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MARCY M. MURRAY, Recorder  
WASATCH COUNTY CORPORATION  
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For: Coalition Title Agency, Inc.  
ELECTRONICALLY RECORDED

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS,**  
**EASEMENTS AND RESTRICTIONS**  
**FOR**  
**MAYFLOWER LAKESIDE TOWNHOMES (PHASE 2A)**

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When Recorded, Please Return To:  
Mayflower Lakeside Development, LLC  
7135 S. Highland Drive, Suite 203,  
Salt Lake City, Utah 84121

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
MAYFLOWER LAKESIDE TOWNHOMES (PHASE 2A)**

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS for MAYFLOWER LAKESIDE TOWNHOMES (PHASE 2A) ("Townhome Declaration") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2025 by Mayflower Lakeside Townhomes South, LLC, a Utah limited liability company ("Declarant").

**RECITALS**

A. Declarant holds both legal and equitable title to certain real property located in the County of Wasatch, State of Utah, hereinafter more particularly described in Exhibit A, which is attached hereto and incorporated herein by this reference (the "Property").

B. Declarant recorded that certain Declaration of Covenants, Conditions, Easements and Restrictions for Mayflower Lakeside Townhomes (Phase 2A), on November 19, 2024, as Entry No. 552622, in Book 1495, at Page 1229, in the Office of the Wasatch County Recorder, State of Utah, and that certain Declaration of Covenants, Conditions, Easements and Restrictions for Mayflower Lakeside Townhomes (Phase 2A), on November 19, 2024, as Entry No. 556035, in Book 1505, at Page 876, in the Office of the Wasatch County Recorder, State of Utah (collectively, the "Original Declaration").

C. Declarant desires to develop a residential planned unit development known as Mayflower Lakeside Townhomes (Phase 2A) on the Property, as generally depicted on the Plat (the "Project"). Declarant intends to develop the Project to consist of up to sixty-two (62) Townhomes for residential use.

D. The Project possesses great natural beauty that Declarant intends to preserve through the use of a coordinated plan of development and the terms of this Townhome Declaration. It is anticipated that the plan will provide for comprehensive land planning, and harmonious and appealing landscaping and improvements. It is assumed that each purchaser of a Townhome in the Project will be motivated to preserve these qualities through community cooperation and by complying with not only the letter but also the spirit of this Townhome Declaration. This Townhome Declaration is designed to complement local governmental regulations, and where conflicts occur, the more restrictive requirements shall prevail.

E. The Project will be part of a larger master planned community known as Mayflower Lakeside, a planned community ("Mayflower") and will also be subject to the terms and conditions of that certain Master Declaration of Covenants, Conditions, Easements and Restrictions for Mayflower, (a Planned Community), as amended or supplemented from time to time, which is recorded against the Project ("Master Declaration").

F. It is desirable for the efficient management and preservation of the value and appearance of the Project to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of managing certain aspects of the Project; maintaining and administering the Townhome Common Areas; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Project and the Owners. Mayflower Lakeside Townhomes (Phase 2A) Owners Association, Inc., a Utah non-profit corporation ("Townhome Association"), has or will be incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions aforesaid.

G. The Townhome Association shall also be a member of the Mayflower Lakeside Master Association, Inc., a Utah non-profit corporation, organized for purposes set forth in the Master Declaration, and in certain instances referred to as "HOA" in the Plat ("Master Association").

H. Each Owner shall receive fee title to his or her Townhome and Townhome Association Membership in the Townhome Association as provided herein.

I. In compliance with the provisions of Section 12.3 of the Original Declaration, and the rights granted to Declarant thereunder, Declarant hereby amends the Original Declaration pursuant to this Townhome Declaration. It is the intent of Declarant that this Townhome Declaration shall amend, replace, and supersede in its entirety the Original Declaration, such that the Original Declaration shall no longer be of Record against the Property.

J. By this Townhome Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the interests therein conveyed and to establish thereon a planned community.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

## **ARTICLE 1** **DEFINITIONS**

Each of the Recitals A through I are incorporated into and made a part of this Townhome Declaration for all purposes. Unless the context clearly indicates otherwise, the following capitalized words, phrases or terms used in this Townhome Declaration shall have the meanings set forth in this Article 1. Certain terms not defined herein are defined elsewhere in this Townhome Declaration or in the Master Declaration.

1.1 Additional Land means, refers to, and consists of any real property Declarant, may own in fee simple now or in the future, including but not limited to, the parcels of real property situated in Wasatch County, Utah described on Exhibit B hereto, as amended from time to time.

This Townhome Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon the Additional Land unless and until it is added to the existing Project in accordance with the provisions of this Townhome Declaration.

1.2 Adjoining Owner means the immediately adjoining Owner that owns a Townhome with or without a common Party Wall touching the contiguous, neighboring Townhome of a different Owner.

1.3 Annual Assessments means the Assessments levied pursuant to Section 6.2.

1.4 Assessment means an Annual Assessment, Special Assessment Specific Assessment, or Master Association Assessment.

1.5 Assessment Lien means the lien created and imposed by Section 7.2

1.6 Association Official(s) shall have the meaning set forth in Section 14.12.

1.7 Board means the board of directors of the Townhome Association.

1.8 Budget Meeting shall have the meaning set forth in Section 6.2.4.

1.9 Bulk Provider shall have the meaning set forth in Section 14.20.5.

1.10 Bulk Service Agreement shall have the meaning set forth in Section 14.20.6.

1.11 CAA shall have the meaning set forth in Section 2.1.

1.12 Certificate of Amendment shall have the meaning set forth in Section 12.2.

1.13 Common Expenses means expenditures made by or financial liabilities of the Townhome Association, together with any allocations to reserves as further described in Section 6.5. Common Expenses shall not include those certain charges levied by a Special Service District.

1.14 Condominium Act shall have the meaning set forth in Section 2.2.

1.15 Declarant means Mayflower Lakeside Townhomes South, LLC, a Utah limited liability company, its successors, and any Person to whom it may expressly assign any or all of its rights under this Townhome Declaration.

1.16 Declarant Affiliate means any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.17 Declarant Control Period shall have the meaning set forth in Section 2.17.

1.18 Defaulting Owner shall have the meaning set forth in Section 8.8.

1.19 Design Review Committee means either the Mayflower Design Review Committee or the Townhome Design Review Committee if created by Declarant pursuant to Section 3.4 below.

1.20 Eligible Mortgagee means and refers to a First Mortgagee who has requested notice of certain matters from the Townhome Association in accordance with Section 10.1 of this Townhome Declaration.

1.21 ERU means a unit of residential density allocated by the Final Approval to the Property as shown on the Master Plan.

1.22 Final Approval means the Final Approval for the Mayflower Project adopted by the Board of County Commissioners, Wasatch County, Utah, on August 22, 2019, as amended from time to time.

1.23 First Mortgage shall have the meaning set forth in Section 1.41.

1.24 First Mortgagee shall have the meaning set forth in Section 1.42.

1.25 Foreclosure Notice shall have the meaning set forth in Section 7.4.3.

1.26 Improvement(s) means any improvement now or hereafter constructed at the Project and includes anything which is a structure and appurtenances thereto of every type and kind, including but not limited to any: (i) Townhome, building, guest house, screening wall, other accessory building, fence or wall; (ii) walkway, garage, road, driveway or parking area; (iii) mailbox, sign, shed, covered patio, stairs, deck, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot); (iv) swimming pool, basketball court, radio or television antenna or receiving dish; (v) paving, exterior lights, curbing, trees, shrubs, hedges, grass, windbreak or other landscaping improvements of every type and kind; (vi) excavation, fill, retaining wall or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel, and related fixtures and equipment; and (vii) other structure of any kind or nature.

1.27 Lessee means the lessee or tenant under a lease, oral or written, of any Townhome (or part thereof), including an assignee of the lessee's or tenant's interest under a lease.

1.28 Lot(s) means a portion of the Project intended for independent ownership and residential use and designated as a Lot on the Plat (at certain times referred to as a "unit" on the Plat), and, where the context indicates or requires, shall include any Townhome, building, structure or other Improvements situated on the Lot.

1.29 Master Association shall have the meaning set forth in Recital G.

1.30 Master Association Assessments means any assessment levied pursuant to the Master Declaration by the Master Association as described and set forth in Section 6.6.

1.31 Master Association Maintenance Area means that portion of a Development Parcel that is improved with grass, trees, shrubs, landscape features, vegetation, roadways, driveways, parking areas, pools, recreational facilities, or recreational areas, but which is not improved with a building intended as a residential dwelling, including, but not limited to, a townhouse or condominium building. During the Declarant Control Period, Declarant, and after the Declarant Control Period ends, the Master Association shall have sole and absolute discretion to make a final determination regarding what constitutes a Master Association Maintenance Area and may record any instrument it deems reasonably necessary to depict or otherwise identify the Master Association Maintenance Area.

1.32 Master Declaration shall have the meaning set forth in Recital E.

1.33 Master Developer means Mayflower Lakeside Village, LLC, a Utah limited liability company, Sundance Burbidge JV 1, LLC, a Utah limited liability company, Mayflower Lakeside Village South, LLC, a Utah limited liability company, and Mayflower Lakeside Townhomes South, LLC, a Utah limited liability company (collectively herein “Master Developer”); provided, however, Master Developer may designate an agent to act on its behalf from time to time.

1.34 Master Plan means that certain Master Plan, dated September 24, 2018, for the Project which, among other things, creates and depicts the Development Parcels (described individually thereon as a numbered “Parcel”) entitled MAYFLOWER MARINA-EAST MASTER PLAN, as the same may be amended from time to time.

1.35 Master Project means the residential planned community known as Mayflower Lakeside, including, but not limited to all “Property” as defined therein.

1.36 Master Project Documents means the Master Declaration the Final Approval, the Master Plan, the Development Agreement, MIDA Documents, the master Articles, the master Bylaws, the Mayflower Design Guidelines, the Master Rules, and the master Board’s resolutions (as defined in the Master Declaration), as each document may be amended from time to time.

1.37 Mayflower shall have the meaning set forth in Recital E.

1.38 Mayflower Design Guidelines means the written review standards promulgated by the Mayflower Design Review Committee pursuant to the Master Declaration, as amended from time to time.

1.39 Mayflower Design Review Committee means the design review committee for Mayflower created pursuant to the Master Declaration.

1.40 Models shall have the meaning set forth in Section 3.2.

1.41 Mortgage means a deed of trust or a mortgage Recorded against a Lot, or any part thereof or interest therein. A “First Mortgage” means a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.

1.42 Mortgagee means a beneficiary under a deed of trust, or a mortgagee under a mortgage, Recorded against a Lot. A “First Mortgagee” means any Person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in this Townhome Declaration shall also protect the Declarant as the holder of a First Mortgage of a Lot or any part thereof or interest therein.

1.43 Municipal Authority means any applicable governmental entity or municipality which has jurisdiction over all or some part of the Project including without limitation Wasatch County, Utah.

1.44 Notice shall have the meaning set forth in Section 14.11.

1.45 Notice of Delinquency shall have the meaning set forth in Section 7.6.

1.46 Notice to Landlord shall have the meaning set forth in Section 7.7.1.

1.47 Notice to Tenant shall have the meaning set forth in Section 7.7.2.

1.48 Occupant means any Person other than an Owner who has actual use, possession or control of a Townhome, or any portion thereof, or any other Improvement located on a Lot, and shall include, without limitation, residents who reside in any Townhome.

1.49 Owner means (i) any Person(s), including the Declarant and/or Declarant Affiliates, who is/are record holder(s) of legal, beneficial or equitable title to the fee simple interest of any Lot, Townhome or any portion thereof or interest therein including, without limitation, one who is buying a Lot, Townhome or any portion thereof or interest therein, under a recorded contract or recorded notice of such contract, but excluding others who hold an interest therein merely as security; and (ii) any Person(s) entitled to occupy all of a Lot, Townhome or portion thereof or interest therein, under a lease or sublease for an initial term of at least five (5) years in which case the lessee or sublessee, rather than the fee owner of the Lot, Townhome or portion thereof, shall be deemed the Owner thereof for purposes of this Townhome Declaration during the term of said lease or sublease.

1.50 Owner's Rights shall have the meaning set forth in Section 7.6.

1.51 Party Wall means a wall that forms part of a Townhouse and is located on or at a boundary line between two adjoining Lots owned by more than one Owner and is used or is intended to be used by the Owners of both properties.

1.52 Person means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.53 Plat means that certain planned community plat entitled “MAYFLOWER LAKESIDE TOWNHOMES – PHASE 2” duly Recorded, as the same may be amended from time to time, and which is incorporated herein by this reference.

1.54 Project shall have the meaning set forth in Recital B.

1.55 Project Governing Bodies shall have the meaning set forth in Section 2.12.

1.56 Property shall have the meaning set forth in Recital A. The term "Property" shall also include any of the Additional Land that is made subject to this Townhome Declaration by the Recordation of a Supplemental Declaration, which inclusion shall be effective from and after the date of recordation of such Supplemental Declaration and amended Plat.

1.57 Record, Recording, Recorded, and Recordation means placing or having placed an instrument of public record in the official records of Wasatch County, Utah.

1.58 Reinvestment Fee shall have the meaning set forth in Section 6.15.

1.59 Shared Roof means a roof shared by Adjoining Owners of a Townhome.

1.60 Special Assessment means any Assessment levied pursuant to Section 6.3.

1.61 Special Service Districts shall have the same meaning as set forth in the Master Declaration and means one or more special service districts, including without limitation the Jordanelle Special Service District, which may be or have been established to provide the Project with, among other things, waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for nonstandard street lights, culinary water and facilities including pump stations, snow plowing and school bus stop shelters.

1.62 Specific Assessment means the charge against a particular Townhome Association Member or Owner directly attributable to the Townhome Association Member or Owner, equal to: (i) the charge to such Townhome Association Member or Owner for particular items, services, administrative fees or benefits provided by the Townhome Association or Master Association at such Townhome Association Member's or Owner's request; or (ii) the costs incurred by the Townhome Association or Master Association for corrective action performed pursuant to the provisions of this Townhome Declaration or the Master Declaration, plus interest thereon and fees (including attorney's fees) and costs.

1.63 Subsidizing Party shall have the meaning set forth in Section 6.9.

1.64 Supplemental Declaration means any recorded declaration, except for the Master Declaration and this Townhome Declaration, covering Lots on the Property recorded by Declarant to subject all or a portion of the Additional Land to this Townhome Declaration as further described in Section 2.6 below, as such Supplemental Declaration may be amended from time to time.

1.65 Townhome Articles means the articles of incorporation of the Townhome Association, as amended from time to time.

1.66 Townhome Association shall have the meaning as set forth in Recital F, and its successors and assigns.

1.67 Townhome Association Member means any Person who is a member of the Townhome Association as provided in Article 5.

1.68 Townhome Association Membership means a membership in the Townhome Association and the rights granted to the Townhome Association Members, including Declarant, pursuant to Article 5 to participate in the Townhome Association.

1.69 Townhome Association Rules means the rules and regulations adopted by the Board pursuant to Section 5.4, as amended from time to time.

1.70 Townhome Bylaws means the bylaws of the Townhome Association, as amended from time to time.

1.71 Townhome Common Areas means all land, and the Improvements situated thereon, within the Project that Declarant designates as common area or common space on the Plat or other Recorded instrument and other real property which the Townhome Association now or hereafter owns in fee for the benefit of the Owners for as long as the Townhome Association is the owner of the fee, which may include without limitation all certain Project parks and open space, landscaped areas, Project and street signage, lighting, sidewalks, and other similar Improvements; provided, however, all exterior elements of a Townhome, such as exterior doorways, windows, façade, rain gutters, shingles, roof, address signs and all other similar exterior improvements of the Townhomes are expressly excluded from Townhome Common Areas. Certain Townhome Common Areas may be open and accessible to members of the general public as required by the Master Project Documents, including, but not limited to, the MIDA Documents.

1.72 Townhome Declaration shall have the meaning set forth in the Preamble, as amended from time to time, and in certain instances referred to as "CC&R's" in the Plat.

1.73 Townhome Design Guidelines means the written review standards promulgated by the Declarant pursuant to this Townhome Declaration (if any), or the Townhome Design Review Committee if created by Declarant pursuant to Section 3.4 below, and in certain instances referred to as "Design Guidelines" in the Plat.

1.74 Townhome Design Review Committee means the design review committee that may be created pursuant to this Townhome Declaration.

1.75 Townhome Limited Common Area(s) means a portion of the Townhome Common Areas designated by this Townhome Declaration or a Supplemental Declaration, and as may be shown on the Plat, for the exclusive use of one or more, but fewer than all of the Owners.

1.76 Townhome Project Documents means this Townhome Declaration, the Townhome Design Guidelines, the Townhome Articles, the Townhome Bylaws, the Townhome Association Rules, the Master Declaration, the Master Plan, the Articles, Bylaws and Board resolutions of the Master Association, the Mayflower Design Guidelines and the Master Rules, as each document may be amended from time to time, and in certain instances referred to as "Governing Documents" in the Plat.

1.77 Townhome(s) means any dwelling unit, including, but not limited to, all exterior elements of a Townhome, such as exterior doorways, windows, façade, rain gutters, shingles, balconies, patios, decks, Shared Roof, address signs and all other similar exterior improvements on the Townhome situated upon a Lot attached to one or more other dwelling units in a row of at

least two such units in which each unit has its own front access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common Party Walls, designed and intended for separate, independent use and occupancy as a townhouse secondary residence, or for overnight or longer residential accommodations.

1.78 Transfer shall have the meaning set forth in Section 2.5.

1.79 Visible From Neighboring Property means, with respect to an object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of neighboring property, except where the object is visible solely through a fence and would not be visible if the fence were a solid fence.

## ARTICLE 2 DECLARANT'S RIGHTS AND OWNERS' OBLIGATIONS

2.1 Property Subject to this Townhome Declaration. This Townhome Declaration is being Recorded to establish a general plan for the development and use of the Project in accordance with the Utah Community Associations Act, Utah Code Ann. 57-8a-101 *et. seq.*, as amended from time to time (the “CAA”) in order to protect and enhance the value and desirability of the Project. All of the property within the Project shall be held, sold and conveyed subject to this Townhome Declaration and the Master Project Documents, including any of the Additional Land hereafter made subject to this Townhome Declaration by the Recordation of a Supplemental Declaration, and related documents, including, but not limited to, any supplemental plat. By acceptance of a deed or by acquiring any interest in any of the property subject to this Townhome Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Townhome Declaration. In addition, each such Person by so doing acknowledges that this Townhome Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its agreement that all the restrictions, conditions, covenants, rules and regulations contained in this Townhome Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Townhome Declaration shall be mutually beneficial, prohibitive and enforceable by the Townhome Association and all Owners.

2.2 No Condominium. Declarant and each Owner hereby agree and understand that the Property is **not**, by execution and recording of this Townhome Declaration, being submitted to the provisions of the Utah Condominium Ownership Act, §§ 57-8-1, *et seq.*, Utah Code Ann. (the “Condominium Act”). This Townhome Declaration does not constitute a declaration as provided for in the Condominium Act and the provisions of the Condominium Act shall not be applicable to Property or any portion thereof, including without limitation all or a portion of the Additional Land made subject to this Townhome Declaration by the recordation of one or more Supplemental Declarations.

2.3 **Lots.** Subject to Declarant's right to expand the Project pursuant to the provisions of Section 2.6, the Project shall consist of up to sixty-two (62) Lots or such greater number of Lots which may be approved or permitted by the controlling Municipal Authority, each of which is to be improved with a Townhome. Declarant reserves the right to adjust the location of each Townhome in order to facilitate proper planning in the sole and exclusive discretion of the Declarant, subject to the terms and provisions of Section 2.13. Moreover, for thirty (30) years following the recording of this Townhome Declaration, Declarant, to the extent permitted by law, reserves the unilateral right to reconfigure, eliminate and/or change the design and arrangement of the Townhome Common Areas, any Townhome and to alter the boundaries between Townhomes as it shall determine in its sole and exclusive discretion, so long as the Declarant or a Declarant Affiliate owns the Townhomes so altered or obtains and duly records the written authorization of the Owner of any altered Townhome not owned by Declarant. Such reconfiguration right shall include the right to change or alter the exterior elements or design of the Townhomes, including, but not limited to, altering or changing the placement, size, number, and configuration of doors, entry-ways, windows, and similar items, and to modify the principal type of construction and building materials of such Townhomes. Any change of the boundaries between Townhomes or Townhome Common Areas shall not require an amendment to this Townhome Declaration or to the Plat, but shall be done in accordance with the requirements of the Wasatch County Code and Utah law. Unless otherwise determined by Declarant in its sole and exclusive discretion, Declarant intends to and shall have the right to construct all Townhomes at the Project. A purchaser, transferee or an Owner of a Lot shall not have the right to independently construct a Townhome thereon, or approve or supervise the construction of any Townhome. Notwithstanding the foregoing intention to construct all of the Townhomes, Declarant reserves the right to sell, convey, transfer, assign or otherwise dispose of any Lot, without first constructing a Townhome thereon.

2.4 **The Townhome Association and Master Association.** The Master Association shall maintain, as provided in the Master Declaration, the Townhome Common Areas and all Improvements thereon, in a safe, sanitary and attractive condition. In the event the Master Association fails to maintain such Townhome Common Areas, then the Townhome Association shall maintain such Townhome Common Areas in accordance with the terms of this Declaration. The Townhome Association shall assess and collect fees from the Townhome Association Members, in accordance with the provisions hereof and the Bylaws. The Townhome Association shall also comply with all applicable provisions of the Master Declaration, including assessments associated with the Master Association's operation, maintenance, repair, and replacement of Common Areas and the Master Association Maintenance Areas.

