 7.8 Association Responsibility after Foreclosure. If the Association takes title to a Townhome pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions herein related to the Townhome that are otherwise applicable to any other Owner, including, but not limited to, obligations to pay Assessments.

## **ARTICLE 8**

### **GENERAL RESPONSIBILITIES OF OWNERS**

- 8.1 Responsibilities of Owners. Each Owner shall have the following responsibilities in addition to any others set forth in the Governing Documents or provided by law.
- 8.2 Maintenance of the Townhome. Except to the extent that maintenance, repair, and upkeep of Townhome exteriors has been assumed by the Association, each Owner shall be responsible to maintain their Townhome in an attractive, neat, clean, usable, safe, and sanitary condition, in accordance with the Community-Wide Standards. This obligation shall include, without limitation, maintenance, repair and/or replacement of all structural elements, fixtures, lines, pipes, equipment, systems, and other improvements within the boundary of the Townhome, as well as all mechanical equipment, systems, lines, pipes, or other appurtenances located outside of the Owner's Townhome but serving only that Townhome.
- 8.3 Responsibility for Limited Common Area. Except to the extent that maintenance and upkeep is assumed by the Association, each Owner shall be responsible to maintain the Limited Common Area appurtenant to the Owner's Townhome in neat and clean condition and free of all debris, grease, spills, leaks, trash, litter, and personal property.
- 8.4 Association May Assume Maintenance Obligation and Specially Assess Costs for Same. Notwithstanding anything to the contrary in Sections 8.2 above, to maintain Community-

Wide Standards, the Project's design, and to protect and preserve the property values within the Project, the Association, from time to time, in the Board's discretion, may undertake any of the maintenance, repair, or replacement obligations for the Townhome exteriors and may assess the cost for such to the Owners.

- 8.5 Snow Removal. Each Owner shall be responsible for the removal of ice and snow from their Townhome, including landings, porches, steps and walkways on the Owner's Lot and the adjoining Limited Common Area.
- 8.6 Prior Authorization from Board Required for Maintenance, Repair and Alteration Affecting Townhome Exterior. Notwithstanding anything in this Article 8 to the contrary, all maintenance, repairs, replacements, and all modifications and alterations affecting the Townhome exterior, the overall appearance of the Project, or the appearance or the structural integrity of any common element or system, shall require prior written approval of the Board to ensure quality of construction, and adherence to Community-Wide Standards. No Owner shall allow their Townhome to detract from the uniform appearance and design of the Project, or the health, safety, and use and enjoyment of the Association members.

## **ARTICLE 9** **RIGHT TO USE COMMON AREAS**

- 9.1 Rights and Nonexclusive License to Use Common Areas.
- (a) Subject to all other terms of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Areas, and the right and nonexclusive license for the use and enjoyment of the Limited Common Area to which that Owner's Townhome has been assigned, if any, subject to any restrictions related to such use. Such rights and nonexclusive license shall be appurtenant to, and shall pass with title to, each Townhome, and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Areas as the Owner whose Townhome the Occupant is occupying. All such rights shall be subject to any Rules established by the Board.
- (b) The Association shall have nonexclusive easements with the right of access over and across each Lot to make inspections, to prevent or mitigate damage to Common Areas to maintain, repair, and/or replace or effectuate the restoration of the Common Areas and any other property or improvements for which the Association is responsible for maintaining which are accessible from such Lot. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Areas for purposes necessary for the proper operation of the Project.
- 9.2 Easements for Party Wall. If any party wall encroaches upon an adjacent Lot as a result of the manner in which it was constructed, or due to settling or shifting, a valid easement for encroachment, and for maintenance of such encroachment, shall exist for the life of the

improvement or structure. For every party wall, each Owner grants to the adjoining Townhome Owner who shares the party wall, an easement over and upon the Owner's Townhome for the purpose of maintaining the party wall and for carrying out the other obligations set forth in this Declaration. By taking title to a Townhome, each Owner hereby covenants and agrees not to do anything that will hinder, delay, or limit the maintenance of the party wall and the performance of the Association's obligations under this Declaration.

