**DECLARATION OF COVENANTS, CONDITIONS,**

**AND RESTRICTIONS FOR LILAC ESTATES**

THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_\_\_\_, 2021, by Val J. & Jacki D. Sanders (hereinafter referred to as “Declarant.”)

1. **Recitals:**
2. On or about [date] a Plat Map depicting certain real property located in Weber County, Utah was recorded in the Weber County Recorder’s Office as entry no. \_\_\_\_\_ (hereinafter “Plat”).
3. Declarant is the owner of the property depicted in the Plat, hereinafter referred to as Lilac Estates. *See* Exhibit “A” for a letter-sized printout of the Plat; *see* Exhibit “B” for a Legal Description of Real Property.
4. It is the desire and intention of the Declarant to sell the units and to subject the units to mutually beneficial restrictions under a general plan of improvement for the benefit of all the units in the Subdivision and the future owners of the units.
5. It is the Declarant’s intention that these restrictions and covenants are to apply to all phases of the Lilac Estates.
6. The Declarant desires to subject Lilac Estates to the terms of this Declaration. Declarant intends to develop a residential subdivision on the Plat pursuant to the Community Association Act, Utah Code section 57-8a-101, *et seq.* Declarant will develop and convey all of the Units within Lilac Estates subject to a general plan of development and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Units within Lilac Estates. Common Areas and Limited Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in this Declaration. Lilac Estates does not constitute a cooperative.
7. Declarant has deemed it desirable, for the efficient preservation of the values and amenities of Lilac Estates, to create an entity which possesses the powers to maintain and administer the Common Areas and Limited Common Areas (where applicable) and otherwise administer and enforce the provisions of this Declaration. For such purposes, Declarant will cause to be registered with the Utah Department of Commerce the Lilac Estates Association.
8. The Lilac Estates Association is governed by the terms of this Declaration, the Lilac Estates Articles and the Lilac Estates Bylaws, which bylaws are attached hereto as Exhibit “C.”
9. Declarant declares that Lilac Estates shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of Lilac Estates, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of Lilac Estates or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with each Residential Unit and Storage Unit located on the Plat, including any additions thereto, and shall be binding upon all persons having any right, title or interest in Lilac Estates or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of Lilac Estates and any interest therein; and shall inure to the benefit of and be binding upon Declarant, and its successors in interests; and may be enforced by the Lilac Estates Association and the Declarant and their successors in interest.
10. Notwithstanding the foregoing, no provision of this Declaration shall prevent Declarant from doing any of the following:, which shall be deemed to be among Declarant’s reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Unit owned by Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable city or county ordinances; (4) assignment of Declarant’s rights under this Declaration in whole or part; and (5) retention of Declarant’s rights with respect to subsequent phases. A supplemental declaration with such modifications or supplemental provisions as may be deemed appropriate by Declarant on a phase-by-phase basis, may be recorded to address differences in the circumstances affecting any Units to be constructed after the initial phase.
11. These recitals are made a part of this Declaration.
12. **Covenants and Conditions:**

