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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ROCKWELL RANCH TOWNHOMES**

(A Residential Townhome Project in American Fork City, Utah County, Utah)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ROCKWELL RANCH TOWNHOMES**

This *Declaration of Covenants, Conditions and Restrictions for Rockwell Ranch Townhomes* (this “**Declaration**”) is made and executed this 2 day of October, 2020, by RWR Property Holdings, LLC, a Utah limited liability company (“**Declarant**”), for itself, its successors and assigns, pursuant to the provisions of the Utah Community Ownership Act in Title 57, Chapter 8a, Utah Code Annotated, as amended (the “Act”).

1. RECITALS.

1.1. Declarant owns the real property located in Utah County, State of Utah, hereinafter more particularly described, upon which Declarant desires to develop a residential townhome project to be known as the Rockwell Ranch Townhomes (the “**Townhome Project**”).

1.2. The Townhome Project will initially be comprised of four (4) townhome buildings, containing a total of sixteen (16) townhome units, to be constructed on the land described in Exhibit D hereto.

1.3. Declarant intends to expand the Townhome Project in the future to include additional townhome buildings with up to three hundred twenty-four (324) additional townhome units, for a total of three hundred forty (340) additional townhome units at full build-out. The rights of Declarant to expand the Townhome Project are described more fully in Section 27 of this Declaration. Hence, this is an expandable townhome project.

1.4. The Townhome Project is part of a larger master planned community known as *Rockwell Ranch*, which includes not only the Townhome Project, but also areas on which condominiums and single family homes will be constructed.

1.5. The townhome units in the Townhome Project will be subject to the provisions of this townhome Declaration as well as the provisions of the Master Declaration of Covenants, Conditions and Restrictions of Rockwell Ranch (the “**Master Declaration**”). This Declaration and the Master Declaration will both be recorded in the Utah County Recorder’s Office against the real property included in the Townhome Project.

1.6. Accordingly, owners of townhome units in the Townhome Project will be members of both the Rockwell Ranch Townhomes Owners Association, Inc. (herein referred to as the “**Townhome Association**”) and also the Rockwell Ranch Owner Association, Inc., referred to as the “**Master Association**.”

1.7. The covenants, conditions and restrictions contained in this Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land. This Declaration shall be binding on all future owners of townhome units in the Townhome Project, as the same may be expanded.

1.8. This Project is not intended to be a cooperative or a condominium project. No portion of this Townhome Project is subject to the provisions of the Utah Condominium Ownership Act (Utah Code 57-8-1 et seq.).

2. DEFINITIONS.

2.1. Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Section **Error! Reference source not found.**

2.2. Act shall mean the Utah Community Ownership Act (Title 57, Chapter 8a, Utah Code Annotated).

2.3. Additional Land means the real property in Utah County, Utah, which may be added to this Townhome Project in the future in accordance with the provisions of Section 27 of this Declaration. The Additional Land is identified as the area designated for Townhomes in the site plan attached in Exhibit C hereto. This Declaration does not create any lien, encumbrances or restriction on such Additional Land unless and until it is added to the Townhome Project and made subject to the provisions of this Declaration in accordance with the provisions of Section 27 below.

2.4. Amendment shall mean any amendment to this Declaration made in accordance with the Declaration and the Act.

2.5. Assessable Unit shall mean each Unit, except for Exempt Units.

2.6. Buildings shall mean the residential townhome buildings constructed within the Townhome Project, located on the land described in Exhibit D hereto (and on any additional land that may be added to the Townhome Project in the future).

2.7. Board shall mean the Board of Directors of the Association, appointed or elected in accordance with this Declaration and the Bylaws.

2.8. Bylaws shall mean the Bylaws of the Townhome Association, as amended from time to time.

2.9. Capital Improvement shall mean any improvement with a useful life of more than three (3) years.

2.10. Common Areas and Facilities shall mean all portions of the Project other than the Units, as described in Section 0 hereof.

2.11. Common Assessments shall mean those assessments described in Section 19 to fund the Common Expenses, and include Regular Common Assessments and Special Common Assessments.

2.12. Common Expense Account shall mean one or more deposit or investment accounts of the Townhome Association into which are deposited the Common Assessments.

2.13. Common Expenses shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Facilities and all other expenses denominated as Common Expenses by this Declaration or by the Act.

2.14. Common Wall(s) means the walls in each Building that divide and are located between any two (2) adjoining Units in a Building. The Common Walls are used by the Owners of adjoining Units in a Building, and are subject to the provisions of Section 7.3 of this Declaration and the subsections thereof. Declarant shall mean and refer to RWR Property Holdings, LLC, a Utah limited liability company, which owns the land described in Exhibit D hereto as of the execution date of this Declaration.

2.16. Exempt Unit(s) shall mean each Unit in the Project while owned by Declarant or a Declarant Affiliate, until the earliest to occur of (i) the acquisition of title to the Unit by a person or entity other than Declarant or a Declarant Affiliate, or (ii) the one hundred eightieth (180th) day after the municipal authority having jurisdiction thereover issues a certificate of occupancy for the Unit. In addition, each Lot that does not contain a fully-constructed townhome Unit with a certificate of occupancy shall be an “Exempt Unit,” and each model unit owned by the Declarant shall be an “Exempt Unit” so long as the same is used as a model unit by the Declarant, a Declarant Affiliate, or their assign(s).

2.17. Family Member shall mean the parent, sibling, child, grandparent, or grandchild of an Owner and that Family Member’s spouse and/or children.

2.18. Lease shall mean any agreement for the leasing or rental of any Unit or portion of the Townhome Project.

2.19. Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities allocated by the Declaration or the Act, and as may be shown on the Plats, for the exclusive use of one or more, but fewer than all, of the Units.

2.20. Lot shall mean each of the tracts of land designated as a “Lot” on the Plat. As shown on the recorded Plat, each townhome Unit will be constructed on a Lot. Ownership of the Lot and the Unit (when constructed on the Lot) shall be inseparable, and any conveyance of a Lot shall operate to convey title to the Unit constructed on the Lot. Likewise, any conveyance of a Unit shall operate to convey title to the Lot on which the Unit is located.

2.21. Manager shall mean the person, firm or company, if any, designated from time to time by the Townhome Association to manage, in whole or in part, the affairs of the Townhome Association and the Townhome Project.

2.22. Map or Plat (townhome plat) shall mean each Record of Survey Map (or Townhome Plat) of the Townhome Project, recorded in the official records of the Utah county Recorder’s Office, Utah, against the real property included in the Townhome Project.

2.23. Master Association shall mean the Rockwell Ranch Owner Association, Inc., which is the owners association of the entire master-planned project known as *Rockwell Ranch*. The Townhome Project is part of *Rockwell Ranch*, and is subject not only to the provisions of this

Declaration but also to the provisions of the Master Declaration. Each Owner of a Unit is automatically a member of the Master Association.

2.24. Master Declaration means the Master Declaration of Covenants, Conditions and Restrictions of Rockwell Ranch, which will be (or has been) recorded against the Townhome Project and all other areas of the Rockwell Ranch master-planned development. Each Unit and Building included in the Townhome Project is subject to the provisions of the Master Declaration (as well as the provisions of this townhome Declaration).

2.25. Mortgage shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

2.26. Mortgagee shall mean (i) any persons or entities named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage, or (iii) any insurer or guarantor of such person or entity under such Mortgage.

2.27. Non-Owner Occupied Unit shall mean: (i) for a Unit owned in whole or in part by an individual(s), the Unit is occupied by someone when no individual Owner or Family Member of the Owner occupies the Unit as the individual Owner's or Family Member's primary residence or second home; or (ii) for a Unit owned entirely by a trust or other entity created for estate planning purposes, the Unit is occupied by anyone other than the person(s) for whom the entity or trust was created for or a Family Member of such person(s).

2.28. Owner shall mean any person or entity at any time owning in fee simple a Unit within the Townhome Project as such ownership is shown by the records of the Utah County Recorder, State of Utah. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

2.29. Owner-Occupied shall mean a Unit occupied as a primary residence or second home by (1) Owner(s), Family Member of the Owner(s), or if the Owner is an entity or trust created for estate planning purposes, the person(s) for whom the entity or trust was created for or a Family Member of such person(s).

2.30. Project or Townhome Project shall mean the Property, Buildings, the Units, the Common Areas and Facilities and all improvements constructed on the Property, as approved by the applicable governmental authorities. As used herein, the term "Project" means and refers only to the Rockwell Ranch Townhomes project (containing up to 340 townhome units), not to the master project known as "*Rockwell Ranch*." The Project is located within said master project.

2.31. Property shall mean that certain real property situated in Utah County, State of Utah, more particularly described in Exhibit D hereto, on which the Buildings, the Units, and other improvements are located.

2.32. Regular Common Assessments shall mean the annual assessments levied by the Townhome Association to pay the budgeted Common Expenses.

2.33. Rental Restrictions shall mean the restrictions and requirements for all rental activity and leases of the Units as set forth in Section 10.10 of this Declaration.

2.34. Special Common Assessments shall mean assessments, which the Townhome Association may levy from time to time, in addition to the Regular Common Assessments, for unexpected Common Expenses or other purposes as provided herein.

2.35. Total Votes of the Townhome Association shall mean the total number of votes appertaining to all Units (one vote per Unit for Class A Members), as described in Section **Error! Reference source not found.** hereof and in Exhibit A.

2.36. Townhome Association or Association shall mean the Rockwell Ranch Townhomes Owners Association, Inc., a Utah nonprofit corporation. Each Owner of a Unit shall automatically be a Member of the Townhome Association and of the Master Association.

2.37. Townhome Project or Project shall mean the Property, the Buildings, the Units, the Common Areas and Facilities and all improvements submitted by this Declaration to the provisions of the Act, as the same may be expanded in accordance with Section 27 below.

2.38. Unit shall mean each townhome within the Project designed for separate ownership and occupancy as described in Section **Error! Reference source not found.** hereof. The Unit shall also include the Lot on which the Unit is located, as depicted on the Plat. The landscaping on the Lot shall be considered Limited Common Area (maintained by the Association) even though the land comprising the Lot is privately owned as part of the Unit.

3. DESCRIPTION OF THE PROPERTY; EXPANDABLE PROJECT.

3.1. The Property on which the Buildings, the Units and related improvements are or will be constructed is situated in American Fork City, Utah County, Utah, and is described in Exhibit D hereto, which legal description is incorporated herein by reference. The Townhome Project may be expanded to include Additional Land as described in Section 27 of this Declaration.