- 9.3 Utilities. Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Board to be helpful in serving the Project, Townhomes, or Townhome Owners in the Project are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Areas and the Townhomes by the Owners or Occupants. Each Owner, in taking title to a Townhome, consents to such easements and rights-of-way, and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner, and those claiming by, through, or under an Owner, agree to execute, promptly, all such documents and instruments and to do such other things as may be necessary or convenient to effect the same, at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy, or enjoyment by any Owner of such Owner's Townhome.
- 9.4 Easements for Encroachments. If any portion of the Common Areas or any Project improvements encroaches upon any Townhome, or if any Townhome encroaches upon any other Townhome or the Common Areas as a result of the manner in which such improvements are constructed, or due to settling, shifting, alteration, replacement, repair or restoration by Declarant or the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

## **ARTICLE 10**

### **USE LIMITATIONS AND CONDITIONS**

- 10.1 Nuisance. No noxious or offensive activity shall be carried on any Lot or elsewhere within the Project, nor shall any activity that might be, or become, an annoyance or nuisance to the Owners or Occupants, be permitted to interfere with their rights of quiet enjoyment, or increase the rate of any insurance, or decrease the value of the Townhomes. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, City, county, state, or federal body. Any violation of this Section 10.1 or any other provision of the Governing Documents may be deemed a Nuisance.
- 10.2 No Unsightly Items. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Townhomes, and shall not be allowed to accumulate therein or thereon. Refuse containers, and machinery and equipment not a part of the

Townhomes, shall be prohibited on the Townhome, unless contained within the Townhome's garage or otherwise obscured from view of neighboring Townhomes and Common Areas. Trash and garbage shall be properly and promptly disposed of.

- 10.3 No Personal Property on Common Area. Unless authorized by the Board in the Rules or otherwise in writing, no personal property of an Owner or Occupant may be left or stored anywhere on the Common Area, excluding the Limited Common Area appurtenant.
- 10.4 Rental Restrictions. No Townhome shall be made available for lease or rent for any lease or rental period of less than six (6) months. Short-term or nightly Townhome rental is expressly prohibited.

## ARTICLE 11 INSURANCE

- 11.1 Insurance Requirement of the Association. It is the intent of this Declaration to subject the Project to the provisions of the Act governing insurance. The Association shall obtain and maintain such insurance as required by § 57-8a-402 of the Act, including, specifically, the following:
- (a) Comprehensive general liability insurance covering 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 in an amount determined by the Board, in its discretion, but in no event less than One-Million Dollars (\$1,000,000.00).
  - (b) Blanket Property Insurance or guaranteed replacement cost insurance on the physical structures of all attached Townhomes and Common Areas appurtenant to Townhomes insuring against all risks of direct physical loss commonly insured against, including fire and extended overage perils. The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the policy deductible exceeds Ten-Thousand Dollars (\$10,000.00), an amount not less than Ten-Thousand Dollars (\$10,000.00). The Association shall provide notice in accordance with the Act to the Owners of an Owner's obligation for the Association's policy deductible and of any change in the amount of the deductible.
- 11.2 Director's and Officer's Insurance. In addition to the property and liability insurance required under Section 11.1 above, the Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers of the Association, and the Association, against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing law, or similar state or federal statute, or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Board, the policy may also

include coverage for any Manager, and any employees of the Manager, and may provide that such coverage is secondary to any other policy that covers the Manager, or any employees of the Manager.

- 11.3 Other and Further Insurance. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration, as the Board shall determine from time to time to be appropriate to protect the Association and/or the Owners. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.
- 11.4 Certificates of Insurance. Certificates of Insurance shall be made available to an Owner upon written request consistent with the Act and to Lenders upon written request withing thirty (30) days.

## **ARTICLE 12** **RIGHTS OF LENDERS**

- 12.1 Lender Rights to Association Books and Records. Subject to any legal requirements otherwise, the Association shall make available to Lenders copies of the Governing Documents and copies of corporate records related to the operations of the Association within thirty (30) days of receipt of a written request.
- 12.2 Notices of Action. A Lender who makes prior written request to the Association (such request to state the Lender's name and address and Owner's name and street address of the Lot) will be entitled to timely written notice from the Association of:
- (a) any condemnation loss or any casualty loss that affects a material portion of the Project;
  - (b) any delinquency in the payment of Assessment by the Owner of the Lot in which the Lender has a security interest where such delinquency has continued for a period of more than ninety (90) days;
  - (c) any lapse or cancellation of any insurance policy maintained by the Association; and/or
  - (d) any proposed action which would require the consent of a specified percentage of Lenders.
- 12.3 Lien Priority. A lien under Section 7.4 of this Declaration shall not have priority over a first or second security interest secured by a mortgage or trust deed on a Lot that is recorded before a notice of lien by or on behalf of the Association.