ARTICLE I

DEFINITIONS

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

1. “Act” means the Community Association Act, Utah Code Ann. Sections 57-8a-101, *et. seq*.
2. “Articles” shall mean the articles of the Association, as amended from time to time.
3. “Assessment” shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as an assessment, townhome assessment, special assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.
4. “Association” shall mean Lilac Estates LLC, and as the context requires, the officers or directors of that Association.
5. “Board” shall mean the duly elected and acting Board of Directors of the Association.
6. “Bulk Service Contract” or “Bulk Service Provider” shall mean a service provider for items such as; internet, television, cable, satellite, telephone, data, solar power and similar utilities and services.
7. “Bylaws” shall mean the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as Exhibit D.
8. “City” shall mean Ogden, Utah and its appropriate departments, officials and boards.
9. “County” shall mean Weber County, Utah and its appropriate departments, officials and boards.
10. “Common Area(s)” shall mean all property designated on the recorded Plat(s) for the Property or described in the Declaration as Common Area, being intended ultimately to be owned by the Association for the common use and enjoyment of all Owners, together with all improvements thereon and all of the easements appurtenant thereto.
11. Common Area may include parking within the Property and landscaping outside of the footprint of the Unit.
12. Certain community amenities within the Property may be owned by other sub-associations or third party entities (as set forth in subsequent plats, recorded documents or governing documents). Notwithstanding, Owners may be granted certain rights of access along with maintenance responsibilities for community amenities.
13. Subsequent Neighborhood Declarations, as approved by the Association, may make further designations within said Neighborhood with regard to Sub-association Common Areas or amenities within sub-associations, which can include parking maintenance and access within specific sub-associations, club houses and related amenities in the Apartments.
14. “Common Expenses” means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments, charges, fines, penalties and liens imposed pursuant hereto; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act.
15. “Declarant” shall mean and refer to Val J. Sanders, Jacki D. Sanders and Lilac Estates, LLC, and their successors and assigns.
16. “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Lilac Estates, together with any subsequent amendments or additions through supplemental declarations.
17. “Development Agreements” shall mean that certain agreement approved by Weber County on or about [date].
18. “Governing Documents” shall mean, as the context requires, the Declaration, Bylaws, Articles, Rules, and any other documents or agreements binding upon an Owner.
19. “Improvements” shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Units, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.
20. “Limited Common Areas” shall mean the all property designated on the recorded Plat or described in this Declaration as Limited Common Areas, which may be owned by the Association but for the exclusive use and enjoyment of one or more appurtenant Lots or Units but fewer than all of the Lots and Units, which may include such items as patios, as further designated in the Plat or Declaration.
21. “Lot(s)” shall mean each individual parcel of real property in the project and all multifamily Units in the project.
22. “Manager” shall mean any entity or person engaged by the Board of Directors to manage the Project.
23. “Member” shall mean and refer to every person who holds membership in the Association, including the owner(s) of each Unit and of each Storage Unit and the Declarant as set forth herein.
24. “Owner” shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Weber County, Utah) of a fee simple or an undivided interest in any Unit within the Property. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term “Owner” shall not mean or include a mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.
25. “Party Wall” shall have the meaning set forth in this Declaration.
26. “Person” shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah, including the authorized representative of such legal entity.
27. “Plat(s)” shall mean an official and recorded plat of the for Lilac Estates, including all subsequent phases, if any, when recorded, as approved by the County and recorded in the office of the Weber County Recorder, as it may be amended from time to time covering the Property.
28. “Rules” mean any instrument adopted by the Board for the regulation and management of the Association as provided in the Governing Documents.
29. “Storage Units” mean units designated for storage of vehicles or other items which are located within and identified on the Plat(s).
30. “Subdivision Improvements” shall mean all improvements to be installed outside the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Lots, and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.
31. “Unit” shall mean each individual residence of the multi-family residential structures built or to be built on the parcels subject to this declaration, together with all Improvements located on or with respect to the parcel(s) concerned that are used in connection with such residence such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, stoves, fixtures, etc. serving that Unit shall be considered part of the Unit. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit or serving only the Unit shall be part of the Unit. This shall also include any individual metering that exists for a specific Unit.

ARTICLE II

EASEMENTS

2.1 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot or Residence and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner’s Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

2.2 Easement Concerning Limited Common Area. The Association shall have a non-exclusive easement for any utility or any required maintenance in and through the Limited Common Area. With the exception of the rights and easements granted to the Association, the Owner(s) of a Lot shall have the exclusive use of all Limited Common Area appurtenant to their Lot.

2.3 Limitation on Easement. An Owner’s right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

* 1. The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;
  2. The right of the Association to suspend an Owner’s right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.
  3. The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service.