2.5 **Density; Transfer of Density.** Pursuant to the Master Declaration, the Master Plan and the Final Approval, including Declarant's expansion rights provided in Section 2.6, the Project has been assigned sixty-two (62) ERUs. Subject to the approval of the controlling Municipal Authority and the Master Developer, Declarant hereby reserves for itself, its successors and assigns, the unilateral right to transfer the ERUs between and among Lots and Development Parcels within the Master Project in the event Declarant or Declarant Affiliate does not utilize all of the ERUs assigned to a Lot in the development of such Lots and construction of Townhomes and Improvements thereon ("Transfer"), provided that such Transfer does not enlarge the total maximum number of ERUs at the Project and does not increase the total number of Townhomes to be developed on the Property as approved in the Final Approval and the Master Plan. Subject to the approval of the appropriate Municipal Authority, the Master Developer and controlling

notice provisions under Utah law, Declarant, for itself and any Declarant Affiliate, reserves the right to unilaterally accomplish any such Transfer by Recording an amendment to this Townhome Declaration identifying the Transfer, the subject Lots, the ERUs transferred, and the allocation of ERUs with respect to the subject Lots both before and after the Transfer's effective date. However, no amendment to the Plat shall be required to effectuate any such Transfer.

**2.6 Additional Land and Right to Expand.** Declarant reserves the right to subject all or a portion of the Additional Land to this Townhome Declaration by the recordation of one or more Supplemental Declarations without the prior consent of any other party or Owner except for the Owner of all or any portion of the Additional Land. Declarant shall identify in each Supplemental Declaration the Additional Land, specify the number of additional Lots, if any or if known, to be added to the Project, and the number of votes and Assessment units to be allocated to the Additional Land based upon the formulas described in this Townhome Declaration. The owner of such Additional Land, if different from the Declarant, shall also execute the Supplemental Declaration. Upon recordation of the Supplemental Declaration, the subject Additional Land shall be deemed added to the Property and the number of Lots, Assessment units and votes shall be automatically increased to include the Additional Land's Lots and other items for purposes of this Townhome Declaration. The Supplemental Declaration may modify any of the covenants, conditions and restrictions otherwise applicable to the Additional Land in the Supplemental Declaration where such changes are deemed necessary in the discretion of the Declarant to address a unique condition affecting or relating to the Additional Land that is the subject of the Supplemental Declaration or to more fairly allocate the benefits and obligations of membership within the Townhome Association. In the event that Declarant and the owner of any of the Additional Land fail to reach an agreement on the terms of inclusion within the Project, the Additional Land will still have such rights of access and be subject to such limitations as are contained in any other agreements with the owners of the Additional Land. This Townhome Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon the Additional Land unless and until it is added to the existing Project in accordance with the provisions of this Section 2.6.

**2.7 Incidents of Ownership.** Every Lot shall have appurtenant to it one Townhome Association Membership in the Townhome Association, and a nonexclusive easement for each Owner for use, enjoyment, ingress and egress over the Townhome Common Areas subject to such restrictions and limitations as are contained in the Townhome Project Documents and subject to other reasonable regulation by the Townhome Association. Each Townhome Association Membership shall be appurtenant to and inseparable from ownership of the Lot. Any sale, conveyance, hypothecation, encumbrance or other transfer of a Lot shall automatically transfer the Townhome Association Membership to the same extent, notwithstanding any term or provision to the contrary in the documents effecting such transfer.

**2.8 Owner's Obligation to Maintain the Lot and Townhome.** Except as otherwise provided with respect to Townhome Common Areas and the Master Association Maintenance Areas, each Owner shall maintain his, her or its Lot and Townhome in a safe, sanitary and attractive condition. In connection with any maintenance or repair work to the exterior of a Townhome, the Owner making such repair shall maintain, replace or repair any finish, surface or other materials with similar materials of at least the same quality, such that there is no reasonably observable difference between those portions of the Townhome exterior being repaired or modified and the

remaining portions of the Townhome exterior of the other Townhomes in the Project. Except as otherwise provided herein, maintenance, repair, and replacement costs are the responsibility of the individual Owner. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of an Owner to maintain his, her or its Lot, Townhome or Improvement, the Board shall have the right to immediately enter upon the Lot to abate the emergency and individually charge the cost thereof to such Owner as a Specific Assessment or otherwise. In the event of any disagreement or uncertainty as to which improvements or elements of a Townhome the Owner is obligated to maintain, replace, or repair as provided herein, the Board shall have the sole and exclusive discretion to make such determination, and the Board's determination shall be conclusive, final and not subject to appeal.

**2.9 Responsibility for Townhome Common Areas Damage.** The cost of repair or replacement of any portion of the Townhome Common Areas resulting from the willful or negligent act of an Owner, Occupant, Lessees, tenants, family, guests or invitees shall be, in addition to the party at fault, the joint responsibility of such Owner to the extent that it is not covered by insurance maintained by the Townhome Association or the Master Association. The Townhome Association or Master Association, as applicable, shall cause such repairs and replacements to be made and the cost thereof may be levied as an individual charge against such Owner.

**2.10 Reservation of Right to Construct Townhomes and Improvements.** In addition to the reservations of rights set forth in this Townhome Declaration, Declarant reserves the sole and exclusive right, without obligation, to construct and/or directly supervise the construction of all Townhomes and Improvements to be erected on the Lots which are a part of the Project in order to protect its integrity and control the grading and site elements relative to each particular Lot.

**2.11 Declarant's Disclaimer of Representations.** Nothing which may be represented to a purchaser by real estate brokers or salespersons representing the Declarant or any Declarant Affiliate shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Townhome Declaration. Owners hereby acknowledge that neither Declarant nor the Master Association will be responsible for injury or damage to persons or property caused by radon.

**2.12 Security.** The Townhome Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. NEITHER THE TOWNHOME ASSOCIATION AND ITS BOARD, THE DECLARANT, THE DESIGN REVIEW COMMITTEE, NOR THE MASTER ASSOCIATION AND ITS BOARD, THE MASTER DEVELOPER OR THE MAYFLOWER DESIGN REVIEW COMMITTEE (COLLECTIVELY, THE "PROJECT GOVERNING BODIES") SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROJECT, HOWEVER, AND THE PROJECT GOVERNING BODIES SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, OCCUPANTS, TENANTS, GUESTS AND INVITEES OF ANY OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGE THAT THE PROJECT GOVERNING BODIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR

INSTALLED ACCORDING TO THE TOWNHOME DESIGN GUIDELINES OR THE MAYFLOWER DESIGN GUIDELINES MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, OCCUPANT, TENANT, GUEST OR INVITEE OF AN OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE PROJECT GOVERNING BODIES ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO LOTS, TO PERSONS, TO TOWNHOUSES, TO IMPROVEMENTS AND TO THE CONTENTS OF TOWNHOUSES AND IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT THE PROJECT GOVERNING BODIES HAVE NOT MADE REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROJECT.

**2.13 Readjustment of Lot Line Boundaries.** Declarant hereby reserves for itself, Declarant Affiliate and Declarant's successors and assigns, the right to effectuate minor realignment and adjustment of Lot boundary lines for purposes of proper configuration and final engineering of the Project; provided that any such realignment and adjustment does not affect any existing Townhome or Improvement (other than landscaping) on the affected Lot. The authority to realign and adjust such Lot boundary lines shall be exclusively reserved to the Declarant, Declarant Affiliate and Declarant's successors or assigns, in their sole and reasonable discretion, subject to the other provisions of this Section 2.13. All Owners specifically acknowledge and agree that they shall cooperate with Declarant to effectuate such minor realignment and adjustment of their respective Lot boundary lines by deed in form and content as requested by the Declarant for the purposes of proper configuration and final engineering of the Lots in relationship to the development of the Project. Further, all Owners acknowledge and agree that no amendment to this Townhome Declaration or the Plat shall be required to effectuate any Lot boundary line adjustments so long as such adjustments are made pursuant to § 17-27a-608(7), Utah Code Ann., as amended

**2.14 Development Plan.** Notwithstanding any other provision of this Townhome Declaration to the contrary, and subject to the approval of the Master Developer and appropriate Municipal Authority, Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to its plan of development with respect to any Property owned by the Declarant in any way which the Declarant desires including, but not limited to, changing all or any portion of the Property owned by the Declarant or changing the nature or extent of the uses to which such Property may be devoted.

**2.15 Townhome Common Area Improvements.** Declarant, so long as Declarant or a Declarant Affiliate owns a Lot within the Project, reserves the unilateral right to construct Improvements on any area of the Townhome Common Areas and modify the location, type and

nature of Townhome Common Areas as it shall determine in its sole and exclusive discretion, including, without limitation, the right to construct or create garden plots, pavilions, recreational facilities, storage facilities, walking trails, picnic areas, covered porches, courtyards, or other Improvements thereon. Such construction and relocation rights shall not be subject to the consent of the Owners, Board, Mortgagees or any other person or entity. After the termination of Declarant's rights under Section 2.17 below, the Board shall have the right to exercise such construction and relocation powers in connection with the Townhome Common Areas upon the vote or written assent of two-thirds (2/3) of the members of the Board present at any annual or special meeting of the Board pursuant to the approval procedures described in the Bylaws. In furtherance of this right, Declarant reserves for itself, and others it may designate, the right to inspect, monitor, test, redesign, and correct any Improvement or condition that may exist on any portion of the Project, including Lots and Townhome Common Areas, and a nonexclusive easement of access throughout the Project to the extent reasonable necessary to exercise such right.

**2.16 Right to Develop.** Notwithstanding anything contained herein to the contrary, no provision of this Townhome Declaration is intended or shall be construed to prevent or limit Declarant's rights to develop the Project and to exercise the rights reserved by Declarant as hereinafter provided. Nothing in this Townhome Declaration shall be construed to require Declarant, or Declarant's successor or assigns, to develop any Lot or other Improvements in any manner whatsoever. Any right or any interest reserved or contained in this Townhome Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, Townhome Association, or other entity, only by written instrument executed by both Declarant and the transferee or assignee and Recorded in the Office of the Wasatch County Recorder, State of Utah. Upon such Recording, Declarant's rights and obligations under this Townhome Declaration shall cease and terminate to the extent provided in such instrument.

**2.17 Declarant's Control.** Notwithstanding anything herein to the contrary, Declarant, or a managing agent or some other person or persons selected by Declarant, may appoint and remove some or all of the members of the Board or some or all of the officers of the Townhome Association or may exercise the powers and responsibilities otherwise assigned by this Townhome Declaration or under Utah law to the Townhome Association, its officers, or the Board. The "Declarant Control Period" as used in this Townhome Declaration and the other Townhome Project Documents shall have the same meaning as the "period of administrative control" defined under the CAA. The right of the Declarant contained in this Section 2.17 shall terminate upon the first of the following to occur:

2.17.1 Sixty (60) days after conveyance of one hundred percent (100%) of the Lots owned by Declarant;

2.17.2 The expiration of thirty (30) years from the date that this Townhome Declaration is Recorded; or

2.17.3 The date on which Declarant, in its sole and exclusive discretion, voluntarily relinquishes its control rights as evidenced by a Recorded notice.

**2.18 Declarant's Exclusive Right to MIDA Reimbursements.** To the extent available, any reimbursement or other payment resulting from the Project being part of the MIDA Project Area and Plan, including, but not limited to, the twenty-five percent (25%) reimbursement, or otherwise related to MIDA will belong exclusively to the Declarant, and all Owners, excluding Declarant and Declarant Affiliates, hereby waive any right, title, claim, or interest in or to such payments or reimbursements. The Townhome Association and each Owner, agrees to execute such further and additional instruments to evidence such waiver as may be requested by Declarant, in its sole and absolute discretion, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

### **ARTICLE 3** **LAND USES, PERMITTED USES AND RESTRICTIONS**

**3.1 Land Uses.** The purposes for which property within the Project may be used shall be residential uses consistent with the Master Declaration and this Townhome Declaration, as well as ancillary, complementary or subsidiary uses such as (without limitation), open space, Townhome Common Areas, Townhome Limited Common Areas and the like. No Lot or Townhome within the Project shall ever be occupied or used for any commercial or business purposes; provided, however, all Owners and occupants hereby agree and acknowledge that Declarant or any other Owner may provide overnight occupancy accommodations at such Owner's Lot or Townhome. Furthermore, Declarant or any Owner may engage a third party to provide rental management services for such Owner's Lot(s) or Townhome(s), including but not limited to entering into a long term contract with a service provider for such rental management services; provided further that nothing in this Section shall be deemed to prevent (i) Declarant or its duly authorized agent from using any Lot or Townhome owned by Declarant or Declarant Affiliate as a sales model; or (ii) any Owner or the Owner's duly authorized agent from renting or leasing said Owner's Lot or Townhome for residential uses, including for long term or transient rental. During the Declarant Control Period, any amendment to this Section (except for a unilateral amendment by Declarant or an amendment necessary or proper to effectuate Declarant's rights) or the right to rent a Lot or Townhome, shall require the affirmative vote of at least eighty-five percent (85%) of the total votes in the Townhome Association. Following termination of the Declarant Control Period, any meeting of the Townhome Association to discuss or vote on any amendment to this Section or the right to rent a Lot or Townhome, shall require attendance of at least eighty-five percent (85%) of the Members and shall require the affirmative vote of at least sixty-seven percent (67%) of the total votes in the Townhome Association.

**3.2 Model Homes.** Any provisions of this Townhome Declaration which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model Townhomes of any kind (including, without limitation, any used in whole or in part as sales offices) (collectively, "Models") by Persons engaged in the construction of Townhomes in the Project, or parking incidental to the visiting of such Models, so long as the construction, operation and maintenance of such Models and parking otherwise comply with all of the provisions of the Master Declaration and this Townhome Declaration. The Mayflower Design Review Committee may also permit Lots and other areas to be used for parking in connection with the showing of Models. Any homes or other structures constructed as Models shall cease to be used as Models at any time the Owner thereof is not actively engaged in the construction and sale of Townhomes in the Project, and no home or other structure shall be used as a Model for the sale

of homes or other structures not located within the Project. Neither the provisions of this Section nor the provisions of any other Section of the Master Declaration or this Townhome Declaration shall restrict or prohibit the right of the Declarant or a Declarant Affiliate to construct, operate and maintain Models within the Project.

**3.3 Use Restrictions.** Except as otherwise provided herein, each Lot may be used in any manner consistent with the requirements of applicable zoning and other land use ordinances and regulations, including the construction of a Townhome in accordance with the Townhome Project Documents. The Lots, Townhomes, Townhome Common Areas and Improvements, except as otherwise permitted in writing by the Master Association, the Townhome Association, and/or Declarant as applicable, shall be used in accordance with the restrictions outlined in the Townhome Project Documents, including, but not limited to, any Open Space Areas or Open Space Use Restrictions as further provided in the Master Declaration. Each Owner agrees, understands and acknowledges that his, her or its Lot is subject to certain use restrictions that may limit such Owner's use of the Lot and ability to construct various Improvements thereon as specifically described in the Townhome Project Documents. Such use restrictions shall include, without limitation, the following restrictions in addition to those described in Article 9 of the Master Declaration:

**3.3.1 Vehicles.** Except as otherwise approved by the Design Review Committee, no automobile, commercial vehicle, truck, recreational vehicle or trailer (either with or without wheels), camper, camper trailer or any other transportation device of any kind, shall be stored outside or parked on a Lot except within a garage. The Board may permit Owners to park a boat or other watercraft and a boat trailer on his, her or its Lot in accordance with the Mayflower Design Guidelines, the Townhome Design Guidelines and the Townhome Association Rules. No Owner or Occupant shall repair or restore any vehicle of any kind upon any portion of the Project, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

**3.3.2 Tree Removal.** Subsequent to final approval by the Design Review Committee, no trees shall be removed, except for (i) diseased or dead trees; and (ii) trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in writing by the Mayflower Design Review Committee and the Townhome Design Review Committee.

**3.3.3 Animals.** Except as otherwise required by applicable law, including, but not limited to, the Americans with Disabilities Act, no animals other than two (2) ordinary household pets may be kept or allowed to remain on any particular Lot or Unit. All animals are subject to applicable Municipal Authority pet ordinances, leash ordinances and any pet rules and regulations promulgated by the Board. Except as otherwise prohibited by applicable law and subject to any Master Rules addressing pets or animals, Declarant during the Declarant Control Period, and thereafter the Board, in its sole discretion, shall have the right to revoke such authorization at any time in its subjective discretion and shall have the power to require any Owner or guest to remove any animal or other pet belonging to it which is not disciplined or which constitutes an undue annoyance or a danger to other Owners, their guests, or others.

3.3.4 Antennas and Satellite Dishes. Except for an Owner's rights under the Federal Communications Commission's over-the-air reception devices rule (OTARD rule, 47 C.F.R. § 1.4000), or other applicable laws, concerning the right to install and use an antenna or dedicated satellite dish to receive video services from direct broadcast satellite, broadband radio services, and television broadcast stations, the installation and use of any other antenna or satellite dish must be approved by Declarant or the Design Review Committee.

3.3.5 No Unsightliness. No unsightliness shall be permitted on or about the Project. Without limiting the generality of the foregoing (i) any unsightly structures, facilities, equipment, tools, vehicles other than automobiles, objects, and conditions shall be enclosed within an approved building or appropriately screened from view, except equipment and tools when in actual use for construction, maintenance or repairs, excepting boats (and their trailers) which may be parked in private driveways subject to any rules or regulations promulgated by the Board regarding the same; (ii) no trailers (other than boat trailers), mobile homes, tractors, truck campers or trucks other than pickup trucks shall be kept or permitted to remain upon the Property; (iii) no vehicle, boat or equipment shall be constructed, reconstructed, repaired or abandoned upon the Property; (iv) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials, or scrap shall be kept, stored or allowed to accumulate on the Property; (v) refuse, garbage and trash shall be placed and kept at all times in a covered container and such container shall be kept within an enclosed structure or appropriately screened from view (vi) hanging, drying or airing of clothing or household fabrics shall not be permitted on a Lot or Townhome if visible from buildings, Development Parcels, Lots, Units, or areas surrounding the Property; and (vii) hanging, mounting, or displaying signs, including but not limited to, for sale, for rent, or other signs shall not be permitted on Development Parcels, Common Elements, Lots or Units if visible from buildings, Development Parcels, Lots, Units, or areas surrounding the Property.

3.3.6 No Fences. No fences, walls, or other barriers shall be permitted for the purpose of enclosing or demarcating any property line boundaries without the prior written approval of the Declarant during the Declarant Control Period (as such term is defined in the Master Declaration), or thereafter the Design Review Committee, which approval may be withheld in the Master Developer's or the Design Review Committee's sole and exclusive discretion.

3.3.7 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Improvements as approved by the Master Developer during the Declarant Control Period (as such term is defined in the Master Declaration), or thereafter the Design Review Committee, except for boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices.

**3.4 Townhome Design Review Committee.** Declarant intends that all design review activities, reviews, approvals, rejections and hearings shall be conducted by the Mayflower Design Review Committee in accordance with the Master Declaration, the rules and regulations promulgated by such Committee, the Mayflower Design Guidelines and the Townhome Design Guidelines. Notwithstanding the foregoing intention, Declarant reserves the right, without obligation, to organize and create the Townhome Design Review Committee to first review, study and either approve, reject or request resubmittal of proposed developments and improvements to a Lot or Townhome, all in compliance with this Townhome Declaration and as further set forth in the rules and regulations of the Townhome Design Review Committee and the Townhome Design Guidelines, prior to any review or approval by the Municipal Authority and/or the Mayflower Design Review Committee. If created, the Townhome Design Review Committee shall have the right, but not the obligation, to promulgate, enforce and interpret the Townhome Design Guidelines provided that the Townhome Design Review Committee's determinations or functions do not contradict or supersede the Municipal Authority's and/or Mayflower Design Review Committee's duties and responsibilities as set forth in the Master Declaration. The Townhome Design Review Committee shall be composed of the number and name of individuals or entities as the Declarant may determine in its sole and exclusive discretion, who need not be Owners.

**3.5 Architectural Control.** In addition to those certain approvals set forth in this Townhome Declaration, all Lots and Townhomes and Improvements constructed within the Project shall comply with the Mayflower Design Guidelines and the Townhome Design Guidelines. The Board and all purchasers, transferees and Owners shall not construct, install, remove, add, alter, repair, change, devegetate, excavate, grade, plant, revegetate, or other do any work, or cause any work to be done, which in any way alters the appearance (including but without limitation, the exterior color scheme) of any property or Lot within the Project, or any Townhomes or Improvements located thereon, without the prior written approval of the Design Review Committee, which approval may be withheld for any reason in the Committee's sole and exclusive discretion. The Townhome Association and any Owner or other Person desiring approval of the Design Review Committee for the construction, installation, addition, alteration, repair, change or replacement of any Lot, or any Townhome or Improvement located thereon, which would alter the exterior appearance of a Lot, Townhome or other portion of the Project, or any Improvements located thereon, shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change, replacement or other work which the Board or such Owner or other Person desires to perform. The Design Review Committee shall review the Board's, Owner's or other Person's written request according to the procedures outlined in the Master Declaration and the Board, Owner or other Person shall pay design review fees promulgated thereunder. Notwithstanding the foregoing, the Design Review Committee shall have the right, but not the obligation, to waive any and all design review fees related to any request made by the Board.