4. CONFIRMATION OF SUBMISSION TO ACT.

Declarant hereby confirms and acknowledges that the Property, the Buildings, the Units, and all other improvements thereon are subject to the provisions of the Act. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a residential townhome project known as the Rockwell Ranch Townhomes. All of said Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project. Each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the Property and shall be binding on any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors.

5. DESCRIPTION OF UNITS AND BUILDINGS.

Each Unit is located within a Building. Each Building will contain two (2) or more Units. There are no basements or basement units. The principal materials of which the Buildings will be constructed are wood/lumber frames, wooden joist floors and roofs, asphalt shingles, and exterior materials including stucco, stone, hardie board and/or similar products. The boundary lines of each Unit are as set forth on the recorded townhome Plats of this Project.

There shall be one Unit located on each Lot, as shown on the Plat. Each Unit shall consist of the interior surfaces of the townhome and its perimeter walls, bearing walls, floors, ceilings, and the windows and doors of each Unit. In addition, each Unit shall consist of the airspace above and the subsurface below the land and all of the area and improvements above and below the surface of the land and within and part of the vertical boundaries defined by the Unit lines shown on the Plat, extended upwards to the heavens and downward to the center of the earth, included within the boundaries of each Lot. Each Unit shall further include the garage space and garage door, exterior doors of the Unit, and any other improvements shown on the recorded Plat as part of the Unit. Declarant intends each Unit to be comprised of all of the physical improvements that pertain solely to the area in which the Unit is located or pertain solely to the improvements of that Unit, including, without limitation, all physical facilities, installations, lines, foundations, equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations that connect or provide service only to the applicable Unit. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; interior walls that support only the improvements within the Unit and are not supportive or load-bearing for the Building as a whole or for any other Units; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit. The Owner(s) of each Unit will be responsible for all costs and expenses associated with the maintenance and repair of his/her/their respective Unit (as the term "Unit" is defined above).

The following items shall not be included in the definition of a Unit (but shall be maintained and repaired by the Association): all driveway areas/garage approaches designated as "Limited Common Areas" on the recorded townhome Plat(s), and materials that are not included in the definition of a "Unit" as defined above, including, without limitation, the exterior surfaces of the Buildings, the roofs of the Buildings, and any and all physical facilities, installations, structural beams, foundations, equipment, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires, sewer laterals, sewer lines, utility lines, and utility installations that provide service to, support or covering for, or otherwise pertain to, two (2) or more Units. These items which are expressly excluded from the definition of a Unit are part of the Common Areas and Facilities (described more fully below) to be maintained by the Association.

6. COMMON AREAS AND FACILITIES.

The Common Areas and Facilities shall mean and include those portions of the Project that are not part of the Units, as well as the open space areas of the Project, the common landscaping of the Project, the non-public roadways, streets and walkways, if any, within the Project, the entry/exit gates and related improvements, if any, within the Project, as well as any other areas in the Project that are not designated as a Lot or Unit on the recorded Plat(s). The Common Areas and Facilities shall mean and include, but are not limited to, the foundation, columns, girders,

beams, supports, and bearing walls that provide support for, or are load-bearing for, two (2) or more Units or a Building as a whole; and all roofs, exteriors and all exterior features of the Units and the Buildings. The Common Areas and Facilities also include all landscaping and grounds in the Project, and all other items designed as Common Areas on the Plat(s); as well as all apparatuses and installations existing for common use; all utility pipes, lines or systems that provide water or sewer service to two (2) or more Units; and all repairs, maintenance, clearing (snow), and replacements of any of the foregoing. Moreover, the Association, (not the Owners individually) shall be responsible for all maintenance and repair, and snow-removal, of and for the private roadways within the Project.

No Owner, directly or indirectly, shall make any alterations to any of the Common Areas and Facilities without the prior written consent of the Board, including, without limitation, any changes to any of the exterior elements of the Units, the paint color of the exterior of the Units, the landscaping of the Project or any other Common Areas and Facilities.

7. LIMITED COMMON AREAS AND FACILITIES.

7.1. Limited Common Areas. Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of other Owners, as indicated by the Plats, to be for the exclusive use of one or more but fewer than all of the Units. Mechanical systems serving only certain Units shall be Limited Common Areas and Facilities with respect to the Units which they serve. Owners may not reallocate Limited Common Areas and Facilities between or among Units in which they have an interest. The Townhome Association shall maintain and repair all Limited Common Areas as a common expense of the Townhome Association.

7.2. Snow Removal. For purposes of clarity, even though the private driveways/garage approaches are designated as Limited Common Areas on the recorded Plat(s), meaning the Association is responsible to maintain and repair the same, each Owner will be responsible for snow-removal on the driveways/garage approaches pertaining to their respective Units. The Association will not provide snow-removal services for the private driveways/garage approaches.

7.3. Common Walls; Roofs. Each Unit will have at least one Common Wall with another Unit. To the extent that a Unit is connected by, or shares, a common wall ("Common Wall") with another Unit, the following provisions shall govern the use, maintenance, repair and restoration thereof:

7.3.1. Each Unit sharing a Common Wall shall provide such access as may be reasonably necessary to permit the Owner of the other Unit sharing said Common Wall, and their respective agents and contractors, to maintain the integrity of the Common Wall, and to repair and restore it as necessary.

7.3.2. Should any Common Wall be damaged or destroyed by the negligence or other act or omission of an Owner of one of the Units sharing the same, or said Owner's agents, employees, invitees or guests, said Owner shall be liable, at its sole cost and expense, for all necessary repairs or restoration of said Common Wall, and related damage to any Unit; provided, however, that any insurance proceeds received in connection with

such damage or destruction from policies of insurance owned by the Owners of either Unit sharing said Common Wall, shall first be applied toward the costs of repairing or restoring the Common Wall and related damages to Units. All repairs or restorations to be completed pursuant to this subparagraph shall be completed to the reasonable satisfaction of the affected Owners.

7.3.3. Should any Common Wall be damaged or destroyed by any cause other than the negligence, act or omission of the Owner of either Unit sharing said Common Wall, or said Owner's agents, employees, invitees or guests, the Owners of the Units sharing said Common Wall shall be equally liable for all necessary repairs or restoration of said Common Wall, and related damage to either Unit; provided, however, that any insurance proceeds received in connection with such damage or destruction from policies of insurance owned by the Owners of either Unit sharing said Common Wall shall first be applied toward the costs of repairing or restoring the Common Wall and related damages to the affected Units. All repairs or restorations to be completed pursuant to this subparagraph shall be completed to the reasonable satisfaction of the affected Owners.

7.3.4. Should any party fail or refuse to complete the repairs or restorations imposed upon it by these provisions, the other Owner, after giving written notice to said party of its intention to do so, may undertake said repairs or restorations, and be entitled to reimbursement for all costs incurred in connection therewith from said party. Such reimbursement shall be made within thirty (30) days after completion of the work and delivery to said party of a statement and demand for payment setting forth all costs incurred. The Owner shall have a direct right of recovery against said party for said party's portion of the costs incurred in making the necessary repairs or restorations, and to recover interest thereon at the rate of 18% per annum until paid in full, together with recovery of attorney fees and costs if collection efforts become necessary.

7.3.5. In the event of a dispute or controversy between the Owners of Units sharing a Common Wall, as to any matter within or arising out of the provisions of this Article 7, or the respective use, maintenance, repair, or replacement of said Common Wall, such dispute or controversy shall be submitted to the Board of Directors of the Association for arbitration. The decision of the Board with respect to the issues presented shall be binding upon the parties involved.

8. NATURE AND INCIDENTS OF UNIT OWNERSHIP.

8.1. Each Unit is a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.

8.2. Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Areas and Facilities and the exclusive right to occupy and use their Unit and any Limited Common Areas and Facilities designated for exclusive use by such Owner or all Owners. Each Owner shall also have the non-exclusive right to use and enjoy the Community Areas and common amenities and recreational facilities of the Rockwell Ranch master-planned community.

8.3. Except as otherwise provided herein, each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of their Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall keep the interior of their Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. Each Owner shall provide its own snow removal services for the patio and driveway/garage approach pertaining to the Owner's Unit even though such patio and driveway/garage approach is identified as Limited Common Area. In the event that any such Unit should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Board, the Board shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair. Owners of adjoining Units may not reallocate or change the boundaries of such Units. Except as otherwise provided herein, no Owner may subdivide their Unit.

8.4. The Board shall have the right, if reasonably necessary, to enter into any Unit for the purpose of cleaning, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity.

8.5. No Owner shall materially alter the exterior color or appearance of the Owner's Unit without prior written approval from the Board, which approval shall not be unreasonably withheld so long as the proposed alterations will maintain the aesthetic and architectural appeal of the Units in the community.

9. TITLE TO UNITS.

9.1. Title to a Unit within the Townhome Project may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

9.2. Title to any part of a Unit within the Townhome Project shall not be separated from any other part thereof during the period of ownership, and each Unit, and the Lot appurtenant to each Unit, shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Townhome Association as herein set forth.

9.3. No Owner shall be permitted to timeshare or allow any form of interval ownership or interval right to use form of timesharing of any Unit within the Townhome Project.

9.4. The Common Areas and Facilities shall be owned by the Association, and no Owner may bring any action for partition thereof.

9.5. Each Owner shall have the right to encumber his interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Areas and

Facilities or any part thereof. Any Mortgage of any Unit within the Townhome Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

9.6. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Townhome Project, if authorized by the Townhome Association and provided for in the Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his Unit.

9.7. Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Townhome Project may describe a Unit by the name of the Townhome Project, the county wherein the Townhome Project is located and its unit number as indicated in this Declaration or as shown on the Plats. Such description will be construed to describe the Unit, the Lot appurtenant to the Unit, and the applicable interest in the rights to use and enjoy the Common Areas and Facilities, and to incorporate all the rights incident to ownership of a Unit within the Townhome Project and all of the limitations on such ownership as described in this Declaration.

9.8. Nothing in this Declaration shall adversely impact the rights of a Mortgagee or its assignee to take any of the following actions: (i) foreclose or take title to a Unit pursuant to the remedies in the Mortgage; (ii) accept a deed or assignment in lieu of foreclosure in the event of default by an Owner subject to such Mortgage; or (iii) sell or lease a Unit acquired by the Mortgagee or its assignee.

10. RESTRICTIONS ON USE; RENTAL RESTRICTIONS.

The Units and Common Areas and Facilities, including but not limited to the Limited Common Areas and Facilities, except as otherwise permitted in writing by the Board, shall be used in accordance with the following restrictions:

10.1. Residential Use Only. All Units are intended to be used for residential use only in accordance with applicable zoning ordinances. The Units are restricted to such uses. Units may be rented or leased only in accordance with the Rental Restrictions set forth in Section 10.10 below.