2.4 Reservation of Access and Utility Easements. Declarant hereby reserves an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

2.5 Easements for Construction and Development Activities. Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Units on Lots, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots, or other property in the Project, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

2.6 Easement in Favor of Association. The Lots, Common Area, and Limited Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

* 1. For inspection during reasonable hours in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;
  2. For inspection, maintenance, repair and replacement of portions of the Common Areas;
  3. For correction of emergency conditions;
  4. For the purpose of enabling the Association, or committees thereof to exercise and discharge during reasonable hours their respective rights, powers and duties;

2.7 Landscaping Easement. The Association shall have an easement and related access rights in order to maintain the landscaping and snow removal of any Common Areas. The Association, its agents, employees, or subcontractors, shall have the right of easement over and across each Lot for the purpose of maintaining the Lot in accordance with the provisions of this Declaration

2.8 Income Generated tom Service Providers. Declarant, as owner of the real property, may negotiate terms with service providers that desire to install infrastructure to provide services to owners in the Association. During the Declarant Control Period, any income gained from these negotiations with service providers by Declarant may be retained by the Declarant. Further, the Association may enter into contracts with third party companies related to the provisions of utilities and related services for the benefit of owners in the Association.

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

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

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

ARTICLE III

COMMON AREAS, LIMITED COMMON AREAS, UNIT  
MAINTENANCE & PARTY WALLS

3.1 Common Areas. The Common Areas consist of areas designated as Common Areas on the recorded Plat(s) or described in this Declaration, including any structures related to the operation or maintenance of the Common Areas, together with any rights of way and utilities, as shown on the recorded Plat(s).

(a) Except as otherwise provided in Governing Documents, the Townhome Association, or its duly designated agent, shall maintain all Common Areas, including, without limitation, the Improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate Common Areas as it deems necessary and appropriate. The Association shall have the authority to assess its members for the costs of said maintenance in accordance with the terms of this Townhome Declaration.

(b) Landscaping. The Association may adopt Rules to add further detail with regard specific landscape maintenance services provided by the Association.

(c) Snow Removal. The Association may adopt Rules to add further detail with regard specific snow removal services provided by the Association. Notwithstanding, it is the intent that the Association shall generally provide for all snow removal on the Common Areas. The Association may make reasonable and prudent efforts to contract with a third party for the removal of snow from Common Areas within the Subdivision. Unless the Board elects to provide snow removal for Limited Common Areas, driveways, private walkways or steps, Owners shall be responsible for such areas and other applicable areas on their Lot. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow will be delegated to a third party, who will utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. To the extent allowed by law, the Association shall not be responsible or liable for said third party’s discretion and removal of snow.

3.2 Limited Common Areas. Owners shall maintain the Limited Common Areas associated with their Lots and Units.

3.3 Association Maintenance of Lots & Units. The Association shall maintain, repair and replace the roofs, rain gutters and downspouts on the Units, and the normal wear and tear on exterior wall finishes of the Units. Exterior wall maintenance by the Association does not include doors, doorframes, garage doors, windows, window frames, window wells, skylights, patio doors, or glass of any kind. All other components or improvements for the Unit(s) that are not specifically assigned to the Association herein shall be maintained by Owners.

3.4 General Rules of Law Apply to Party Walls. Each wall which is built as part of the original construction of a Unit within the Project and placed on the dividing line between two Units shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of the Act, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

3.5 Party Wall Maintenance. Each Unit that shares one or more Party Wall(s) will also share elements of a common roof, a common exterior wall, or other common exterior elements with adjacent Unit(s). The Owners acknowledge that certain repairs or maintenance to Units with a Party Wall or Walls may become necessary, which repairs or maintenance may not be able to be performed on one Unit only.

3.6 Insurance. The existence of attached Lots within the Project will require blanket property insurance coverage as required by the Governing Documents and/or Act on all attached Units.

ARTICLE IV

OWNERS’ MAINTENANCE OBLIGATIONS

4.1 Duty to Maintain. With the exception of those items reference in Article 3.3 above, it is the obligation of each Owner to maintain his Unit and Improvements located thereon, which shall remain in a clean and sanitary condition, free of pests and rodents, and uncluttered at all times in order to preserve and enhance the enjoyment of the Project.