**3.6 Architectural Review Fee.** The Design Review Committee shall have the right to charge a reasonable fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change, replacement or other work pursuant to the Master Declaration and this Townhome Declaration, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. Such fee, if established and charged by the Design Review Committee, shall be set at such reasonable level as the Design Review Committee may estimate will be necessary to defray the reasonable costs and expenses of the Design Review

Committee in reviewing and evaluating any such request or application, and may include, if the Design Review Committee deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the Design Review Committee by an architect, engineer or attorney.

**3.7 Municipal Authority Approval.** The approval required of the Design Review Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, the Master Declaration or under any other governing Recorded instrument. The Design Review Committee may condition its approval of any application, plans or other items submitted to it on delivery to the Design Review Committee of evidence satisfactory to the Design Review Committee that the Owner or other Person seeking its approval has also made appropriate applications for (and prior to commencing work shall have obtained) any and all such other approvals or permits. The Design Review Committee shall cooperate reasonably with any other approving authorities or entities; provided, however, that the Design Review Committee shall not be bound by any approvals, permits or other decisions of any other such approving authority or entity, unless otherwise required by law.

**3.8 Required Approvals for Further Property Restrictions.** The Property is subject to the following additional approvals:

3.8.1 No Lot, or portion thereof, shall be further subdivided, and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Declarant, so long as Declarant's Class B Membership exists, and thereafter, the Board. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant, and is not intended to prohibit any Owner from renting his or her Townhome as temporary short-term or overnight accommodations, subject to any Townhome Association Rules governing such rental activities. No Owner of any Townhome shall offer or sell any interest in a Townhome under a timesharing, interval ownership, fractional, club or similar program.

3.8.2 No site plan, subdivision plat, declaration or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be Recorded, submitted to any Municipal Authority unless the same has first been approved in writing by the Design Review Committee; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Design Review Committee hereunder unless such changes or modifications have first been approved by the Design Review Committee in writing.

**3.9 Lots and Improvements.** Declarant shall not be restricted in the location or in the number of Townhomes, Townhome Common Areas or other Improvements that may be created on the Property, except as may be required by the Townhome Project Documents, applicable zoning requirements, ordinances or regulations, and provided that when completed, the Project shall not contain more than sixty-two (62) Lots and sixty-two (62) Townhomes, subject to Declarant's right to expand as provided in Section 2.6. The Lots and Townhomes to be located on the Property shall be subject to the use restrictions contained in the Townhome Project Documents

and the Master Project Documents. No structures other than Townhomes and Improvements approved by the Design Review Committee will be erected on the Property; provided, however, that Declarant reserves the right to create additional Townhome Common Areas and Improvements on the Property without limitation. Declarant makes no assurances as to location, size, type or number of Townhome Common Areas or other Improvements to be created on the Property.

**3.10 Description of Townhome Limited Common Areas.** Townhome Limited

Common Areas means a portion of the Townhome Common Areas reserved for the exclusive use and occupancy of one or more but fewer than all of the Owners to the exclusion of other Owners. Townhome Limited Common Areas shall include, without limitation, any areas identified by this Townhome Declaration, a Supplemental Declaration or on the Plat or other recorded instrument as Townhome Limited Common Areas within the Project to be for the exclusive use of one or more but fewer than all of the Owners, such as certain driveways and similar Improvements. The use and occupancy of designated Townhome Limited Common Areas shall be reserved to the Owner of the Lots as shown on the Plat or as specified in this Townhome Declaration or in a Supplemental Declaration. In addition to the Townhome Association Rules and other parking restrictions that Declarant or the Board may promulgate from time to time, each driveway designated for ingress and egress to a particular Lot shall constitute a Townhome Limited Common Area and the Owner of such Lot shall have control and exclusive right of access to and use of the driveway constructed for the benefit of his, her or its Lot. Owners are hereby granted an easement to use and occupy the Townhome Limited Common Areas allocated exclusively to the Lot(s) such Owners own as described in this Section, subject to the Assessments levied by the Townhome Association associated with such Townhome Limited Common Areas, as further described in this Townhome Declaration. Declarant reserves the right for itself, and its successors and assigns, to fix the Townhome Limited Common Areas via a recorded instrument as it shall determine in its sole and exclusive discretion, and Owners shall not designate, modify or reallocate Townhome Limited Common Areas between or among Lots in which they have an interest. No amendment to the Plat shall be required in order to fix Townhome Limited Common Areas. Notwithstanding anything to the contrary provided herein, Owners may, subject to approval of the Board or the Design Review Committee, elect to install, at their own expense, a hot tub on any rear porch or rear patio of such Owner's Townhome. Any Owner who elects to install a hot tub on a rear porch or rear patio will be solely responsible for all maintenance, replacement, repair, and upkeep, including but not limited to, winterization of the hot tub, hose bib and related items or equipment. Any Owner who elects to install or maintain a hot tub agrees to hold harmless and indemnify the Townhome Association and the Master Association from any and all damages, costs, expenses or other amounts, including attorneys' fees, resulting from such Owner's hot tub, including but not limited to such Owner's failure to use or maintain the hot tub or related items or equipment. To the extent the Master Association or the Townhome Association elect or are required to undertake any maintenance, repairs or replacements related to an Owner's hot tub, the costs and expenses for such maintenance, repair or replacement will be the sole responsibility of such Owner and will be billed as a Specific Assessment.

**3.11 Declarant's Exemption.** No Townhome Design Review Committee approval shall be required for (i) any construction, installation, addition, alteration, repair, change, replacement or other work by, or on behalf of, the Declarant; (ii) initial Improvements constructed by, at the direction of, or with the express written approval of Declarant; (iii) normal maintenance

of Property or Improvements; (iv) rebuilding on Property or Improvements in accordance with its original design and dimensions; (v) work reasonably required to be performed in an emergency for the purpose of protecting any person or property from damage.

## ARTICLE 4 EASEMENTS

### 4.1 **Owners' Easements of Enjoyment.**

4.1.1 Subject to the rights and easements granted to the Declarant in Section 4.4, each Owner and Occupant shall have a non-exclusive right and easement of enjoyment in, to and over the Townhome Common Areas, which right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to the provisions of the Townhome Project Documents including, without limitation, the following:

4.1.1.1 Except as otherwise provided in this Townhome Declaration, no dedication, transfer, mortgage or encumbrance of all or any portion of the Townhome Common Areas shall be effective unless approved by Owners representing two-thirds (2/3) of the votes in each class of Townhome Association Members. Notwithstanding the preceding sentence or any other provision of this Townhome Declaration to the contrary, the Townhome Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any part of the Property), to dedicate portions of the Townhome Common Areas to the public, or grant easements over, under or through portions of the Townhome Common Areas to the public, to any Municipal Authority, or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by any Municipal Authority or other entity having jurisdiction, or by a public, quasi-public or private utility company, in connection with or at the time of the development of portions of the Property. Declarant's prior written consent shall be required prior to any amendment to the Townhome Project Documents that may alter or affect the MIDA Documents.

4.1.1.2 The Townhome Association shall have the right, which may be delegated or assigned to the Master Association, to regulate the use of the Townhome Common Areas through the Townhome Association Rules and to prohibit access to such portions of the Townhome Common Areas, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or other Occupants.

4.1.1.3 The Declarant and the Townhome Association shall each have the right, which may be delegated or assigned to the Master Association, to grant easements or licenses to Persons for the construction of Improvements on the Townhome Common Areas, and the Declarant and the Townhome Association shall each have the right to grant ingress and egress easements over the Townhome Common Areas in the Project to Persons who are not Townhome Association Members.

4.1.2 Occupants Use of the Townhome Common Areas. If a Townhome is leased or rented by its Owner, the Occupants of such Townhome shall have the right to use the Townhome Common Areas during the term of the lease, and the Owner of such Townhome shall have no right to use the Townhome Common Areas until the termination or expiration of such lease.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Townhome Common Areas, certain portions of the Lots and other property as depicted on the Plat for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, telephone, internet, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment on the Townhome Common Areas, certain portions of the Lots and other property as depicted on the Plat. However, except within the public utility easements depicted on the Plat, no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Townhome Common Areas, Lots, and other property except as initially designed, approved and/or constructed by the Declarant or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot). Declarant reserves the right to record an instrument which narrows and limits any grant of a blanket utility easement to the actual easement width and location of such blanket utility easement within those certain areas of Project which actually contain a blanket utility easement as described in such instrument and for the purposes described therein. Such reserved right is subject to the utility companies' rights then located under the real property within the Project, including but not limited to the utility facilities. If any utility company requests that a more specific easement be granted in its favor in substitution for the easement hereby established with respect to the Townhome Common Areas, the Townhome Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate.

4.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Townhome Common Areas. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such private or public street and parking areas as from time to time may be paved and intended for such purposes. Moreover, there is an easement created for Owners' use and enjoyment of, and ingress and egress to and over, to specific Owners for any Townhome Limited Common Areas appurtenant to one or more Lots. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots and Townhomes and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Townhome Common Areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of any Municipal Authority having jurisdiction thereover including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

4.4 Declarant's Use and Easements. So long as Declarant or a Declarant Affiliate owns a Lot within the Project, Declarant shall have and hereby reserves the following rights and

easements for the benefit of itself and all Declarant Affiliates and their agents, contractors, members, officers, employees, and assigns:

4.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Property, including without limitation on the Townhome Common Areas, with respect to the sales of Lots, Townhomes or other property in the Project or within any of the Additional Property. Declarant reserves the right to place Models, management offices and sales and leasing offices on any Lots or other property owned by Declarant or a Declarant Affiliate and on any portion of the Project, including without limitation on the Townhome Common Areas, in such number, of such size and in such locations as Declarant deems appropriate.

4.4.2 So long as Declarant is marketing Lots, Townhomes or other portions of the Property, Declarant shall have the right to restrict the use of the parking spaces on the Townhome Common Areas. Such right shall include reserving such spaces for use by prospective purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

4.4.3 Declarant shall have the right and an easement on and over the Townhome Common Areas to construct all Improvements Declarant may deem necessary and to use the Townhome Common Areas and any Lots and other property owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

4.4.4 Declarant shall have the right and an easement upon, over and through the Townhome Common Areas as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by the Declarant in this Townhome Declaration or the Master Declaration, including an easement for communication facilities as provided in the Master Declaration.

**4.5 Easement in Favor of Townhome Association and Master Association.** The Lots are hereby made subject to the following easements in favor of the Townhome Association and Master Association and their respective directors, officers, agents, employees and independent contractors:

4.5.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

4.5.2 For inspection, maintenance, repair and replacement of portions of the Townhome Common Areas accessible only from such Lot or Lots;

4.5.3 For correction of emergency conditions on one or more Lots or on portions of the Townhome Common Areas accessible only from such Lot or Lots;

4.5.4 For the purpose of enabling the Master Association, Townhome Association, the Board, the Design Review Committee or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Townhome Project Documents and the Master Project Documents;

4.5.5 For inspection during reasonable hours of the Lots in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Townhome Project Documents;

4.5.6 For inspection, maintenance, repair and replacement of the landscaped areas, concrete improvements, fences, covered porches and courtyards (both during and after any applicable warranty periods) and driveways located on the Lots which the Townhome Association or the Master Association, as applicable, is obligated to repair, replace and maintain pursuant to the provisions of this Townhome Declaration and the other Townhome Project Documents; and

4.5.7 For inspection, maintenance, repair and replacement of the exterior elements of the Townhomes and any Party Walls located on the Lots (whether or not enclosed within a courtyard or covered porch) which the Master Association or Townhome Association is obligated or authorized to repair, replace and maintain pursuant to the provisions of this Townhome Declaration and the other Townhome Project Documents.

4.6 **Easement for Party Wall.** Each Owner, for each Lot that he, she or it owns, hereby acknowledges and agrees that a Party Wall may presently encroach upon or overlap the Owner's Lot. To the extent the Party Wall does encroach upon or overlap a Lot, the Owner of said Lot hereby grants to the Adjoining Owner of the other Lot that shares a Party Wall an easement over and upon its Lot for the purpose of maintaining the Party Wall and carrying out the other obligations set forth in this Townhome Declaration. By accepting a deed to a Lot, each Owner hereby covenants and agrees to maintain any Party Wall in good condition and repair and not to do anything or to erect any barrier that will hinder, delay or limit the maintenance of the Party Wall and the performance of the Master Association or Townhome Association's obligations and each Owner's respective obligations under this Townhome Declaration.

4.7 **Easement for Shared Roof.** Each Owner, for each Lot that he, she or it owns, hereby acknowledges and agrees that the Townhome situated on the Lot will include a Shared Roof. Each Owner hereby grants to the Adjoining Owner of the other Lot with a Shared Roof a reciprocal easement over and upon its Lot for the purpose of maintaining the Shared Roof and carrying out the other obligations set forth in this Townhome Declaration. By accepting a deed to a Lot, each Owner hereby covenants and agrees to cooperate to maintain any Shared Roof in good condition and repair and not to do anything or that will hinder, delay or limit the maintenance of the Shared Roof and the performance of the Master Association or Townhome Association's obligations and each Owner's respective obligations under this Townhome Declaration.

**ARTICLE 5**  
**THE TOWNHOME ASSOCIATION; ORGANIZATION;**  
**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**5.1 Formation of Townhome Association.** The Townhome Association shall be a nonprofit Utah corporation charged with the duties and vested with the powers prescribed by law and set forth in the Townhome Project Documents.

**5.2 Registration with the Department of Commerce.** The Townhome Association shall register with the Department of Commerce within ninety (90) days of the Recordation of this Townhome Declaration. Within ninety (90) days after a change of any information provided in the Townhome Association's registration with the Department of Commerce, the Board shall submit an updated registration in the manner established by the Department of Commerce and the CAA.

**5.3 Governing Board and Officers.** The affairs of the Townhome Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Townhome Project Documents specifically require the vote or written consent of the Townhome Association Members, approvals or actions to be given or taken by the Townhome Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Townhome Association and the Townhome Common Areas; the Board shall determine the compensation to be paid to any such manager. The initial number of directors on the Board shall be at least three (3) and, until the rights of Declarant under Section 2.17 are terminated, all directors, unless Declarant otherwise agrees in writing, will be appointed by Declarant. If the Declarant relinquishes its right to appoint the directors of the Board or its right to do so is otherwise terminated in accordance with the provisions of Section 2.17, the Board at the time of such relinquishment or termination shall continue in office until the next special or annual meeting of Owners who shall then have authority to elect a new Board in accordance with the Townhome Bylaws. Moreover, the terms of the directors of the Board, the filling of Board vacancies and similar operational matters of the Board shall be conducted in accordance with the Townhome Bylaws.

**5.4 Townhome Association Rules.** The Board may, from time to time, and subject to the provisions of this Townhome Declaration, adopt, amend and repeal the Townhome Association Rules which generally pertain to: (i) the management, operation and use of the Townhome Common Areas; (ii) traffic and parking restrictions including speed limits on the private street within the Project; (iii) minimum standards for any maintenance of Townhome Common Areas, Lots, Townhomes and Improvements within the Project; or (iv) any other subject within the jurisdiction of the Townhome Association. Townhome Association Rules must comply with the limitations set forth in the CAA. In the event of any conflict or inconsistency between the provisions of this Townhome Declaration and the Townhome Association Rules, the provisions of this Townhome Declaration shall prevail.

**5.4.1 Enforcement of Townhome Project Documents.** All Owners, Occupants, guests, and persons under Owner's control, shall strictly comply with the provisions of this Townhome Declaration, the Bylaws, the Townhome Association Rules and all other

Townhome Project Documents and decisions issued pursuant thereto. The Townhome Association and any aggrieved Owner shall have a right of action against Owners, Occupants and guests who fail to comply with provisions of the Townhome Project Documents or the decisions of the Townhome Association. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Board, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; (ii) suspension of the Owner's voting rights; and/or (iii) the Board to impose monetary penalties, temporary suspensions of an Owner's right to the use of the Townhome Common Areas, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Board shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Board. The Board may delegate to the property manager, the power and authority to carry out disciplinary actions duly imposed.

**5.4.2 Imposition of Fines.** Pursuant to the CAA, as amended, the Board may assess a fine against an Owner or Occupant for a violation of the Townhome Project Documents by such Owner, Occupant and/or his, her or its guests. Before assessing a fine under this Section 5.4.2, the Board shall (i) notify the Owner or Occupant of the violation; and (ii) inform the Owner or Occupant that a fine will be imposed if the violation is not remedied within the time provided in the Townhome Association Rules, which shall be at least forty eight (48) hours. Unpaid fines may be collected as an unpaid Assessment as set forth in this Townhome Declaration or under Utah law. A fine assessed under this Section 5.4.2 shall:

5.4.2.1 be made only for a violation of a rule, covenant, condition, or restriction that is specifically listed in the Townhome Project Documents;

5.4.2.2 be in the amount specifically provided for in the Townhome Project Documents for that specific type of violation or in an amount commensurate with the nature of the violation; and

5.4.2.3 accrue interest and late fees as provided in this Townhome Declaration for the payment of delinquent Assessments.

**5.5 Hearing.** An Owner or Occupant who is assessed a fine under Section 5.4.2 may request an informal hearing to protest or dispute the fine within 14 days from the date the fine is assessed. A hearing requested under this Section 5.5 shall be conducted in accordance with standards provided in the Townhome Bylaws. No interest or late fees may accrue until after the hearing has been conducted and a final decision by the Board has been rendered.

**5.6 Personal Liability.** No member of the Board, the Design Review Committee, or any other committee of the Townhome Association, no officer of the Townhome Association and no manager or other employee of the Townhome Association shall be personally liable to any Townhome Association Member, or to any other Person including the Townhome Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or

negligence of the Townhome Association, the Board or any member thereof, the manager, any representative or employee of the Townhome Association, any officer of the Townhome Association or any member of any other committee of the Townhome Association; provided, however, the limitations set forth in this Section shall not apply to any person who has engaged in intentional misconduct.

**5.7 Borrowing Power.** The Townhome Association may borrow money in accordance with the Bylaws in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate as determined by the Board without a vote of the Townhome Association Members. The Townhome Association may secure such loans by pledging any of its properties including future Assessments and by granting interests in the Townhome Common Areas to secure such loans.

**5.8 Express and Implied Rights.** The Townhome Association may exercise any expressed or implied right or privilege given to the Townhome Association expressly by the Townhome Project Documents or any other right or privilege reasonably necessary to effectuate any such right or privilege. In particular, subject to the rights of Declarant described in this Townhome Declaration, the business, property and affairs of the Townhome Association shall be managed, operated, and maintained by the Board and by any manager it may designate and the Board, acting for and on behalf of the Townhome Association, shall have, and is hereby granted, the following specific authority and powers:

5.8.1 Without the vote or consent of the Owners or any other persons, the Board may grant or create, to the extent permitted by law and on such conditions as it deems advisable, utility and similar easements and rights of way, over, under, across and through the Townhome Common Areas;

5.8.2 The Board may execute and record, on behalf of all Owners, any amendment to the Declaration or Plat which has been approved by any vote or consent necessary to authorize such amendment;

5.8.3 The Board shall have the authority to enforce this Townhome Declaration on behalf of the Townhome Association and its Townhome Association Members;

5.8.4 The Board shall have the authority to prepare and administer an operational budget, collect Assessments, pay the Common Expenses, and open bank accounts for the funds held by the Townhome Association;

5.8.5 The Board shall have authority to enter into contracts, deeds, leases, and other written instruments which in any way concern the Project on behalf of the Townhome Association, so long as any vote or consent of the Owners which may be necessitated by the subject matter of the agreement has been obtained;

5.8.6 The Board may add any interest in real property obtained pursuant to Section 5.9 to the Project, so long as such action has been authorized by any necessary vote or consent of the Owners and Declarant;

5.8.7 The Board may adopt Townhome Bylaws of the Townhome Association;

5.8.8 The Board may promulgate, from time to time, such reasonable rules, regulations, and procedures as may be necessary or desirable to aid in carrying out the Townhome Association's functions and/or to govern the reasonable use, maintenance, and operation of the Project;

5.8.9 The Board, to the extent the following are not an obligation of an Owner or the Master Association, shall have the obligation and authority to maintain, repair, replace, restore, operate, and manage the Townhome Common Area, private roads, landscaped areas, concrete improvements, fences, covered porches and courtyards, and driveways located on a Lot, and any property that may be acquired by the Townhome Association, to appoint a manager in regard to such activities, and to establish an adequate reserve fund for repair, replacement, and restoration thereof;

5.8.10 The Board may enter into a property management agreement with any Person, including Declarant or any Declarant Affiliate, and may engage the services of accountants, attorneys or other employees or agents and pay said persons a reasonable compensation therefor;

5.8.11 The Board may bring, prosecute, and settle litigation for itself, the Townhome Association, and its members;

5.8.12 The Board shall have authority to secure fidelity bond coverage and such other policy or policies of insurance as the Board deems necessary or desirable in protecting the interests of the Townhome Association and the Owners; and

5.8.13 The Board may perform any other acts and may enter into any other transactions which are permitted by the Bylaws, which may be deemed reasonably necessary by the Board for the Board to perform its function, and which Utah law shall permit.

**5.9 Acceptance and Control of Townhome Association Property.** The Board shall have authority to purchase, otherwise acquire, and accept title to, in the name of the Townhome Association, any personal property and/or interest in real property, and to convey or transfer any interest in real property, so long as such action has been authorized by any vote or consent of the Owners which may be necessary under the circumstances. Declarant or its designees may transfer to the Townhome Association, and the Townhome Association shall accept, personal property and/or fee title or other property interests in any improved or unimproved real property included with the Project. Prior to or immediately after the expiration of Declarant's control of the Townhome Association, the Townhome Association shall execute and deliver to Declarant a transition agreement or such similar instrument which shall contain such terms and conditions that Declarant deems is reasonable to effectuate transition of control of the Townhome Association, as Declarant may determine in its sole and exclusive discretion.