10.2. Nuisances; Safety Hazards. No noxious, destructive or offensive activity shall be carried on or placed in or upon any Unit, or in the Common Areas, or Limited Common Areas, or any part thereof, which shall interfere with the legal rights of other Owners nor shall anything be done therein which is or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Townhome Project. No activities shall be conducted, nor improvements constructed, in or upon any part of the Townhome Project which are or may become unsafe or hazardous to any person or property. Without limiting the breadth of the

foregoing, aluminum foil, newspapers, or any other similar materials may not be used to cover the windows in any Unit. The Common Areas and Facilities shall be used only in a manner which is consistent with a residential townhome project.

10.3. Signs. No signs, flags or advertising devices of any nature, including, without limitation, informational or directional signs or devices, shall be erected or maintained on any part of the Townhome Project, without the prior written approval of the Board, except as may be customary in marketing a Unit "for sale" in accordance with reasonable sign restrictions that the Board is authorized to adopt and enforce.

10.4. No Subdivision. No Unit, or portions thereof, may be further divided or subdivided into two or more other Units. This provision does not prohibit a Unit from being owned by more than one person in the form of a tenancy in common or other form of joint undivided ownership. An Owner may lease portions of a Unit to two or more tenants.

10.5. Remodeling; Construction Work. No Owner shall, without the prior written consent of the Board, do any act that would impair the structural soundness or integrity of the Building or the safety of property, impair any easement or hereditament appurtenant to the Townhome Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities. Owners may remodel or redecorate the interior space of their Units, without Board approval, so long as the remodeling or redecoration involves quality workmanship and materials and does not impair the structure integrity of the Buildings.

10.6. No Obstruction of Common Areas. There shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Areas and Facilities, other than Limited Common Areas and Facilities appurtenant to their Unit, except with the prior consent of the Board.

10.7. Insurance Protection; Ordinances. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which would result in cancellation of the insurance on the Townhome Project or any part thereof, nor shall anything be done or kept in any Unit which would increase the rate of insurance on the Townhome Project or any part thereof over what the Townhome Association but for such activity, would pay, without the prior written consent of the Board. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner or guest, lessee, licensee or invitee of any Owner, and each Owner shall indemnify and hold the Townhome Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his guests, lessees, licensees or invitees.

10.8. Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Board of the Townhome Association for the governance of the Units, the Common Areas and the Townhome Project, as such rules and regulations may be modified, amended and construed by the Townhome Association in the sole and reasonable discretion of the Board.

10.9. Leases. All Non-Owner Occupied Units, shall have a written Lease agreement between an Owner and occupant respecting a Unit shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a default under the Lease. All such Lease agreements shall be in writing and a copy of the Lease shall be filed with the Townhome Association. An Owner shall be responsible and liable for any damage to the Townhome Project caused by its tenant.

10.10 Non-Owner Occupancy Restrictions. Non-Owner Occupied Units, including, without limitation, Leases and short-term nightly rentals, are allowed so long as the following requirements are satisfied: (i) the leasing and/or rental activity must be permitted and allowed by the applicable zoning and ordinances of American Fork City; (ii) the Owners of the Non-Owner Occupied Units must obtain all permits and licenses, if any, required by American Fork City.

11. TOWNHOME ASSOCIATION AND BOARD.

11.1. Each Owner shall be a member of the Townhome Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Townhome Project cannot be separated from the Townhome Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Unit shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Townhome Association and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Townhome Association, and membership in the Townhome Association may not be transferred except in connection with the transfer of a Unit.

11.2. The Townhome Association shall be governed by the following provisions:

11.2.1. The management and maintenance of the Townhome Project and the administration of the affairs of the Townhome Association shall be conducted by a Board (also known as the Board of Directors) consisting of three (3) natural persons as provided in the Bylaws. The Board shall be elected as provided in this Declaration and in the Bylaws.

11.2.2. Except as otherwise provided herein, the Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following:

11.2.2.1. To make and enforce all rules and regulations covering the operation and maintenance of the Townhome Project and the Units.

11.2.2.2. To carry out through a Manager those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent

contractor and not an agent or employee of the Townhome Association or Board, shall be responsible for managing the Townhome Project for the benefit of the Townhome Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself.

11.2.2.3. To engage the services of accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefor.

11.2.2.4. To operate, maintain, repair, improve and replace the Common Areas and Facilities.

11.2.2.5. To determine and pay the Common Expenses.

11.2.2.6. To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Section **Error! Reference source not found.** hereinafter.

11.2.2.7. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

11.2.2.8. To open bank accounts on behalf of the Townhome Association and to designate the signatories therefor.

11.2.2.9. To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Townhome Association or its designee.

11.2.2.10. To bring, prosecute and settle litigation for itself, the Townhome Association and the Townhome Project, provided that it shall make no settlement which results in a liability against the Board, the Townhome Association or the Townhome Project in excess of \$50,000 without the prior approval of a majority of the Total Votes of the Townhome Association at a meeting or by written ballot distributed to Owners by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Townhome Association's insurance carrier and which in either case results in no actual liability of funds of the Townhome Association in excess of \$20,000 shall not require Townhome Association approval.

11.2.2.11. To obtain insurance for the Townhome Association with respect to the Buildings and the Common Areas and Facilities, as well as worker's compensation insurance, as needed.

11.2.2.12. To repair or restore the Townhome Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Townhome Project from the provisions of the Act.

11.2.2.13. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Townhome Association, items of personal property necessary to or convenient to the management of the business and affairs of the Townhome Association and the Board and to the operation of the Townhome Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and supplies.

11.2.2.14. To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Townhome Project by Owners in accordance with the terms of the Bylaws. The Townhome Association or the Board shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Townhome Project and other books, records and financial statements of the Townhome Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

11.2.2.15. To do all other acts necessary for the operation and maintenance of the Townhome Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Townhome Project.

11.2.2.16. To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

11.2.2.17. To grant conveyances, easements and rights-of-way over the Common Areas and Facilities.

11.2.2.18. Members of the Board, the officers and any assistant officers, agents and employees of the Townhome Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Townhome Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Townhome Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

11.2.2.19. When a member of the Board is sued for liability for actions undertaken in his role as a member of the Board, the Townhome Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof the Townhome Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the

Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Townhome Project. Punitive damages may not be recovered against the Townhome Association, but may be recovered from persons whose gross negligence gave rise to the damages.

11.2.3. Neither the Board nor the Manager, if any, shall sell any Property of the Townhome Association except as permitted by the Act and this Declaration.

12. MAINTENANCE, ALTERATION AND IMPROVEMENT.

12.1. The Board, acting on behalf of the Townhome Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and Facilities and all improvements thereon and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair; provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Areas designated for use in connection with his Unit in a clean, sanitary and attractive condition. The Board shall be responsible for the maintenance and repair of the exterior of the Building, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, exterior materials, siding, railings, roof and fences, cleaning, repair, and the maintenance of all landscaping and landscaping sprinkling systems, walkways and driveways. The Board shall also be responsible for maintenance, repair and replacement of Common Areas and Facilities within each Building, and any items located within or used in connection with the Common Areas and Facilities. The costs associated with the maintenance, replacement and repair of the Common Areas and Facilities shall be a Common Expense.

12.2. Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Townhome Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Areas and Facilities or for making any emergency repairs at any time and when necessary to prevent damage to the Common Areas and Facilities or to any Unit. The Townhome Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Townhome Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Townhome Association.

12.3. Additions or Capital Improvements to the Townhome Project which cost no more than \$100,000 (as measured by 2020 dollars) may be authorized by the Board alone, so long as the Townhome Association has such funds available to it without imposing a special assessment. Additions or Capital Improvements the cost of which exceeds \$100,000 must, prior to being constructed, be authorized by at least a majority of the undivided ownership in the Townhome Project.

12.4. No Owner shall enlarge or otherwise modify the exterior of his/her Unit or Limited Common Area or add any devices or structures such as, for illustration and not limitation, fences, greenhouses, solariums, room additions, or decks.

12.5. Should any improvement or modification to a Unit or to the Project by an Owner cause any increase in the cost of the Townhome Association's insurance, painting, or other expense, such increase in expense shall be added to the affecting Owner's monthly assessment. Further, any such additional expense affected thereby and applicable to non-yearly periodic maintenance projects such as, but not limited to, roofing, staining or painting, shall also be added to any special assessment of the Owner.

13. INSURANCE.

13.1. The Townhome Association shall at all times maintain in force insurance meeting the following requirements:

13.1.1. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Townhome Project, including: Common Areas and Facilities; the Building including all Units (other than the interior contents thereof); fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or Facilities or owned by the Townhome Association, but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity townhome insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Townhome Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Townhome Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. If the Board deems such advisable, the insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent (100%) of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). Unless the Board otherwise determines, the maximum deductible amount for such a policy covering the Common Areas and Facilities shall be Ten Thousand Dollars (\$10,000.00) and for losses related to individual Units that are covered by such a policy, the maximum deductible related to each individual Unit shall be Five Thousand Dollars (\$5,000.00). Funds to cover these deductible amounts shall be included in the Townhome Association's operating reserve account.

13.1.2. If a Unit within the Townhome Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a “master” or “blanket” policy of flood insurance shall be maintained covering the Building (a separate policy is required for each separate multi-story building that houses Units), any machinery and equipment that are not part of a Building and all Common Areas and Facilities within the Townhome Project (hereinafter “Insurable Property”) in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for the Building and any other Insurable Property within any portion of the Townhome Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for any such policy shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount.

13.1.3. The name of the insured under each policy required to be maintained by the foregoing Sections **Error! Reference source not found.** and **Error! Reference source not found.** shall be the Townhome Association. Declarant shall be named as an additional insured party. Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Townhome Association, including any Insurance Trustee with whom the Townhome Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Townhome Association (or Insurance Trustee), as a trustee for each Owner and each such Owner’s Mortgagee. Each Owner and each such Owner’s Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

13.1.4. Each policy required to be maintained by the foregoing Sections **Error! Reference source not found.** and **Error! Reference source not found.** shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Townhome Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days’ prior written notice to the Townhome Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

13.1.5. Each policy required to be maintained by the foregoing Sections **Error! Reference source not found.** and **Error! Reference source not found.** shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively or the Townhome Association; and the policy is primary in the event the Owner has other insurance covering the same loss.

13.1.6. In contracting for the policies of insurance required to be maintained by the foregoing provisions of this Section **Error! Reference source not found.**, the Board shall make reasonable efforts to secure, if the Board deems such advisable, coverage which provides the following endorsements: (1) “Inflation Guard Endorsement” (2) “Building

Ordinance or Law Endorsement”, if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) “Boiler and Machinery Coverage Endorsement”, if the Townhome Project has central heating or cooling, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the Building containing the boiler or machinery. In lieu of obtaining this as an endorsement to the commercial package property, the Townhome Association may purchase separate stand-alone boiler and machinery coverage.

