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E 3256439 B 7523 P 2796-2832  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
5/29/2020 4:18:00 PM  
FEE \$120.00 Pgs: 37  
DEP eCASH REC'D FOR COTTONWOOD TITLE INS

WHEN RECORDED MAIL TO:

CW The Ridge, LLC  
1222 Legacy Crossing Blvd #6  
Centerville, UT 84014

File No.: 116400-CAF

**Supplemental Declaration for Amber Vista at the Ridge a Village at the  
Ridge Subdivision P.U.D.**

In Reference to Tax ID Number(s):

01-506-0301 through 01-506-0350

# **SUPPLEMENTAL DECLARATION**

**for**

**AMBER VISTA AT THE RIDGE**

**A VILLAGE AT THE RIDGE  
SUBDIVISION P.U.D.**

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	ii
RECITALS .....	1
DECLARATION.....	1
ARTICLE I. DEFINITIONS.....	2
ARTICLE II. PROJECT DESCRIPTION .....	5
ARTICLE III. LAND USE CLASSIFICATIONS .....	6
ARTICLE IV. TOWNHOMES COMMON AREAS; EASEMENTS.....	6
ARTICLE V. THE ASSOCIATION .....	8
ARTICLE VI. VOTING .....	14
ARTICLE VII. BUDGET AND ASSESSMENTS.....	14
ARTICLE VIII. USE RESTRICTIONS .....	18
ARTICLE IX. ARCHITECTURAL CONTROLS.....	21
ARTICLE X. ENFORCEMENT .....	23
ARTICLE XI. RIGHTS OF FIRST MORTGAGEE .....	23
ARTICLE XII. SPECIAL DECLARANT RIGHTS .....	23
ARTICLE XIII. AMENDMENTS .....	29
ARTICLE XIV. MISCELLANEOUS .....	29
CERTIFICATION .....	31
EXHIBIT A .....	1

This SUPPLEMENTAL DECLARATION FOR AMBER VISTA AT THE RIDGE, A VILLAGE AT THE RIDGE SUBDIVISION P.U.D. ("Declaration") is effective when recorded in the office of the Davis County Recorder by CW THE RIDGE, LLC, a Utah limited liability company, ("Declarant").

## RECITALS

- A. The real property situated in Davis County, Utah, described in Exhibit A, attached to and incorporated in this Declaration by reference, is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed on the property, and all easements and rights appurtenant thereto, to a residential planned unit development consisting of multi-family lots and related common areas pursuant to Utah Code Ann. § 57-8a-101 et seq. that shall be known as Amber Vista at The Ridge ("Townhome Project").
- B. The Townhome Project is subject to the MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR THE RIDGE SUBDIVISION P.U.D., which was recorded with the Davis County Recorder on September 10, 2019 as Entry Number 3185813, as amended and supplemented ("Master Declaration").
- C. Declarant is the declarant under the Master Declaration. Lennar Homes of Utah, Inc., a Delaware corporation ("Lennar Homes") is the owner of the real property subject to this Declaration ("Townhomes Parcel"). By signing this Declaration, Declarant and Lennar Homes consent to subjecting the Townhome Parcel to the terms, covenants, and restrictions contained herein.
- D. Declarant hereby desires to establish for the mutual benefit of all future Owners and Residents, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein (collectively the "Restrictions"), which shall run with and be a burden upon the Townhome Parcel.
- E. Declarant intends that the real property within the Townhomes Parcel shall be held, sold, and conveyed subject to the Restrictions in this Declaration, which: (1) are for the purpose of protecting the value, desirability, attractiveness, and character of the Townhomes Project; (2) shall run with the land; (3) shall be binding upon all Owners, Residents, Mortgagees, and all other persons hereafter acquiring any interest in the Project; and (4) shall inure to the benefit of all parties having any right, title, or interest in any part of the Townhome Project, and their successors and assigns.
- F. Declarant explicitly reserves for itself the option in the future to expand the Townhomes Project. This Declaration shall apply to such additional real property as may be hereafter annexed into the Townhomes Project as set forth below.
- G. Capitalized terms used in this Declaration and not otherwise defined in the Declaration shall have the same meanings given to such terms in the Master Declaration.

## DECLARATION

**NOW, THEREFORE**, Declarant hereby declares, covenants, and agrees that the real property within the Townhomes Project is and shall henceforth be owned, held, conveyed,



encumbered, leased, improved, used, occupied, and enjoyed subject to the following covenants, conditions, and restrictions. These covenants, conditions, and restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Townhomes Project; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the recitals above.

## ARTICLE I. DEFINITIONS

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

1.2. **Additional Land** shall mean, without limitation, any parcel of land that is annexed into the Townhomes Project in accordance with the provisions outlined in this Declaration.

1.3. **Articles** shall mean the Articles of Incorporation for the Association, as amended and restated from time to time.

1.4. **Annual Townhomes Assessments** shall mean the regular annual assessments levied by the Board with respect to the Townhomes Project pursuant to Section 7.2.

1.5. **Association** shall mean and refer to The Ridge Master Association, Inc. a Utah nonprofit corporation.

1.6. **Board** or **Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Master Declaration, Articles, and Bylaws. The Board is the governing body of the Association.

1.7. **Board Member** shall mean a duly qualified and elected or appointed individual member of the Board of Directors of the Association.

1.8. **Bylaws** shall mean the Bylaws of the Association as the same may be amended from time to time.

1.9. **Common Expenses** shall mean all sums lawfully assessed against the Owners for expenses of administration, maintenance, management, operation, repair, and replacement of the Townhomes Common Areas which are maintained by the Association; expenses agreed upon as common expenses by the Association or its Board of Directors; any telecommunication or data service expenses for which the Association is response to pay for the benefit of the Townhome Parcel like those contemplated under Section 14.6 herein; expenses declared common expenses by the Declaration or the Master Declaration; expenses levied against the Townhomes Owners by the Association for its allocated portion of the Association's common expenses, if any; and any other charges incurred by the Association or the Board necessary for the common benefit of the Owners.

1.10. **Declarant** shall mean CW The Ridge, LLC, a Utah limited liability company, and any successor in interest.

1.11. **Declaration** shall mean and refer to this Supplemental Declaration of Covenants, Conditions, and Restrictions for The Ridge Townhomes, a Village at The Ridge Subdivision P.U.D., as may be amended from time to time.

1.12. **Design Guidelines** shall mean and refer to those requirements governing the location, color, materials, and architectural design of dwellings, structures, and improvements within the Townhomes Project.

1.13. **Governing Documents** shall mean the Declaration, Townhomes Rules, and Design Guidelines.

1.14. **Lot** shall mean and refer to each of the individual lots within the Townhomes Project, as shown on the Plat, with the exception of the Townhomes Common Areas. Reference to a Lot shall include reference to the Residence and other improvements constructed thereupon where the context allows.

1.15. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Townhomes Project.