**5.10 Membership in the Townhome Association.** Every Owner, including Declarant, shall be a member of the Townhome Association, and the Declarant shall be a member of the Townhome Association so long as it owns any Lot, Townhome, or part of the Project (unless and

until the Declarant expressly relinquishes in writing its status as a Townhome Association Member).

**5.11 Votes in the Townhome Association.** The Townhome Association shall have two classes of Townhome Association Memberships which shall be entitled to the following voting rights:

5.11.1 **Class A.** Each Owner of a Lot shall be a Class A Member of the Townhome Association and each Owner is allotted one (1) vote per Lot owned. Each Class A membership in the Townhome Association shall be held jointly by all Owners of that Lot.

5.11.2 **Class B.** Declarant shall be a Class B Member of the Townhome Association and shall be entitled to three (3) votes for each Lot held by Declarant as an Owner of a Lot.

**5.12 Voting Procedures.** A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded, or, in connection with Owners who are vendees, upon the execution of the installment purchase contract. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provided satisfactory evidence thereof. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Townhome Association Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular Lot, the vote for that Lot shall be deemed void and shall not be counted.

**5.13 Transfer of Townhome Association Membership.** The voting rights and assessment obligations of any Townhome Association Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Townhome Association Membership appurtenant to said Lot to the new Owner thereof. No Owner may transfer a Lot's undivided interest in the Townhome Common Areas separate from a transfer of title to the Lot. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his, her or its name to the purchaser of such Lot upon transfer of fee title thereto, the Board shall have the right, but not the obligation, to record the transfer upon the books of the Townhome Association. All transfers shall be subject to the transfer fee described in Section 6.15.

## ARTICLE 6

### COVENANT FOR ASSESSMENTS

**6.1 Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Townhome Association in accordance with this Townhome Declaration. All Assessments shall be established and collected as provided in this Townhome Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorney's fees, incurred by the Townhome Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorney's fees, incurred by the Townhome Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title), but the lien created by this Townhome Declaration against the applicable Lot shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges) until the same are fully paid.

**6.2 Annual Assessment.** In order to provide for the operation and management of the Townhome Association and to provide funds for the Townhome Association to pay all Common Expenses and to perform its duties and obligations under the Townhome Project Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each fiscal year shall assess an Annual Assessment against each Lot. Annual Assessments shall be computed and assessed against all Lots in the Project as follows:

**6.2.1 Common Expense.** Annual Assessments shall be based upon advance estimates of the Townhome Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Townhome Common Areas, including all Master Association Maintenance Areas, and furnishing common utility services and other common items to the Townhomes. Such estimated expenses may include, without limitation, the following: landscaping costs, management expenses; real property taxes on the Townhome Common Areas; premiums for all insurance that the Townhome Association is required or permitted to maintain hereunder; repairs and maintenance; Master Association Assessments, wages of Townhome Association employees, including fees for a manager; utility charges, including charges for utility services to the Townhome Common Areas; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Townhome Common Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Townhome Association for the benefit of the Owners under or by reason of this Townhome

Declaration. Such shall constitute the Common Expenses, and all funds received from assessments under this Section shall be part of the common expense fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the common expense fund;

6.2.2 Apportionment. Common Expenses shall be equally apportioned among and assessed to all Townhome Association Members. Each Owner, for each Lot that he, she or it owns, shall be liable for a 1/34<sup>th</sup> equal share of the Common Expenses, or such other fraction corresponding to an equal share for the then current number of Lots following the Recordation of a Supplemental Declaration annexing Additional Land into the Project;

6.2.3 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of this Townhome Declaration, and, on or before December 1 of each year thereafter fiscal year. The Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating fiscal year. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year;

6.2.4 Budget Approval. The Board shall present the adopted budget to the Townhome Association Members for their approval at a meeting of the Townhome Association ("Budget Meeting"), which may be the same as the annual meeting of the Townhome Association Members. A budget is disapproved if within forty-five (45) days of the Budget Meeting there is a vote of disapproval by at least fifty-one percent (51%) of the total votes of all the Townhome Association Members at a special meeting subsequent to the Budget Meeting called for that purpose by the Townhome Association Members pursuant to this Townhome Declaration. If the budget is disapproved, the budget the Board last adopted that was not disapproved by the Townhome Association Members continues as the budget for the Townhome Association unless and until the Board presents another budget to the Townhome Association Members and that budget is not disapproved; provided, the Townhome Association Members may not disapprove a budget during the period of Declarant control described in Section 2.17 above;

6.2.5 Notice and Payment. Beginning after the closing of a sale of the first Lot, the Board shall give notice of the Annual Assessment to each Owner at least ten (10) days prior to the beginning of each fiscal year, but the failure to give prior notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that fiscal year are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Townhome Association Members, it may increase the Annual Assessment for that fiscal year and the revised Annual Assessment shall commence on the date designated by the Board.

6.2.6 Effective Date of Assessments. Any Assessment created pursuant hereto shall be effective, provided it is created as provided herein, if Notice (as defined below) of the amount thereof is sent by the Board to the Owner subject thereto at least ten (10) days prior to the due date thereof as described in Section 6.2.5 above, or, if it is to be paid in installments, the due date of the first installment thereof. Written notice mailed, emailed or delivered to an Owner's Townhome shall constitute notice to that Owner, unless the Owner has delivered written notice to the Board of a different address for such notices, in which event the transmission of the same to that last designated address shall constitute notice to that Owner.

6.3 Special Assessments. The Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be levied against each Lot and to each Townhome Association Member associated therewith, and shall be payable in such manner and at such times, including installments over time, as the Board may determine. The Board may levy Special Assessments for any reason permitted by the Townhome Project Documents or applicable law, as it shall determine in its sole and exclusive discretion, including without limitation Special Assessments for any purpose including defraying, in whole or in part, the cost of any design, permitting, construction, reconstruction, repair, and replacement of a capital improvement of or upon the Townhome Common Areas, including fixtures and personal property related thereto, which shall be the responsibility of the Master Association, except with respect to repairs or replacement resulting from a casualty as further provided in Section 9.5 below.

6.4 Specific Assessments. Specific Assessments levied by the Townhome Association shall be levied against a particular Lot or Townhome and to each Townhome Association Member associated therewith, to cover costs, including overhead and, administrative costs, for:

6.4.1 Providing particular services, items, or benefits to a Lot, Townhome or Improvement at the request of the Owner thereof or Townhome Association Member associated therewith pursuant to a list of special services which the Board may authorize from time to time including, without limitation, landscape maintenance, and handyman services, and which Assessments may be levied in advance of providing such special services;

6.4.2 Enforcing any provision of the Townhome Project Documents, including the Townhome Declaration against any Townhome Association Member or Owner, or of bringing any Lot, Townhome or Improvement into compliance with such requirements; and

6.4.3 Maintenance, repairs, or replacements of or within the Townhome Common Areas arising out of or caused by the willful or negligent act or omission of a Townhome Association Member or an Owner or the Owner's guests.

## 6.5 Reserves.

6.5.1 Use of Reserve Funds. The Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of

major components of the Townhome Common Areas for which the Townhome Association is responsible and for which the reserve fund was established or for litigation involving such matters. Furthermore, the Board shall not use money in a reserve fund for daily maintenance expenses, unless a majority of the Townhome Association Members vote to approve the use of the reserve fund money for that purpose. Upon the approval of a majority of the Townhome Association Members, the Board may authorize the temporary transfer of money from the reserve account to the Townhome Association's operating account from time to time to meet short-term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Townhome Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Board may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Townhome Association, delay such restoration until the time it reasonably determines to be necessary. The Board shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Assessment shall not be subject to the limitations set forth in Sections 6.5.4.

**6.5.2 Reserve Analysis.** At least once every six (6) years the Board shall cause a reserve analysis to be conducted of the reserve account of the Townhome Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter, review the reserve account study at least every three (3) years and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve analysis shall include, at a minimum:

6.5.2.1 Identification of the major components which the Townhome Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of no fewer than three (3) years but less than thirty (30) years that will reasonably require reserve funds;

6.5.2.2 Identification of the probable remaining useful life of the components identified in subparagraph 6.5.2.1 above, as of the date of the study;

6.5.2.3 An estimate of the cost of repair, replacement, and restoration of each major component identified;

6.5.2.4 An estimate of the total annual contribution to reserve funds necessary to meet the cost to repair, replace, or restore each major component during and at the end of its useful life; and

6.5.2.5 A reserve funding plan that recommends how the Townhome Association may fund the annual contribution described in Section 6.5.2.4.

**6.5.3 Providing Reserve Analysis to Owners.** Each year the Townhome Association shall provide a summary of the most recent reserve analysis, including any updates, to each Owner. Owners may receive a complete copy of the reserve analysis upon

a request submitted to the Board. During the period of Declarant control described in Section 2.17 above, Declarant shall provide to each purchaser of a Lot a copy of the Townhome Association's most recent financial statement that includes any reserve funds held by the Townhome Association.

**6.5.4 Reserve Fund Line Item.** The Townhome Association's budget shall include a reserve fund line item as determined by the Board, based on the reserve analysis and the amount the Board determines is prudent under the circumstances. Within forty-five (45) days after the day on which the Townhome Association adopts its budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote at a special meeting called by the Owners for the purpose of voting whether to veto the reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved budget of the Townhome Association that was not vetoed, the Townhome Association shall fund the reserve account in accordance with that prior reserve fund line item.

## **6.6 Master Association Assessments.**

**6.6.1 Master Declaration.** The Project is encumbered by, and is entitled to receive the benefits arising under, the Master Declaration. The Master Declaration permits certain development rights with respect to, and imposes certain land use and other restrictions on, the Project. The development, construction, reconstruction, ownership and use of the Project must comply with the terms and requirements of the Master Declaration.

**6.6.2 Master Association Assessments.** The Master Declaration grants certain easements and other rights that benefit the Project and imposes certain obligations on the Master Association for maintenance within the Project. The Master Association also imposes certain assessments and fees on the ownership, use, and transfer of the Lots. Each Owner by accepting a deed or conveyance to a Lot agrees to be bound by all of the terms and provisions of the Master Declaration and agrees to pay, as and when due, its applicable assessments, costs and fees arising under the Master Declaration. The Master Association shall levy certain Assessments against the Townhome Association and each Owner hereby agrees to pay its pro rata share of the Assessments levied by the Master Association against the Townhome Association and shall be included in the Common Expenses. The Townhome Association will remit these amounts to the Master Association as required by the Master Declaration.

**6.6.3 No Duty to Collect the Master Association Assessments.** Other than collecting and paying the Master Association Assessments as a part of the Assessments levied by the Townhome Association as described in Section 6.6.2 above, the Townhome Association has no responsibility, obligation or duty to collect or assess the Master Association Assessments. However, to the extent any Owner fails to pay its Master Association Assessments, the Townhome Association may, at its option, exercise all of the lien rights and other remedies contained in this Article 6 to collect any such delinquent Assessments.

**6.7 Working Capital Fund.** Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Townhome Declaration. The failure of the Townhome Association to send a bill to a Townhome Association Member shall not relieve any Townhome Association Member of his, her or its liability for any Assessment or charge under this Townhome Declaration. However, no Assessment Lien shall be foreclosed or otherwise enforced until the Townhome Association Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Townhome Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during a fiscal year; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

**6.8 Providing Payoff Information.** The Townhome Association may charge a reasonable fee (to be paid after closing) for providing payoff information needed in connection with the closing of an Owner's financing, refinancing, or sale of a Lot. The Board shall provide payoff information within five (5) business days after the closing agent for a transaction requests such information.

**6.9 Declarant and Declarant Affiliate Subsidy.** Notwithstanding any other provision of this Townhome Declaration to the contrary, prior to its transfer of control of the Townhome Association pursuant to Section 2.17 above, Declarant reserves for itself and all Declarant Affiliates (collectively referenced as the "Subsidizing Party"), in its sole and exclusive discretion, the right to subsidize the Townhome Association (rather than paying a full assessment share for each Lot it owns) for the amount by which the actual cost and expense of operating and administering the Townhome Association and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies, all as provided in this Townhome Declaration, exceeds the total amount of Assessments levied against and collected from Owners other than the Subsidizing Party. The subsidy required of the Subsidizing Party under this Section may be in the form of cash or in the form of "in-kind" contributions of goods or services, provided that "in-kind" contributions of goods or services must directly reduce the Townhome Association's costs and expenses for which an Assessment is being levied. The Subsidizing Party shall make payments or contributions in respect to its subsidy obligations under this Section at such time as the Board may reasonably request from time to time as necessary to ensure that there are sufficient funds available for payment of Townhome Association costs and expenses and accumulation of adequate reserves (but in any event not more often than monthly). At the end of each fiscal year, either (i) the Subsidizing Party shall pay or contribute to the Townhome Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by the Subsidizing Party during such fiscal year, to satisfy in full the Subsidizing Party's subsidy obligations under this Section for such fiscal year; or (ii) the Townhome Association shall pay to the Subsidizing Party or credit against the Subsidizing Party's subsidy obligation for the immediately following fiscal year, as the Subsidizing Party may elect, the amount, if any, by which the total of all payments or contributions paid or made by the Subsidizing Party during such fiscal year exceeded the total subsidy obligation of the Subsidizing

Party for such fiscal year under this Section. Within thirty (30) days of the end of each fiscal year, the Board shall make an accounting of the Subsidizing Party's subsidy obligations for that period, what amounts have been paid by the Subsidizing Party (in cash, goods or services) with respect to such obligations, and what amounts are due. A copy of the accounting shall be made available for review by Townhome Association Members upon request. Subsequent to Declarant's transfer of control of the Townhome Association pursuant to Section 2.17 above, the Subsidizing Party shall pay twenty-five percent (25%) of the Annual Assessment attributable to each Lot which it owns until completion and sale of the Townhome on such Lot to an unrelated third-party Owner. Subsequent to the Subsidizing Party's sale, conveyance and/or transfer of a Lot to a third-party Owner, such Owner shall pay the full Assessment attributable to such Lot for that remaining portion of the year during which he, she or it owes.

**6.10 Encumbrances.** Any encumbrancer holding a lien on a Lot may pay any amounts secured by the Assessment Lien created by this Article 6, and upon such payment such encumbrancer shall be subrogated to all rights of the Townhome Association with respect to such lien, including priority.

**6.11 Effect of Conveyance.** In any voluntary conveyance, except to a First Mortgagee in lieu of foreclosure of the First Mortgage, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid Assessments against the Lot for his, her or its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board setting forth the amounts of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth.

**6.12 Statement of Account.** Upon payment of a reasonable fee and upon written request of any Owner or any lien holder, prospective lien holder, or prospective purchaser of a Lot, the Board shall issue, within twenty (20) days following such request, a written statement setting forth: (i) the amount of the unpaid Assessments, if any, with respect to such Lot; (ii) the amount of the current yearly Annual Assessment and the date that such Assessment becomes or became due, and (iii) any credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Townhome Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days following a written request, all unpaid Assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid Assessments and the personal obligation of the purchaser shall be released automatically if: (i) the statement is not furnished within such twenty (20) day period and (ii) the purchaser subsequently acquires the Lot.

**6.13 Purposes for Which Townhome Association's Funds May be Used.** The Townhome Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction,

alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all roads, land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Townhome Association may seek to aid, promote and provide for such common benefit: social interaction among Townhome Association Members and Occupants, maintenance of landscaping on Townhome Common Areas and public right-of-way and drainage areas within the Project, construction, operation and maintenance of recreational and other facilities on Townhome Common Areas, recreation, insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Townhome Association, employment of professional managers, hiring professional consultants such as architects, engineers, attorneys and accountants, and pledging future Assessments as collateral to secure Townhome Association financing.

6.14 **Surplus Funds.** The Townhome Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Townhome Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Townhome 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 Townhome Association and the accomplishment of its purposes.

6.15 **Transfer Fee.** Each purchaser of a Lot or Townhome within the Project, other than a purchaser initially purchasing a Lot or Townhome directly from Declarant, shall pay to the Townhome Association at closing a reinvestment fee ("Reinvestment Fee") immediately upon becoming the Owner of the Lot or Townhome in such amount as is established from time to time by Declarant or the Board, subject to applicable law, including Utah Code Ann. §57-1-46. The purpose of the Reinvestment Fee is to reimburse the Townhome Association for costs incurred by the Townhome Association in connection with transfer of title to such new Owner, for the payment of Common Expenses and reserves, and any other authorized use of such funds. Currently, the Reinvestment Fee is equivalent to three (3) months of the then current Assessments for such Lot or Townhome (unless otherwise determined by the Board). In no event shall the Reinvestment Fee exceed the maximum amount permitted by applicable law, including Utah Code Annotated §57-1-46. Nothing in this Section shall be interpreted as a restriction, limitation, or cap on the amount of Assessments that may be levied by the Townhome Association. Should the amount of three (3) months of Assessments ever exceed the reinvestment fee amount permitted by applicable law, the Reinvestment Fee will automatically be reduced to the maximum amount permitted by applicable law. Declarant or the Board shall have the right to collect and enforce the payment of the Reinvestment Fee in the same manner as enforcement and collection of delinquent Assessments as further described in this Townhome Declaration. In the event that the Reinvestment Fee is not paid at closing to the Townhome Association, then Declarant or the Board shall have the right to impose a charge against the new Owner of the Lot or Townhome in an amount as determined by the Board from time to time in its sole and subjective discretion.

6.16 **Notice for Meetings to Consider Special Assessments.** All written notices of any meeting called for the purpose of approving the establishment of any Special Assessment shall be sent to all Townhome Association Members in accordance with the time periods and provisions set forth in the Bylaws.

6.17 **Special Service Districts.** In connection with the development of the Project and other developments within Wasatch County, Special Service Districts have been or will be formed in order to provide the Project with various services and facilities including but not limited to waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for non-standard street lights, culinary water and facilities including pumping stations, snowplowing and school bus stop shelters. The Special Service Districts have or will have the power, among other things, to contract, to acquire and construct facilities and to finance the cost thereof by the issuance of bonds and to establish rates and charges that enable the Special Service Districts to operate such facilities as are necessary to fulfill its purposes. Each Owner hereby agrees and acknowledges that the Project is a part of certain Special Service Districts, and may become a part of future Special Service Districts, and that Special Service Districts have or shall have the right and authority to levy taxes, charges and/or assessments upon owners of taxable property within such Special Service Districts. Each Owner will be subject to all charges levied by such Special Service Districts and will pay such charges directly to the same. All charges levied by such Special Service Districts against owners of taxable property are and shall be the personal and individual obligation of each Owner, and such charges do not constitute a Common Expense. Each Owner hereby agrees and acknowledges that it shall pay his, her or its proportionate share of the Special Service District assessments currently allocated to the Project, as determined by the Declarant (during the or Declarant Control Period) or the Board following termination of the Declarant Control Period in its sole and absolute discretion.

## ARTICLE 7

### ENFORCEMENT OF PAYMENT OF ASSESSMENTS

7.1 **Townhome Association as Enforcing Body.** The Townhome Association, as the agent and representative of the Townhome Association Members, shall have the exclusive right to enforce the provisions of this Townhome Declaration. However, if the Townhome Association shall fail or refuse to enforce this Townhome Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Townhome Association Member may enforce them at his, her or its own expense by any appropriate action, whether in law or in equity.

#### 7.2 **Effect of Nonpayment of Assessments; Assessment Lien.**

7.2.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due.

7.2.2 If any installment of an Assessment assessed by the Board is not paid within thirty (30) days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

7.2.3 The Townhome Association shall have a lien on each Lot for all Assessments levied against the Lot and for all other fees and charges payable to the Townhome Association by the Owner of the Lot pursuant to this Townhome Declaration. Recording of this Townhome Declaration constitutes record notice and perfection of the Assessment Lien. The Board may, at its option, Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Townhome Association, the legal description of the Lot against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees and reasonable attorneys' fees.

7.2.4 The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes; (ii) assessments in favor of any Municipal Authority or assessment district; and (iii) the lien of any First Mortgage as provided in this Section 7.2.4. The lien of the Assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed First Mortgage on a Lot recorded prior to the date on which such lien of the Townhome Association is recorded and any holder of such First Mortgage which comes into possession of a Lot pursuant to the remedies provided in the First Mortgage, foreclosure of the First Mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid installments of assessments and charges against the Lot which (i) are so subordinate to such First Mortgage and (ii) became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor Owner by virtue of such process. The foregoing will not relieve any successor Owner from the obligation for Assessments accruing thereafter.

7.2.5 The Board shall not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Townhome Association by the Owner of the Lot have been paid in full.

7.3 **Townhome Association's Remedies to Enforce Payment of Assessments.** If any Townhome Association Member fails to pay the Annual, Specific Assessment or Special Assessments or installments of such when due, the Townhome Association may enforce the payment of the Annual, Specific Assessments, Special Assessments, and/or Assessment Lien by taking one or more of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Townhome Association does not prejudice or waive its right to exercise the other remedy):

7.3.1 Bring an action at law and recover judgment against the Townhome Association Member personally obligated to pay the Annual or Special Assessments.

7.3.2 Foreclose the Assessment Lien against each Lot in accordance with then prevailing Utah law relating to the foreclosure of mortgages or deeds of trust (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Title 38, Chapter 1a, Utah Code Ann., or any other means permitted by law, and the Lot may be redeemed after foreclosure sale if provided by law.