4.2 Repairs by Association. In the event that an Owner permits his Unit or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within l5 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner’s Unit and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus l5%. In addition, each Owner hereby grants to the Association a lien on the Unit and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Unit in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

4.3 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as originally constructed. No subsequent exterior alterations, improvement or remodeling, or any changes in landscaping, paint color or materials will be made without the advance consent of the Board. Declarant shall be exempt from this provision.

4.4 Repair Following Damage. In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage, before reconstruction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Unit for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

ARTICLE V

MEMBERSHIP

5.1 Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association, so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in the Lot. Upon the transfer of an ownership interest in a Lot the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Lot is held. Notwithstanding the foregoing, the Declarant shall also be granted voting rights as a Class “B” Member, as defined below.

ARTICLE VI

VOTING

6.1 The Association shall have two (2) classes of voting membership, Class “A” and Class “B”, as follows:

(a) Class “A”. Class “A” Members shall be all Owners with the exception of Class “B” membership, if any. Class “A” membership shall be entitled to one (1) equal vote for each Residence in which they are an Owner. Only an Owner that is current on all Assessments and/or other fees thirty days in advance of the meeting or vote shall be deemed in good standing and entitled to vote. With regard to any approval that requires a specified percentage of total membership, the total membership shall be calculated from the total number of Owners eligible to vote at the time such approval is sought. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association that Person shall be entitled to cast all votes appertaining to that Residence. But if more than one of such Person(s) is present, the votes appertaining to that Residence shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Residence without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Residence may not be divided between Owners of such Residence or with respect to matters before the Association, and all such votes appurtenant to any one Residence shall be voted in one block. If the vote of a majority of the owners of a Residence cannot be determined, no vote shall be cast in relation to such Residence.

(b) Class “B”. The Class “B” Member shall be Declarant. In all matters requiring a vote, the Class “B” membership shall receive one hundred (100) votes for each recorded Residence or acre of property in the Undeveloped Land owned by Declarant. The Class “B” membership shall also be entitled to appoint the members of the Townhome Board and Association during the Class “B” Control Period.

ARTICLE VII

CONTROL PERIOD

7.1 The Class “B” Control Period runs until ninety (90) days after the first to occur of the following:

(a) Declarant no longer owns any Lots or Undeveloped Land; or

(b) When, at its discretion, the Class B Member so determines.

7.2 Notwithstanding anything to the contrary in this Declaration, Declarant may exercise its discretionary termination of control in whole or in part as to any portion of the Subdivision at its sole election and determination. In doing so as to a portion of the Subdivision, it does not waive any reversionary or remaining control as to all other portions of the Subdivision, the control of which is not expressly terminated by Declarant.

ARTICLE VIII

ASSOCIATION

8.1 Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners within the Property, and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Unit, and is transferable only in conjunction with the transfer of the title to the Unit. The Association shall serve as the organizational body for all Owners.

8.2 Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Unit; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners’ right to receive utility service paid as a common expense; (6) terminate an Owner’s right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

(a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Unit(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

8.3 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy assessments against each Unit and each Storage Unit as necessary to carry out its functions. Assessments shall be levied against all Units and Storage Units in the Property, whether vacant or improved. Each Owner shall, by acquiring or in any way becoming vested with his/her interest in a Unit and/or Storage Unit, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

(a) All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Unit with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Unit at the time the assessment fails due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Unit at the time of the conveyance, without prejudice to the grantee’s right to recover from the grantor the amounts paid by the grantee therefor.

(b) Special Assessment. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.

(c) Individual Assessment. The Association may levy individual assessments on every Unit, Owner or occupant that shall cause any damage to the Project or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Unit(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.

(d) Reserve Fund. The Association may levy a reserve fund assessment, as set forth in this article.

(e) The Associations may levy other assessments or fees, as authorized by the Governing Documents.