1.16. **Master Declaration** shall mean and refer to the MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, AND RESERVATIONS OF EASEMENTS FOR THE RIDGE SUBDIVISION P.U.D., which was recorded with the Davis County Recorder on September 10, 2019 as Entry Number 3185813, as the same is amended and supplemented from time to time.

1.17. **Master Project** shall refer to The Ridge Subdivision P.U.D. made subject to the Master Declaration.

1.18. **Mortgage** shall mean and refer to a mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.19. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.20. **Party Wall** shall mean and refer to a wall , including without limitation a foundation wall, that forms part of a Living Unit and is located on or adjacent to a boundary line between two or more adjoining Lots or Residences that are owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Residence as a structural partition wall. A Party Wall may be separated by a sound board between two or more Residences.

1.21. **Period of Declarant Control** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (1) the date on which all of the Lots have been conveyed to purchasers, evidenced by a written statement from the Declarant, including Lots that may be included within the Additional Land, regardless of whether such Additional Land has been added to the Project; or (2) the Declarant executes and records a written document that terminates the Period of Declarant Control.

1.22. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.23. **Plat** shall mean all of the official subdivision plats of The Ridge Subdivision P.U.D., filed and recorded in the official records of the Davis County Recorder's Office, as amended and supplemented.

1.24. **Proceeding** shall mean and refer to a lawsuit, arbitration, mediation, or an administrative or governmental proceeding.

1.25. **Residence** shall mean and refer to an attached residential structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot which are used in connection with such Residence. The Residence shall include, without limitation, interior and exterior components, the attached garage, any mechanical equipment located outside said Residence but designed to serve only that Residence, and all utility lines or installations serving only the Residence.

1.26. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.27. **Supplemental Declaration** shall mean a written instrument recorded in the records of the Davis County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

1.28. **Townhomes Assessment(s)** means and refers to an Annual Townhomes Assessment, Townhomes Special Assessment, Townhomes Individual Assessment, Townhomes Special Use Fee, or any other fees, fines, or charges assessed by the Board pursuant to this Declaration with respect to the Townhome Project. Townhome Assessments shall be considered "village assessments" or "benefitted common area assessments" as defined under the Master Declaration.

1.29. **Townhomes Assessment Lien** shall mean and refer to the lien created and imposed by Section 7.1.

1.30. **Townhomes Common Areas** shall mean the following, to the extent located within the Townhomes Parcel and intended for the exclusive use and enjoyment of the Townhomes Owners and Townhomes Residents: all roadway improvements within the Townhomes Project shown on the Plat as private roads and which are not accepted for dedication by a municipal authority; all land, and the improvements situated thereon, within the Townhomes Project that Declarant designates as common areas on the Plat or other recorded instrument and other real property which the Association now or hereafter owns in fee for the benefit of Townhomes Owners for as long as the Association is the owner of the fee, which may include, without obligation or limitation, signs or monuments, walkways, landscaped areas outside of the Lots, street signage, lighting detached from any Residence, sidewalks, and other similar improvements; and any real property or improvements within the Townhomes Project that the Association has the obligation to maintain, repair, or replace for the common benefit of the Townhomes Owners, as the Board shall determine in its sole and exclusive discretion, including, without limitation, all utility and service lines, systems and similar improvements, whether public or private-company owned, intended to serve more than one Lot regardless if located within the boundaries of a Lot. The Townhomes Common Areas shall be owned and maintained by the Association at the sole expense of the Townhomes Owners through the Townhomes Assessments.

1.31. **Townhomes Individual Assessment** shall mean and refer to any assessment levied and assessed as set forth in Section 7.5.

1.32. **Townhomes Owner** shall mean and refer to the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Townhomes Project,

including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.33. **Townhomes Parcel** as hereinbefore defined shall mean and refer to the real property legally described in Exhibit A.

1.34. **Townhomes Project** as hereinbefore defined shall at any point in time mean, refer to Amber Vista at The Ridge and shall include the Townhomes Parcel, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

1.35. **Townhomes Resident** shall mean and refer to (a) any tenant or lessee of a Townhomes Owner actually residing on any Lot, and (b) the members of the immediate family of each Townhomes Owner, lessee, and tenant actually living in the same household with such Townhomes Owner, lessee, or tenant. Subject to such Townhomes Rules as the Board may specify (including the imposition of special nonresident fees for use of Townhomes Common Areas if the Association shall so direct), the term Townhomes Resident also shall include onsite guests or invitees of any such Townhomes Owner, lessee, or tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

1.36. **Townhomes Rules** shall mean and refer to the rules, resolutions, regulations, policies, architectural guidelines, etc. adopted by the Board pursuant to this Declaration.

1.37. **Townhomes Special Assessment** shall mean and refer to any assessment levied and assessed with respect to any of the Townhomes Project pursuant to Section 7.3.

1.38. **Townhomes Special Use Fees** shall mean and refer to any fees charged by the Association for the use of the Townhomes Common Areas.

## ARTICLE II. PROJECT DESCRIPTION

2.1. **Submission**. The Declarant hereby confirms that the Townhomes Parcel described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant hereby declares that the Townhomes Project and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Master Declaration and this Declaration. This Declaration shall be deemed a "Supplemental Declaration" pursuant to the terms and condition of the Master Declaration and is a subsidiary and supplemental to the Master Declaration, and Townhomes Parcel is a "Village" or "Service Area" within the meaning of the Master Declaration. This Declaration shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, the Association, and each Townhomes Owner, including their respective heirs, successors, and assigns.

2.2. **Name**. The Townhomes Project, as submitted to the provisions of this Declaration, shall be known as the Amber Vista at The Ridge. The Townhomes Project is not a cooperative.

2.3. **Description of Improvements**. The improvements contained in the Townhomes Project will be located upon the Townhomes Parcel. The major improvements contained in the Townhomes Project will include fifty (50) Lots, each containing a single attached Residence thereon. Other Lots or Townhomes Common Area may be added as

reserved by the Declarant upon Additional Land. There are also Townhomes Common Areas as further provided herein, along with other improvements detailed on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements at the Townhomes Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.

2.4. **Common Areas.** The Townhomes Common Areas of the Townhomes Project shall be as identified on the Plat and as defined in Article 1 above.

2.5. **Incorporation of Recitals.** The Recitals above are incorporated into and are a part of this Declaration.

2.6. **Association.** It is intended that the Townhomes Project and the Townhomes Owners will be subject to the Master Declaration and be members of the Association. There shall not be any village or sub-association created by this Declaration.

2.7. **Expansion of Project.** The Townhomes Project may be expanded by the Declarant in accordance with the provisions of Article XII.

### **ARTICLE III. LAND USE CLASSIFICATIONS**

3.1. **Land Use Classifications.** Single-family attached residential townhomes are the permitted land use classification within the Townhomes Parcel, which may also include Townhomes Common Areas.