7.3.3 Notwithstanding subordination of an Assessment Lien as described in Section 10.3, the delinquent Owner shall remain personally liable for the Assessments and related costs after his, her or its membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

7.4 **Foreclosure.** Any foreclosure pursuant to Section 7.3.2 above shall be conducted in accordance with the following procedures:

7.4.1 Scope of Lien. In any foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Townhome Association any Assessments against the Lot which shall become due during the period of foreclosure, and all such amounts shall be secured by the lien being foreclosed.

7.4.2 Trustee. The Declarant, Townhome Association, and each Owner hereby convey and warrant pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302 to Coalition Title Agency, with power of sale, the Lots, Townhomes, and all Improvements for the purpose of securing payment of Assessments under the terms of this Townhome Declaration. Provided, however, the Townhome Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code Ann. The Townhome Association may, through its duly authorized agents, bid on the Lot at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The trustee appointed hereunder, and any successors, shall not have any other right, title or interest in the Project beyond those rights and interests necessary and appropriate to foreclose any liens against Lots arising pursuant hereto.

7.4.3 Nonjudicial Foreclosure. At least thirty (30) calendar days before initiating a nonjudicial foreclosure, the Townhome Association shall provide notice ("Foreclosure Notice") to the Owner that is the intended subject of the nonjudicial foreclosure. The Foreclosure Notice shall: (i) notify the Owner that the Townhome Association intends to pursue nonjudicial foreclosure with respect to the Owner to enforce the Townhome Association's lien for unpaid assessments; (ii) notify the Owner of the Owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure; (iii) be sent to the Owner by certified mail, return receipt requested and be included with other Townhome Association correspondence to the Owner; and (iv) be in substantially the following form:

**NOTICE OF NONJUDICIAL FORECLOSURE  
AND RIGHT TO DEMAND JUDICIAL  
FORECLOSURE**

The Mayflower Lakeside Townhomes Phase 2A Owners Association, Inc., a Utah nonprofit corporation (the “Townhome Association”), the Townhome Association for the project in which your Lot is located, intends to foreclose upon your Lot and allocated interest in the common areas using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the Townhome Association’s lien against your Lot and to collect the amount of an unpaid assessment against your Lot, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the Townhome Association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that “I demand a judicial foreclosure proceeding upon my Lot,” or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 15 days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand attention to: MAYFLOWER LAKESIDE DEVELOPMENT, LLC, 7135 S. HIGHLAND DRIVE, SUITE 203, SALT LAKE CITY, UTAH 84121.

7.4.4 Demand for Judicial Foreclosure. The Townhome Association may not use a nonjudicial foreclosure to enforce a lien if an Owner mails the Townhome Association a written demand for judicial foreclosure: (i) by U.S. mail, certified with a return receipt requested; (ii) to the address stated in the Foreclosure Notice; and (iii) within fifteen (15) days after the date of the postmark on the envelope of the Foreclosure Notice.

7.5 Subordination of Assessment Lien to First Mortgage; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any First Mortgage and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as otherwise provided herein, the Assessment Lien shall be

superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a First Mortgage to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust of sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; provided, however, that such First Mortgage foreclosure sale purchaser or grantee shall take subject to all Assessments and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

**7.6 Termination of Delinquent Owner's Rights.** The Board may terminate a Delinquent Owner's (defined below) right to vote in the Townhome Association and access to and use of recreational facilities within the Project, except for ingress and egress (together the "Owner's Rights"). Before terminating the Owner's Rights, the Board shall give the Delinquent Owner notice ("Notice of Delinquency") of such termination. The Notice of Delinquency shall state: (i) that the Townhome Association will terminate any of the Owner's Rights, if the Townhome Association does not receive payment of the assessment owed to the Townhome Association within fourteen (14) days after the Delinquent Owner receives the Notice of Delinquency; (ii) the amount of the Assessments due, including any interest or late payment fee; and (iii) the Owner's right to request a hearing. A Delinquent Owner may submit a written request to the Board for an informal hearing to dispute the amounts due. Such request shall be submitted within fourteen (14) days after the date the Delinquent Owner receives the Notice of Delinquency. The Board shall conduct the informal hearing in accordance with the standards provided in the Bylaws. If a Delinquent Owner requests a hearing, the Townhome Association may not terminate the Owner's Rights until after the Board conducts the hearing and enters a final decision. If the Townhome Association terminates the Owner's Rights, the Townhome Association shall take immediate action to reinstate the service or right following the Owner's payment of the Assessments, including any interest, late payment fee or other charges. The Townhome Association may assess an Owner for the cost associated with reinstating a utility service that the Townhome Association terminates and demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in the Notice of Delinquency. As used in this Section, "Delinquent Owner" means an Owner who fails to pay an Assessment or other amounts owed to the Townhome Association when due.

**7.7 Leased Townhomes.** If an Owner fails to pay Assessments or other amounts due under this Townhome Declaration for a period of more than sixty (60) days after such amounts are due and payable, the Townhome Association may require a Tenant (defined below) under a Lease (defined below) with an Owner to pay the Townhome Association all future Lease payments due to the Owner beginning with the next monthly or periodic payment due from the Tenant and until the Townhome Association is paid the Amount Owing (defined below), in accordance with the procedure set forth below.

**7.7.1 Notice to Owner.** Before requiring a Tenant to pay Lease payments to the Townhome Association, the Board shall give the Owner notice ("Notice to Landlord"), which notice shall state: (i) the amounts due, including any interest, late fee, collection cost, and attorney fees; (ii) that any costs of collection, including attorney fees, and other

assessments that become due may be added to the total amount due and be paid through the collection of Lease payments; and (iii) that the Townhome Association intends to demand payment of future Lease payments from the Owner's Tenant if the Owner does not pay the Amount Owing within fifteen (15) days.

**7.7.2 Notice to Tenant.** If an Owner fails to pay the Amount Owing within fifteen (15) days after the Board gives the Notice to Landlord, the Townhome Association may collect Lease payments by the Board delivering written notice to the Tenant of Owner ("Notice to Tenant"), which notice shall state that: (i) due to the Owner's failure to pay an assessment within the required time, the Board has notified the Owner of the Townhome Association's intent to collect all Lease payments until the Amount Owing is paid; (ii) the law requires the Tenant to make all future Lease payments, beginning with the next monthly or other periodic payment, to the Townhome Association, until the Amount Owing is paid; and (iii) the Tenant's payment of Lease payments to the Townhome Association does not constitute a default under the terms of the Lease with the Owner. The Board shall mail a copy of the Notice to Tenant to the Owner.

**7.7.3 Payments to Townhome Association and Credit under Lease.** A Tenant to whom the Notice to Tenant has been given shall pay to the Townhome Association all future Lease payments as they become due and owing to the Owner: (i) beginning with the next monthly or other periodic payment after the Notice to Tenant is delivered to the Tenant; and (ii) until the Townhome Association notifies the Tenant that the Amount Owing is paid. An Owner shall credit each payment that the Tenant makes to the Townhome Association under this Section against any obligation that the Tenant owes to the Owner as though the Tenant made the payment to the Owner. An Owner may not initiate a suit or other action against a Tenant for failure to make a Lease payment that the Tenant pays to the Townhome Association as required under this Section. Within five (5) business days after the Amount Owing is paid, the Board shall notify the Tenant in writing (and mail a copy thereof to the Owner) that the Tenant is no longer required to pay future Lease payments to the Townhome Association. The Board shall deposit money paid to the Townhome Association under this Section in a separate account and disburse that money to the Townhome Association until the Amount Owing is paid and any cost of administration, not to exceed the maximum amount set forth in the CAA (if any) is paid. The Townhome Association shall, within five (5) business days after the Amount Owing is paid, pay to the Owner any remaining balance.

**7.7.4 Terms.** As used in this Section "Amount Owing" means the total of any assessment or obligation under this Townhome Declaration that is due and owing together with any applicable interest, late fee, and cost of collection; "Lease" means an arrangement under which a Tenant occupies a Townhome in exchange for the Owner receiving a consideration or benefit, including a fee, service, gratuity, or other compensation; and "Tenant" means a person, other than the Owner, who has regular, exclusive occupancy of an Owner's Townhome.

**7.8 One-Action Rule Not Applicable; Abandonment of Enforcement Proceeding.** §78B-6-901, Utah Code Ann., does not apply to the Townhome Association's judicial or nonjudicial foreclosure of a Lot under this Article 7. The Townhome Association may abandon a

judicial foreclosure, nonjudicial foreclosure, or sheriff's sale and initiate a separate action or another judicial foreclosure, nonjudicial foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial foreclosure, or sheriff's sale is not complete.

**7.9 Costs and Attorney Fees in Enforcement Action.** A court entering a judgment or decree in a judicial action brought under this part shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the Townhome Association is the prevailing party, any costs and reasonable attorney fees that the Townhome Association incurs collecting the judgment. In a nonjudicial foreclosure, the Townhome Association may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the amount due, including the costs of preparing, recording, and foreclosing the Assessment Lien.

**7.10 Action to Recover Unpaid Assessment.** The Townhome Association need not pursue a judicial foreclosure or nonjudicial foreclosure to collect an unpaid assessment but may file an action to recover a money judgment for the unpaid assessment without waiving the Assessment Lien.

## ARTICLE 8 MAINTENANCE

### 8.1 **Townhome Common Areas and Public Right of Way.**

8.1.1 The Master Association, or its duly delegated representative, shall manage, maintain, repair and replace the Townhome Common Areas and all Improvements located thereon (subject to Section 8.1.3), except the Master Association may, but shall not be obligated to, maintain areas which any Municipal Authority or any utility company is maintaining or is obligated to maintain. Notwithstanding anything herein or on the Plat to the contrary, the Master Association has the responsibility, authority, and is hereby granted an easement for access to and maintenance of all Master Association Maintenance Areas, including areas on a Lot outside the footprint of each individual Townhome.

8.1.2 The Master Association shall be the sole judge as to the appropriate maintenance of all Townhome Common Areas and other properties maintained by the Master Association. In the event of any disagreement or uncertainty, the Master Association shall have the sole and exclusive power and authority to determine which real property and Improvements constitute Townhome Common Areas to be maintained by the Master Association, which determination shall be conclusive, final and not subject to appeal. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Master Association or by its duly delegated representative.

8.1.3 In the event of any deed restriction, the Plat or this Townhome Declaration permits the Master Association or the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Townhome Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants for the

Townhome Association or an individual Owner to be responsible for such maintenance, considering cause, cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Master Association may contract to provide maintenance service to Owners of Lots and Townhomes having such responsibilities in exchange for the payment of such fees as the Master Association and Owner may agree upon.

8.1.4 During the Declarant Control Period (as such term is defined in the Master Declaration), the Townhome Association may not elect to sell, convey, transfer or otherwise dispose of all or part of the Common Areas without the prior written approval of the Master Developer and the Design Review Committee. Thereafter, the Townhome Association may not elect to sell, convey, transfer or otherwise dispose of all or part of the Common Areas without a vote of sixty-seven percent (67%) of the Master Association, as well as consent by the Master Developer and the Design Review Committee.

8.2 **Townhome Limited Common Areas.** The Master Association, or its duly delegated representative, shall maintain, repair, replace and otherwise manage all Townhome Limited Common Areas which constitute a Master Association Maintenance Area pursuant to the same maintenance standards applicable to all Townhome Common Areas; provided however, Owners shall maintain any Townhome Limited Common Area related to arising from such Owner's obligation to maintain his or her Townhome, including, but not limited to, any decks, balconies or porches. In the event that the need for maintenance or repair of Townhome Limited Common Areas maintained by the Master Association is caused through the willful or negligent act of any Owner of a Lot, or any family, guests, invitees or tenants of such Persons, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Owner and the Owner's Lots is subject and shall be secured by the Assessment Lien.

8.3 **Lots and Townhomes.** Each Owner of a Lot shall be responsible for maintaining, repairing or replacing his, her or its Lot and Townhome, and all other Improvements situated thereon, including, but not limited to, all exterior elements of a Townhome, such as exterior doorways, windows, patios, balconies, decks, façade, rain gutters, shingles, roof, address signs and all other similar exterior improvements on the Townhomes situated upon a Lot, except for any portion of the Lot which is maintained by the Master Association in association with the Townhome Common Areas or the Master Association Maintenance Area. All Townhomes and other Improvements shall at all times be kept in good condition and repair. Landscaping shall be maintained as required by Section 8.4. All Lots upon which no Townhomes or other Improvements have been constructed shall be maintained in a weed free and attractive manner.

8.4 **Installation of Landscaping.** In order to maintain uniformity of appearance, the Townhome Association shall install (if not already installed) grass, trees, plants and other landscaping improvements (together with an irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements) as the Townhome Association deems appropriate, on all portions adjacent to the Lot for the benefit of the Owner. Such landscaping Improvements shall constitute Townhome Common Areas, and the cost of any such installation thereof shall be paid to the Townhome Association by the Owners as a part of the Annual Assessment upon demand and assessment from the Board. All landscaping must be installed in accordance with plans approved in writing by the Design Review Committee, and shall be subject to those certain approvals described in Section 3.4 above. Any amounts payable by an Owner to

the Townhome Association pursuant to this Section shall be secured by the Assessment Lien, and the Townhome Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Townhome Declaration for the collection and enforcement of Assessments. Following installation, maintenance shall be performed by the Master Association in accordance with Section 3.3 of the Master Declaration.

**8.5 Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of the Townhome Common Areas or any other area maintained by the Master Association or the Townhome Association is caused through the willful or negligent act of any Townhome Association Member, his, her or its family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Townhome Association Member and the Townhome Association Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Townhome Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

**8.6 Improper Maintenance and Use of Lots.** In the event any portion of any Lot or Townhome is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Townhome is being used in a manner which violates the Townhome Project Documents, or in the event the Owner of any Lot is failing to perform any of its obligations under the Townhome Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such corrective action as it deems appropriate to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

**8.7 Maintenance of Party Walls and Shared Roofs.** 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 good condition and repair to preserve the integrity of the Townhomes as they are used and occupied by the Owners. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Townhouse. With respect to pipes, conduits, ducts and other utility lines and connections which benefit only one of the Owners, the Owner benefited solely thereby shall be fully responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed. With respect to structural components of the Party Wall or a Shared Roof, except as may be otherwise provided in the immediately preceding sentence, the Owners agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary. With respect to a Shared Roof, the Owners agree that the maintenance and repair obligations herein include complete replacement thereof as necessary. In the event of a dispute between Adjoining Owners with respect to the

maintenance, repair, or replacement of a Party Wall or a Shared Roof, the Adjoining Owners shall immediately provide the Board with written notice of the dispute, which shall describe the dispute in detail. The Board will review the notice of dispute and may request additional information. Following review, the Board will issue a decision regarding the dispute, which shall be final and not subject to appeal. If the Party Wall or Shared Roof is destroyed or damaged by fire or other casualty, either Owner may restore it, and the other Adjoining Owner shall contribute one-half of the cost of restoration thereof; provided, however, that any such single maintenance or repair activity, including a replacement as necessary, which is expected to exceed Five Thousand Dollars (\$5,000.00) shall, except in an emergency, be undertaken only with the approval of the Board and both Owners, which approval shall not be unreasonably withheld, conditioned or delayed.

**8.8 Failure to Maintain Party Wall or Shared Roof.** If any Owner shall fail to comply with the provisions of this Townhome Declaration as to maintenance, repair, or use of the Party Wall or a Shared Roof, or the obtaining of insurance as set forth in Article 9 below, or other obligations contained herein ("Defaulting Owner"), then in any such event the Adjoining Owner shall have the right, upon thirty (30) days written notice to the Defaulting Owner (unless within such 30-day period the Defaulting Owner shall cure such default, or in the case of a nonmonetary default which by its nature cannot be cured within such 30-day period, the Defaulting Owner shall take such action as is reasonably calculated to commence the curing thereof, and thereafter shall diligently prosecute the curing thereof to completion) to proceed to take such action as shall be necessary to cure such default, all in the name of and for the account of the Defaulting Owner. The Defaulting Owner shall on demand reimburse the other Adjoining Owner taking such action for the monies actually expended by such Adjoining Owner and the Adjoining Owner's reasonable out-of-pocket expenses in so doing, together with interest thereon as set forth below from the date of demand to the date of payment. Notwithstanding the foregoing, if the nondefaulting Adjoining Owner shall in good faith deem that an emergency is occurring or has occurred, so that the default requires immediate curing, then no notice shall be required and the nondefaulting Adjoining Owner may act promptly without giving notice and take such action as is necessary to cure the alleged failure. Any Adjoining Owner performing any action pursuant to the preceding sentence shall interfere to the minimum extent possible with the Defaulting Owner's use and occupancy of such Defaulting Owner's Townhouse, and, with reasonable promptness, shall give verbal or written notice to the Defaulting owner of such action and the claimed failure.

**8.8.1** All remedies hereby specifically set forth in this Section 8.8.1 are cumulative and shall be deemed to be in addition to any remedies available at law or in equity which shall include the right to restrain by injunction any violation or threat of violation by any Owner of any of the terms, covenants, or conditions of this Townhome Declaration governing Party Walls or a Shared Roof and by decree to compel specific performance of any such terms, covenants, or conditions governing Party Walls or a Shared Roof, it being agreed that the remedy at law for any breach of any such term, covenant, or condition governing Party Walls or a Shared Roof is not adequate. Notwithstanding the foregoing, no default by any Owner under this Agreement shall entitle any other Adjoining Owner to terminate, cancel, or otherwise rescind this Townhome Declaration or any terms, covenants or conditions governing Party Walls or a Shared Roof.

**8.8.2** The Board, without obligation and in its exclusive discretion, may also notify the Defaulting Owner of the work required to the Party Wall or a Shared Roof and

demand that it be done within a reasonable and specified period. In the event that the Defaulting Owner fails to carry out such maintenance within said period, the Board shall have the right to enter upon the Lot, to cause such work to be done to the Party Wall or a Shared Roof and individually charge the cost thereof to such Defaulting Owner, and the costs shall be secured by the Assessment Lien. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of a Defaulting Owner to maintain his, her or its Party Wall or a Shared Roof, the Board shall also have the right to immediately enter upon the Lot to abate the emergency and individually charge the cost thereof to such Defaulting Owner, and the costs shall be secured by the Assessment Lien.

## ARTICLE 9 INSURANCE

9.1 **Scope of Coverage.** Commencing not later than the time of the first conveyance of a Lot to a purchaser, other than Declarant or a Declarant Affiliate, the Townhome Association shall maintain, to the extent reasonably available, the following insurance coverage:

9.1.1 Property insurance on the Townhome Common Areas insuring against all risk of direct physical loss, including loss and damage by fire and other perils normally covered by the standard extended coverage endorsement, insured against in an amount equal to the maximum insurable replacement value of the insurable Improvements, Townhome Common Areas, Lots, and Townhomes as determined by the Board; to the extent available at a reasonable cost, as the Board shall determine is advisable in its sole and subjective discretion, such property insurance includes all structural elements of and fixtures in the Townhomes, including without limitation those installed by Owners; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

9.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than Two Million Dollars (\$2,000,000). Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Townhome Common Areas and other portions of the Project which the Townhome Association is obligated to maintain under this Townhome Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

9.1.3 Workers compensation insurance to the extent necessary to meet the requirements of applicable law;

9.1.4 Fidelity bonding of the Board and employees of the Townhome Association having control of, or access to, the funds of the Townhome Association with loss coverage ordinarily not less than the maximum amount of funds of the Townhome Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time;

9.1.5 Errors and omissions insurance coverage for the Board; and

9.1.6 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Townhome Association or the Owners.

9.1.7 Each insurance policy purchased by the Townhome Association shall, to the extent reasonably available, contain the following provisions:

9.1.7.1 The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Townhome Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

9.1.7.2 No act or omission by any Owner will void the policy or adversely affect recovery on the policy;

9.1.7.3 The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

9.1.7.4 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Townhome Association or other Owners or Occupants;

9.1.7.5 Statement that the policy is primary in the event the Owner has other insurance covering the same loss;

9.1.7.6 Statement naming the Townhome Association as the insured;

9.1.7.7 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy; and

9.1.7.8 Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-international edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

**9.2 Certificates of Insurance.** An insurer which has issued an insurance policy under this Article 9 shall issue a certificate or a memorandum of insurance to the Townhome Association and, upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article 9 shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Townhome Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

**9.3 Payment of Premiums and Deductibles.** The premiums for any insurance obtained by the Townhome Association pursuant to this Townhome Declaration shall be included in the budget of the Townhome Association as a Common Expense and shall be paid by the Townhome Association. The Townhome Association shall set aside an amount equal to the amount of the property insurance policy deductible or, if the policy deductible exceeds Ten Thousand Dollars (\$10,000.00), an amount not less than Ten Thousand Dollars (\$10,000.00). Owners affected by any loss covered by insurance maintained by the Townhome Association shall pay such Owner's share of any deductible; Owners may obtain insurance to cover such deductible. Any deductibles paid by the Townhome Association pursuant to insurance obtained by the Townhome Association shall also constitute Common Expenses. The Board shall provide notice to Owners of the amount of the deductibles and any change thereto.

**9.4 Payment of Insurance Proceeds.** With respect to any loss to the Townhome Common Areas covered by property insurance obtained by the Townhome Association, the loss shall be adjusted with the Townhome Association, and the insurance proceeds shall be payable to the Townhome Association and not to any Mortgagee. Subject to the provisions of Section 9.5, the proceeds shall be disbursed for the repair or restoration of the damage to the Townhome Common Areas.