## **ARTICLE 13** **REINVESTMENT FEE COVENANT**

- 13.1 Reinvestment Fee Covenant. Consistent with Utah Code § 57-1-46 (and as later amended), the Association may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Lot (a "Reinvestment Fee") in an amount to be determined by the Board



and allowed by law. For purposes of this section and subject to the exclusions in Utah Code Ann. § 57-1-46 listed below, a transfer shall mean and refer to any change in the ownership of the Lot as reflected in the Office of Recorder for Salt Lake County, Utah, regardless of whether it is pursuant to the sale of the Lot or not. The amount shall be set forth by the Board in the Rules consistent with Utah Code Ann. § 57-1-46 or in the Notice of Reinvestment Fee Covenant. The value of the Lot for purposes of this section shall include the home constructed thereon, if any, and all other improvements, and shall be the higher of: (a) the purchase price paid for the Lot related to the transfer; (b) the value of the Lot as determined by the property tax assessor on the date of the transfer of title; or (c) the value of the Lot on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Board) and paid for by the Association using an appraiser selected by the transferee of the property from a list of five appraisers selected by the Association. This reinvestment fee covenant may not be enforced against: (a) an involuntary transfer; (b) a transfer that results from a court order; (c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; (e) ) a transfer to a trust of which the transferor is a trustee or beneficiary or the transfer to an limited liability company or corporation wholly owned by the transferor; (f) the transfer to a Bulk Builder of six (6) or more Lots; or (g) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest Association's costs directly related to the transfer of the burdened property, not to exceed Two-Hundred Fifty Dollars (\$250.00) or such other amount as may be established by law. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include: (a) requirements for Owners to provide sales and transfer documents; (b) requirements for the timing of responses to requests such as the selection of the appraiser; (c) default provisions if no selection is made such as allowing the Association to select the appraiser; and (d) other procedural requirements and rules as the Board deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

#### **ARTICLE 14** **AMENDMENT**

- 14.1 **General Amendment Requirements.** This Declaration may be amended only by an instrument, in writing, approved by Owners holding at least fifty percent (50%) of the total voting interests of the Association. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration not inconsistent with the governing documents of the Association.
- 14.2 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided in Section 14.1 shall be executed by the president of the Association, and the secretary of the Association shall certify that the amendment has been approved and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the Office of Recorder for Salt Lake County, Utah.

**ARTICLE 15**  
**SPECIAL DECLARANT RIGHTS**

- 15.1 Special Declarant Rights. Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have all the rights and powers provided for in this Article 15. If any other article in this Declaration contains the words “notwithstanding anything to the contrary,” or words of similar import, the article shall all nonetheless be subject to the terms in this Article 15.
- 15.2 Right to Appoint the Board During Declarant Control Period. The Declarant shall have the right to appoint and remove all Board Members during the Declarant Control Period. In the appointment of Board Members, the Declarant shall not be bound by any qualifications for Committee Members in the Governing Documents. The Declarant may assume (and shall be presumed to have assumed, unless Declarant notifies the Association otherwise) the powers of the Board without appointing Board Members pursuant to the rights granted in the Articles of Incorporation to the Declarant.
- 15.3 Declarant Control Period. For purposes of this Article 15, and as used in this Declaration, the “Declarant Control Period” shall mean, and refer to, the period of time which the Declarant owns any Townhome within the Project. During the Declarant Control Period, the Declarant shall retain control, power, and authority over all decision-making ability or authority for the Association and/or the Project. The Declarant shall determine whether to hire professional management during the Declarant Control Period.
- 15.4 Easement Rights. The Declarant shall have, and hereby retains, an easement for access over, under, across, and through the entire Project, and may utilize, allow anyone else to utilize, or may grant easements over, under across, and through, any easement right reserved to anyone in the Declaration.
- 15.5 Right to Amend Plat. Subject to necessary approvals from the City, during the Declarant Control Period, the Declarant shall have the right to amend, change, or modify the Plat, subject only to the requirement that the Declarant get approval from any Owner of a Townhome that has any boundary modified by the Plat.
- 15.6 Assessment Exemption. The Declarant shall be exempt from any Assessments, including any Regular Assessment or special Assessment.
- 15.7 Right to Amend Declaration, Bylaws, Articles of Incorporation, and Rules. Until the expiration of the Declarant Control Period, the Declarant shall have the unilateral right to amend, revise, and modify this Declaration, any Supplement to the Declaration, the Bylaws, the Articles, and the Rules, in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone, including, but not limited to, the Owners. Pursuant to § 57-8a-217(6) of the Act, the Declarant’s promulgation or amendment of any Rules shall be exempted from the Act’s rule-making process. Any amendment to the Bylaws or Declaration shall be effective upon the recordation by the Declarant of an amendment duly signed by an authorized officer of the Declarant, with such signature acknowledged.