13.1.7. The Townhome Association shall at all times maintain in force and pay the premiums for “blanket” fidelity bonds for all officers, members, and employees of the Townhome Association and for all other persons handling or responsible for funds of or administered by the Townhome Association whether or not that individual receives compensation for services. Furthermore, where the Townhome Association has delegated some or all of the responsibility for the handling of funds to the Manager, the Manager shall provide “blanket” fidelity bonds, with coverage identical to such bonds required of the Townhome Association, for the Manager’s officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Townhome Association. The total amount of fidelity bond coverage required shall be based upon the Townhome Association’s best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Townhome Association, or the Manager, as the case may be, at any given time during the term of each bond. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Townhome Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees”, or similar terms or expressions; (3) the premiums on all bonds required herein for the Townhome Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Townhome Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days’ prior written notice to the Townhome Association.

13.1.8. The Townhome Association shall maintain in force, and pay the premium for a policy providing commercial general liability insurance coverage covering all of the Common Areas and Facilities, Building exteriors, public ways in the Townhome Project, all other areas of the Project that are under the Townhome Association’s supervision, and any commercial spaces owned by the Townhome Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Townhome Project in construction, location, and use. Nevertheless, such coverage shall be for at least Two Million Dollars (\$2,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use

of the Common Areas and Facilities, Building exteriors, and legal liability arising out of lawsuits related to employment contracts of the Townhome Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Townhome Project in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Townhome Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Townhome Association and to each First Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

13.1.9. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Townhome Association, the Townhome Association's authorized representative, including any trustee with whom the Townhome Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Townhome Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Townhome Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Townhome Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests appear.

Each insurance policy maintained pursuant to the foregoing Sections **Error! Reference source not found., Error! Reference source not found., Error! Reference source not found.,** and **Error! Reference source not found.** shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board, or the Townhome Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Townhome Association, or Owner) from collecting insurance proceeds. The provisions of this Section **Error! Reference source not found.** and of the foregoing Sections **Error! Reference source not found., Error! Reference source not found., Error! Reference source not found.,** and **Error! Reference source not found.** shall not be construed to limit the power or authority

of the Townhome Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board Members of the Townhome Association may deem appropriate from time to time.

13.1.10. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Townhome Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

14. DESTRUCTION OR DAMAGE.

14.1. All of the Owners irrevocably constitute and appoint the Townhome Association as their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Townhome Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute an appointment by said grantee of the Townhome Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Townhome Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Townhome Association except as otherwise provided in this Declaration.

14.2. Repair and reconstruction of the improvements as used herein means restoring the Townhome Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having substantially the same vertical and horizontal boundaries as before.

14.3. In the event all or any part of the Townhome Project is damaged or destroyed, the Townhome Association shall proceed as follows:

14.3.1. The Townhome Association shall give timely written notice to any holder of any First Mortgagee on a Unit in the event of substantial damage to or destruction of any part of the Common Areas or Facilities or a Unit subject to such First Mortgage.

14.3.2. As soon as practicable after an event causing damage to or destruction of any part of the Townhome Project, the Townhome Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Townhome Project damaged or destroyed.

14.3.3. If the proceeds of the insurance of the Townhome Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Townhome Project, such repair and reconstruction shall be carried out.

14.3.4. If the proceeds of the insurance maintained by the Townhome Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Townhome Project and if less than seventy-five percent (75%) of the Townhome Project is damaged or destroyed, such repair and reconstruction shall nevertheless be

carried out. The Townhome Association shall levy a Special Common Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Common Assessment shall be allocated and collected as provided in Section 19.1.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

14.3.5. If the proceeds of the insurance maintained by the Townhome Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Townhome Project, and if seventy-five percent (75%) or more of the Townhome Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Total Votes of the Townhome Association and Mortgagees that represent at least fifty-one (51%) of the votes of Units that are subject to Mortgages vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Total Votes of the Townhome Association and Mortgagees that represent at least fifty-one (51%) of the votes of Units that are subject to Mortgages to carry out such repair and reconstruction, the Townhome Association shall record in the office of the County Recorder of Utah County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

14.3.5.1. The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in an amount equal to the pro-rata interests of the Owners in the Project.

14.3.5.2. In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

14.4. If the damage or destruction is to be repaired or reconstructed as provided above, the Townhome Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Townhome Project damaged or destroyed. The Townhome Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Townhome Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before. Any restoration or repair of the Townhome Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

14.5. If repair or reconstruction is to occur, the insurance proceeds held by the Townhome Association and any amounts received from Common Assessments shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally.

14.6. This Section **Error! Reference source not found.** shall not be amended unless Owners entitled to vote at least sixty-six percent (66%) of the Total Votes of the Townhome Association and, to the extent such amendment is materially adverse to Mortgagees, Mortgagees that represent at least fifty-one (51%) of the votes of Units that are subject to Mortgages consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Townhome Association and recorded in accordance with the provisions of this Declaration.

15. TERMINATION.

15.1. Except as otherwise provided in this Declaration, the Townhome Project may be terminated only by agreement of Owners entitled to vote at least sixty-six percent (66%) of the Total Votes of the Townhome Association and Mortgagees that represent at least fifty-one (51%) of the votes of Units that are subject to Mortgages at a meeting of Owners and Mortgagees duly called for such purpose at which a quorum is present.

15.2. All of the Owners may remove the Townhome Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens, including Mortgagees, affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Townhome Project.

16. EMINENT DOMAIN.

16.1. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Board and each Owner and Mortgagee shall be entitled to timely written notice thereof and the Board shall, and the Owners and Mortgagees at their respective expense may, participate in the proceedings incident thereto.

16.2. With respect to the Common or Limited Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein.

16.3. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damage or destruction pursuant to Section **Error! Reference source not found.** above and shall be deposited with the Board as trustee. Even though the damages or awards may be payable to one or more Owners, the Owners shall deposit the damages or awards with the Board as trustee. In the event an Owner refuses to so deposit his award with the Board, then at the option of the Board, either a Special Common Assessment shall be made against the defaulting Owner and his Unit in the amount of

this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner.

16.4. If one or more Units are taken, in whole or in part, and the Townhome Project is not removed from the provisions of the Act, the taking shall have the following effects:

16.4.1. If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of the Unit. The balance of the award, if any, shall be distributed to the Mortgagee to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner.

16.4.2. If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, the award shall be distributed to the Mortgagee of the Unit to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owners thereof. The remaining portion of such Unit, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all Owners in the manner approved by the Board.

16.5. Changes in Units and in the Common Areas and Facilities shall be evidenced by an Amendment to this Declaration and the Plat, which need not be approved by the Owners.

17. MORTGAGEE PROTECTION.

17.1. The Townhome Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Townhome Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Townhome Project. Generally, these documents shall be available during normal business hours.

17.2. The lien or claim against a Unit for unpaid assessments or charges levied by the Townhome Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit 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, 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 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 Unit affected or previously affected by the First Mortgage concerned.

17.3. In the event any taxes or other charges which may or have become a lien on the Common Areas and Facilities are not timely paid, or in the event the required hazard insurance described in 13.1.1 lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or

premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Townhome Association.

17.4. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas and Facilities.

18. AMENDMENT.

18.1. Except as provided elsewhere in this Declaration, any amendment to this Declaration or the Plats shall require the affirmative vote of at least sixty-six percent (66%) of the Total Votes of the Townhome Association cast in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners. Any amendments of a materially adverse nature to Mortgagees, after timely written notice to Mortgagees, must be agreed to by Mortgagees that represent at least fifty-one (51%) of the votes of Units that are subject to Mortgages. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Utah County Recorder of an instrument executed by the Townhome Association. In such instrument an officer or a member of the Board of the Townhome Association shall certify that the vote required by this Section for amendment has occurred.

18.2 With respect to the vote required by Mortgagees pursuant to Section 18.1, the Mortgagees approval of the amendment may be implied when a Mortgagee fails to submit a response to any written proposal for amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with return receipt requested.

19. ASSESSMENT OF UNITS BY THE TOWNHOME ASSOCIATION.

19.1. The making and collection of Common Assessments by the Association from Owners of Units for their share of Common Expenses shall be pursuant to the Bylaws and subject to the following provisions:

19.1.1. Declarant, for each Unit owned by Declarant which is not an Exempt Unit, and each Owner, other than Declarant, by becoming an Owner of a Unit is deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. Each Unit in the Project (except for Exempt Units) shall be liable for an equal share of the Common Expenses of the Association. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Article **Error! Reference source not found.** shall be the Common Expense Account. Common Assessments shall include both Regular Common Assessments and Special Common Assessments. Regular Common Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments shall be levied against each separate Unit annually.

19.1.2. The Association may not impose a Regular Common Assessment per Unit which is more than 20% greater than the previous year's Regular Common Assessment, without first obtaining the vote of Owners, constituting a quorum, casting a majority of the Total Votes of the Association at a meeting of the Association. Such percentage increase shall be calculated without regard to any increase attributable to an increase in real estate taxes against the Units. The Association shall provide notice, by first class mail to all Owners, of any increase in the Regular Common Assessments not less than fifteen (15) nor more than sixty (60) days prior to the date the increased Regular Common Assessment is due.

19.1.3. In addition to the Regular Common Assessments, the Association may levy in any calendar year, Special Common Assessments applicable to that year only. However, in any fiscal year, except as otherwise provided in this Declaration, the Board shall not, without the vote or written assent of Owners, casting a majority of the Total Votes of the Association at a meeting or by written ballot, levy Special Common Assessments which in the aggregate exceed 10% of the budgeted gross expenses of the Association for that fiscal year. All Units within the Project, except Exempt Units, shall pay an equal portion of any Special Common Assessment. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the special assessment is to pay an increase in real property taxes. The Board shall provide notice by first class mail to all Owners of any Special Common Assessments not less than fifteen (15) nor more than sixty (60) days prior to the date such Assessment is due. Special Common Assessments shall be paid as determined by the Board and the Board may permit Special Common Assessments to be paid in installments extending beyond the fiscal year in which the Special Common Assessment is imposed.

19.1.4. The Association may also levy a Specific Assessment against an Owner or an Owner's Unit: (1) to reimburse the Association for costs incurred in bringing an Owner and/or an Owner's Unit into compliance with the provisions of this Declaration, the Bylaws, rules and regulations of the Association or any other governing instrument of the Project; (2) to cover costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying a Specific Assessment for this purpose; or (3) to pay the costs, including overhead and administrative costs, of providing services to the Owner or the Owner's Unit in accordance with this Declaration, including the provisions of Section 20, or pursuant to any menu of special services which may be offered by the Association or the Manager. Specific Assessments for special services may be levied in advance of the provision of the requested service.