**9.5 Repair and Replacement of Damaged or Destroyed Property.** Notwithstanding the Master Association's maintenance rights and obligations, the Master Association shall not be responsible for reconstruction or replacement or Common Areas or Limited Common Areas in the event of destruction or casualty. The Townhome Association will be responsible, as further provided in this Section in the event of destruction or casualty occurring within the Townhome Project. Any portion of the Townhome Common Areas which is damaged or destroyed shall be repaired or replaced promptly by the Townhome Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (ii) Owners representing at least seventy-five (75%) percent of the total votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Townhome Association. If the entire Townhome Common Areas, Lots, or Townhomes are not repaired or replaced, insurance proceeds attributable to the damaged Townhome Common Areas, Lots, or Townhomes shall be used to restore the damaged area to a condition which is in conformity with the Mayflower Design Guidelines, approved by the Mayflower Design Review Committee and is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be: (i) retained by the Townhome Association as an additional capital reserve; (ii) used for payment of operating expenses of the Townhome Association if such action is approved by the affirmative vote or written consent of Townhome Association Members representing seventy-five percent (75%) or more of the votes in the Townhome Association; and/or (iii) distributed in equal shares per Townhome Association Membership to the Owners of each Lot as their interests appear.

9.6 **Owner Acknowledgement and Waiver.** By acceptance of a deed to a Lot, each Owner hereby acknowledges his, her or its independent insurance obligations as outlined in Utah Code Annotated §57-8a-405 and such insurance shall apply to deductibles under the Association's master policy. Each policy shall be carried with a company rated X or better in "Best's Insurance Guide", and each Owner shall provide a copy of the policy obtained by such Owner to the Board and the other Adjoining Owner and such policy shall require thirty (30) days' notice to the Board and the other Adjoining Owner before the policy can be cancelled. Each Owner hereby waives any rights it may have against the other Adjoining Owner on account of any loss or damage to its Townhouse which arises from any risk covered by fire and extended coverage insurance carried hereunder, whether or not such other Adjoining Owner may have been negligent or at fault in causing such loss or damage, except that such waiver shall not extend to any deductible paid by any Owner as a result of the negligence or fault of an Adjoining Owner. Each Owner shall obtain a clause or endorsement in the policies of such insurance which each Owner obtains to the effect that the insurer waives, or shall otherwise be denied, the right of subrogation against the Association for loss covered by the Association's master policy insurance. It is understood that such subrogation waivers may be operative only as long as such waivers are available in the State of Utah and do not invalidate any such policies. If such subrogation waivers are allegedly not operative in the State of Utah, notice of such fact shall be promptly given by the Owner obtaining insurance to the Board and the other Adjoining Owner. The Board may unilaterally adopt, amend, and modify, in its sole and subjective discretion, rules and regulations regarding insurance requirements for Owners without amendment to this Townhome Declaration.

9.7 **Annual Review.** Insurance policies may be reviewed annually by the Board to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed and to determine their compliance with the provisions of this Townhome Declaration. In the event any of the insurance coverage provided for in this Article 9 is not available at a reasonable cost or is not reasonably necessary to provide the Project with adequate insurance protection, as determined by the Board, the Board shall have the right to obtain different insurance coverage or insurance coverage which does not meet all of the requirements of this Article 9 so long as, at all times, the Board maintains insurance coverage on a basis which is consistent with the types and amounts of insurance coverage obtained for projects similar to the Project. Additionally, the Board shall give Owners notice within seven (7) days if any such insurance is not reasonably available.

9.8 **Owner to Insure.** Notwithstanding anything in this Article 9 to the contrary, it shall be the responsibility of each Owner, at such Owner's expense, to maintain physical damage insurance on such Owner's personal property and furnishings. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Townhome as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverages obtained by such Owner shall affect any insurance coverage maintained by the Townhome Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Townhome Association and the Owner. An Owner shall be liable to the Townhome Association for the amount of any such diminution of insurance proceeds to the Townhome Association as a result of insurance coverage maintained by the Owner, and the Townhome Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Board on behalf of the

Townhome Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Townhome Association and the Master Association.

## ARTICLE 10

### MORTGAGEE REQUIREMENTS

**10.1 Notice of Action.** The Board shall maintain a roster containing the name and address of each Eligible Mortgagee as such term is defined herein and in Section 1.20 above. To be considered an Eligible Mortgagee, a First Mortgagee shall provide the Board with a certified copy of its Recorded First Mortgage and the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage together with a written request that it receive notice of the matters and actions described below ("Eligible Mortgagee"). The Board shall strike an Eligible Mortgagee from the roster upon request by such Eligible Mortgagee or upon the Board's receipt of a certified copy of a Recorded full release or satisfaction of the Eligible Mortgage. The Board shall give notice of such removal to the Eligible Mortgagee unless the removal is requested by the Eligible Mortgagee. Upon the Board's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

10.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor;

10.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner whose Lot is subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; and

10.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Townhome Association.

**10.2 Availability of Townhome Project Documents and Financial Statements.** The Townhome Association shall maintain and have current copies of the Project Documents, membership register, books, records, and financial statements available for inspection by Townhome Association Members or by Eligible Mortgagee. Generally, these documents shall be available during the Townhome Association's normal business hours and may be maintained and kept at the office of the manager for the Townhome Association. The Townhome Association may, as a condition to permitting a Townhome Association Member to inspect the membership register or to its furnishing information from the register, require that the Townhome Association Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the regular business of the Townhome Association and the Townhome Association Member's interest in the Townhome Association.

**10.3 Subordination of Lien.** The Assessment or claim against a Lot for unpaid Assessments or charges levied by the Townhome Association pursuant to this Townhome Declaration shall be subordinate to the First Mortgage affecting such Lot, and the First Mortgagee thereunder which comes into possession of or which obtains title to such Lot shall take the same

free of such lien or claim for unpaid Assessment or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, Assessment Lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtains title to a Lot, shall be collected or enforced by the Townhome Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot affected or previously affected by the First Mortgage concerned. The provisions of this Section 10.3 shall be in addition to the rights of a First Mortgagee under Section 7.2.4.

**10.4 Notice to Eligible Mortgagees.** The Townhome Association shall give timely written notice of the events listed in Section 10.1 above to any Eligible Mortgagee who requests such notice in writing.

**10.5 Payment of Taxes.** In the event any taxes or other charges which may or have become a lien on the Townhome Common Areas are not timely paid, or in the event the required hazard insurance described in Section 9.1 lapses, is not maintained, or the premiums therefore are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Prior to paying any taxes or premiums, such First Mortgagee or First Mortgagees shall provide thirty (30) days advance written notice to the Board, which notice shall specify the nature of the taxes or premiums and suggest a reasonable cure period for such payments.

**10.6 Priority.** No provision of this Townhome Declaration or the Articles gives or may give a Townhome Association Member or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Townhome Association Members of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Townhome Common Areas. All proceeds or awards shall be paid directly to any Mortgagees of Record, as their interests may appear.

## **ARTICLE 11 CONDEMNATION**

**11.1 Notice.** Whenever all or any part of the Townhome Common Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Townhome Association Member shall be entitled to notice of the taking, but the Townhome Association shall act as attorney-in-fact for all Townhome Association Members in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

**11.2 Partial Condemnation; Distribution of Award; Reconstruction.** The award made for such taking shall be payable to the Townhome Association as trustee for all Townhome Association Members to be disbursed as follows: If the taking involves a portion of the Townhome Common Areas on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Townhome Association Members representing at least sixty-seven percent (67%) of the total votes of the Townhome Association shall otherwise agree, the Townhome Association shall restore or replace such Improvements so taken on the remaining land included in the Townhome Common Areas to the extent lands are available therefore, in

accordance with plans approved by the Board and the Design Review Committee. If such Improvements are to be repaired or restored, the provisions in Article 9 to be repaired shall apply. If the taking does not involve any Improvements on the Townhome Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed to Townhome Association Members in proportion to their respective Townhome Association Membership Interests, first to the Mortgagees and then to the Townhome Association Members.

**11.3 Townhome Limited Common Areas.** All or any portion of an award attributable to the taking, condemnation, sale, acquisition or other disposition of in lieu of or in avoidance of condemnation of Townhome Limited Common Areas shall be equally divided among the Owner or Owners of the Lot or Lots to which such Townhome Limited Common Areas were appurtenant at the time of the taking, condemnation, sale, acquisition or other disposition in proportion to such Owner's or Owners' respective interest in such Townhome Limited Common Areas.

**11.4 Complete Condemnation.** If all of the Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Townhome Declaration shall terminate, and the portion of the condemnation award attributable to the Townhome Common Areas shall be distributed to Townhome Association Members based upon the relative value of the Lots prior to the condemnation.

## **ARTICLE 12** **TERM, TERMINATION AND AMENDMENT**

**12.1 Term; Method of Termination.** This Townhome Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of thirty (30) years from the date this Townhome Declaration is recorded. From and after said date, this Townhome Declaration, as amended, shall be automatically extended for successive periods of twenty (20) years each, unless there is an affirmative vote to terminate this Townhome Declaration by the then Townhome Association Members casting eighty percent (80%) of the total votes cast at an election held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any twenty-year extension. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a certificate of termination, duly signed by the president or vice president and attested by the secretary or assistant secretary of the Townhome Association, with their signatures acknowledged. Thereupon these covenants shall have no further force and effect, and the Townhome Association shall be dissolved pursuant to the terms set forth in its Articles.

**12.2 Amendments.** This Townhome Declaration may be amended by Recording a certificate of amendment, duly signed and acknowledged by and on behalf of the Townhome Association ("Certificate of Amendment"). The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided elsewhere in this Townhome Declaration, shall certify that at a meeting duly called and held pursuant to the provisions of the Townhome Articles and Townhome Bylaws or by separate written ballot without a meeting, the Townhome Association Members casting at least sixty-seven percent (67%) of the total votes of the Townhome Association at the election voted affirmatively for the adoption of the amendment.

During the Declarant Control Period, this Townhome Declaration may be amended or terminated only with the written consent of the Declarant.

**12.3 Unilateral Amendments.** Declarant alone may amend or terminate this Townhome Declaration prior to the closing of a sale of the first Lot. Notwithstanding anything contained in this Townhome Declaration to the contrary, this Townhome Declaration may be amended unilaterally at any time and from time to time by Declarant if such amendment is (i) necessary to correct typographical errors or inadvertent omissions; (ii) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (iii) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Development Parcels, Townhome Common Areas, Lots, Units or Improvements subject to this Master Declaration; or (iv) necessary to evidence an increase in the total number or ERU's or density allocated to the Project, or transfer such ERU's as described in as described in this Townhome Declaration; provided, however, any such amendment shall not materially adversely affect the title to any Lot, Townhome or Improvement unless any such Owner shall consent thereto in writing. Each Owner hereby agrees and acknowledges that Declarant's increase or transfer of ERU's pursuant to the terms and provisions of as described in this Townhome Declaration shall not constitute a "material adverse affect" to the title to any Lot, Townhome or Improvement. Further, so long as the Declarant's Class B Membership in the Townhome Association exists, Declarant may unilaterally amend this Townhome Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

**12.4 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions.** Anything in this Article or Townhome Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Townhome Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Townhome Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recordation by Declarant of a Certificate of Amendment duly signed by or on behalf of the members, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Townhome Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Townhome Declaration to restore such control.

## 12.5 Prior Approval Required to Terminate this Townhome Declaration or Amend

**Article 8.** Article 8 of this Townhome Declaration describes the duties and obligations of the Master Association and/or the Townhome Association to repair, replace and maintain the Townhome Common Areas, the Lots, and certain other physical portions of the Property and the Project. Notwithstanding any other provision described in this Townhome Declaration to the contrary, including without limitation the amendment powers described in this Article 12, Declarant, the Townhome Association and each Owner hereby agree and acknowledge that the Master Association or Townhome Association's maintenance, repair and replacement duties set forth in Article 8 shall not be amended or deleted and this Townhome Declaration shall not be terminated without the prior written approval of Declarant (prior to Declarant's transfer of control of the Townhome Association pursuant to Section 2.17 above). Such approval shall be evidenced by a written consent attached to or incorporated in such Recorded amendment or certificate of termination executed by Declarant (if necessary).

## ARTICLE 13

### BINDING ARBITRATION FOR ENFORCEMENT OF PROJECT DOCUMENTS

**13.1 Opt-Out Right.** IF AN OWNER DOES NOT WANT THE FOLLOWING ARBITRATION PROVISION TO APPLY, THE OWNER MUST SEND A LETTER TO DECLARANT, SIGNED BY THE OWNER (AND ANY CO-OWNER OF THE SAME LOT) AND ADDRESSED TO 7135 S. HIGHLAND DRIVE, SUITE 203, SALT LAKE CITY, UTAH 84121 ATTN: ARBITRATION OPT-OUT. THE LETTER MUST BE SENT (I) WITHIN 30 DAYS AFTER THE DATE OF THE OWNER'S REAL ESTATE PURCHASE CONTRACT, OR (II) IN THE CASE OF A LOT UNDER CONTRACT ON THE DATE THIS TOWNHOME DECLARATION IS RECORDED, WITHIN THIRTY (30) DAYS OF THE DATE THE DEED OF CONVEYANCE TRANSFERRING THE LOT IS RECORDED IN THE OFFICIAL RECORDS OF WEBER COUNTY, UTAH, AND MUST STATE THAT THE OWNER DOES NOT WANT ARBITRATION TO APPLY TO THE MATTERS DESCRIBED IN THIS Article 13. ANY OPT OUT WILL RENDER THIS ARBITRATION PROVISION NULL AND VOID BUT WILL HAVE NO OTHER EFFECT ON THE OWNER'S RIGHTS.

**13.2 Arbitration Terms Defined.** In the arbitration provision described in this Article 13 ("Arbitration Provision"), the following capitalized words, phrases or terms have the meanings set forth below:

13.2.1 "Institutional Party" means Declarant and Declarant Affiliates; the Townhome Association during the period of control pursuant to Section 2.17 above; any third party that provides any product or service to a Consumer Party in connection with this Townhome Declaration, if and only if such third party is named as a co-party with another Institutional Party in a Claim asserted by a Consumer Party; their successors and assigns; and the agents, representatives, members, employees, officers and/or directors of the foregoing entities.

13.2.2 "Consumer Party" means the Owners; their heirs, successors and assigns; and the Townhome Association after the period of control pursuant to Section 2.17 above.

13.2.3 “Bound Party” means any Institutional Party or Consumer Party who asserts a Claim or has a Claim asserted against such party.

13.2.4 “Claim” means any claim, dispute or controversy between an Institutional Party and a Consumer Party, other than an Exempt Claim, arising out of or relating in any way to this Townhome Declaration or any other Townhome Project Documents, the Property, the Project, the Lots or the Townhomes, including any such claim, dispute or controversy regarding or arising over the marketing and sale of Lots or Townhomes; the terms of this Townhome Declaration or any other Townhome Project Documents; the design, specifications, surveying, planning, supervision, testing, observation of construction or construction of an Improvement to, or survey of, the Property; or the maintenance or use of the Property. This includes, without limitation, disputes concerning the validity, enforceability, arbitrability or scope of this Arbitration Provision or this Townhome Declaration; disputes involving alleged fraud or misrepresentation, breach of contract, negligence or violation of statute, regulation or common law; and disputes involving requests for declaratory relief, injunctions or other equitable relief.

13.2.5 “Exempt Claim” means any of the following Claims, which will not be subject to this Arbitration Provision: (i) any individual action brought by a Consumer Party in small claims court or a relevant state’s equivalent court, unless such action is transferred, removed, or appealed to a different court; (ii) any action to effect a judicial or non-judicial foreclosure; (iii) any eviction or other summary proceeding to secure possession of real property or an interest therein; (iv) any action in any bankruptcy proceeding to assert, collect, protect, realize upon or obtain possession of the collateral for any amount owed; (v) any action to quiet title; (vi) any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing; (vii) any self-help remedy, such as the refusal of an Institutional Party to allow a Consumer Party to use a Townhome or Lot, or any individual action in court by one party that is limited to preventing the other party from using a self-help remedy and that does not involve a request for damages or monetary relief of any kind; and (viii) any dispute concerning the validity and effect of Section 13.8 below, the ban on class actions and certain other proceedings (the “Class Action Ban”). Notwithstanding the prior sentence, at the request of a Consumer Party, the Institutional Parties will agree to arbitrate under this Arbitration Provision any matter covered by items (ii)–(vi) above if arbitration will afford the parties substantially the same rights and remedies as a court action. Any dispute regarding the question of whether arbitration will afford the parties substantially the same rights and remedies as a court action is also an Exempt Claim and shall be determined exclusively by the court and not by an arbitrator. If one or more Institutional Parties are allowed to proceed outside arbitration with respect to any of the matters covered by items (ii)–(vi) above, the Consumer Party may assert in court on an individual basis any related defenses or Claims such Consumer Party may have.

13.2.6 “Administrator” means either of the following companies to be selected by the Bound Party initiating the arbitration: JAMS, 18881 Von Karman Ave. Suite 350 Irvine, CA 92612, [www.jamsadr.com](http://www.jamsadr.com) or the American Arbitration Association (“AAA”), 1633 Broadway, 10th Floor, New York, NY 10019, <http://www.adr.org>. However, neither JAMS nor AAA may serve as Administrator, without the consent of all Bound Parties

asserting or defending a Claim, if it adopts or has in place any formal or informal policy that is inconsistent with and purports to override the terms of the Class Action Ban.

**13.3 Arbitration of Claims.** Unless a Consumer Party has opted out of this Arbitration Provision, upon the election of any Consumer Party or Institutional Party asserting or defending a Claim, such Claim shall be resolved by binding individual (and not class) arbitration. Notice of an election to arbitrate a Claim may be given after a lawsuit begins and may be given in papers filed in the lawsuit. Any arbitration will be conducted in accordance with this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the rules of the Administrator in effect at the time the Claim is filed.

**13.4 Fees.** If a Consumer Party cannot obtain a waiver of any fees of the Administrator or arbitrator, the Institutional Parties will consider in good faith any request for them to pay such fees for the Consumer Party. Each Bound Party shall bear the fees and expenses of that Bound Party's attorneys, experts, and witnesses, provided that the Institutional Parties will bear the reasonable fees and expenses incurred by a Consumer Party if the Consumer Party prevails on a Claim the Consumer Party has asserted against the Institutional Parties. Also, the Institutional Parties will pay any arbitration, attorneys' and/or other fees and expenses they are required to pay by applicable law, or they are required to pay in order to enforce this Arbitration Provision. If a participatory arbitration hearing is requested, it will take place in Weber County, Utah or, if the Administrator determines that such location would be unfair to a Consumer Party, at a location reasonably convenient to such Consumer Party and the Institutional Parties.

**13.5 Governing Law.** This Arbitration Provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1–16 (the “FAA”) and not state arbitration laws, provided that Utah law shall govern to the extent that state law is relevant under the FAA in determining the enforceability of this Arbitration Provision. The arbitrator shall be obligated to follow applicable substantive laws, statutes of limitations and privilege rules related to any Claim. The arbitrator shall award the remedies, if any, that would be available in an individual court proceeding if arbitration had not been elected. This includes, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings); declaratory, injunctive and other equitable relief; and attorneys' fees and costs. Upon the timely request of any Bound Party, the arbitrator shall write a brief explanation of the grounds for his, her or its decision. In addition to the Bound Parties' rights under the Administrator's rules to obtain information prior to the hearing, any Bound Party may ask the arbitrator for more information from the other party. The arbitrator will decide the issue in his, her or its sole discretion, after allowing the other Bound Party the opportunity to object.

**13.6 Appeal of Arbitrator's Decision.** Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding, except for any appeal right under the FAA. However, for Claims involving more than Fifty Thousand Dollars (\$50,000.00), any Bound Party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider from the start any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Fees and costs associated with an appeal shall be governed by Section 13.4 above.

13.7 **Jury Trial Waiver.** IF A BOUND PARTY ELECTS TO ARBITRATE A CLAIM, NO BOUND PARTY WILL HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM.

13.8 **Class Action Ban.** NO BOUND PARTY MAY PARTICIPATE IN A CLASS ACTION IN COURT OR IN CLASS-WIDE ARBITRATION, EITHER AS A REPRESENTATIVE, CLASS MEMBER OR OTHERWISE. NO BOUND PARTY MAY PARTICIPATE IN A PRIVATE ATTORNEY GENERAL PROCEEDING IN COURT OR IN ARBITRATION. NO CLAIMS BY OR AGAINST A BOUND PARTY MAY BE JOINED OR CONSOLIDATED WITH CLAIMS BY OR AGAINST ANY OTHER PERSON (EXCEPT FOR CLAIMS INVOLVING THE HEIRS AND SUCCESSORS OF SUCH CONSUMER PARTIES). THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY GENERAL ARBITRATION OR MULTI-PARTY ARBITRATION INCONSISTENT WITH THIS SECTION. Notwithstanding any language in this Arbitration Provision to the contrary, any dispute about the validity or effect of the above Class Action Ban shall be resolved by a court and not an arbitrator or the Administrator.

13.9 **Severability.** If a determination is made that any part of this Arbitration Provision is unenforceable (other than the Class Action Ban) or that this Arbitration Provision is unenforceable as to any party or parties, this provision shall nonetheless remain enforceable in all other respects and as to all other parties. If the Class Action Ban is held to be unenforceable in connection with any Claim subject to the Class Action Ban, this Arbitration Provision (other than this sentence) shall be null and void in such proceeding, provided that the Institutional Party seeking to enforce the Class Action Ban shall have the right to appeal at the earliest possible time any holding that the Class Action Ban is unenforceable.