When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including Owners.

- 15.8 Transfer of Declarant Rights. The Declarant, at any time, by recording a written notice, may assign or transfer all, or some, of its control, power, authority, or decision-making ability to the Association or any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant, as provided for in this Declaration, may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor.
- 15.9 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in the Declaration as it relates to the Townhomes owned by the Declarant.
- 15.10 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents and, specifically, in this Article 15, shall not be substantively or procedurally altered without the written consent of the Declarant until the Declarant Control Period has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void, ab initio, to the extent it attempts to alter the rights of the Declarant or any provision of the Articles, without the consent of the Declarant. Any consent to waive, change, or alter any provisions of this Article 15 by any future Declarant (as a result of any voluntary or involuntary assignment of Declarant rights) shall effect a change to those provisions only as to that Declarant, and shall not be applicable to any prior Declarant without that prior Declarant's specific consent.
- 15.11 Use of Townhomes and Common Areas for Sales Activities. During the Declarant Control Period, the Declarant shall have the right to use any Townhome owned by it, and any part of the Common Areas in furtherance of any activities designed to accomplish or facilitate construction, improvement, and sale of all Townhomes owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Lot, with the permission of the Owner of that Lot, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs, or otherwise, any street or other parking as parking for sales only, or to otherwise restrict and use any common parking. The Declarant shall have the right, from time to time, to relocate, move, remove, or add

to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.

- 15.12 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article 15 shall not be construed to impose any obligation, legal or equitable, related to the issues to which they might apply. Each Owner, by taking title to a Townhome, and the Association waive and disclaim any such duty, and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.
- 15.13 Declarant Exemption from Statutory Obligations. Pursuant to § 57-8a-217(6) of the Act, Declarant is hereby exempt from the provisions of § 57-8a-217 of the Act. Pursuant to § 57-8a-211(10) of the Act, § 57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period, and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a reserve analysis or to fund any reserve fund during the Declarant Control Period.
- 15.14 Termination of Declarant Control Period. Declarant Control shall terminate on the occurrence of the earliest of the following events: (i) three (3) years from the date the first deed to a Unit is recorded by a purchaser from Declarant, (ii) six (6) months after the date on which more than three-fourths of the Units have been conveyed by Declarant, or (iii) the Declarant executes and records a written waiver of its right to control the Association. The expiration of the Period of Declarant Control has no effect on the termination of all other Special Declarant Rights set forth in this Declaration.

## **ARTICLE 16** **MISCELLANEOUS**

- 16.1 Enforcement. The Association and each Owner shall have the right to enforce, by proceedings at law or in equity, each and every provision of the Association's Governing Documents applicable to the respective party, including the right to prevent the violation of any such provision and the right to recover damages and other sums for such violation.
- 16.2 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other. The Association and the Owners shall have the right to pursue any one, or all, of such rights, options and remedies, or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively to the respective party.
- 16.3 Attorneys' Fees and Cost. In any action to interpret or enforce the Governing Documents, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.
- 16.4 Consent, Power of Attorney, Waiver. By taking title to a Townhome, each Owner and consents to the rights reserved to Declarant and the Association in this Declaration, including, but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements, and to make necessary and appropriate amendments of this Declaration. By such acceptance, each Owner agrees to execute all documents and to do all other things as may be necessary

or convenient to affect the same. Such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration, and shall not be affected by the disability of any such Owner or Occupant.