(f) Storage Unit Assessment. The Storage Units are expected to incur far less expense and maintenance because they have no electrical, plumbing, or other common utilities. Unless approved by all Storage Unit Owners, any assessment for Storage Units shall be assessed at 15% of the amount assessed to Residences.

8.4 Budget. The Board is authorized and required to adopt a budget annually, which shall be presented to the Owners at a meeting of members.

(a) The Board may revise the approved budged from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget.

(b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

(c) Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments.

8.5 Reserve Fund Analysis. Following the Class B Period, the Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

8.6 Reserve Fund Account Creation. The Board shall create a reserve fund account that is separate and distinct from the Association general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board’s discretion, to fund the reserve account.

8.7 Reinvestment Fee. There shall be no Reinvestment Fee unless adopted by action of all voting members and recorded against the property.

8.8 Date of Commencement of Assessments. Assessments provided for herein shall commence as to each Unit on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide. Notwithstanding, Assessments for those Units owned by Declarant or their assigns, successors, subsidiaries, related construction entities, or other entities established by Declarant, or Declarant’ members, for the purpose of constructing Units on the Unit (collectively “Declarant’ Related Entities”) shall not commence until the completed Unit is conveyed to an Owner that is not the Declarant or a Declarant’ Related Entity. No amendment of this Declaration changing the allocation assessments with regard to Declarant or Declarant Related Entities shall be valid without the consent of the Declarant.

8.9 Fines. Following notice as required by the Act, the Association shall have the power to assess a fine against an Owner (or their Lot(s)) for a violation of the terms and conditions of the Governing Documents in an amount set by the Board.

8.10 Hearing Process. The Board shall have authority to create a reasonable hearing process, consistent with the Act, applicable when the Association takes an adverse action related to any particular Owner(s).

8.11 Association Rules. The Board from time to time and subject to the provisions of the Governing Documents , may adopt, amend, repeal and enforce Rules governing: (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; (e) collection policies and procedures; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents.

During the Class B Period, Declarant shall be exempt from the rule making procedure required by Utah Code section 57-8a-217 and may adopt rules in Declarant’s sole discretion.

8.12 Statement of Account & Payoff Information. Upon a written request from an Owner that the Association provide the Owner with a statement of his/her account, the Association may charge a fee, not to exceed $10.00, for providing such statements. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Unit Owner’s sale of his/her Unit, the Association may charge a fee not to exceed $50.00.

8.13 Availability of Documents. The Association shall make appropriate documents available to Owners (and their lenders, insurers and/or authorized agents) consistent with the Act and the Utah Revised Non-Profit Act. The Board may adopt a record retention policy to govern it record retention procedures.

8.14 Indemnity of Association Board and Officers. The Association will indemnify the officers, agents and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under the Governing Documents.

8.15 Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Townhome Articles or Bylaws.

8.16 Number of Board. Term of Office. The appointment, election and term of the Members of the Board are set forth in the Townhome Bylaws and Townhome Articles. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association.

8.17 Independent Accountant/Bookkeeper. The Association may retain the services of an independent accountant or bookkeeper to assist the Board of Directors and officers to maintain accurate financial records of the Association.

ARTICLE IX

NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE

9.1 Delinquent Assessment, Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

9.2 Due Date. Charges & Interest. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10th of each month. The Board may charge late fees in an amount set by the Board. In addition to late fees, interest shall accrue on all unpaid balances, including prior, unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges imposed by a Manager related to collections.

9.3 Lien. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (l) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

9.4 Foreclosure. The Association shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Unit not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

9.5 Other Remedies. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The “One Action Rule” shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Unit(s), and/or other obligees jointly and severally.

9.6 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Unit, the amount of any assessment that is more than sixty (60) days past due.

9.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Unit(s).

9.8 Appointment of Trustee. The Declarant hereby convey and warrant pursuant to U.C.A. Sections 57-l-20 and 57-8a-212 to Matthew G. Koyle, Esq., a licensed member of the Utah State Bar, and assigns, with power of sale, the Unit and all Improvements to the Unit for the purpose of securing payment of assessments under the terms of this Declaration.