13.10 **Notice of Claim; Right to Address.** Prior to asserting a Claim, the Bound Party with the Claim (the “Claimant”) shall give the Bound Party that is the subject of the Claim written notice of the Claim and a reasonable opportunity, not less than thirty (30) days, to resolve the Claim. The Claimant’s claim notice must include the Claimant’s name, address and telephone number. Any claim notice must explain the nature of the Claim and the relief that is demanded. A Consumer Party may only submit a claim notice on his, her or its own behalf and not on behalf of any other party. The Claimant must reasonably cooperate in providing any information about the Claim that the other Bound Party reasonably requests. If: (i) a Consumer Party submits a claim notice in accordance with this Section on his, her or its own behalf (and not on behalf of any other party); (ii) the Institutional Party refuses to provide the requested relief; and (iii) an arbitrator subsequently determines that the Consumer Party was entitled to such relief (or greater relief), the arbitrator shall award the Consumer Party at least Five Thousand One Hundred Dollars (\$5,100.00) (not including any arbitration fees and attorneys’ fees and costs to which the Consumer Party may be entitled under this Arbitration Provision or applicable law).

## ARTICLE 14 GENERAL PROVISIONS

14.1 **Enforcement.** The Master Association, the Townhome Association or any Owner shall have the right to enforce the Townhome Project Documents.

14.2 **Interpretation.** Except for judicial construction, the Townhome Association shall have the exclusive right to construe and interpret the provisions of this Townhome Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Townhome Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Townhome Declaration. The term "include" and similar terms (e.g., includes, including, included, comprises, comprising, such as e.g., and for example), when used as part of a phrase including one or more specific items, are used by way of example and not of limitation.

14.3 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Townhome Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

14.4 **Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Townhome Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Townhome Declaration is Recorded.

14.5 **Change of Circumstances.** Except as otherwise expressly provided in this Townhome Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Townhome Declaration.

14.6 **Rules and Regulations.** In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Townhome Declaration, the Townhome Association shall have the right to adopt, as part of the Townhome Association Rules, additional rules and regulations with respect to any other aspects of the Townhome Association's rights, activities and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Townhome Project Documents.

#### 14.7 **Laws, Ordinances and Regulations.**

14.7.1 The covenants, conditions and restrictions set forth in this Townhome Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Design Review Committee, or the Master Association or the Mayflower Design Review Committee, with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Townhome Declaration shall not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

14.7.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be in violation of this Townhome Declaration and subject to any or all of the enforcement proceedings set forth herein.

14.8 **References to this Townhome Declaration in Deeds.** Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and

restrictions herein set forth by reference to this Townhome Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Townhome Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

**14.9 Gender and Number.** Wherever the context of this Townhome Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

**14.10 Captions and Title; Section References; Exhibits.** All captions, titles or headings of the Articles and Sections in this Townhome Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Townhome Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Townhome Declaration, unless the context otherwise requires. Any Exhibits referred to in this Townhome Declaration are hereby incorporated herein by reference and fully made a part hereof.

**14.11 Notices.** If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, the Townhome Project Documents or resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified in the Townhome Project Documents or in the resolution of the Board, or unless otherwise required by law, such notice requirement shall be deemed satisfied if notice of such action, proposed action or meeting is: (i) sent by United States mail to the last known mailing address of the Owner or Occupant (as applicable), as shown in the records of the Townhome Association; (ii) sent by electronic means, including text messaging or electronic mail if the Owners has provided the appropriate address or phone number to the Townhome Association; (iii) if no address is reflected on the records of the Townhome Association, then sent by United States mail to the mailing address of the Lot (as applicable) on file with the Wasatch County Assessor's Office; or (iv) if there is no such mailing address reflected in the records of the Townhome Association and there is no then current address on file with the Wasatch County Assessor's Office, then sent or given in whatever reasonable manner the Board may elect, which may include, without limitation, publishing the same in any newspaper in general circulation within Wasatch County, Utah ("Notice"). This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other reasonable and appropriate manner.

**14.12 Indemnification.** The Townhome Association shall indemnify each and every trustee and officer of the Townhome Association, each and every member of the Design Review Committee, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Townhome Association, former members of the Design Review Committee, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which

he or she may be a party by reason of being or having been an Association Official, unless the liability for such expenses arises out of his or her own intentional misconduct. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Townhome Association (except indirectly to the extent that such Association Official may also be a Townhome Association Member and therefore subject to Assessments hereunder to fund a liability of the Townhome Association), and the Townhome Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Townhome Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Townhome Association the total of such funds advanced by the Townhome Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate as exclusively determined by the Board from the date(s) advanced until paid.

**14.13 No Partition.** No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Townhome Common Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate any funds or other assets of the Townhome Association except in connection with the sale, conveyance or hypothecation of such Owner's Townhome (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Townhome Common Areas, which shall be subject to Article 4) which may or may not be subject to this Townhome Declaration.

**14.14 Number of Days.** In computing the number of days for purposes of any provision of this Townhome Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

**14.15 Notice of Violation.** The Townhome Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Townhome Project Documents. The notice shall be executed and acknowledged by an officer of the Townhome Association and shall contain substantially the following information: (i) the name of the Owner or Occupant; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Townhome Association pursuant to this Townhome Declaration; and (v) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any

subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Townhome Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Townhome Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Townhome Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

**14.16 Disclaimer of Representations.** While neither the Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Townhome Declaration is or may be invalid or unenforceable for any reason or to any extent, neither the Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold the Declarant and all Declarant Affiliates harmless therefrom.

**14.17 Amendments Affecting Declarant Rights.** Notwithstanding any other provision of this Townhome Declaration to the contrary, no provision of this Townhome Declaration (including but not limited to, this Section) which grants to or confers upon the Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as the Declarant, any Declarant Affiliate or a trustee for the benefit of the Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of the Declarant.

**14.18 Conflicts.** In the event of any conflict or inconsistency between this Townhome Declaration and the other Townhome Project Documents, priority shall be given to the Townhome Project Documents in the following order: the Master Declaration, the Articles of the Master Association, the Bylaws of the Master Association, the rules promulgated by the Master Association pursuant to the Master Declaration, this Townhome Declaration, Townhome Articles, Townhome Bylaws, and Townhome Association Rules, as each respective document may be amended from time to time. The foregoing notwithstanding, in the event of any inconsistency between this Townhome Declaration, on the one hand, and or any applicable law, including the CAA, on the other, then in all events the applicable law shall control.

**14.19 Use of Technology.** In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, the Townhome Association may, as a Common Expense, provide for or offer services, which make use of computers and other technological opportunities. For example, to the extent Utah law permits, and unless otherwise specifically prohibited in the Townhome Project Documents, Declarant or the Townhome Association may send required notices by electronic means; hold Board or Townhome Association meetings and permit attendance and voting by electronic means; send and collect Assessment and other invoices electronically; sponsor a Project cable television channel; create and maintain a Project intranet or Internet home page offering interactive participation opportunities for users;

maintain an “online” newsletter or bulletin board; and provide funding for any of the above purposes.

#### **14.20 Bulk Service Agreements.**

14.20.1 The Board, acting on behalf of the Townhome Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots both within the Property, or within one or more portions thereof, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or any concierge or other personal services (i) which might not otherwise be generally available to such Owners and Occupants; (ii) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; and/or (iii) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally.

14.20.2 If all Lots within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to (i) include the Townhome Association’s costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (ii) separately bill to each Owner his, her or its proportionate share of the Townhome Association’s costs under such Bulk Service Agreement, as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly. Such “separate billing” may be made as one or more separate line items on billings or invoices from the Townhome Association to the affected Owner(s) for Assessments or other charges. If not all Lots within the Property will be served by a particular Bulk Service Agreement the Board shall have only the billing option described in clause (ii) above.

14.20.3 Declarant, for each Lot, hereby covenants and agrees, and each Owner other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot) by the Board pursuant to this Section and all such amounts (i) shall be deemed to be a part of the Assessments against the Lots (or against or to whose Owners they are levied or charged); (ii) with interest, late charges and all costs, including but not limited to reasonable attorney’s fees, incurred by the Townhome Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Townhome Declaration; and (iii) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

14.20.4 No Owner of a Lot covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Lot under this Section, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no Townhome or other Improvement has been completed.

14.20.5 "Bulk Provider" means a private, public or quasi-public utility or other company which provides, or proposes to provide, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Occupants, Townhomes within the Property, Lots or within one or more portions thereof, pursuant to a "Bulk Service Agreement" (as defined below).

14.20.6 "Bulk Service Agreement" means an agreement between the Townhome Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Occupants or Lots.

14.20.7 So long as Declarant's Class B Membership exists, the Board shall not, without the approval of Townhome Association Members holding at least fifty-one percent (51%) of all Class A votes represented in person or by proxy at an annual or special meeting of the Townhome Association, enter into a Bulk Service Agreement which imposes on the Townhome Association or the Townhome Association Members any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any cable television, community satellite television, high speed Internet, security monitoring or electronic entertainment, information, communication or security services, but nothing in this Section shall prevent the Board from entering into, or require approval by the Townhome Association Members of any Bulk Service Agreement which imposes on the Townhome Association or the Townhome Association Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Wasatch County, Utah, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

Mayflower Lakeside Townhomes South, LLC,  
a Utah limited liability company

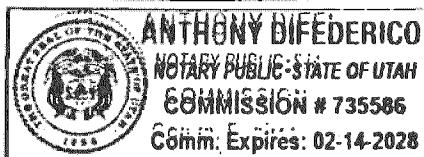
By: Bret Burbidge  
Its: President

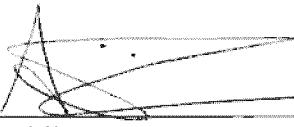
Acknowledged by the Master Association

By: Bret Burbidge  
Its: Board member

STATE OF UTAH )  
:ss.  
County of SALT LAKE )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of MARCH,  
2025, by Bret Burbidge, the PRESIDENT of Mayflower Lakeside Townhomes South, LLC,  
a Utah limited liability company, on behalf of such entity.



  
\_\_\_\_\_  
Notary Public

My Commission Expires:

2/14/2028

**Exhibit A**

**Project Legal Description**

[Attached herein and incorporated by reference.]

Phase 2A legal

UNITS 139 through 200, MAYFLOWER LAKESIDE TOWNHOMES, PHASE 2A, A P.U.D. Plat, as the same are identified in the record of survey plat recorded November 19, 2024, as Entry No. 552621 and Declaration of Covenants, Conditions, Easements and Restrictions for Mayflower Lakeside Townhomes (Phase 2A), recorded November 19, 2024, as Entry No. 552622, in Book 1495, at Page 1229, in the office of the Wasatch County Recorder's Office and Declaration of Covenants, Conditions, Easements and Restrictions for Mayflower Lakeside Townhomes (Phase 2A), recorded November 19, 2024, as Entry No. 556035, in Book 1505, at Page 876, in the office of the Wasatch County Recorder's Office

Together with and subject to all rights, privileges, easements, duties and obligations as set forth in the Declaration of Covenants, Conditions, Easements and Restrictions, but without limitation, a non-exclusive right and easement of use and enjoyment in and to the Townhome common areas.

(Tax Serial No. 0AT-2B139 and Parcel No. 00-0022-0864 through 0AT-2B200 and Parcel No. 00-0022-0926), 62 Units

**Exhibit B**

**Additional Land Legal Description**

[Attached herein and incorporated by reference.]

**BYLAWS  
OF  
MAYFLOWER LAKESIDE TOWNHOMES (PHASE 2A) OWNERS  
ASSOCIATION, INC.**

These Townhome Bylaws shall govern the operation of the MAYFLOWER LAKESIDE TOWNHOMES (PHASE 2A) OWNERS ASSOCIATION, INC., a Utah nonprofit corporation, subject to its Articles of Incorporation (the "Townhome Association"). These Townhome Bylaws shall operate under the Utah Revised Nonprofit Corporation Act, § 16-6a-101, *et seq.*, Utah Code Ann., as may be amended from time to time ("Nonprofit Act"), and the Community Association Act, § 57-8a-101, *et seq.*, Utah Code Ann., as may be amended from time to time ("CAA"). The words used in these Townhome Bylaws shall be given their normal, commonly understood definitions. Unless the context clearly indicates otherwise, capitalized terms shall have the same meaning as set forth in Article 1 of the Declaration of Covenants, Conditions, Easements and Restrictions for Mayflower Lakeside Townhomes (Phase 2A), as may be amended, supplemented, or recorded in the official records of Wasatch County, State of Utah (the "Townhome Declaration"). The provisions set forth below are subject to the provisions of the Townhome Declaration applicable to the Townhome Association and the Master Declaration applicable to the Project, including the Townhome Association, which are incorporated herein by this reference.

**ARTICLE I  
VOTING RIGHTS, MAJORITY OF QUORUM, QUORUM, PROXIES**

1.1. Voting Rights. The Townhome Association shall have two classes of voting.

1.1.1. Class A. Each Owner of a Lot, which is Assessable Property, shall be a Class A Member of the Townhome Association and each Owner is allotted one (1) vote for each Lot owned. Each Class A membership in the Townhome Association shall be held jointly by all Owners of that Lot. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised by a majority of such Owners as may be determined among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever until the matter is resolved to the reasonable satisfaction of the Townhome Association. In such case, the Townhome Association may, but shall not be required to apportion such Lot's vote among the Owners thereof.

1.1.2. Class B. Declarant shall be a Class B Member of the Townhome Association and shall be entitled to three (3) votes for each Lot held by Declarant as an Owner of a Lot.

1.2. Majority of Quorum. Except as otherwise provided in these Townhome Bylaws or the Townhome Declaration, any action which may be taken by the Townhome Association may be taken by a majority vote of a quorum of the Townhome Association Members at any meeting of Townhome Association Members.

1.3. Quorum. Except as otherwise provided in these Townhome Bylaws or the Townhome Declaration, the presence in person or by proxy of Owners holding at least forty percent (40%) of the total votes in the Townhome Association at any duly noticed and called meeting of the Townhome Association shall constitute a quorum.

1.4. Proxies. Votes may be cast in person or by proxy by a Townhome Association Member. Every proxy shall be revocable and shall automatically cease (i) after completion of the meeting for which the proxy was filed; and (ii) upon conveyance by the Townhome Association Member of his or her Lot. Proxies must be in writing and filed with the Secretary of the Townhome Association at least twenty-four (24) hours before the appointed time of each meeting.

## ARTICLE II ADMINISTRATION

2.1. Association Responsibilities. The Townhome Association and the Master Association shall have the responsibility of administering, maintaining and repairing the Project and otherwise exercising the rights and performing the duties as set forth in the Townhome Declaration and the Master Declaration, including, but not limited to, the Master Association's responsibilities and obligations associated with the Master Association Maintenance Areas.

2.2. Place of Meetings of Members. Meetings of the Townhome Association Members shall be held in the Project or at such other suitable place as may be designated by the Board, which shall be as close as practicable in Wasatch County, Utah and convenient to the Townhome Association Members.

2.3. Annual Meetings of Members. The first annual meeting of Townhome Association Members shall be held within sixty (60) days after conveyance of one hundred percent (100%) of the Lots Owned by Declarant. Thereafter, the annual meetings of the Townhome Association shall be held each year on a date and at a time designated by the Board in accordance with a resolution of the Board. At the annual meeting, the Townhome Association Members may transact any business of the Townhome Association as may properly come before them including, without limitation, the right to elect a new Board or fill Board vacancies. Each Eligible Mortgagee of a Lot in the Project may designate a representative to attend all annual meetings of the Townhome Association Members.

2.4. Special Meetings of Members. Special meetings of the Townhome Association Members may be called at any time by a majority of the Board or upon a petition signed by Townhome Association Members holding at least forty percent (40%) of the voting power of the Townhome Association Members having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice. Each Eligible Mortgagee of a Lot may designate a representative to attend all special meetings of the Townhome Association Members.

2.5. Notice of Meetings of Members. It shall be the duty of the Secretary of the Townhome Association to provide a notice of each annual or special meeting of Townhome Association Members, stating the purpose thereof as well as the day, hour and place where it is to

be held, to each Townhome Association Member of record and to each Eligible Mortgagee of a Lot which has filed a written request for notice with the Secretary. Notice of each meeting shall be issued, at least ten (10) but not more than sixty (60) days prior to such meeting. The notice may set forth time limits for speakers and nominating procedures for the meeting. The notice shall be considered served upon: (i) deposit of said notice, properly addressed and postage prepaid, in a regular depository of the United States mail; (ii) if the Townhome Association offers to send notice by electronic mail, sending by electronic mail at the request of the Owner to an electronic mail address designated in writing by the Owner; or (iii) published in a Project newsletter or other similar publication that is circulated to each Owner. If no street or electronic mail address has been furnished to the Secretary, notice shall be deemed to have been given to a Townhome Association Member if posted in a conspicuous place within the Project.

2.6. Waiver of Notice. Whenever any notice is required to be given to any Townhome Association Member, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a Townhome Association Member at any meeting shall also constitute a waiver of notice of such meeting, except where such Member attends a meeting for the express purpose of objecting to the transaction of any business because the Townhome Association Member contends that the meeting is not properly called or convened.

2.7. Adjourned Meetings. If any meeting of Members cannot be held, the Members who are present, either in person or by proxy, may adjourn the meeting and reconvene it at a time not less than five (5) days nor more than thirty (30) days following the time the original meeting was called. Such adjourned meetings may be held without further notice if the date, time, and place the meeting is to be reconvened is announced at the meeting at which such adjournment is taken.

2.8. Order of Business. The order of business at all annual meetings of the Townhome Association Members shall include but not be limited to: (i) the approval of the minutes from the preceding annual meeting; (ii) review of the past year and upcoming year financials; and (iii) elections of directors.

2.9. Action Without Meeting. The Townhome Association shall have the right to take any action in the absence of a meeting in any manner permitted by the Nonprofit Act, as the Nonprofit Act may be amended from time to time.

2.10. Minutes, Presumption of Notice. Minutes or a similar record of the proceedings of meetings of Townhome Association Members, when signed by the President or Secretary, shall be presumed truthful evidence of the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be *prima facie* evidence that such notice was given.

### **ARTICLE III** **BOARD OF DIRECTORS**

3.1. Number and Qualification. The property, business and affairs of the Townhome Association shall be governed and managed by a Board of Directors ("Board"). The Board will

be composed of three (3) persons appointed by the Declarant until the rights of the Declarant are relinquished or terminated under Section 2.17 of the Townhome Declaration, at which time the Townhome Association Members will elect a new Board composed of at least three (3) persons but no more than seven (7) persons in accordance with § 57-8a-501 of the CAA. The Townhome Association Member-elected Board shall be composed of only Owners of Lots, the officer, director, or agent of Owners who are not natural persons, or conservators or guardians of incapacitated Owners. The Owners may increase or decrease the number of directors at any annual meeting, provided, that a proportionate number of directors shall expire annually. Directors shall not receive any stated salary for their services as directors; provided, however, that: (i) nothing herein contained shall be construed to preclude any director from serving the Townhome Association in some other capacity and receiving compensation therefor; and (ii) any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

3.2. Term of Office. When the Declarant's rights are either relinquished or terminated pursuant to Section 2.17 of the Townhome Declaration, the Members shall then have authority to elect a new Board at the next special or annual meeting. The terms of the directors shall be staggered so that the terms of one-third (1/3) of the directors will expire and successors will be elected at each annual meeting of the Townhome Association as provided by these Townhome Bylaws. Thereafter, at such annual meetings, successors to the directors whose terms then expire shall be elected to serve terms of three (3) years. Directors shall serve until their successors have been duly elected and qualified unless removed pursuant to Section 3.9. Any director who fails on three successive occasions to attend Board meetings (whether regular or special) shall automatically forfeit his or her seat.

3.3. Election Process. Subject to the rights of Declarant under Section 2.17 of the Townhome Declaration, any vacancy occurring on the Board prior to an annual meeting shall be filled by the affirmative vote of the remaining directors until the next annual meeting or, in the event there are no remaining directors, by the affirmative vote of a majority of the votes of the Townhome Association Members at any special meeting of the Townhome Association Members held in accordance with these Townhome Bylaws. Elections shall be conducted by secret written ballot unless a majority of the quorum consents to having the election conducted orally. A majority of the quorum of Townhome Association Members shall elect each director. The votes exercised by the Owner or Owners of a Lot shall be the number of votes the Owner has under Section 1.1 multiplied by the number of seats to be filled. Said votes may be voted in favor of as many candidates as there are director seats to be filled. Each director shall serve until his or her successor has been duly elected and qualified. In the event a seat becomes vacant, whether by reason of forfeiture or due to another cause, such vacancy shall be filled by an appointment by Declarant, or, if Declarant's right to select directors has been relinquished or terminated, such vacancy shall be filled in accordance with Section 3.4.

3.4. Filling Board Vacancies. Generally, each director shall hold his or her office until his or her successor has been elected and the first meeting involving such successor is held. However, if a vacancy in the Board is caused by death, resignation, removal or judicial adjudication of mental incompetence, the vacancy may be filled by the majority vote of either the remaining directors or a special meeting of the Townhome Association Members held in accordance with these Townhome Bylaws. Any director so appointed to fill a vacancy shall serve until the next annual meeting immediately following such director's appointment, at which time

an election will be held in accordance with the provisions of this Article III to determine who will serve for the remainder of the unexpired term of the appointed director's predecessor.

3.5. Powers and Duties. The Board has the powers and duties necessary for the administration of the affairs of the Townhome Association and may do all such acts and things as are not by law, the Townhome Declaration, or by these Townhome Bylaws directed to be exercised and done exclusively by the Townhome Association Members.