- 16.5 Security. Neither the Declarant, the Association, nor any Board Member shall be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. Neither the Declarant, the Association nor any Board Member shall be liable for any loss or damage by reason of criminal conduct within or related to the Project, including any failure to provide security or any ineffectiveness of any security measures undertaken. By taking title to a Townhome and/or residing in the Project, Owners and Occupants agree that neither Declarant nor the Association or the Board are insurers of the safety or well-being of Owners or Occupants, or of their personal property as it relates to criminal conduct within the Project, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.
- 16.6 Reasonable Fair Housing Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications within the Project that are otherwise prohibited by the Governing Documents, as may be required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal or state law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Townhome, the Common Areas, or deviations from a provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 16.7 Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat, this Declaration, the Bylaws, the Articles, and then the Rules.
- 16.8 Severability. Invalidation of any portion of this Declaration, by judgment or court order, shall in no way affect any other portion of this Declaration, all of which shall remain in full force and effect.
- 16.9 Construction and Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purposes. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for, or against, or strictly for or against, the Association, any Owner, or any other Person, subject to their term. Whenever the context

of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

**ARTICLE 17**  
**CONFLICT AND LITIGATION AVOIDANCE**

- 17.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Lot that the Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing, it therefore is acknowledged that it is unfair and improper thereafter to seek to have Declarant change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner, by taking title to a Lot, and Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the value, sale, and ability to obtain financing for the purchase of a Townhome for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Townhomes during any period when litigation is pending. For this reason, each Owner and Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. The intent of this Article 17 is to eliminate, to the extent possible, claims against or involving Declarant and claims related to the operation and administration of the Association during the Declarant Control Period and to the development of the Project, the Lots, and the Common Areas therein when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration. The provisions of this Article 17 are separate from and in addition to the provisions in § 57-8a-229 of the Act.
- 17.2 Waiver of Subrogation and Release. The Association and each Owner, by and upon taking title to a Lot, waives any right to subrogation against Declarant in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against Declarant (including principles, officers, managers, interest holders, members, employees, agents, and representatives). To the full extent permitted by law, the Association and Owners hereby release Declarant (including principles, officers, managers, interest holders, members, employees, agents and representatives) from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss. The Association and each Owner agree that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend Declarant (including its principles, officers, employees, owners, or representatives) from any claims barred or released by this provision, including, but not limited to, any claim brought under any right of subrogation.

### 17.3 Litigation and Alternative Dispute Resolution.

- (a) For any claim against Declarant, to the extent allowed herein or by law after the following efforts at dispute resolution have been completed:
  - (i) Right to Cure: The Owner(s) or the Association asserting the claim(s) shall provide to Declarant a Notice of Claim (defined below) and permit Declarant one-hundred eighty (180) days to cure or resolve the claim, prior to initiating any lawsuit, claim, or dispute resolution process;
  - (ii) Mediation. If the dispute is not resolved within the one-hundred eighty (180) day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, causes of action or legal theories for recovery (including damages, damage calculations) are added or asserted against Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall be triggered and any pending action, including any mediation or arbitration, shall be stayed for the one-hundred eighty (180) day period to facilitate Declarant's right to cure such additional, different, or modified claims.
- (b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against Declarant by either the Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. In the event the parties are unable to agree regarding an arbitration service, the American Arbitration Association shall administer the proceedings and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the Rules and this Declaration.
- (c) The term "Notice of Claim" in this Article 17 shall mean and include the following information: (i) the nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a detailed description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (iv) a recitation of all efforts taken to avoid, mitigate, or minimize the claim and alleged damages arising therefrom; and (vi) the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
- (d) Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against Declarant (including principles, officers, managers, interest holders, members, employees, agents and representatives), for any reason, including, but not limited to, the Declarant's administration and operation of the Association during the Declarant Control Period, or any damages arising therefrom.