### **ARTICLE IV. TOWNHOMES COMMON AREAS; EASEMENTS**

4.1. **Conveyance of Townhomes Common Areas.** Declarant shall convey the Townhomes Common Areas to the Association and the Association shall hold such as Townhomes Common Areas and not as Association Common Areas, as provided in Section 1.8 of the Master Declaration. From time to time, Declarant may convey easements, leaseholds, or other real property within the Townhomes Project to the Association and upon such conveyance or dedication to the Association, such property shall be deemed a part of the Townhomes Common Areas accepted by the Association and thereafter shall be maintained by the Association for the benefit of all the Townhomes Owners.

4.2. **Easement of Enjoyment.** Each Townhomes Owner shall have a right and easement of use and enjoyment in and to the Townhomes Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Townhomes Owners may delegate the right and easement of use and enjoyment described herein to any Townhomes Residents. The foregoing grants and rights are subject to the following

4.3. **Limitation on Easement.** A Townhomes Owner's right and easement for the use and enjoyment of the Townhomes Common Areas shall be subject to the following limitations:

- 1) The right of the Association to charge reasonable Townhomes Special Use Fees for the use of the Townhomes Common Areas. Townhomes Special Use Fees shall be set by the Board from time to time in its absolute discretion. Townhomes Special Use Fees shall be charged only for actual entry upon or



utilization of those Townhomes Common Areas selected by the Board to be subject to Townhomes Special Use Fees and shall be intended to collect revenue from the actual users of such selected Townhomes Common Areas so that all of the costs of operating the selected Townhomes Common Areas are not borne by all of the Townhomes Owners through Annual Townhomes Assessments, but rather are borne, at least in part, by the Townhomes Owners and Townhomes Residents utilizing such selected Townhomes Common Areas. Townhomes Special Use Fees assessed against a Townhomes Owner or Townhomes Resident on such Townhomes Owner's Lot shall also become part of the Townhomes Assessment to which such Townhomes Owner and such Townhomes Owner's Lot is subject and secured by the Townhomes Assessment Lien.

2) The right of the Association to impose reasonable limitations on the number of guests or invitees per Townhomes Owner or Townhomes Resident who at any given time are permitted to use the Townhomes Common Areas.

3) The right of the Association to suspend voting rights and right to use the Townhomes Common Areas by any Townhomes Owner or Townhomes Resident for any period during which any Townhomes Assessment against his Lot remains unpaid, for a period not to exceed 60 days for any infraction of this Declaration or the Townhomes Rules; and for successive 60 day periods if any such infractions are not corrected during any preceding 60 day suspension period.

4) The right of the Association to regulate the use of the Townhomes Common Areas through Townhomes Rules and to prohibit access to those Townhomes Common Areas such as landscaped areas not intended for use by the Townhomes Owners or Townhomes Residents.

5) The right of the Association to dedicate or transfer all or any part of the Townhomes Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. During the Period of Declarant Control, any such dedication or transfer may take place in the sole discretion of the Declarant without any assent from the Townhomes Owners. Following the Period of Declarant Control, any such dedication or transfer must be assented to by two-thirds (2/3) of the Townhomes Owners.

6) The right of Davis County and any other governmental or quasi-governmental body having jurisdiction over the Townhomes Project to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Townhomes Project for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service.

**4.4. Association Easement.** The Association, its Board, Manager, employees, agents, and contractors shall have non-exclusive easements to use the Townhomes Common Areas to perform their duties as assigned by the Board. The Association, its Board, Manager, employees, agents, and contractors shall also have non-exclusive easements to the Lots and Residences as needed to perform its duties and obligations under this Declaration and the Master Declaration, including for the maintenance, repair, and replacement of portions of the Lot and/or Residences.

4.5. **Easement for Utility Services.** The Townhomes Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

4.6. **Easements for Encroachments.** If any portion of the Townhomes Common Areas structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot encroaches upon any other Lot or the Townhomes Common Area as a result of the manner in which the improvements were initially approved and constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment and maintenance of such encroachment, shall exist for the life of the improvement or structure.

4.7. **Compliance with Restrictions and Rules.** Each Townhomes Owner and Townhomes Resident shall comply with the Restrictions imposed by this Declaration and shall fully and faithfully comply with the Townhomes Rules.

## **ARTICLE V. THE ASSOCIATION**

5.1. **Association Rights and Powers.** The Association shall have such rights and powers as are set forth in this Declaration, which shall include all rights and powers as may be reasonably necessary in order to affect the purposes of the Association as set forth in this Declaration.

### **5.2. Townhomes Property Funds.**

1) **Purpose.** The Association shall apply all funds and property collected and received by it (including the Annual Townhomes Assessments and Townhomes Special Assessments, fines, loan proceeds, and all funds and property received by it from any other source) with respect to the Townhomes Project (collectively, "Townhomes Property Funds") for the purposes and uses authorized by this Declaration or otherwise for the common good and benefit of the Townhomes Project and the Townhomes Owners. Subject to this Declaration and the Articles and Bylaws, the Association may expend Townhomes Property Funds in any manner permitted under the laws of the State of Utah.

2) **Separate Funds.** All Townhomes Property Funds may be maintained by the Association in accounts separate from, and shall be accounted for separately from, all other Association funds.

3) **Borrowing Power.** The Association may borrow money in connection with its obligations with respect to the Townhomes Project in such amounts at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate; provided, however, no loan in an amount in excess of \$25,000 shall be contracted until approved by at least, a majority of all Townhomes Owners.

4) **Spending Townhomes Property Funds.** The Association shall not be obligated to spend in any year all Townhomes Property Funds received by it in such year and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of a Townhomes Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry

forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association, with respect to its duties and obligations pursuant to this Declaration and the accomplishment of its purposes as they relate to the Townhomes Project.

5.3. **Maintenance.**

1) **By Association.**

a) The Association shall maintain, repair, and replace, and otherwise manage all Townhomes Common Areas and the improvements thereupon.

b) The Association shall not have any obligation to maintain, repair, and replace any portion of a Residence, including exterior and interior portions thereof.

c) Unless the Board determines otherwise in its sole discretion, the Association shall perform the landscaping upon the Lots; however, enclosed backyard areas shall be landscaped and maintained by the Townhome Owner.

d) The Board shall use a reasonably high standard of care in providing for the repair, management, and maintenance of the foregoing items, but the Board shall be the sole judge as to the appropriate maintenance of all such areas. The Townhomes Common Areas shall be used at the risk of the user, and Declarant and the Association shall not be liable to any Person for any claim, damage, or injury occurring thereon or related to the use thereof.

e) A maintenance allocation chart has been attached hereto as Exhibit B, which further defines and clarifies Association and Owner maintenance, repair, and replacement responsibilities. If there is a conflict between the maintenance allocation chart and this Section 5.3, the maintenance allocation chart shall control.