19.1.5. All Assessments shall be due as determined pursuant to this Declaration and the Bylaws. Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall be delinquent and shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Board, from the date when due until paid. In addition, Owners who do not pay their Common Assessments when due shall be subject to a late fee of Fifty dollars (\$50.00), adjustable from year to year at the discretion of the Board. All payments of Assessments

shall be first applied to accrued interest and late fees, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s).

19.1.6. There shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to the Declaration and the Act. The lien for unpaid Assessments and related charges shall be effective upon recordation in the Office of the Utah County Recorder of a written notice of lien by the Board or the Manager. The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the State of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Ann., as amended from time to time. In any such 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 Association any Assessments against the Unit which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Board shall have the right and power on behalf of the Association to bid at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Act. The Board hereby appoints Paxton R. Guymon, Esq., of York Howell & Guymon, 6405 South 3000 East, #150, Salt Lake City, Utah 84121, as trustee for the purposes of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1 Utah Code Ann. and made applicable hereto by Title 57, Chapter 8a Utah Code Ann. Provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1 Utah Code Ann. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302 to Paxton R. Guymon, with power of sale, the Lots and Units and all improvements to the Lots and Units for the purpose of securing payment of Assessments under the terms of the Declaration. Each Owner also hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Assessments. The Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The lien of the Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Unit as provided for in Section **Error! Reference source not found.** hereof and

assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. The Board, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board, the Manager and every Owner, in favor of all who rely on such statement in good faith.

19.1.7. The amount of any Assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas and Facilities or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

19.1.8. The personal obligation of an Owner to pay unpaid Assessments against his Unit as described in Section 19.1.7 shall not pass to successors in title unless assumed by them; provided, however, that a lien to secure unpaid assessments shall not be impaired, nullified or otherwise affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments.

19.1.9. All Exempt Units shall be exempt from the Assessments (including Regular Common Assessments and Special Common Assessments). Declarant shall remain a Class B Member in the Association at all times until Declarant surrenders such Class B Membership status in writing in accordance with the provisions of Section 22.2, notwithstanding its temporary exemption status from the required Assessment payments. On the date on which a Unit loses its status of being an Exempt Unit (as set forth in Section 2.16), then it shall automatically be subject to its share of Assessments from that date forward.

19.2. 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 Common Areas and Facilities for which the Association is responsible and for which the reserve fund was established or for litigation or binding arbitration involving such matters. Nevertheless, the Board may authorize the temporary transfer of money from the reserve account to the 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 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 Project and

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 Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth in Section 19.1.3 hereof. At least once every three (3) years the Board shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

19.2.1. Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

19.2.2. Identification of the probable remaining useful life of the components identified in Section 19.2.1 above, as of the date of the study.

19.2.3. An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in Section 19.2.1 above, during and at the end of its useful life.

19.2.4. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

For the purposes of this Section, the term “reserve account requirements” means the estimated funds which the Board has determined, with the assistance of a third-party reserve analyst or otherwise, are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain. The Board shall comply with the provisions of the Act pertaining to a reserve analysis and the funding of a reserve account.

19.3. If an Owner shall at any time lease his Unit and shall default in the payment of Assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Board shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid.

19.4. The Board and the Townhome Association shall comply with the requirements of the Act concerning a Reserve Analysis and Reserve Funds as set forth in Utah Code Ann. § 57-8a-211, as the same may be amended.

19.5. Reinvestment Fees. Each time a Unit in the Townhome Project is sold, a Reinvestment Fee shall be paid to the Master Association as set forth in the provisions of the Master Declaration, but no additional reinvestment fee will be paid to the Townhome Association.

20. VOTING.

The Association shall have two (2) classes of membership which shall be entitled to the following voting rights:

20.1 Class A. Each Owner of a Unit, which is an Assessable Unit, shall be a Class A Member of the Association and each Owner is allotted one (1) vote per Unit owned. Each Class A Membership shall be held jointly by all Owners of such Unit.

20.2 Class B. Declarant shall be the only Class B Member of the Association and shall be entitled to ten (10) votes for each Unit owned and ten (10) votes for each Lot owned (as shown on the recorded Plat(s)) without a townhome Unit, provided however, that Declarant's Class B Membership status is not dependent or contingent upon Declarant's ownership of any Unit(s) and Lot(s) within the Property. Rather, Declarant's Class B Membership will cease only upon Declarant's express surrender of Class B Membership status, which surrender must be in a written instrument signed by Declarant and recorded in the office of the Utah County Recorder, which instrument shall specify the date of surrender of Class B Membership. If the instrument specifies no date, the surrender date shall be the date of recording of the instrument. Declarant has the sole and absolute discretion to determine the date of its surrender. Declarant has the sole and absolute discretion to determine the date of its surrender of Class B Membership. Declarant shall be entitled to cast ten (10) votes for each Unit and Lot owned by Declarant even if the Units or Lots are temporarily classified as Exempt Units under Section 2.16 of this Declaration.

All matters requiring a vote of the Members shall be decided by a majority of the Total Votes of the Association (including, without limitation, the votes pertaining to the Class B Member). During the Declarant Control Period, however, all matters requiring a vote of the Members or otherwise submitted to a vote of the Members shall be approved and implemented if and only if the Declarant also approves such matters. When Declarant is no longer a Class B Member of the Association, then (i) the Class B Membership shall cease being a class of membership; (ii) there shall no longer be any Class B votes of the Association; and (iii) all matters submitted to a vote of the Association shall be decided solely by the votes of the Class A Members. The schedule of Class A votes is as follows: except for Units and Lots owned by Declarant as a Class B Member, there shall be one (1) vote for each Unit in the Project (meaning each Unit that has been constructed and for which a certificate of occupancy has been issued). The voting percentage for each Unit shall be equal to a fraction, the numerator of which shall be the vote held by the Owner of such Unit and the denominator of which shall be the total number of all votes for all Units in the Project.

21. EASEMENTS.

21.1. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original

construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

21.2. If any utility line of any kind is constructed such that it crosses through, over, or under one or more Units in order to provide service to another Unit, or if, after construction, it becomes necessary to install a utility line through, over or under one or more Units in order to provide service to another Unit, a perpetual easement for such utility line(s) is hereby granted for the installation, maintenance, repair (or replacement) and operation of all such utility line(s).

21.3. Each Owner shall have the unrestricted right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to the Unit he or she is occupying and to any Limited Common Areas and Facilities appurtenant to his or her Unit, and shall have the right to the horizontal, vertical and lateral support of his or her Unit and such rights shall be perpetual and shall be appurtenant to and pass with title to each Unit.

21.4. The Association shall have an easement, including, without limitation, an easement through, over and across the Lots and the Units, to make such use of the Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Areas and Facilities for use by the Owners and the Association.

21.5. Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Townhome Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair (emergency or otherwise) or replacement of any Common Areas and Facilities or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas and Facilities or to any Unit. In addition, agents of the Townhome Association may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction or reconstruction for which the Townhome Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Townhome Association with funds from the Common Expense Account. Similarly, Owners shall have a right of reasonable access through the Common Areas and Facilities and other Units (upon reasonable advance notice to the owner(s) of such Units) if reasonably necessary to access, repair, replace or maintain any Unit or item appurtenant to such Unit.

21.6. All conveyances of Units within the Townhome Project shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

22. NOTICES.

Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of

delivery, or by telecopy or facsimile transmission, or by email with read receipt confirmed including a response to the subject email. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Board. In any instance herein where Mortgagees are entitled to vote or be provided notice, notice to Mortgagees shall be addressed to each Mortgagee at the address provided by such Mortgagee to the Board for the purpose of service of such notices required by this Declaration and the Bylaws. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office/location at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid.

23. NO WAIVER.

The failure of the Board or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, the Bylaws, to exercise any right or option herein contained or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its agents or designees of the payment of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

24. ENFORCEMENT.

24.1. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Declaration, the Bylaws, and the rules and regulations and decisions issued pursuant thereto. The Townhome Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with provisions of the Declaration or the decisions of the Townhome Association. Owners shall have a similar right or action against 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; and/or (ii) the Board to impose monetary penalties, temporary suspensions of an Owner's right to the use of a Unit or the Common Areas and Facilities, 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 Manager, the power and authority to carry out disciplinary actions duly imposed.

24.2. The Townhome Association shall not be empowered to cause the absolute forfeiture of an Owner's right, title or interest in the Townhome Project on account of the Owner's failure to comply with the provisions of the Declaration or the rules and regulations for the Townhome Project except pursuant to:

24.2.1. The judgment of a court; or

24.2.2. A foreclosure for the failure of an Owner to pay assessments duly levied by the Townhome Association.

24.3. The Townhome Association shall only be empowered to cause or require alteration or demolition of any construction to enforce any restrictions contained in this Declaration pursuant to judicial proceedings.

25. DISPUTE RESOLUTION; MANDATORY BINDING ARBITRATION.

25.1. Statement of Intent. Prior to purchasing a Unit, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Unit that Owner is purchasing or any other aspect of the Townhome Project, including, without limitation, the Common Areas and Facilities. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Unit, having received a written warranty if any warranty is provided, and having paid market price for a Unit, in the condition it and the Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Townhome Project change, upgrade, or add additional work to the Townhome Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Units for years, unfairly prejudicing those Owners who must or want to sell their Unit during any period when litigation is pending. For this reason, the Owners, by purchasing a Unit, and the Declarant covenant and agree that all claims and disputes relating to the Townhome Project or the Units, or relating to the Common Areas and Facilities, shall not be pursued through court action, but shall be asserted and resolved only through the specific alternative dispute resolution mechanisms described below, and only after full disclosure, satisfaction of the notice and right to cure requirements, and knowing approval of the Owners, as set forth in the provisions of this Section 25 (including the subsections below). In addition, the Townhome Association and the Owners agree that they take ownership and possession of the Units and Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

25.2. Binding Arbitration for All Disputes. To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Townhome Association may have involving the Declarant, or any agent, contractor, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Townhome Project, which arise from or are in any way related to a Building, Unit, or other Improvement on a Lot, Common Areas, or any other Improvement on or component of the Townhome Project (a “**Dispute**”), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant and the Townhome Association. Arbitration proceedings, however, shall not be commenced unless the Pre-Arbitration

Requirements set forth in Section 25.3 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

25.2.1. Any allegation that a condition in any of the Buildings or Units or the Common Areas, or other Improvements in the Townhome Project, is or involves a construction defect;

25.2.2. Any disagreement as to whether an alleged construction defect has been corrected;

25.2.3. Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;

25.2.4. Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;

25.2.5. Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;

25.2.6. Any alleged violations of consumer protection, the Act, the implied warranties of habitability or other common law doctrines or claims, unfair trade practice, or other statutes or laws;

25.2.7. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;

25.2.8. Any allegation that any condition existing in the Townhome Project or created by the Declarant (or any of its contractors), including construction-related noise, dust, and traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;

25.2.9. Any disagreement concerning the scope of issues or claims that should be submitted to binding arbitration;

25.2.10. Any disagreement concerning the timeliness of performance of any act to be performed by Declarant or any of its contractors;

25.2.11. Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;

25.2.12. Any disagreement or dispute regarding management of the Townhome Association, or regarding reserve studies or funding of Townhome Association expenses; and

25.2.13. Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of Improvement or Units, Common Areas, Limited Common Areas, off-site improvements, management of the Townhome Association, or other claims regarding the Townhome Project.