- (e) The Association shall indemnify and defend Declarant (including its principles, officers, managers, interest holders, members, employees, agents and representatives) against any litigation, arbitration, or the assertion of any claim arising out of or related to Declarant's administration and operation of the Association during the Declarant Control Period or the development and/or construction of the Project and/or any damages arising therefrom.
- (f) The Association and the Owners take ownership and possession of the Lots and Common Areas "AS IS," with all faults and with no warranties of any kind except as otherwise required by law. **DECLARANT SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OF HABITABILITY, TO THE FULL EXTENT ALLOWED BY LAW.**
- (g) The existence of procedures and/or requirements in this Article 17 applicable to claims against Declarant that are barred or limited in other provisions of this Declaration shall not be construed as permitting any such claims or as contradictory to a prohibition or limit on such claims in other provisions in this Declaration. The procedures and requirements to assert a claim (including, but not limited to, the right to cure requirements, the mediation requirement, and the arbitration requirements) that are prohibited by this Declaration are provided solely in case any such claim is permitted by law notwithstanding the terms of this Declaration.

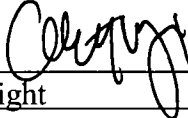
[Signature page follows]



IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative this 10<sup>th</sup> day of May, 2024.

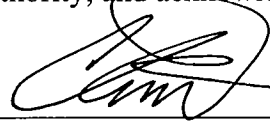
**DECLARANT**

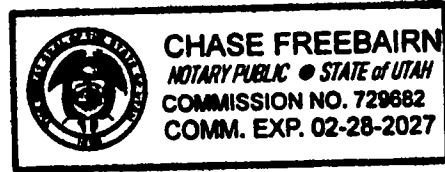
CW THE MONROE PARTNERSHIP, L.P.,  
a Utah limited liability partnership

By:   
Name: Colin Wright  
Its: Member

STATE OF UTAH )  
 ) ss.  
COUNTY OF Davis )

On the 10<sup>th</sup> day of May, 2024, personally appeared before me Colin H. Wright who by me being duly sworn, did say that he is an authorized representative of CW The Monroe Partnership, L.P., and that the foregoing instrument is signed on behalf of said partnership and executed with all necessary authority, and acknowledged to me that said partnership executed the same.

  
Notary Public



**EXHIBIT A**

LEGAL DESCRIPTION

Lots 1 through 56, inclusive, as shown on the official The Monroe Townhomes final plat on file and of record in the Office of the Recorder for Salt Lake County, Utah and recorded on \_\_\_\_\_ as Entry No. 14239179 and all appurtenant Common Areas as shown thereon.

Parcel Nos.

## **EXHIBIT B**

### **BYLAWS**

#### **OF**

#### **THE MONROE OWNERS ASSOCIATION, Inc.**

Consistent with § 57-8a-216 of the Act, CW The Monroe Partnership, L.P. (the “Declarant”) has established and adopted these bylaws as the Bylaws of The Monroe Owners Association, Inc. (the “Association”). These Bylaws and any valid amendments thereto shall be effective upon recording with the Office of Recorder for Salt Lake County, Utah and shall be binding on the Declarant, the Association, and all present and future Owners, Mortgagees, Occupants, and their invitees of the Project. The mere acquisition or rental of any of the Units or the mere act of occupancy or use of any said Units or the Common Areas will signify that these Bylaws and the Governing Documents are accepted, ratified, and will be complied with by said Persons.

#### **ARTICLE I DEFINITIONS**

- 1.1. Definitions. Unless otherwise defined herein, capitalized terms in these Bylaws are defined in the Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for Monroe Townhomes (“the Declaration”) shall have the same defined meanings when used in these Bylaws.

#### **ARTICLE II ASSOCIATION MEMBERS**

- 2.1. Annual Meetings. An annual meeting of the Owners shall be held no less than once each calendar year. The date, time, and location of the annual meeting shall be determined by the Board in its discretion. The annual meeting shall be held for the purpose of electing members to the Board (after the termination of the Declarant Control Period), review of the annual budget promulgated by the Board, and transaction such other business as may properly come before the Owners. Notwithstanding the foregoing, an annual meeting of the members shall not be required during the Declarant Control Period.
- 2.2. Special Meetings. Special meetings of the Owners may be called by the Board, the President, or upon the written request of Owners holding not less than twenty-five percent (25%) of the total votes of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within forty-five (45) days of receipt of the Owner request. Notwithstanding the foregoing, during the Period of Declarant Control, Special Meetings may only be called by the Declarant.