2) **By Townhomes Owners.** Each Townhomes Owner shall have the obligation to provide exterior and interior maintenance of the Residence and all improvements therein or thereupon. The Townhome Owner obligations include, without limitation: roofs, foundations, gutters, downspouts, exterior siding, windows, garage doors, exterior doors and trim, driveways, patios, porches, stoops, stairways, railings, and utility lines that solely service the Lot or Residence, as well as all interior improvements. As necessary or desirable, each Townhomes Owner shall paint, repair, and otherwise maintain those exterior portions of the Residence for which he/she responsible and shall maintain, repair, and replace all mechanical and utility facilities serving the Lot. Townhomes Owners shall also be responsible to maintain, repair, and replace any fences located on their Lot. The cost and responsibility to maintain, repair, and replace any portion of such fence, which serves, benefits, or bounds only one Lot shall be borne exclusively by the Townhomes Owner bounded thereby. When such fences serve, benefit, or otherwise mark a boundary of two or more Lots, the responsibility and cost to maintain, repair, and replace the shared portion of such fences shall be borne equally by all Townhomes Owners bounded thereby. Townhomes Owner required maintenance shall be performed pursuant to the requirements of this Declaration, Townhomes Rules, and any Design Guidelines. The



Association shall have the power and authority without liability to any Townhomes Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon (including a Residence); but only if the Townhomes Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration or any Townhomes Rules or Design Guidelines. All costs incurred by the Association may be added to and become part of the Townhomes Assessment appurtenant to the Lot and shall be secured by a Townhomes Assessment Lien.

3) Maintenance Costs. If the need for maintenance or repair of Townhomes Common Areas, structures, or other property maintained by the Association is caused by the intentional or negligent act of any Townhomes Owner or any Townhomes Resident, the cost of such maintenance or repairs may be added to and become part of the Townhomes Assessment to which such Townhomes Owner and the Townhomes Owner's Lot is subject and shall be secured by the Townhomes Assessment Lien.

4) Other Services. In the sole discretion of the Board, the Association may provide or contract for such services to be of benefit to the Townhomes Project, including, without limitation, landscaping and garbage/trash removal services for all Lots.

5) Party Wall and Shared Roof Maintenance. By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees, and understands that it is essential that the Party Wall and shared roof be maintained in a good condition and repair to preserve the integrity of the Residences as they are used and occupied by Owners. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall or shared roof. With respect to the surface components of the Party Wall and shared roof, each Owner agrees to maintain and keep in good condition and repair, including the making of replacement as needed, all surface components which face into such Owners' respective Residence. With respect to pipes, conduits, ducts, and other utility service lines and connections which benefit only one or more, but fewer than all, of the Owners, the Owner(s) benefited solely thereby shall be fully and personally responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed. If the need for maintenance or repair of the Party Wall or shared roof is caused through the willful or negligent act of any Owner or his/her Occupant, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. With respect to structural components of the Party Wall and shared roof, except as may be otherwise provided in the immediately preceding sentences, the Owners benefitted by the Party Wall and shared roof agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary. If there is a dispute over the responsibility for maintenance or repair of a Party Wall or shared roof, the Association may, but shall not be required to, intervene and determine each Owner's responsibility.

5.4. Insurance. The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more

or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies. Insurance premiums and other insurance expenses that are specific to the Townhome Parcel shall be paid through Townhomes Assessments.

1) **Property Insurance.** The Association shall maintain a blanket policy of property insurance covering the Townhomes Common Areas and all buildings containing Residences, including all permanent fixtures and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

a) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Residences or otherwise permanently part of or affixed to the Townhomes Common Areas or Residences, including, without limitation, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, wall coverings, and windows.

b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

d) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a "Guaranteed Replacement Cost Endorsement" under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a "Replacement Cost Endorsement" under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an "Agreed Amount Endorsement" which must waive or eliminate the requirement for coinsurance.

e) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown" if the Townhomes Project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable

value of the building containing the equipment.

f) The costs of the property insurance for the Townhomes Common Areas and the Residences shall be allocated as a Townhomes Assessment.

g) If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of a Townhomes Owner then the Association's policy provides primary insurance coverage, and: (i) the Townhomes Owner is responsible for the Association's policy deductible; and (ii) the Townhomes Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

h) The Association shall provide notice to each Owner of the Owner's obligation under Subsection (g) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

i) If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's policy deductible: (i) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (ii) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (iii) the Association need not tender the claim to the Association's insurer.

d) The Association shall have no obligation to obtain or maintain any insurance covering Townhomes Owners' personal property and each Townhomes Owner shall be responsible for obtaining and maintaining such personal property insurance.

2) **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Townhomes Owners, against liability incident to the use, ownership or maintenance of the Townhomes Common Areas or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence.

3) **Named Insured.** The named insured under any policy of insurance shall be the Association.

4) **Right to Negotiate All Claims & Losses & Receive Proceeds.** The Association is hereby irrevocably appointed and authorized by the Townhomes Owners to adjust all claims arising under insurance policies purchased by the

Association with respect to the Townhomes Project and its activities under this Declaration and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association pursuant to this Section 5.4 shall be payable to the Association. Any proceeds resulting from damage to the Townhomes Common Areas shall be used to repair the damage, unless otherwise approved by a majority of the Townhomes Owners who are voting at a meeting called for such purpose. Any excess proceeds may be retained by the Association as reserves or to reduce future Townhomes Assessments or, if distributed to the Townhomes Owners, such proceeds shall be distributed to them and their Mortgagees as their interests may appear at a uniform rate.

5.5. **Townhomes Rules.** The Board shall have the authority to adopt and establish Townhomes Rules as it may deem necessary for the maintenance, operation, management, and control of the Townhomes Project. The Townhomes Rules may restrict and govern the use of the Townhomes Common Areas by any Townhomes Owner or Townhomes Resident or by their respective family members, invitees, or tenants. The Townhomes Rules may not be inconsistent with this Declaration, the Master Declaration, the Articles, or Bylaws. Upon adoption, the Townhomes Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Board may from time to time alter, amend, and repeal such Townhomes Rules and use their best efforts to see that they are strictly observed by all Townhomes Owners and Townhomes Residents. Townhomes Owners and Townhomes Residents are responsible to ensure that their family members, guests, and invitees strictly observe the Townhomes 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. During the Period of Declarant Control, Townhomes Rules and Design Guidelines may be adopted without being subject to the requirements of Utah Code §57-8a-217.

5.6. **Right of Entry and Inspection.** During reasonable hours and upon reasonable notice to the Townhomes Owner or Townhomes Resident, the Association, through its Board, any Board Member, the Declarant, Manager, or any authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the improvements constructed or being constructed thereon (except for the interior portions of any completed and occupied Residence), to determine compliance with this Declaration, the Master Declaration, and the Townhomes Rules and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the Association shall have an easement and right of entry upon any Lot at any time without notice in order to perform emergency repairs. Failure to respond to Board demands to comply may be deemed an emergency. Townhomes Owners shall be responsible for any costs incurred by the Association as a result of entering a Lot under this Section and shall indemnify and hold harmless the Association, Board Member, Declarant, Manager, or any authorized representative of any of them for all damages related to such entry, except for such damages resulting from recklessness or bad faith.