25.3. Pre-Arbitration Requirements. An Owner or the Townhome Association may only pursue a claim against the Declarant or any contractors hired by Declarant in arbitration after all of the following efforts of dispute resolution have been completed: (1) Right to Cure: the claimant (e.g. the Owner or the Townhome Association) shall provide to the Declarant a written Notice of Claim (defined below) and permit the Declarant one hundred fifty (150) days to cure or resolve the claim or defect or to try to get the builder or the appropriate contractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; (2) if the dispute is not resolved within the 150-day Right to Cure period, the parties shall participate in formal mediation with a mutually-acceptable third-party mediator in an effort to resolve the Dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 150-day cure period.

25.3.1. "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged defective condition, if applicable, (5) samples of any alleged defective conditions or materials, if reasonably available, (6) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

25.4. Member Approval; Legal Opinion; Arbitration. If a claim or dispute has not been resolved after satisfying and complying with the above-described "Pre-Arbitration Requirements," then the claimant (Owner or Townhome Association) shall have the right to proceed with binding arbitration; however, the Townhome Association shall not pursue or commence binding arbitration unless (i) such action is first approved by a majority of the Total Votes of the Townhome Association after the Townhome Association has obtained a written opinion from legal counsel advising the Townhome Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, arbitration fees, and expert witness fees of the entire arbitration proceeding (the "**Arbitration Budget**"), and the likelihood of recovery if the Townhome Association prevails, and (ii) the Townhome Association has collected funds from the Owners, by Special Assessment or otherwise, equal to at least 50% of the Arbitration Budget as set forth in the opinion letter described above. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a mutually-acceptable arbitrator (preferably a former judge), or, if an arbitrator cannot be mutually selected, then by a member of the National Panel of Construction ADR Specialists promulgated by Construction Dispute Resolution Services, LLC ("**CDRS**") or a similar organization. The binding arbitration shall be conducted according to the rules and procedures set forth in the Arbitration Rules and Procedures promulgated by CDRS. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

25.5. Fees and Costs of Arbitration. Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. The arbitrator shall not award attorney fees, expert witness fees or arbitration costs to the prevailing party.

25.6. No Waiver of Arbitration Right. If any Owner, the Townhome Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration or to insist on compliance with the requirements set forth in this Section 25. If any such court action is filed, then the court in such action shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein, including, without limitation, compliance with the Pre-Arbitration Requirements set forth above.

25.7. Waiver of Subrogation. The Townhome Association and each Owner waives any and all rights to subrogation against the Declarant and any builder, contractor, and engineer in the Townhome Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Townhome Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the Townhome Project engineer, and builder, contractors of the Declarant and the builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Townhome Association and Owners hereby release Declarant, the Townhome Project engineer, and builder, and their respective officers, employees, owners, contractors, insurers, and representatives from any and all liability to the Townhome Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Townhome Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Townhome Association or any Owner to recover thereunder. The Townhome Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, contractors, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

26. **RIGHTS RESERVED FOR DECLARANT.** So long as Declarant owns two (2) or more townhome Units in the Townhome Project, the Declarant shall have the right to use any Building, Unit, or part of the Common Areas in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Townhome Project, and the construction and improvement of all Common Areas and/or Limited Common Areas as the Declarant may desire. The Declarant shall have the right to maintain one (1) or more sales offices and model Units. Such offices and model Units may be located in any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one (1) or more separate structures, trailers, or facilities placed in the Townhome Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Townhome Project.

The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, model Units, signs, banners or similar structures or devices.

27. EXPANSION OF TOWNHOME PROJECT.

27.1. Right to Expand; Additional Land. There is hereby granted unto Declarant (and its assigns), and Declarant hereby reserves, the absolute right and option to expand the Townhome Project at any time (within the limits herein prescribed) and from time to time by adding the Additional Land (described in Exhibit D) or a portion or portions thereof. Notwithstanding any provision of this Declaration which might be construed to the contrary, such right may be exercised without obtaining the vote or consent of any other person (including any Owner or Mortgagee) and shall be limited only as specifically provided herein. Any specifically described portion of the Additional Land shall be deemed added to the Townhome Project at such time as a Supplemental Declaration (or similar instrument) containing the information required by this Section 27 has been Recorded with respect to the portion of the Additional Land concerned. After the date such Supplemental Declaration (or similar instrument) is Recorded, title to each Unit and Parcel thereby created within the portion of the Additional Land concerned and its appurtenant right and easement of use and enjoyment in and to the Common Areas shall be vested in and held by the Declarant that owns such Additional Land, until such time as the Declarant sells a constructed Unit to a buyer (new Owner).

27.2. Rights and Statements Respecting Additional Land. The following information applies to Declarant's right and option concerning expansion of the Townhome Project by the addition thereto of the Additional Land or a portion or portions thereof.

27.2.1. Additional Land and Units. The Additional Land is comprised of land on which no more than 324 additional Units may be constructed. The Buildings constructed on the Additional Land will have approximately the same size and constructed of the same kinds of building materials and quality of construction as the Buildings included in the original Project (depending on the number of Units in each Building). Units constructed in such Buildings on the Additional Land will be for residential use only, and will be substantially similar to the Units in the original Buildings of the Project. All of the Additional Land need not be added to the Project, if any such Additional Land is added. Rather, a portion or portions of the Additional Land may be added to the Project at different times. There are no limitations or requirements relative to the size, location or configuration of any given portion of the Additional Land which may be added to the Project or relative to the order in which particular portions of the Additional Land may be added. If and when added to the Project, such portion(s) of the Additional Land shall be subject to and governed by the provisions of this Declaration as well as the provisions of the Master Declaration. Except as expressly stated herein, there are no requirements or assurances regarding the locations of any improvements that may be made on portions of the Additional Land that are added to the Townhome Project. All structures (new Buildings) constructed on the Additional Land will be compatible with the Buildings constructed on the land originally within the Project.

27.2.2. Procedure for Expansion. Each Supplemental Declaration (or similar instrument, such as a "Declaration of Inclusion") by which an addition to the Townhome Project of any portion of the Additional Land is accomplished shall be executed by Declarant, shall be in recordable form, must be Recorded in the Office of the County Recorder of Utah County, Utah, no later than seven (7) years after the date on which this Declaration is recorded, and shall contain the following information for that portion of the Additional Land which is being added: (a) data sufficient to identify this Declaration with respect to that portion of the Additional Land being added; (b) the legal description of the portion of the Additional Land being added; and (c) a statement that such portion of the Additional Land shall thereafter be held, transferred, sold, conveyed, occupied, improved and developed subject to the covenants, restrictions, easements, charges, and liens set forth in this Declaration.

Upon the date any Supplemental Declaration (or Declaration of Inclusion) contemplated above is Recorded, it shall automatically supplement this Declaration and any Supplemental Declarations previously Recorded. At any point in time, this townhome Declaration shall consist of this Declaration, as amended and expanded by all Supplemental Declarations (or Declarations of Inclusion) theretofore Recorded pursuant to the terms hereof. Further, Declarant may assigns its rights to expand the Townhome Project and add Additional Land to the Project to any assignee or affiliate who owns or purchases some or all of the Additional Land.

27.3 Allocation of Assessments and Voting Rights Following Expansion. Each Unit added to the Townhome Project shall be responsible to pay assessments in the same manner and subject to the same provisions as all other Units in the Townhome Project. Each Owner of a Unit shall be entitled to Memberships and votes in the Townhome Association to the extent provided for in Section 20 above. Assessments (except for Exempt Units) and voting rights shall commence as of the date the Declarant Records a Supplemental Declaration (or Declaration of Inclusion) with respect to each subdivided Unit contained within the Additional Land that has received a certificate of occupancy.

27.4 No Obligation to Expand. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) the addition to the Townhome Project of any or all of the Additional Land; (ii) the creation or construction of any Unit or other Improvements; (iii) the carrying out in any particular way or within any particular time of any development or addition which may be undertaken; or (iv) the taking of any particular action with respect to any portion of the Additional Land.

28. AGENT FOR SERVICE OF PROCESS.

The name and address of the person to receive service of process in all cases provided by the Act shall be the registered agent and address of the Townhome Association as shown on the official corporate records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah. In the absence of such information, the person to receive service of process on behalf of the Project is Paxton R. Guymon, Esq., York Howell & Guymon, 10610 South Jordan Gateway #200, South Jordan, Utah 84095.

29. SEVERABILITY.

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

30. CAPTIONS.

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

31. LAW CONTROLLING.

This Declaration shall be governed by the laws of the State of Utah.

32. EFFECTIVE DATE. This Declaration shall take effect when recorded in the office of the Utah County Recorder.

IN WITNESS WHEREOF, the Declarant has executed this instrument this 2 day of October, 2020.

DECLARANT:

RWR Property Holdings, LLC, a Utah limited liability company

By: [Signature]
Title: Member

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 2nd day of October, 2020, by Grant LeFevre, as authorized manager/member of RWR Property Holdings a Utah limited liability company (the above Declarant).

SEAL:

[Signature]
NOTARY PUBLIC

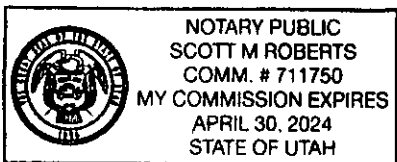


EXHIBIT A

Units and Votes of Rockwell Ranch Townhomes

Each Owner of a Unit, which is an Assessable Unit, shall be a Class A Member of the Association and each Owner is allotted one (1) vote per Unit owned. Each Class A Membership shall be held jointly by all Owners of such Unit.

Declarant shall be the only Class B Member of the Association and shall be entitled to ten (10) votes for each Unit owned and ten (10) votes for each Lot owned without a townhome Unit on it. Declarant shall have such votes (10 votes per Unit/Lot) even if the Units or Lots are temporarily classified as Exempt Units under Section 2.16 of the Declaration.