3.6. Special Powers and Duties. Without prejudice to the foregoing general powers and duties and such powers and duties as are set forth in the Townhome Declaration, the Board, subject to and limited by the rights of Declarant under the Townhome Declaration, is vested with, and shall be responsible for, the following powers and duties:

3.6.1. To select, appoint, and remove all officers, agents, and employees of the Townhome Association, to prescribe such powers and duties for such officers, agents, and employees, as may be consistent with law, the Townhome Association Articles, the Townhome Declaration, and these Townhome Bylaws, and to set the other terms of their office consistent with the provisions of Article IV below as the Board shall reasonably determine.

3.6.2. The Board may execute and record, on behalf of all Owners, any amendment to the Declaration, Plat, or these Townhome Bylaws, which has been approved by any vote or consent necessary to authorize such amendment;

3.6.3. To conduct, manage and control the affairs and business of the Townhome Association and to make and enforce Townhome Association Rules, all as may be consistent with law, the Townhome Articles, the Townhome Declaration, and these Townhome Bylaws.

3.6.4. To change the principal office for the transaction of the business of the Townhome Association from one location to another within the County of Wasatch; to designate any place within said county for the holding of any annual or special meeting or meetings of Members consistent with the provisions of Article II hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment, may deem best.

3.6.5. Subject to the Townhome Declaration, to borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate as determined by the Board without a vote of the Townhome Association Members. The Townhome Association may secure such loans by pledging any of its properties including future Assessments as collateral and to incur indebtedness for the purposes of the Townhome Association, and to cause to be executed and delivered therefor, in the Townhome Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities.

3.6.6. To incur reasonable expenditures for any of the various Townhome Association purposes and to provide, or cause to be provided, adequate reserves for replacements as it shall deem to be necessary or advisable in the interest of the Townhome

Association or welfare of its Townhome Association Members. At all times until proper expenditure or distribution thereof for the purposes for which they are received occurs, the funds collected by the Board from the Townhome Association Members shall be held in trust for Townhome Association Members.

3.6.7. To contract for and pay maintenance, gardening, utilities, materials and supplies, repair, and services relating to the Townhome Common Area, and to employ personnel necessary for the operation of the Townhome Association and the Project, including legal and accounting services.

3.6.8. To grant easements over the Townhome Common Area where necessary for utilities and sewer facilities to serve the Lots.

3.6.9. To exercise all other rights and enforce all other provisions set forth in the Townhome Declaration, these Townhome Bylaws, or other agreements of the Townhome Association.

3.7. Management Agent. The Board, may appoint for the Townhome Association a professional management agent at a compensation established by the Board, consistent with general law and the Nonprofit Act.

3.8. Books and Financial Information. The Board shall cause to be maintained a full set of books and records showing the financial condition of the affairs of the Townhome Association in a manner consistent with generally accepted accounting principles. An operating budget and balance sheet and an operating (income) statement for the Townhome Association shall be distributed to each Member (and to any Eligible Mortgagee on a Lot in the Community upon written request) within a reasonable time after the last day of each of the Townhome Association's fiscal years ("Accounting Date").

The balance sheet and operating statement shall cover the period between the most recent Accounting Date prior to the issuance of the balance sheet and operating statement and the Accounting Date immediately prior to that Accounting Date ("Accounting Period"). Each balance sheet shall show each item reflected on the balance sheet at the beginning of the Accounting Period and at the end of the Accounting Period. The operating statement for the first Accounting Period shall include a schedule of Assessments received or receivable itemized by Lot number.

3.9. Removal of Directors. Excepting only directors named in the Townhome Association Articles or selected by Declarant, any director may be removed from the Board with or without cause, by a majority vote of the Townhome Association Members. Subject to the rights of Declarant under the Townhome Declaration, at any regular or special meeting of the Members duly called, any one or more of the directors may be removed with or without cause by a majority vote of the Townhome Association Member of the Townhome Association, and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Townhome Association Member shall be given an opportunity to be heard at the meeting. If more than one director is to be removed at any one time, each Townhome Association Member may accumulate his or her votes and vote for or against such removal of one or more of the directors in the number of votes equal to his or her share of the voting power as set forth in

Section 1.1 multiplied by the number of directors sought to be removed; in such event, no director shall be removed if the number of votes cast against his or her removal exceeds the number of votes cast for his or her removal. If any or all of the directors are so removed, new directors may be elected at the same meeting.

3.10. Organizational Meeting. The first regular organizational meeting of a newly elected Board shall be held within thirty (30) days after election of the Board, at such place as shall be fixed and announced by the directors at the meeting at which such directors were elected, for the purpose of organization, election of officers, and the transaction of other business. No notice shall be necessary to the newly elected directors in order legally to constitute such meeting, provided a majority of the whole Board shall be present.

3.11. Other Regular Meetings. Other regular meetings of the Board may be held at such time and place within the Project as shall be determined, from time to time, by a resolution adopted by a majority of a quorum of the directors; provided, however, that such meeting shall be held no less frequently than annually. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone, telegraph, email, fax, or by other direct means at least forty-eight (48) hours prior to the date named for such meeting. Except as otherwise provided in this Article III, notice of regular Board meetings shall also be given by e-mail to Members who have requested such notice at least forty-eight (48) hours before the meeting.

3.12. Special Meetings. Special meetings of the Board may be called by the President (or, if he is absent or refuses to act, by the Vice President) or by any two directors. At least forty eight (48) hours' notice shall be given to each director, personally or by mail, telephone, telegraph, email, fax, or by other direct means, which notice shall state the time, place and the purpose of the meeting, and shall be posted at a prominent place or places within the Project. If served by mail, each such notice shall be sent, postage prepaid, to the address reflected on the records of the Townhome Association, and shall be deemed given, if not actually received earlier, at 5:00 o'clock p.m. on the second day after it is deposited in a regular depository of the United States mail as provided herein. Except as otherwise provided in this Article III, notice of special Board meetings shall also be given by e-mail to Townhome Association Members who have requested such notice at least forty-eight (48) hours before the meeting. Whenever any director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall be *prima facie* evidence that due notice of such meeting was given to such director as required by law and as provided herein.

3.13. Waiver of Notice/Form of Meeting. Before or at any meeting of the Board, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required to Board members and any business may be transacted at such meeting. The transactions of any meeting of the entire Board, however called and noticed or wherever held, shall be valid. All such waivers, consents and approvals shall be filed with the records of the Townhome Association or made a part of the minutes of the meeting. Meetings of the Board may be held in person, telephonically or by similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

3.14. Quorum and Adjournment. Except as otherwise expressly provided herein, at all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board.

3.15. Action Without Meeting. The directors shall have the right to take any action in the absence of a meeting in any manner permitted by the Nonprofit Act, as the Nonprofit Act may be amended from time to time.

3.16. Fidelity Bonds. The Board may require that all officers and employees of the Townhome Association handling or responsible for Townhome Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Townhome Association.

3.17. Committees. The Board, by resolution, may, from time to time, designate such committees as it shall desire and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee shall provide for the appointment of its members and a chairman. The resolution shall state the purposes of the committee, and shall provide for reports, termination, and other administrative matters as deemed appropriate by the Board.

3.18. Meetings Open to Members. During the Declarant Control Period, Board meetings will be open to Townhome Association Members only as required by applicable law. Following termination of the Declarant Control Period, all meetings of the Board shall be open to Townhome Association Members and the Board shall provide each Townhome Association Member a reasonable opportunity to offer comments. The Board may, with the approval of a majority of a quorum of its directors, adjourn the meeting and reconvene in executive session at the exclusion of the Members to discuss or vote upon: (i) personnel matters; (ii) ongoing or potential legal or administrative proceedings; (iii) consultation with an attorney for legal advice; (iv) contract negotiation; (v) matters affecting an individual's reasonable expectation of privacy; and (vi) delinquent assessments or fines and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

## ARTICLE IV OFFICERS

4.1. Designation. At the option of the Board, the principal officers of the Townhome Association shall be a President, Vice President and Secretary, all of whom shall be elected by and from among the Board, subject to the rights of Declarant under the Townhome Declaration.

4.2. Election of Officers. Subject to the rights of Declarant under the Townhome Declaration, the officers of the Townhome Association shall be elected annually by the Board, and each officer shall hold his or her office at the pleasure of the Board until he shall resign or be removed or otherwise disqualified to serve or his or her successor shall be elected and qualified to serve.

4.3. Removal of Officers. Subject to the rights of Declarant under the Townhome Declaration and upon an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and his or her successor elected at any regular meeting of

the Board, or at any special meeting of the Board called for such purpose. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary of the Townhome Association. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and unless otherwise specified in said notice, acceptance of such resignation by the Board shall not be necessary to make it effective.

4.4. Compensation. No officers shall receive compensation for any services they may render to the Townhome Association as an officer; provided, however, that the officers may be reimbursed for expenses incurred in performance of their duties as an officer to the extent such expenses are approved in advance by the Board.

4.5. President. The President shall be the chief executive officer of the Townhome Association. He or she shall preside at all meetings of the Townhome Association and the Board. He or she shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including, but not limited to, the power, subject to the powers of the directors under Article III, to appoint committees from among the Townhome Association Members from time to time as he may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Townhome Association. The President shall, subject to the control of the Board, have general supervision, direction, and control of the business of the Townhome Association. The President shall be an ex officio Townhome Association Member of all standing committees, and he shall have such other powers and duties as may be prescribed by the Board or these Townhome Bylaws of the Townhome Association.

4.6. Vice President. The Vice President shall take the place of the President and perform his or her duties whenever the President shall be absent, disabled, refuses or is unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other Townhome Association Member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board or these Townhome Bylaws of the Townhome Association.

4.7. Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Townhome Association at the principal office of the Townhome Association or at such other place as the Board may order. The Secretary shall keep the seal of the Townhome Association in safe custody and shall have charge of such books and papers as the Board may direct; and the Secretary shall, in general, perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notices of meetings of the Members of the Townhome Association and of the Board required by these Townhome Bylaws or by law to be given, however, no notice, if otherwise timely and proper will not be deemed invalid merely because it was not given personally by the Secretary. The Secretary shall maintain a book of record Owners, listing the names and addresses of the Townhome Association Members as furnished the Townhome Association, and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Lot is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board.

4.8. Accounts. The Secretary shall also have responsibility for Townhome Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records and business transactions of the Townhome Association, including accounts

of all assets, liabilities, receipts and disbursements in books belonging to the Townhome Association. The Secretary shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Townhome Association in such depositories as may from time to time be designated by the Board. The Secretary shall cosign all checks and promissory notes, on behalf of the Association. The Secretary shall disburse the funds of the Townhome Association as may be ordered by the Board, in accordance with the Townhome Declaration, shall render to the President and directors, upon request, an account of all of his or her transactions and of the financial conditions of the Townhome Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or by these Townhome Bylaws.

4.9. Statements of Unpaid Assessments. The Secretary, or any officer having access to the books and records of the Townhome Association may prepare, certify, and execute statements of unpaid Assessments ("Statements"). Pursuant to §57-8a-206(1)(a) of the CAA, a Statement shall be issued with respect to a Lot upon the written request of the Owner thereof. The Townhome Association may charge a reasonable fee for preparing Statements. The amount of this fee and the time of payment shall be established by resolution of the Board, but shall not exceed \$10 in accordance with §57-8a-206(1)(a)(ii) of the CAA. Also in accordance with § 57-8a-206(1)(b) of the CAA, the Statement is binding upon the Townhome Association and other Owners in favor of any person who relies in good faith on the Statement. Unless the Board complies with a request for a Statement from an Owner within ten (10) days of its receipt of the same, any unpaid Assessment that became due prior to the date of the Owner's request was made is subordinate to a lien held by the person requesting the Statement pursuant to §57-8a-206(1)(b) of the CAA.

## ARTICLE V OBLIGATIONS OF MEMBERS

5.1. Notice of Assessments. The Board shall give notice of the Annual Assessment to each Owner at least ten (10) days prior to the beginning of each fiscal year, but the failure to give prior notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that fiscal year are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Townhome Association Members, it may increase the Annual Assessment for that fiscal year and the revised Annual Assessment shall commence on the date designated by the Board.

5.2. Special Assessments. The Townhome Association or the Master Association may levy against each Lot, in any fiscal year, a Special Assessment as provided in the Townhome Declaration or the Master Declaration; provided, however, that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by the Townhome Association Members who are voting in person or by proxy at a meeting duly called for such purpose, if the cost of such new improvements would exceed ten (10%) percent of that budget for the fiscal year.

5.3. Enforcement of Assessments. If an Owner fails or refuses to pay an Assessment when due, the Board shall give written notice to the Owner informing him of the amount of the Assessment due, including any interest or late payment fee, notifying him that pursuant to

applicable law, the utility services paid as a Common Expense and the right of access and use of the recreational facilities will be terminated if payment of the Assessment is not received within seventy-two (72) hours. Initially, the late charge shall be the greater of One Hundred Dollars (\$100.00) or five percent (5%) of the amount of the delinquent installment and interest shall not to exceed the lesser of twenty one percent (21%) per annum or the maximum amount permitted by applicable law. The Board reserves the right to modify the interest charges and late fees in its sole and absolute discretion from time to time, including through the association rules and regulations. The notice must also inform him that he has the right to request an informal hearing by submitting a written request to the Board within fourteen (14) days after the date on which the owner receives the notice. If a hearing is requested, utility services and use of Recreational Facilities may not be terminated until after the hearing is conducted and a final decision has been entered. After notice, if the Owner of a Lot does not request a hearing within fourteen (14) days and fails to pay his or her Assessment, that amount constitutes a lien which the Board may record. The Board may enforce the lien by sale or foreclosure of the Owner's interest in his or her Lot.

The Board may establish and adjust a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due. If any installment of an Assessment assessed by the Board is not paid within thirty (30) days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments. The Townhome Association shall have a lien on each Lot for all Assessments levied against the Lot and for all other fees and charges payable to the Townhome Association by the Owner of the Lot pursuant to this Townhome Declaration.

5.4. Fine for Violation of Townhome Project Documents. The Board may adopt resolutions providing for fines or other monetary penalties for the infraction of the Townhome Project Documents. Fines will be levied after notice thereof and an opportunity to be heard. The Board may levy fines in amounts that it, in its sole discretion, shall determine to be reasonable for each violation of the Townhome Project Documents, including those violations which persist after notice and an opportunity for an informal hearing is given. Before assessing a fine the Board shall: (i) notify the Owner or Occupant of the violation and the applicable rule; and (ii) inform the Owner or Occupant that a fine will be imposed if the violation is repeated within one year, or if a continuing violation, if not remedied within a specified time period, which shall be at least forty-eight (48) hours. The Board may assess additional fines without further warning if an owner violates the same rule within one year from the date of the previous fine or allows a violation to continue for 10 days or longer after the date of the previous fine. Unpaid fines may be collected as an unpaid Assessment and shall be secured by the Assessment Lien. A fine assessed under this Section shall: (i) be made only for a violation of a rule, covenant, condition, or restriction that is specifically listed in the Townhome Project Documents for that specific type of violation or in an amount commensurate with the nature of the violation; and (ii) accrue interest and late fees as provided in the Townhome Declaration for the payment of delinquent Assessments. An Owner or Occupant who is assessed a fine under this Section may request an informal hearing to protest or dispute the fine within fourteen (14) days from the date the fine is assessed. Such hearing shall be conducted in accordance with the standards adopted by the Board and no interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

**5.5. Maintenance, Repair and Replacement.**

5.5.1. Every Townhome Association Member must perform promptly, at his or her sole cost and expense, all maintenance, repair and replacement work on the interior and exterior elements of his or her Townhome, as further described and required in the Townhome Declaration. The Townhome Association or the Master Association, as applicable, shall perform all maintenance, repair and replacement work on the Townhome Common Area, Master Association Maintenance Areas, and all landscaped and improved areas of the Lots, as further described and required in the Townhome Declaration.

5.5.2. As further provided in the Townhome Declaration, each Member shall reimburse the Townhome Association for any expenditures incurred in repairing or replacing any portion of the Townhome Association Common Area owned by the Townhome Association which are damaged through the fault of such Townhome Association Member, including but not limited to such Owners pro rata share of any Master Association Assessments levied against the Townhome Association. Such expenditures shall include all court costs and reasonable attorneys' fees incurred in enforcing any provision of these Townhome Bylaws or the Townhome Declaration.

**ARTICLE VI  
AMENDMENTS TO BYLAWS**

These Townhome Bylaws shall be recorded no later than the date the first Lot is sold. These Townhome Bylaws may be amended unilaterally by the Declarant in the same manner described in Section 12.3 of the Townhome Declaration for amending the Townhome Declaration, or by the Townhome Association in a duly constituted meeting of the Townhome Association Members for such purpose. No amendment by the Townhome Association to these Bylaws shall take effect unless approved by at least a majority of a quorum of Townhome Association Members present, in person or by proxy, at a duly constituted regular or special meeting of the Townhome Association Members. The Townhome Association shall record all amendments to these Bylaws. The prior written approval of each Eligible Mortgagee on a Lot in the Project must be secured before any material amendment to these Bylaws may take effect, which may adversely affect any Mortgagee's rights or security interests, and this sentence may not be amended without such prior written approval of a majority of such Eligible Mortgagees.

**ARTICLE VII  
CONFLICTING PROVISIONS**

In the event any provision within these Townhome Bylaws shall conflict with Utah law, such conflicting provision of the Townhome Bylaws shall be null and void, but all other provisions in these Townhome Bylaws shall remain in full force and effect to the extent permitted by law. In the event there is any inconsistency or conflict between these Townhome Bylaws and the other Townhome Project Documents, priority shall be given to the Townhome Project Documents in the following order: the Townhome Declaration, Townhome Articles, Townhome Bylaws, and Townhome Association Rules, as each respective document may be amended from time to time.

## **ARTICLE VIII**

### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Pursuant to Section 14.12 of the Townhome Declaration, the Board shall authorize the Townhome Association to indemnify Townhome Association officials against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Townhome Association official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Townhome Association official, unless the liability for such expenses arises out of his or her own intentional misconduct. No Townhome Association official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Townhome Association (except indirectly to the extent that such Townhome Association official may also be a Townhome Association Member and therefore subject to Assessments hereunder to fund a liability of the Association), and the Townhome Association shall indemnify and forever hold each such Townhome Association official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Townhome Association official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Townhome Association official who may be entitled to indemnification hereunder to enable such Townhome Association official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Townhome Association official by reason of his or her being, or having been, an Townhome Association official. In the event it is ultimately determined that an Townhome Association official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Townhome Articles or applicable law, such Townhome Association official shall promptly upon demand repay to the Townhome Association the total of such funds advanced by the Townhome Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate as exclusively determined by the Board from the date(s) advanced until paid. Payments authorized hereunder include amounts paid and expenses incurred in settling any such action or threatened action. The provisions of this Section shall apply to the estate, executor, administrator, heirs, legatees, or devisees of a Townhome Association official.

## **ARTICLE IX**

### **MISCELLANEOUS**

9.1. Execution of Documents. The Board, except as in these Townhome Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Townhome Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent, committee member, or employee shall have any power or authority to bind the Townhome Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

9.2. Inspection of Records. The Townhome Association shall keep in its office for the transaction of business the original or a copy of these Townhome Bylaws as amended or otherwise

altered to date, certified by the Secretary, as well as other records of the Townhome Association as required by the CAA or Nonprofit Act, which shall be open to inspection by the Owners and all Eligible Mortgagees in accordance with the CAA and Nonprofit Act. The Board may require payment of the cost of reproducing copies of documents requested by a Townhome Association Member.

9.3. Fiscal Year. The fiscal year of the Townhome Association shall be determined by the Board and, having been so determined, is subject to change from time to time as the Board shall determine.

9.4. Membership Book. The Townhome Association shall keep and maintain in its office for the transaction of business a book containing the name and address of each Townhome Association Member. Proper termination or transfer of ownership of any Lot by an Owner shall be recorded in the book, together with the date on which such ownership was transferred.

9.5. Use of Technology. In recognition of the opportunities offered through computers and continuing advancements in technology, the Townhome Association may, as a Common Expense, provide for or offer services, which make use of computers and other technological opportunities. For example, to the extent Utah law permits, and unless otherwise specifically prohibited in these Townhome Bylaws, the Townhome Association may send required notices by electronic means, hold Board or Townhome Association meetings and permit attendance and voting by electronic means, and send and collect Assessments and other invoices electronically.

## **ARTICLE X ENFORCEMENT**

In the event of a violation of the Townhome Declaration, these Townhome Bylaws, the Townhome Association Rules, the Board may enforce the Townhome Declaration, these Bylaws, the Townhome Association Rules in any manner prescribed by law and shall have all rights and remedies available at law and in equity.

## **ARTICLE XI MEMBERSHIP IN ASSOCIATION**

Townhome Association Membership, and transfers thereof, shall be limited and determined as provided in the Townhome Declaration and the Townhome Articles. There shall be as many Townhome Association Members as there are Owners of Lots in the Project.

*(Secretary's Certification Follows)*

CERTIFICATION

I, the undersigned, do hereby certify:

That I am an authorized representative of the Mayflower Lakeside Townhomes (Phase 2A) Owners Association, Inc., a Utah nonprofit corporation;

That the foregoing Townhome Bylaws constitute the original bylaws of said Townhome Association, as duly adopted at a meeting of the Board thereof held on the 17<sup>th</sup> day of March, 2025.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17<sup>th</sup> day of March, 2025 which are certified to be the Townhome Bylaws adopted by the Board of the MAYFLOWER LAKESIDE TOWNHOMES (PHASE 2A) OWNERS ASSOCIATION, INC., dated March 17<sup>th</sup>, 2025

Name: Bret Burbidge  
Authorized Representative