## ARTICLE VI. VOTING

6.1. **Voting.** Except as otherwise disallowed in this Declaration or limited by the Special Declarant rights reserved by the Declarant, voting with respect to any matters relating to the Townhomes Project and this Declaration shall be limited to only the Townhomes Owners but shall otherwise be in accordance with the provisions of the Master Declaration.

## ARTICLE VII. BUDGET AND ASSESSMENTS

7.1. **Covenant to Pay Assessments.** Each Townhomes Owner, by the acceptance of a deed to a Lot, whether or not it be so expressed in the deed, hereby covenants and agrees to pay to the Association all Townhomes Assessments levied against such Lot. Each Townhomes Assessment, which is the obligation of a Townhomes Owner hereunder, together with interest, late fees, costs, collection agency fees, and reasonable attorneys' fees of the Association incurred in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing lien upon the Lot with respect to which such Townhomes Assessment is made. All Townhomes Assessments shall be the personal obligation of the Person who is the owner of such Lot at the time the Townhomes Assessment falls due. No Townhomes Owner may exempt himself or his Lot from liability for payment of Townhomes Assessments by waiver of his rights concerning the Townhomes Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Townhomes Assessments, late payment fees, interest, and costs of collection, including reasonable attorney fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

7.2. **Annual Townhomes Assessments.** In order to provide funds for the uses and purposes specified in this Declaration, each year the Board shall prepare, or cause the preparation of, and adopt an annual budget for the Townhomes Project. The annual budget shall provide, without limitation, for the maintenance of the Townhomes Common Areas and for the administration, management, and operation of the Townhomes Project. The Annual Townhomes Assessment shall be in the sole discretion of the Board. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. The budget shall be made available to the Townhomes Owners within thirty (30) days after adoption.

7.3. **Townhomes Special Assessments.** In addition to the Annual Townhomes Assessments, the Board may levy a Townhomes Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Townhomes Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Townhomes Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Townhomes Special Assessments over five hundred dollars (\$500) in a calendar year must be approved and assented to by a majority of the Townhomes Owners present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Townhomes Special Assessments and the time for their payment shall be given as soon as is reasonably



possible to the Townhomes Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice.

7.4. **Allocation of Townhomes Assessments.** Annual Townhomes Assessments and Townhomes Special Assessments shall be fixed at a uniform rate for all Lots, unless otherwise provided in the Declaration.

7.5. **Townhomes Individual Assessments.** In addition to Annual Townhomes Assessments and Townhomes Special Assessments authorized above, the Board may levy Townhomes Individual Assessments against a Lot and its owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Declaration or Townhomes Rules against the Townhomes Owner or Townhomes Resident or their guests; (b) costs associated with the maintenance, repair, or replacement of Townhomes Common Areas caused by the neglect or actions of a Townhomes Owner or Townhomes Resident or their guests; (c) any other charge, fine, fee, expense, or cost designated as a Townhomes Individual Assessment by the Board, including, without limitation, action taken to bring a Lot Owner into compliance with the Declaration and Townhomes Rules; (d) nonpayment of a "reinvestment fee"; (e) costs of providing services to the Lot upon request of the Townhomes Owner; and (f) attorney's fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration. The aggregate amount of any such Townhomes Individual Assessment shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Townhomes Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Townhomes Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Townhomes Owner's or Townhomes Resident's or their guests' negligence.

7.6. **Declarant's Exemption.** Anything to the contrary notwithstanding, the Declarant and builders exempted by the Declarant in its sole discretion, shall not be obligated to pay any Townhomes Assessments on any Lot owned by it until such time as the Declarant or exempted builder elect in writing to pay Townhomes Assessments, and only for so long as the Declarant or exempted builder elect to pay Townhomes Assessments.

7.7. **No Offsets.** All Townhomes Assessments shall be payable in the amount specified by the Board and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association owes the Townhomes Owner money, or that the Association is not properly exercising its duties and powers as provided in this Declaration.

7.8. **Certificate Regarding Payment.** Upon the request of a Townhomes Owner, prospective purchaser, Mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether all Townhomes Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Townhomes Owner, prospective purchaser, Mortgagee, or encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater if so provided in the Act.

7.9. **Rules Regarding Billing and Collection Procedures.** The Board shall have the right to adopt Townhomes Rules setting forth procedures for billing and collection of Townhomes Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to a Townhomes Owner shall not relieve any Townhomes Owner of liability for any Townhomes Assessment or charge under this Declaration. Townhomes Assessments shall be paid in a timely manner. Payments are due in advance on dates established by the Board. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever a Townhomes Assessment is delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

7.10. **Collection Charge.** Townhomes Assessments not paid within ten (10) days of the date they were first due are delinquent. Delinquent accounts shall be charged a late fee, in an amount determined by the Board, each month until the Townhomes Owner's account (including all collection charges, costs, and attorney fees) are paid in full. Interest shall accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, attorney fees, and/or late fees shall constitute part of the Assessment lien provided above until paid. The Association may by Townhomes Rules increase the amount of the late fee described above.

7.11. **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Townhomes Assessments:

- 1) The Association may suspend such Townhomes Owner's voting rights.
- 2) The Association shall have a lien against each Lot for any Townhomes Assessment levied against the Lot and any fines or other charges imposed under this Declaration against the Townhomes Owner of the Lot from the date on which the Townhomes Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Townhomes Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Davis County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Townhomes Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to a Townhomes Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except: a lien or encumbrance recorded before the Declaration was recorded; a first or second security interest on the Lot secured by a Mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.
- 3) The Association may bring an action to recover a money judgment for unpaid Townhomes Assessments, fines, and charges under this Declaration against the Townhomes Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
- 4) If the delinquent Townhomes Owner is leasing his Lot or any portion

thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Townhomes Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Townhomes Owner for such Townhomes Assessments to the extent of the amount so paid.

5) The Association may terminate utilities paid out of the Common Expense and the right to use the Townhomes Common Areas.

6) Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

7) The Association shall have any other remedy available to it whether provided in the other governing documents of the Townhomes Project, the Act, other law, or in equity.

7.12. **Power of Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §§ 57-1-20 and 57-8a-302, a Townhomes Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Townhomes Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

7.13. **Reserve Account.** From the Annual Townhomes Assessments received by the Association, the Board shall establish such reserve funds in such amounts as the Board deems reasonably prudent for the maintenance, repair, and replacement of the Townhomes Common Areas and for other Association purposes relating to the Townhomes Project. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a reserve account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Period of Declarant Control.

7.14. **Association Responsibility after Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Townhomes Owner, including but not limited to obligations to pay Townhomes Assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Mortgagees cannot make any claim against the Association for nonpayment of taxes, Townhomes Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to a failure to pay Townhomes Assessments.

7.15. **Homestead Waiver.** Pursuant to Utah Code §57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Townhomes Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.