As Additional Land is added to the Townhome Project, the Units constructed on such Additional Land shall have, and be subject to, these same Voting rights and provisions.

Voting Rights are described more fully in Section 20 of the Declaration, and Declarant's right and option to expand the Townhome Project is described more fully in Section 27 of the Declaration.

EXHIBIT B

BYLAWS OF THE

ROCKWELL RANCH TOWNHOMES OWNERS ASSOCIATION, INC.

ARTICLE ONE: NAME AND LOCATION

The name of the corporation is *Rockwell Ranch Townhomes Owners Association, Inc.* (the "Townhome Association" or the "Association"). The principal office of the Association is 520 S. 850 E. Suite A-300, Lehi, Utah 84043, but the meetings of Owners and Trustees may be held at such other places as may be designated by the Board of Directors. For purposes of these Bylaws and the other governing documents of the subject townhome project, the "*Board of Directors*" shall have the same meaning as the "*Board*." The Association is subject to both the Utah Community Ownership Act in Title 57, Chapter 8a, Utah Code Annotated, as amended, and the Utah Revised Nonprofit Corporation Act in Title 16, Chapter 6a, Utah Code Annotated, as amended.

ARTICLE TWO: APPLICATION OF BYLAWS

All present and future owners, mortgagees, lessees and occupants of any Unit or Townhome and any other persons who may use the facilities of the Rockwell Ranch Townhomes, located in American Fork City, Utah County, Utah (the "Project") in any manner are subject to these Bylaws, the *Declaration of Townhome for Rockwell Ranch Townhomes* filed of record with the Utah County Recorder's Office, (the "Declaration") and all rules made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance or entering into of a lease or the act of occupancy of a Unit or Townhome shall constitute an agreement that the provisions of the Declaration and these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with. Certain capitalized terms in these Bylaws shall be defined in accordance with the definition for such terms set forth in the Declaration.

ARTICLE THREE: MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Owners shall be held within one (1) year from the date of incorporation of the Association, and each subsequent annual meeting shall be held in July of each calendar year at a date and time fixed by the Board of Directors, or such other month or date as the Board of Directors may designate.

Section 2. Special Meetings. Special meetings of the Owners may be called at any time by the president or by the Board of Directors, or upon written request of the Owners who are entitled to vote at least twenty-five percent (25%) of all the votes of the membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Owners shall be given by, or at the direction of, the secretary of the Association or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Owner entitled to vote thereat, addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of special meeting, the purpose of the meeting. Notice of a meeting can also be given by email to each of the Owners. Owners may also call meetings on shorter notice provided all Owners agree to such shorter notice.

Section 4. Quorum. The presence at the meeting of Owners entitled to cast, or of proxies entitled to cast, fifty percent (50%) or more of the total votes of the membership shall constitute a quorum for any action except as otherwise provided in the articles, the Declaration, or these Bylaws. If, however, such a quorum shall not be present or represented at any meeting, the Owners entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as stated is present or be represented by proxy.

Section 5. Voting. At all meetings of Owners, each Owner may vote in person, by written ballot, or by proxy. Except as otherwise provided in Section 7 of this Article Three, in the event that ownership of a Unit is jointly held by two or more persons (each a “Joint Owner”) the Association may accept the vote of any one Joint Owner as the vote for such Unit, unless it receives written notice to the contrary from any of the other Joint Owners of such Unit. The Association may accept votes, consents, written ballots, waivers, proxy appointments, and proxy revocations of the Owners in accordance with the provisions of UTAH CODE ANN. § 16-6a-713.

Section 6. Action Taken Without a Meeting. Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if:

6.1 A written ballot is distributed to every Owner entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the Owner to return the ballot to the Association.

6.2 The number of votes cast by ballot within the specified time under Subsection 6.1 equals or exceeds the quorum required to be present at a meeting authorizing the action.

6.3 The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

6.4 The written ballot distributed to Owners affords an opportunity for the Owner to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the Association and further provides that the vote of the Owners shall be cast in accordance with the choice specified.

In addition to foregoing, any action that may be taken at any annual or special meeting of Owners may be taken without a meeting and without prior notice if the requirements of UTAH CODE ANN. § 16-6a-707 have been satisfied.

Section 7. Proxies. At each Owners meeting, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner himself or by his attorney thereunto duly authorized in writing or which satisfies the requirements of UTAH CODE ANN. § 16-6a-712. The instrument authorizing the proxy to act shall indicate the name of the secretary of the Association, or such other officer or person or who may be acting as the secretary at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent Owner’s vote as specified in the form of proxy. If a Unit is jointly held, the instrument authorizing a proxy to act must have been executed by all Joint Owners of such Unit or their attorneys thereunto duly authorized

in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

ARTICLE FOUR:
BOARD OF DIRECTORS. ELECTION. TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of Directors of at least three (3) but no more than five (5), who need not be Owners of the Association (each a "Trustee"). The Board of Directors shall be the "*Board*" of the Association for purposes of the Utah Townhome Ownership Act and the subject townhome project.

Section 2. Initial Selection and Term of Office. Declarant shall have the exclusive right to appoint and to remove all Trustees so long as Declarant holds a majority of the number of votes as section forth in Section 20 of the Declaration (the "Declarant Control Period"). At the end of the Declarant Control Period, the Owners shall elect the Trustees at a meeting of Owners each calendar year. Trustees shall serve one year terms, which may be renewed by the Owners by vote each year.

Section 3. Election. Except as set forth in Section 2 above, election to the Board of Directors shall be by vote of the Owners. At such election, the Owners or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provision of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4. Removal. After the end of the Declarant Control Period, any Trustee may be removed from the Board, with or without cause, by a majority vote of the Owners of the Association. In the event of death, resignation or removal of a Trustee, a successor shall be selected by the remaining Owners of the Board of Directors and shall serve for the unexpired term of said Trustee's predecessor.

Section 5. Compensation. No Trustee shall receive compensation for any service the Trustee may render to the Association. However, any Trustee may be reimbursed for actual reasonable expenses incurred in the performance of Trustee duties.

Section 6. Action Taken Without a Meeting. The Trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Trustees. Any action so approved shall have the same effect as though taken at a meeting of the Trustees.

Section 7. Vacancies. If a vacancy occurs on the Board of Directors, including a vacancy resulting from an increase in the number of Trustees, the vacancy may be filled by the Owners or by the Board of Directors in accordance with UTAH CODE ANN. § 16-6a-810.

ARTICLE FIVE: MEETING OF TRUSTEES

Section 1. Regular Meetings. The Board of Directors shall hold a regular meeting at least one time per calendar year.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) Trustees, after not less than three (3) days notice to each Trustee.

Section 3. Quorum. A majority of the number of Trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Trustees present at a duly held meeting at which a quorum is present shall be the act of the Board of Directors.

ARTICLE SIX:
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

1.1 Adopt and publish rules and regulation governing the use of the Common Areas and Facilities, and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof,

1.2 Upon reasonable notice and the opportunity for a hearing to an Owner, suspend the voting rights of an Owner during any period in which such Owner shall be in default in the payment of assessment levied by the Association. Such rights may also be suspended after notice and hearing, for the period not to exceed sixty (60) days for the infraction of published rules and regulations;

1.3 Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provision of these Bylaws, the Articles, or the Declaration;

1.4 Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

1.5 Employ a Manager, an independent contractor, and such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

2.1 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Owners, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Owners who are entitled to vote;

2.2 Supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;

2.3 As more fully provided in the Declaration, to:

2.3.1 Fix the amount of the annual assessment against each Unit at least fifteen (15) days in advance of each annual assessment period;

2.3.2 Foreclose at its discretion the lien against any Unit for which assessments are not timely paid and/or to bring an action at law against the Owner personally obligated to pay the same.

2.4 Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

2.5 Procure and maintain adequate liability, and hazard insurance on property by the association, and adequate officers' and trustees' indemnity insurance, and all other insurance required by the Declaration;

2.6 Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

2.7 Cause the Common Areas and Facilities to be maintained;

2.8 Permit First Mortgagees of Units in the Project to pay taxes or other charges which are in default and which may have become a charge against the Common Areas of the Association, and such First Mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property, and such First Mortgagees, upon making such payments, shall be owed immediate reimbursement therefor from the Association; and

2.9 Assess and collect all assessments authorized in the Declaration.

ARTICLE SEVEN: OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be president, a secretary, and a treasurer, and such other officers as the Board of Directors may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the annual meeting of the Owners each year, or as deemed necessary by the Owners.

Section 3. Term. The officers of this Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his or her successor is elected and has qualified, unless he or she shall sooner resign, or shall be removed, or otherwise be disqualified.

Section 4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of

receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the office he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant Section 4 of this Article Eight.

Section 8. Duties. The duties of the officers are as follows:

President: The president shall preside at all meetings of the Board; shall see that orders and resolution of the Board of Directors are carried out; and shall sign all leases mortgages, promissory notes, checks, deeds and other written instrument on behalf of the Association.

Secretary: The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Owners; serve notice of meetings of the Board and of the Owners; keep appropriate current records showing the Owners of the Association together with their addresses; and shall perform such other duties as required by the Board.

Treasurer: The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall, together with the president, sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit or review of the Association book to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures, and deliver a copy of each to the Owners. The treasurer may choose to work with a management company to carry out the financial duties of the Association.

ARTICLE EIGHT: INDEMNIFICATION OF OFFICERS AND TRUSTEES

The Association shall provide any indemnification required or permitted by the laws of Utah, including without limitation indemnification required to be provided pursuant to UTAH CODE ANN. §§ 16-6a-901 to 910, and the Association shall indemnify Trustees, officers, agents and employees as follows:

Section 1. Third Party Litigation. The Association shall indemnify any Trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was such Trustee or officer or an employee or agent of the Association, or is or was serving at the request of the Association as a trustee, office, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding,

had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Association Litigation. The Association shall indemnify any Trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was such a Trustee or officer of an employee or agent of the Association, or is or was serving at the request of the Association as trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought, or any other court having jurisdiction in the premises, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court deems proper.

Section 3. Expenses. To the extent that a Trustee or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or 2 of this Article Nine, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 4 of this Article Nine.

Section 4. Determination of Right to Indemnity. Any indemnification under Section 1 or 2 of this Article Nine (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Trustee or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or 2 of this Article Nine. Such determination shall be made (i) by the Board of Directors of the Association by a majority vote of a quorum consisting of Trustees who were not parties to such action, suit or proceeding, or (ii) if such quorum is not obtainable, or even if obtainable, and such a quorum of disinterested Trustees so directs, by independent legal counsel (who may be regular counsel for the Association) in written opinion; and such determination shall be conclusive.