ARTICLE X

SUBORDINATION OF LIEN TO INSTITUTIONAL  
FIRST AND SECOND MORTGAGES

10.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Association. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a prior, recorded institutional first or second mortgage shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer; provided, that to the extent there are any proceeds of the sale on foreclosure of such mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such mortgage, the lien shall apply to such excess. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the mortgagee holding an institutional first or second mortgage of record or other purchaser of a Unit obtains title pursuant to remedies under the mortgage, its successors and assigns shall not be liable for the share of the assessments by the Association chargeable to such Unit that became due prior to the acquisition of title to such Unit by such acquirer. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

ARTICLE XI

USE LIMITATIONS & RESTRICTIONS

11.1 Single Family. All Units shall be used only for single-family residential purposes. “Single Family” shall mean one household of persons related to each other by blood, marriage, or adoption, or one group of not more than one unrelated individual per bedroom.

11.2 Zoning Regulations. The lawfully enacted zoning regulations of the City and/or County, and any building, fire, and health codes are in full force and effect in the Project. No Unit may be occupied in a manner that is in violation of any statute, law or ordinance.

11.3 Acceptable Business Uses. No commercial trade or business may be conducted in or from any Residence unless: 1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence;2) the business activity conforms to all zoning requirements for the Property, and the necessary and required permits and licenses are obtained; 3) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and 4) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The terms “trade or business” shall have their ordinary and generally accepted meanings, which shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or a license is required therefore. As used herein, “commercial or business” activity shall not include the rental or leasing by an Owner of a Residence for residential purposes. This Section specifically prohibits the use of a Residence for the commercial repair or sale of any vehicle, equipment, boat or other fuel operated equipment.

11.4 No Noxious or Offensive Activity. No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may be a nuisance or may cause embarrassment, disturbance, or annoyance to Occupant(s) of other Lots, including but not limited to unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

11.5 Vehicles & Parking. The Association may promulgate further rules and policies with regard to vehicles and parking including, but not limited to: time and location restrictions, fines, towing, enforcement, visitor parking, street parking, type of vehicles, rules and prohibitions with regard to oversized, commercial, recreational, trailers, RVs, boats and other types of vehicles. All garage doors shall be kept closed except when open for a temporary purpose.

11.5 External Improvements. No dog runs, walls, decks, or gazebos shall be allowed without prior approval of the Board. No solar panels shall be allowed.

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

11.7 Restrictions on Animals. No animals other than common household pets, up to a maximum of two (2), shall be allowed for each Unit provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner’s control. “Control” for the above purposes shall only mean on a leash or lead, within a vehicle, or within the Unit of the Owner. Pet owners shall promptly remove and dispose of all excrement emitted by their pets. Fierce, dangerous or vicious animals or animals that cause a nuisance by barking or other offensive activity shall not be permitted. Failure to abide by these conditions shall result in fines and further legal action, as authorized by the Board. All restrictions and rules as set forth by the City with respect to animals are hereby incorporated by this reference. The Association may also defer to the City for enforcement of violations of animals rules where appropriate. Any complaint with regards to a pet or animal in the Subdivision shall first be made to the County Animal Control Department prior to contacting the Board or Manager.

The Association may adopt further rules and policies for management of pets in the Project including procedures for approval of service/assistance animals. Further, sub-association may adopt further restrictions and policies with regard to pets applicable to their sub-association.

11.8 Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any Unit, upon any Lot, or upon the Common Area, or upon any part of the Project which would be in violation of any statute, ordinance, regulation, rule, permit, or other validity-imposed requirement of any governmental authority, nor result in the cancellation of any insurance policy. No damage to, or waste of, the Common Area or Common Facilities or any part thereof shall be committed by any Owners or guest or invitee of any Owner, and each such Owner shall indemnify and hold harmless the Association and the other Owners against all loss resulting from any such damage or waste caused by such Owner, his or her family, guests, tenants, licensees, or invitees.