7.16. **Master Declaration Assessments; Declarant Exemption.** The Townhomes Assessments provided for in this Declaration are in addition to any "Assessments" levied and payable pursuant to the Master Declaration. The Declarant however shall not be required to pay any Master Declaration assessments on any Lot owned by it until such time as the Declarant elects in writing to pay such assessments, and only for so long as the Declarant elects to pay such assessments.

## ARTICLE VIII. USE RESTRICTIONS

8.1. **Use of Common Areas.** The Townhomes Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots.

8.2. **Use of Lots.** All Lots are intended to be improved with a single-family Residence and are restricted to such use unless approved by the Board to the contrary. No gainful occupation, business, trade, or other nonresidential use shall be conducted on any Lot without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that: only normal residential activities would be observable outside of the Residence; the business activity does not involve persons coming on to the Townhomes Project who do not reside in the Townhomes Project; the business activity does not involve the solicitation of Townhomes Owners or Townhomes Residents; the business will not result in the increase of the cost of the Association's insurance; and that the activities would not be in violation of applicable local ordinances.

8.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, or Townhomes Common Areas, nor shall anything be done or placed on any Lot or Townhomes Common Areas which interferes with or jeopardizes the quiet enjoyment of other Lots or the Townhomes Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the Association's insurance or which would cause the improvements within the Townhomes Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

8.4. **Recreational Vehicles.** Except as allowed by the Townhomes Rules, the parking of boats, trailers, motorhomes, large trucks, commercial vehicles, other recreational vehicles, or the like (as determined by the Board) may not be parked within the Townhomes Parcel for a period exceeding twenty-four (24) hours unless such is parked completely within an Owner's enclosed garage. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot, street, or other Townhomes Common Area, except for emergency repairs or repairs performed within a garage. The Association is authorized to adopt Rules that vary or expand upon the restrictions set forth in this Section.

8.5. **Pets.** Up to two (2) common domestic pets per Lot is allowed. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Townhomes Project. The Board may adopt Townhomes Rules adding further restrictions related to pets not inconsistent with this Declaration including but not limited to requirements for registration

and the use of leashed and noise barking limitations, animal size restrictions, and allowed animal types. All pets must be registered in advance with the Association. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Townhomes Rules adopted by the Board from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Townhomes Common Areas of another Townhomes Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passerby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Townhomes Common Area and dogs, and other pets determined by the Board, shall be leashed whenever outside a Lot.

8.6. **Nuisances.** No resident shall create, maintain, or permit a nuisance in, on or about the Townhomes Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes, but is not limited to, the following:

- 1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Townhomes Common Areas;
- 2) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- 3) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board;
- 4) The storage of any substance, thing or material upon any Lot or in the Townhomes Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Townhomes Project;
- 5) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Townhomes Common Areas;
- 6) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;
- 7) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invitees;
- 8) Too much noise in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers;
- 9) Too much traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;

- 10) Allowing a dog, or other pet as determined by the Board, to be unleashed while outside a fenced Lot;
- 11) Continuous barking, meowing, or other animal noises;
- 12) Allowing a pet to defecate in the Townhomes Common Areas or another Lot, or failing to immediately clean any feces deposited by a pet in the Common Area.

8.7. **Signs.** The Association may regulate and restrict signs in the Townhomes Project. Unless otherwise designated in the Townhomes Rules, lawn signs are prohibited, except "For Sale" or "For Rent" signs that may be placed in the front yard of a Lot, or as directed by the Board. All other signs may only be erected or maintained in the Townhomes Project, whether in a window or otherwise, with the prior approval of the Board.

8.8. **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for the shortest time necessary to effect such collection. The Association may adopt additional Townhomes Rules for the storage and concealment of trash containers.

8.9. **Parking.** Townhomes Owners and Townhomes Residents shall utilize their garages and driveways for parking. At no time shall any vehicle be parked at an entrance to or in front of a garage or walkway or at any other location within the Townhomes Project, which would impair vehicular or pedestrian access, or snow removal. Parking on private streets within the Townhomes Project is prohibited. Townhomes Common Area parking stalls (if any) shall be subject to and governed by Townhomes Rules, and may be assigned by the Board. The Association may charge a fee for the use of any assigned parking stalls, which are intended to be used as vehicle parking spaces only and are restricted to such use. The Board may adopt additional Townhomes Rules relating to the parking of vehicles within the Townhomes Project, including, without limitation: the size and dimensions of the vehicles parked within the Townhomes Project; the allowance or prohibition of street parking; the admission and temporary parking of vehicles within the Townhomes Project; the use of the undesignated parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Board; the right to remove or cause to be removed any vehicles that are improperly parked; the time visitor spaces may be used; and the levying of fines against Townhomes Owners and Townhomes Residents who violate, or whose invitees violate, such Townhomes Rules.

8.10. **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on front yards, porches, etc., which may be seen from the road or another Lot except for patio furniture and portable barbecue grills in good condition which may be maintained on backyard patios. Said patio furniture shall conform with standards set by the Board.

8.11. **Window Coverings.** Every Townhomes Owner shall be obligated to ensure that window coverings are installed within their Residence within one (1) month of purchasing or taking possession. Furthermore, the Board is authorized to adopt and implement reasonable Townhomes Rules pertaining to the type, color, material, etc. of window coverings.

8.12. **Leases.** Residences may be leased as set forth herein. Any agreement for the leasing, rental, or occupancy of a Lot (hereinafter in this Section referred to as a "lease") shall be in writing. Upon request of the Board, a copy of any leasing agreement shall be provided to the Board along with the name and contact information for all adult tenants, vehicle information of the tenants, and any other information deemed necessary by the Board. No Townhomes Owner shall be permitted to lease his/her Lot for transient, hotel, or seasonal purposes. All leases shall be for an initial term of no less than six (6) months. Daily or weekly rentals are prohibited. No Townhomes Owner may lease individual rooms to separate persons or less than his or her entire Lot. All leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within ten (10) days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents, the Townhomes Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. If the Townhomes Owner fails to act accordingly, the Board may initiate eviction Proceedings on behalf of the Townhomes Owner, and through this Declaration the Townhomes Owner hereby assigns the Association the authority to do so. Timeshare interests are prohibited.

8.13. **Energy Conservation Equipment.** Solar energy collector panels and attendant hardware or other energy conservation equipment shall be prohibited from being constructed or installed on any Lot in the Townhomes Project. Notwithstanding the forgoing, if the Board elects to allow energy conservation equipment in the Townhomes Project, then the Board may adopt Townhomes Rules for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot or Residence. Solar panels or other equipment shall not be installed so as to be visible from any Lot or street in the Townhomes Project without prior approval from the Board as a variance. The Board shall have the sole discretion to determine compliance with the Design Guidelines.