- 2.3. Place of Meetings, Use of Teleconferencing and Video Conferencing. The Board may designate the office of the Manager or any place within the City as the place of meeting for any annual or special meeting. Alternatively, meetings may be held telephonically or via video conferencing (e.g., Skype, Zoom, FaceTime), provided meeting participants are able to hear and communicate with each other in real time.
- 2.4. Notice of Meetings. The Board shall cause written notice of the time and place, and, in the case of a special meeting, the purpose, for all meetings of the Owners (whether annual or special) to be delivered, not more than sixty (60) or less than ten (10) days prior to the meeting. Notices may be given via email or other electronic means unless otherwise provided by law.
- 2.5. Quorum. Those Owners and the holders of proxies entitled to cast votes present at an annual or special meeting shall constitute a quorum for the transaction of business.
- 2.6. Voting. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one (1) vote for each Unit of such Owner, provided such Owner is current on all Assessments. The exercise of an Owner's voting right may be restricted by the Board if the Owner is delinquent on their Assessment obligation. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Utah Revised Nonprofit Corporations Act, Utah Code §§ 16-6a-101 et seq. (the "Nonprofit Act"). When a Unit is jointly owned, any joint Owner may exercise the vote for such Unit on behalf of all joint Owners of the Unit. In the event of two conflicting votes by joint Owners of one Unit, no vote shall be counted for that Unit. The Association may utilize email and electronic voting and ballots to the fullest extent permitted by law.
- 2.7. Ballots and Written Consent. The Association may utilize written consents and/or ballots consistent with the requirements of the Nonprofit Act. The Association may utilize electronic signatures, electronic consent, electronic ballots, and email to the fullest extent permitted by law.
- 2.8. Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, form of proxies, and method of ascertaining the Owners present shall be deemed waived if no objection thereto is made at the meeting.
- 2.9. Action Taken Without a Meeting. Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners through ballot, written consent, or otherwise. The Association may also use any method permitted for actions without a meeting in accordance with the requirements of Utah Code § 16-6a-707 or § 16-6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots

or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

- 2.10. Minutes of Meetings. The Secretary, or their designee, shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be available to requesting Owners within sixty (60) days of the meeting.

### ARTICLE III BOARD OF DIRECTORS

- 3.1. Number, Tenure, Qualifications, and Election. The Board shall be composed of three (3) individuals. Except during the Declarant Control Period, Board Members must be Owners, at least eighteen (18) years of age or older, and current on Assessments. Except during the Declarant Control Period, Board Members shall serve staggered terms of three (3) years. The initial Board elected by Owners after the Declarant Control Period may determine between themselves who shall serve a one-year term and a two-year term so as to create staggered terms for Board Members going forward.
- 3.2. Board Meetings. The Board shall hold at least one (1) regular meeting during the calendar year and may hold other regular meetings as the Board may determine, at its discretion. Consistent with § 57-8a-226 of the Act. Owners may attend regular Board meetings and may be present for all discussion, deliberation, and decisions except when the Board is in executive session.
- 3.3. Special Meetings. Special meetings of the Board may be called by or at the request of any two Board Members or the President. Notice of any special meeting shall be given at least forty-eight (48) hours prior thereto to each Board Member. Except as provided by law, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.
- 3.4. Quorum and Manner of Acting. A majority of the Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members presents at any meeting at which a quorum is present and for which proper notice was provided to the Board Members shall be the act of the Board. The Board Members shall act only as a Board, and individual Members shall have no powers as such.
- 3.5. Place and Notice of Meetings. The Board may designate the office of the Manager or any place within the City as the place of meeting for any regular or special meeting. Alternatively, meetings may be held telephonically or via video conferencing (e.g., Skype, Zoom, FaceTime), provided meeting participants are able to hear and communicate with

each other in real time. Consistent with § 16-6a-81, regular meetings of the Board may be held without notice of the date, time, place, or purpose of the meeting. Special meetings of the Board shall require at least two (2) days' notice of the date, time, and place. Notice of the purpose of the special meeting shall not be required.

- 3.6. Action Without a Meeting. Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting pursuant to § 16-6a-813 of the Nonprofit Act.
- 3.7. Removal. A Board Member may be removed with or without cause by a majority vote of the Owners at a special meeting called for that purpose.
- 3.8. Vacancies. If vacancies shall occur in the Board by any reason other than removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board Members then in office, even though less than a quorum may be available. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election by the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her/their predecessor.
- 3.9. Compensation. No Board Member shall receive compensation for any services that he/she may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in the performance of his/her duties as a to the extent such expenses are unanimously approved by the Board.