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

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

11.11 Garbage Refuse and Debris. All trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and/or Residence shall not be allowed to accumulate thereon. All containers for the storage or disposal of such material shall be kept in a clean and sanitary condition, and shall be stored in the garages of each Owner. Such containers may be placed for collection not more than twenty-four (24) hours prior to the scheduled collection date and shall be removed from the view of the general public and stored in a reasonably prompt manner after collection. No lawn, shrub, or tree clippings or trimmings may be stored or accumulated on any Lot or Unit except as allowed above.

11.12 Satellite Dishes. No more than one satellite dish may be installed per Unit. Notwithstanding, the use of fiber, cable and other less visible options are preferred. The location of any satellite dishes in the Project, including any related cables or infrastructure must receive the prior, written approval from the Board.

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

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

1 1.15 Holiday Lighting. Holiday Lighting and any other seasonal exterior decor to be temporarily attached to a Unit shall only be allowed on the Townhomes between October lst and January 30th.

11.16 Window Coverings. Residents shall not use blankets, sheets, foils, or non-standard window coverings in place of draperies or blinds. Residents shall not place objects on window or window seals which are visible from the outside.

11.17 Barbeques. The use or storage of any charcoal burner, liquid petroleum, and gas fueled or any other cooking devices (“Barbeque Devices”) are prohibited in any Unit or on any balcony. With respect to Townhomes, Barbeque Devices must be stored in garages, and used on the back patio of such Townhome.

11.18 Signs and Advertising. No commercial billboard or advertising shall be displayed to the public view on or from any Lot, Residence, or Unit. Owners may advertise a Unit unit or Lot for rent or for sale by displaying a single, neat, vacancy sign or “For Sale” sign, thereon, with the sign and hanging apparatus not exceeding a total of 9 square feet. Signs advertising the name of the builder and the name of the institution providing financing may be displayed on a Lot during construction of the improvements; said sign and hanging apparatus may not exceed 16 square feet. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions provided the same is approved by the ACC prior to installation.

11.19 External Energy Devices. No energy producing devices including, but not limited to, solar panels and generators of any kind, shall be constructed, installed or maintained on the Property,

11.20 Combination of Lots. No Unit may be combined with another Unit without the consent of the Board.

11.21 Miscellaneous

(a) Between 10:00 p.m. and 7:00 a.m. all noise shall be held to a minimum.

(b) Smoking materials, such as cigarette butts, cigar ends, etc. must be properly disposed of by the smoker in appropriate receptacle. Any smoking must be 25 feet away from other Units. Smokers are required to obey the Utah Clean Air Act regarding smoking.

11.22 Submission to Committee. No Improvement, Unit, accessory building or structure, addition, landscape changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Unit shall be performed, unless plans and specifications therefor have first been submitted to and approved by the Board. All such plans and specifications shall be consistent with Architectural Guidelines which shall be from time to time adopted by the Board.

11.23 Exception for Declarant and Declarant Related Entities. The foregoing provisions of this Article shall not apply to any improvement construction, landscaping, or alteration which is carried out by Declarant or Declarant Related Entities on any Unit or on any part of the common Areas and which occurs at any time during class B control Period.

ARTICLE XII

ANNEXATION & DE-ANNEXATION

13.1 Annexation. Additional phases may be added to the Property.

ARTICLE XIII

INSURANCE

14.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by the Act. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

As used in this Article:

1. Covered Loss” means a loss, resulting from a single event or occurrence that is covered by the Association’s property insurance policy.
2. “Unit Damage” means damage to a Unit.
3. “Unit Damage Percentage” means the percentage of total damage resulting in covered loss that is attributable to Unit Damage.

14.2 Property Insurance.

(a) Hazard Insurance.

(i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all common Areas, Limited Common Areas and attached Units.