8.14. **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (1) either that the restriction would create an unreasonable hardship or burden on an Townhomes Owner or Townhomes Resident, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (2) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the other Townhomes Owners or Townhomes Residents of the Townhomes Project and is consistent with the high quality of life intended for residents of the Townhomes Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

## **ARTICLE IX. ARCHITECTURAL CONTROLS**

9.1. **Design Guidelines.** The Board may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the Townhomes Project.

1) The Declarant shall have sole and full authority to amend the Design Guidelines during the Period of Declarant Control. The Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the Board. Upon termination or delegation of the Declarant's right to amend, the Board shall have the right to amend the Design Guidelines.

2) The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board. The Design Guidelines may also designate landscaping requirements. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.

3) Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

9.2. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents or assigns, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Townhomes Project. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Lots, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of improvements within the Townhomes Project so long as the location of such model homes and the opening and closing hours are approved by the Board, and the construction, operation and maintenance of such model homes otherwise complies with all of the provisions of this Declaration. The Declarant may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with city ordinances and any Townhomes Rules. Any residences constructed as model homes shall cease to be used as model homes at any time the Townhomes Owner thereof is not actively engaged in the construction and sale of residences within the Townhomes Project, and no home shall be used as a model home for the sale of homes not located within the Townhomes Project.

9.3. **Variances.** The Declarant and Board may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect a Townhomes Owner's obligation to comply with all governmental laws and regulations.

9.4. **Liability for Damages.** The Declarant and Board shall not be held liable for damages because of any action, inaction, approval, or disapproval by it made pursuant to this Article.



## ARTICLE X. ENFORCEMENT

10.1. **Enforcement of Declaration, Townhomes Rules, and Others.** The Association or any Townhomes Owner shall have the right to enforce, by Proceedings at law or in equity, each provision of this Declaration, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The Association or any Townhomes Owner shall also have the right to enforce by Proceedings at law or in equity the provisions of the Townhomes Rules and any respective amendments thereto. The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorney fees.

## ARTICLE XI. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything contrary contained herein, the following provisions apply:

11.1. **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Townhomes Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for all Assessments levied while it holds title to the Lot.

11.2. **Notice of Default by Townhomes Owner.** In the event a Townhomes Owner neglects for a period of sixty (60) days or more to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Townhomes Owner's Lot.

11.3. **No Priority.** No provision herein is intended, nor shall it be construed, to give any Townhomes Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Townhomes Owner of insurance proceeds or condemnation awards for losses to or a taking of Townhomes Common Areas.

## ARTICLE XII. SPECIAL DECLARANT RIGHTS

12.1. **Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- 1) Any improvements shown on the Plat;
- 2) Any Residence upon any portion of the Additional Land, and subject to the requirements of Section 12.2, the addition of the same to the Townhomes Project; and
- 3) Any other buildings, structures, or improvements that Declarant desires to construct on the Townhomes Parcel, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Townhomes Project.

12.2. **Expandable Project.** The Declarant herewith expressly reserves the right and option to expand the Townhomes Project by the addition of Additional Land, or portions

thereof, and Lots and residences to be constructed thereon, all in accordance with the provision of this Section.

1) The Townhomes Project may be expanded by the addition of real property designated by Declarant. Such real property or portions thereof where applicable being referred to as "Additional Land".

2) Expansion of the Townhomes Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Townhomes Owner.

3) Declarant's right to expand the Townhomes Project as provided in this Section shall not expire until the Declarant elects in writing to not add the Additional Land to the Townhomes Project.

4) The Additional Land may be added in total or in part, and in any order as Declarant may determine. Such Additional Land (or any portion thereof) may be added at any time within the period allowed for expansion of the Townhomes Project.

5) All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion, subject to the requirements contained herein. All additional Lots and residences to be constructed upon Additional Land will be constructed for or are to be designated exclusively for residential use.

6) All improvements erected upon any Additional Land added to the Townhomes Project will be compatible with the improvements then upon or to be constructed upon the Townhomes Parcel, all such additional improvements to be approximately equal to or better in terms of quality of construction and materials to be used. Notwithstanding the above, no assurances can be made by the Declarant in every instance that such structures and improvements will be identical in all regards.

7) Declarant consents and agrees that any Lot within the Townhomes Project and upon Additional Land will be similar in all material respects to those presently contained or to be constructed upon the Townhomes Project and shown on the Plat.

8) The Declarant simultaneously with the submission of Additional Land to the Townhomes Project shall prepare and record in the Davis County records, a supplemental Plat pertaining to such Additional Land to be added showing the location and dimensions of each Lot created from and located upon such Additional Land.

9) Simultaneously with the recording of said supplemental Plat, the Declarant shall duly execute, acknowledge, and record a Supplemental Declaration setting forth that an expansion of the Townhomes Project has occurred. Such Supplemental Declaration shall include, in addition to any requirements of the Act, the following: (i) if now shown on the supplemental Plat, a legal description of the Additional Land added to the Townhomes Project; (ii) the designation of each Lot created from and included within the Additional Land.

**12.3. Other Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents

and shall include, and regardless of anything in the Declaration or Master Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law:

- 1) the right to maintain sales offices, model homes, and signs advertising the Townhomes Project or any Lot at any location in the Townhomes Project;
- 2) the right to use easements through the Townhomes Common Areas as set forth in this Declaration;
- 3) the exclusive right to veto Board decisions relating to the Townhomes Project during the Period of Declarant Control;
- 4) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- 5) the right to withdraw land from the Townhomes Project for up to fifteen (15) years from the date this Declaration is recorded in the office of the Davis County Recorder;
- 6) the right to veto Townhomes Rules and Design Guidelines adopted by the Board; and
- 7) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

**12.4. Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Townhomes Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Townhomes Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Townhomes Owners.

**12.5. Interference with Special Declarant Rights.** Neither the Association nor any Townhomes Owner may take any action or adopt any Townhomes Rules or Design Guidelines that interferes with or diminishes any Special Declarant Right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

**12.6. Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Townhomes Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Townhomes Common Areas as originally constructed or created by Declarant.



12.7. **Transfer of Special Declarant Rights.** The Declarant may transfer, convey, assign, or share all or some of its rights, exemptions, or authority created or reserved under this Declaration to any Person.

12.8. **Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot prior to the contracting for the conveyance of such to a purchaser.

12.9. **Easements Reserved to Declarant.**

1) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Townhomes Common Areas, and over those strips of land running along the front, rear, side, and other Lot lines of each Lot shown on the Plat.

2) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Townhomes Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

3) Easement granting the privilege of entering upon the Townhomes Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

4) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over, and across the Townhomes Common Areas for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Townhomes Project and the provision of utility services, and related services and facilities.

5) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot(s) in the Townhomes Project except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Declarant.

6) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do

such grading or to maintain any slope.

**12.10. Dispute Resolution.** Declarant, Association, its officers and directors, and all Townhomes Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, condition, or sale of any part of the Townhomes Project or any improvements thereon ("Claims") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

(a) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:

- i. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- ii. The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
- iii. The proposed remedy;
- iv. The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
- v. That the person alleged to be responsible shall have one hundred and eighty (180) days to cure or resolve the claim.