Section 5. Advance of Expenses. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the Trustee or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article Nine.

Section 6. Other Indemnification Rights. Agents and employees of the Association who are not Trustees or officers of the Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board of Directors of the Association.

Section 7. Benefited Parties. Any indemnification pursuant to this Article Nine shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a trustee or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

ARTICLE NINE: ACCOUNTING; RECORDS

Section 1. Accounting

1.1 The books and accounts of the Association shall be kept in accordance with reasonable accounting procedures used by similar townhome projects under direction of the treasurer.

1.2 At the close of each fiscal year, the books and records of the Association shall be reviewed by an independent management company or public accountant approved by the Association.

Section 2. Inspection of Records. The membership register, books of account and minutes of meeting of the Association, of the Board of Directors and of committees of the Board of Directors, and all other records of the Project maintained by the association or Manager shall be made available for inspection and copying by any Owner of the Association or his duly appointed representative at any reasonable time and for a non-commercial purpose reasonably related to his interest as an Owner, at the office where the records are maintained. Upon receipt of an authenticated written request from an Owner along with the fee prescribed by the Board of Directors to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Owner a copy of any and all records requested. The Board of Directors shall establish reasonable rules with respect to:

2.1 Notice to be given to the custodian of the records by the Owner during to make the inspection;

2.2 Hours and days for the week when such an inspection may be made; and

2.3 Payment of the cost of making copies of documents requested by an Owner.

Every member of the Board of Directors, subject to the conditions set forth above, shall have the absolute right at any reasonable time to inspect and make copies of all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association.

ARTICLE TEN: ASSESSMENTS

All assessments shall be made in accordance with the general provisions of the Declaration. The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project and any other expenses incurred. Such records shall be available for examination

by the Owners during regular business hours. In accordance with the actions of the Board of Directors in assessing Common expenses against the Units and Owners, the treasurer shall keep an accurate record of such assessments and of the payment thereof by each Owner.

ARTICLE ELEVEN: AMENDMENTS

Section 1. Amendment Procedure. These Bylaws may be amended, at a regular or special meeting of the Owners, by a vote of a majority of a quorum of the Owners present in person or by proxy.

Section 2. Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the provisions of the Declaration and these Bylaws, the provisions of the Declaration shall control.

THESE BYLAWS have been approved and adopted by the Declarant and by the initial members of the Board of Directors/Board as of the date of recording of the Declaration with the Utah County Recorder's Office, State of Utah.

END OF BYLAWS

EXHIBIT C
Additional Land

The Additional Land that may be added to the Townhome Project in accordance with Section 27 of the Declaration is located in Utah County, Utah, and is depicted in the dotted areas for Town Homes in the site plan shown below. This Declaration shall not be recorded against the Additional Land.

Master Land Use Plan
Rockwell Ranch

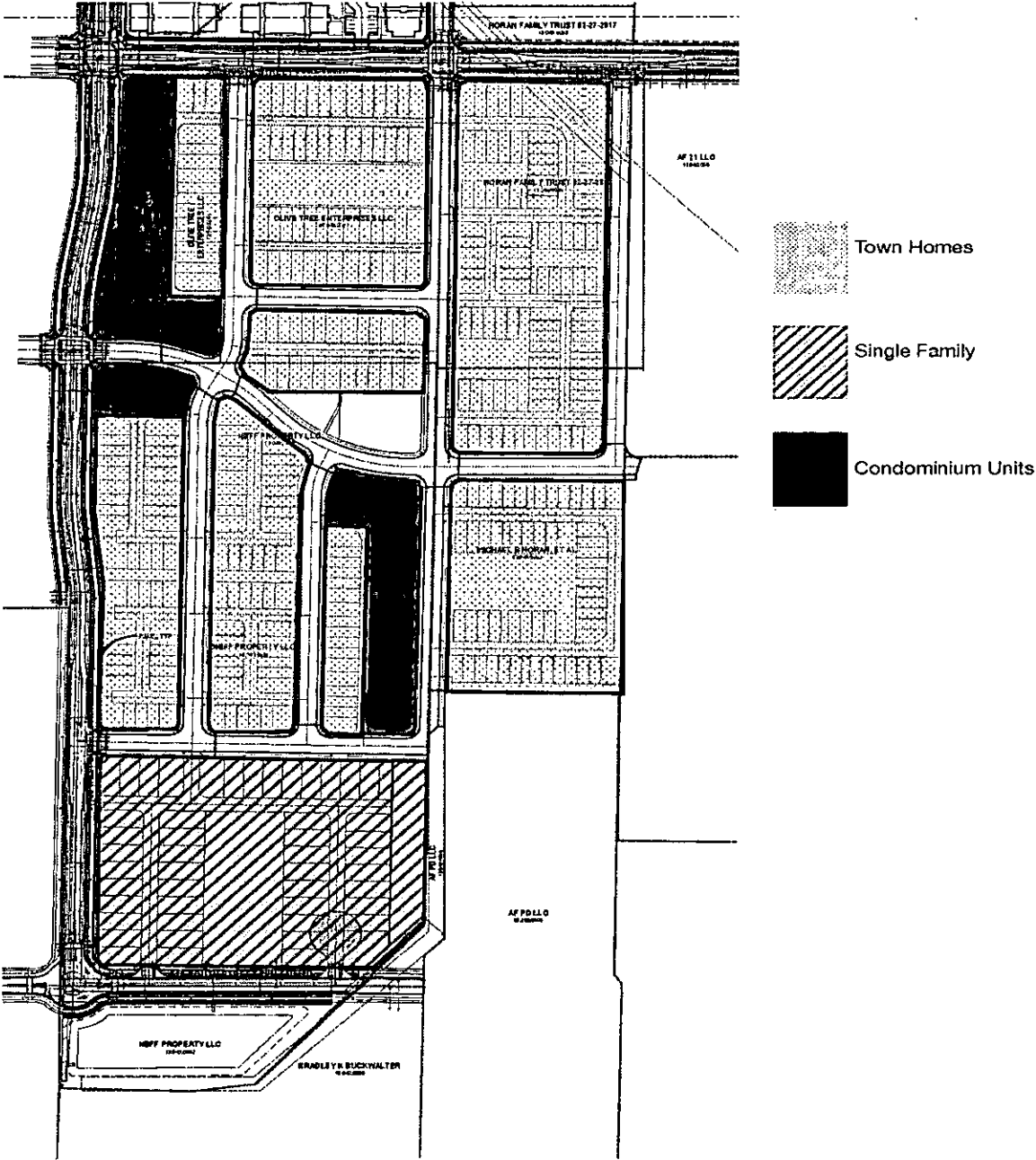


EXHIBIT DLegal Description of Townhome Project (Initial Phase)

This Declaration shall be recorded against the real property described below, which land will include the initial four (4) townhome buildings to be constructed within this Townhome Project, located in American Fork City, Utah County, State of Utah:

Block 1 – Phase 1 Plat

Beginning at a point being South 89°53'31" East 1,254.99 feet along section line and South 2,798.01 feet from the Northwest Corner of Section 22, Township 5 South, Range 1 East, Salt Lake Base and Meridian; and running

thence South 89°23'30" East 167.37 feet;
 thence Southwesterly 23.47 feet along the arc of a 15.00 foot radius curve to the left (center bears South 00°36'30" West and the chord bears South 45°46'32" West 21.15 feet with a central angle of 89°39'57");
 thence South 00°56'33" West 403.13 feet;
 thence Southeasterly 23.56 feet along the arc of a 15.00 foot radius curve to the left (center bears South 89°03'27" East and the chord bears South 44°03'27" East 21.21 feet with a central angle of 90°00'00");
 thence South 00°56'33" West 56.00 feet;
 thence Southwesterly 23.56 feet along the arc of a 15.00 foot radius curve to the left (center bears South 00°56'33" West and the chord bears South 45°56'33" West 21.21 feet with a central angle of 90°00'00");
 thence South 00°56'33" West 48.23 feet;
 thence Southerly 52.22 feet along the arc of a 128.00 foot radius curve to the right (center bears North 89°03'27" West and the chord bears South 12°37'47" West 51.86 feet with a central angle of 23°22'27");
 thence Southerly 20.51 feet along the arc of a 15.00 foot radius curve to the left (center bears South 65°43'41" East and the chord bears South 14°54'24" East 18.95 feet with a central angle of 78°21'25");
 thence South 24°38'42" West 57.30 feet;
 thence Westerly 27.45 feet along the arc of a 15.00 foot radius curve to the left (center bears South 37°53'22" West and the chord bears South 75°27'26" West 23.78 feet with a central angle of 104°51'53");
 thence North 57°17'35" West 56.55 feet;
 thence Northerly 24.66 feet along the arc of a 15.00 foot radius curve to the left (center bears North 63°54'44" West and the chord bears North 21°01'00" West 21.98 feet with a central angle of 94°12'31");
 thence Westerly 118.76 feet along the arc of a 325.00 foot radius curve to the left (center bears South 21°52'45" West and the chord bears North 78°35'21" West 118.10 feet with a central angle of 20°56'12");
 thence North 89°03'27" West 43.73 feet;
 thence North 00°56'33" East 56.00 feet;
 thence South 89°03'27" East 43.73 feet;
 thence Southeasterly 148.74 feet along the arc of a 381.00 foot radius curve to the right (center bears South 00°56'33" West and the chord bears South 77°52'25" East 147.80 feet with a central angle of 22°22'04");

thence Northeasterly 25.42 feet along the arc of a 15.00 foot radius curve to the left (center bears North 23°18'37" East and the chord bears North 64°46'11" East 22.48 feet with a central angle of 97°04'54");

thence Northeasterly 19.19 feet along the arc of a 72.00 foot radius curve to the left (center bears North 73°47'18" West and the chord bears North 08°34'44" East 19.14 feet with a central angle of 15°16'21");

thence North 00°56'33" East 76.96 feet;

thence North 89°27'33" West 162.54 feet;

thence North 00°32'27" East 20.00 feet;

thence South 89°27'33" East 46.29 feet;

thence Northeasterly 15.64 feet along the arc of a 10.00 foot radius curve to the left (center bears North 00°32'27" East and the chord bears North 45°44'30" East 14.09 feet with a central angle of 89°35'54");

thence North 00°56'33" East 438.97 feet;

thence South 89°03'27" East 10.00 feet;

thence North 00°56'33" East 6.27 feet to the point of beginning.

Contains 102,401 Square Feet or 2.351 Acres (for construction of 16 Townhome Units)

- Note: the above-described land will be part of the Townhome Project (as defined above in the Declaration), and shall be subject to the terms and provisions of the Master Declaration of Covenants, Conditions and Restrictions of Rockwell Ranch (the overall master-planned development).