(1) Subject to the provisions of Utah Code section 57-8a-405, a blanket policy of property insurance or guaranteed replacement cost insurance on the physical structure of all Units, common Areas and Limited common Areas appurtenant to a Unit within the Property, insuring against all risks of direct physical loss commonly insured against, including fire and extended perils.

(2) Any blanket policy shall be in an amount not less than one hundred percent (100%0) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(b) Flood Insurance. If the property insured by the Association is not situated in a Special Flood Hazard Area, the Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(c) Earthquake Insurance. The Association may nonetheless, if approved by a majority of Owners, purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.

(d) Association’s Obligation to Segregate Property Insurance Deductible. The Association shall keep an amount equal to the Townhome Association’s property insurance policy deductible or $10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) Association’s Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association’s property insurance policy deductible the Association need not tender the claim to the Townhome Association’s insurer.

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

14.4 Director’s and Officer’s Insurance. The Association shall obtain Directors’ and Officers’ liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

(a) Include coverage for volunteers and employees;

(b) Include coverage for monetary and non-monetary claims;

(c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and

(d) Provide coverage for defamation. ln the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

14.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds that shall:

(a) Provide coverage for an amount of not less than the sum of three months regular assessment in addition to the prior calendar year’s highest monthly balance on all operating and reserve funds; and

(b) Provide coverage for theft or embezzlement of funds by:

(i) officers and Board of Directors member of the Association;

(ii) Employees and volunteers of the Association;

(iii)Any manager of the Association; and

(iv) officers, directors and employees of any manager of the Association.

14.6 Association’s Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association’s property insurance policy shall be payable to the Association; and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Townhome Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Townhome Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

14.7 Owner Act Cannot Void Coverage under Any Policy. An Owner’s act or omission may not void an insurance policy or be a condition to recovery under a policy.

14.8 Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

14.9 Owners’ Individual Coverage. **EACH OWNER SHOULD PURCHASE INDIVIDUAL INSURANCE COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER’S INSURANCE AGENT.**

ARTICLE XIV

DAMAGE & DESTRUCTION

15.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

I5.2 Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Townhome Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

15.3 In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

ARTICLE XV

DISBURSEMENT OF PROCEEDS

16.1 If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account.

ARTICLE XVI

REPAIR AND RECONSTRUCTION

17.1 If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

ARTICLE XVII

CONDEMNATION

18.1 Whenever all of any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of members representing at least sixty-seven percent (67% of the total Association vote by any authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the 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 disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE XVIII

MISCELLANEOUS PROVISIONS

19.1 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance, and is subject to abatement by the Association.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by an Owner or by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

19.2 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, during the Class B Period, this Article and its subsections may not be amended except with the prior written consent of the Declarant.

19.3 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

19.4 Consent. Power of Attorney. Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Unit, each Owner or occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of the Governing Documents. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner’s or Occupant’s behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association’s reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

19.5 No Representations and Warranties. Each Owner and occupant understands, agrees, and acknowledges through taking title or residing in the Project that the Declarant, Association and the Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any representation or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Project.

19.6 Amendment. At any time while this Declaration is in effect, the covenants herein contained can be modified by the Declarant or Declarant’ successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

19.7 Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Unit in the Project is conclusively deemed to have notice of this Townhome Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against his/her Unit, whether or not there is any reference to this Declaration in the instrument by which he/she acquires interest in any Unit.

19.8 Notices. All notices under this Declaration are provided as set forth in the Bylaws.

19.9 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

19.10 Right to Modify Unit Boundaries and Interior Boundary Lines. Declarant reserve the unilateral right to modify Unit boundaries and interior boundary lines and/or combine Units so long as it owns the Units; provided, however, such changes may not extensively alter the boundaries of the Common Area and Facilities nor change the percentages of ownership interest.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written.

THIS DECLARATION is made the day and year first above written.

DECLARANT:

Val J. Sanders

Jacki D. Sanders

STATE OF UTAH )

:ss

COUNTY OF WEBER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 2021, by Val J. Sanders and Jacki D. Sanders.

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NOTARY PUBLIC