(b) Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(c) In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with a Proceeding against the Respondent following one hundred and eighty (180) days of the original notice.

(d) Before initiating any Proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:

- i. Provide full disclosure in writing to all Townhomes Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;

- ii. Call and hold a special meeting of the Townhomes Owners to discuss the Claim and disclosures, and provide at least 72 hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting;
- iii. Receive approval from at least two-thirds (2/3) vote of all Townhomes Owners, who must be present in person or by proxy at the special meeting, to initiate any Proceeding of the Claim against the Declarant and/or its affiliate, if applicable.

(e) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

(f) Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any Proceeding; and (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Board Member who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of: (a) not less than sixty-seven percent (67%) of the total voting power of the Townhomes Owners, (b) not less than seventy-five percent (75%) of the Association Board, and (c) the Declarant during the Period of Declarant Control. Any purported amendment or deletion of this Section or any portion hereof, without all of these express prior written approvals shall be void.

(g) The dispute resolution procedures in this Section are in addition to and are not superseded by those protections provided to the Declarant by the Act, including, but not limited to, Utah Code § 57-8a-229.

(h) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

**12.11. Authority to Establish Sub-Association.** With approval of the Board, the Declarant may create a homeowner's association for the Townhomes Project, through a Supplemental Declaration to govern, operate, and administer the affairs of the Townhomes Project and Townhomes Common Areas. In the event this homeowner's association is formed and created, it shall act as a sub-association to the Association, adopt board members from among the Townhomes Owners, and relieve the Board from the duties it has been given through this Declaration concerning the Townhomes Project, except for those duties agreed upon to remain with the Board. Following the Period of Declarant Control, the Townhomes Owners may vote to approve the creation of a similar homeowner's association if so approved by: (i) 67% of the Townhomes Owners, (ii) the Board, and (iii) the Declarant if the Declarant has any interest in the Townhomes Project or intends to develop, construct, or sell additional Lots and/or Residences at the Townhomes Project. Any sub-association formed shall continue to be subject to the Master Declaration.

### **ARTICLE XIII. AMENDMENTS**

**13.1. Amendments by Declarant.** During the Period of Declarant Control, the Declaration and the Plat may be amended solely by the Declarant without any additional approval required. In addition, during the Period of Declarant Control no other amendment shall be valid or enforceable without the Declarant's prior written consent.

**13.2. Amendments by Association.** After termination of the Period of Declarant Control, amendments to this Declaration or Plat may be proposed by either a majority of the Board Members or by Townhomes Owners holding at least forty percent (40%) of the voting interests of the Townhomes Owners. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Except as otherwise provided herein, this Declaration may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Townhomes Owners and a majority of the Association's Board. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Davis County Recorder. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one owner, the vote of any one owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature used for voting shall be required. Any amendment that negatively impacts, as determined by the Declarant, the Declarant's right to develop, construct, and sell Lots and Residences within the Townhomes Project shall be null and void unless it is approved by the Declarant so long as the Declarant has an interest in the Townhomes Project or intends to develop, construct, or sell additional Lots and/or Residences within the Townhomes Project.

### **ARTICLE XIV. MISCELLANEOUS**

**14.1. Notices.** Any notice required or permitted to be given to any Townhomes Owner according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as a Townhomes Owner, at the latest email or mailing address for such Person

appearing in the records of the Association at the time notice is sent. If no email or mailing address has been provided, the physical address of the Lot owned by said Townhomes Owner shall be used for notice purposes.

14.2. **Interpretation and Severability.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

14.3. **Covenants to Run with Land.** This Declaration and all provisions hereof shall constitute covenants that run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Townhomes Common Areas shall be subject to the terms of this Declaration and the provisions of any Townhomes Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Townhomes Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Townhomes Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

14.4. **No Waiver.** Failure by the Association or by any Townhomes Owner to enforce any Restriction or provision herein contained, or contained in the Townhomes Rules or Design Guidelines, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

14.5. **Security.** The Declarant or Association shall in no way be considered an insurer or guarantor of security within or relating to the Townhomes Project, including any Townhomes Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Townhomes Owners and Townhomes Residents agree by purchasing or residing at a Lot in this Association that the Association, Declarant, and the Board are not insurers of their safety or well-being or of their personal property, and that each Townhomes Owner and Townhomes Resident assumes all risks for loss or damage to persons, the Lots, the Townhomes Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH TOWNHOMES OWNER AND TOWNHOMES RESIDENT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, DECLARANT, AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND THAT EACH TOWNHOMES OWNER AND TOWNHOMES RESIDENT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE TOWNHOMES PROJECT.

14.6. **Data Services Contract.** Lennar Homes, as defined in the Recitals above, or the Association may enter into a data services agreement for the benefit of the Townhomes

Parcel and Townhomes Owners with Century Link or another similar provider ("Data Agreement"). The costs required to be paid under the Data Agreement for data services provided thereunder shall be paid through the Townhomes Assessments levied by the Association. In the event that the Association is not an initial party to the Data Agreement, the Data Agreement may be assigned to the Association and the Association hereby agrees to accept such assignment on behalf of the Townhomes Parcel.

14.7. **Effective Date.** The Declaration and any amendment hereof shall take effect upon its filing in the office of the Davis County Recorder.

### CERTIFICATION

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

DATED this 29 day of MAY, 2020.

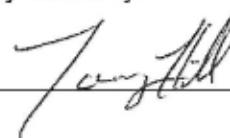
**DECLARANT**  
**CW THE RIDGE, LLC**  
a Utah Limited Liability Company

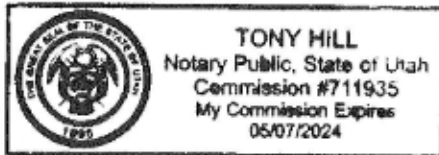
By: 

Its: 

State of Utah       )  
                              ) ss:  
County of DAVIS )

On the 29 day of MAY, 2020, personally appeared before me COLIN H. WRIGHT who by me being duly sworn, did say that she/he is an authorized representative of CW The Ridge, LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public 





DATED this 20<sup>th</sup> day of May, 2020

**LENNAR HOMES OF UTAH, INC.**  
a Delaware Corporation

By: [Signature]

Its: DIVISION PRESIDENT

State of Utah )  
County of Salt Lake ) ss:

On the 20<sup>th</sup> day of May, 2020, personally appeared before me  
David Prolo who by me being duly sworn, did say that she/he is an  
authorized representative of Lennar Homes of Utah, Inc, and that the foregoing instrument is  
signed on behalf of said company and executed with all necessary authority.

Notary Public [Signature]



## EXHIBIT A

### LEGAL DESCRIPTION

#### Amber Vista at The Ridge

ALL OF LOT 346, RIDGE SUBDIVISION PUD, THE. CONT. 0.03000 ACRES.  
ALL OF LOT 345, RIDGE SUBDIVISION PUD, THE. CONT. 0.03000 ACRES.  
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