#### ARTICLE IV OFFICERS

- 4.1. Officers. The officers of the Association shall be a president or chairperson (the "President"), the secretary (the "Secretary") and the treasurer (the "Treasurer").
- 4.2. Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board annually at a meeting of the Board. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. A Board Member may hold more than one office, except the President shall not also serve as the Secretary. All officers must be Board Members during the entire term of their respective offices.
- 4.3. Subordinate Officers. The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. Subordinate officers need not be members of the Association.
- 4.4. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Board Member or to the Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Board at any time, with or without cause.

- 4.5. Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting. During the time that any office is vacant, and no other officer is available to perform the duties of that office as required below, the Board shall ensure that the duties and responsibilities of the office are performed.
- 4.6. The President. The President shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs. The President shall sign on behalf of the Association all contracts, conveyances, and other instruments and shall do and perform all acts and things which the Board of Directors may require or may delegate to the President.
- 4.7. The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Board may require such person to keep. The Secretary shall perform such other duties as required by the Board.
- 4.8. The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.
- 4.9. Compensation. No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

## ARTICLE V INDEMNIFICATION

- 5.1. Indemnification. Each Board Member and Officer now or hereafter serving as such, shall be indemnified by the Association against any and all claims and liabilities to which they have or may become subject by reason of serving or having served as such Board Member or Officer, or by reason of any action alleged to have been taken, omitted, or neglected by him or her as such Board Member or Officer. The Association shall reimburse each such person for all legal expenses reasonably incurred by them in connection with any such claim or liability, provided, however, that no Board Member or Officer shall be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of any criminal action, willful misconduct or gross negligence.
- 5.2. Determination of Indemnifiable Amount. The amount paid for indemnification shall not exceed the indemnified Board Member or Officer's actual, reasonable, and necessary expenses incurred in connection with the matter involved, and such additional amount as

may be fixed by a committee of not less than three (3) nor more than five (5) persons selected by the Board of Directors who may or may not be Members and any determination so made shall be binding on the indemnified Officer or Board Member.

- 5.3. State Law. The right of indemnification provided for shall not be exclusive of any rights to which any Officer or Board Member of the Association may otherwise be entitled by then Utah law.

#### ARTICLE VI RULES AND REGULATIONS

- 6.1. Rules. The Board shall have the authority to adopt Rules and a schedule of fines for violations as it deems necessary for the maintenance, operation, management, and control of the Project by resolution or similar document. The Board may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and Occupants. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board shall be sent to all Owners at least fifteen (15) days prior to the effective date thereof.

#### ARTICLE VII AMENDMENTS AND CONFLICTS

- 7.1. Amendments. Except as otherwise provided by law, by the Declaration or by these Bylaws, these Bylaws may be amended with the affirmative vote of a majority of the Board. No amendment shall be effective unless and until a written instrument setting forth (a) the amendment; (b) the number of votes cast in favor of such action; and (c) shall have been executed and verified by the current President and Secretary and recorded in the official records of the Association and with the Office of Recorder for Salt Lake County, Utah.
- 7.2. Conflicts with Declaration. In the event of any conflict between the provisions of these Bylaws and the Declaration, the provisions of the Declaration shall control.

#### ARTICLE VIII MISCELLANEOUS PROVISIONS

- 8.1. Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.
- 8.2. Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural shall include the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.



8.3. Conflicts. These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

[signature page follows]

IN WITNESS WHEREOF, the Declarant has executed and adopted these Bylaws on behalf of the Association this 10<sup>th</sup> day of May, 2024.

**DECLARANT**  
CW THE MONROE PARTNERSHIP, L.P.,  
a Utah limited liability partnership

By: Colin Wright  
Name: Colin Wright  
Its: Member

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF Davis )

On the 10<sup>th</sup> day of May, 2024, personally appeared before me Colin H. Wright who by me being duly sworn, did say that he is an authorized representative of CW The Monroe Partnership, L.P., and that the foregoing instrument is signed on behalf of said partnership and executed with all necessary authority, and acknowledged to me that said partnership executed the same.

[Signature]

Notary Public



**EXHIBIT C**

**MAINTENANCE ALLOCATION CHART**