

Supplemental Declaration Page 1 of 24
Gary Christensen Washington County Recorder
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CAPITAL

WHEN RECORDED, RETURN TO:

Henry Walker Construction, LLC
Attn: Legal Department
1216 W. Legacy Crossing Blvd., Ste. 300
Centerville, UT 84014

Affecting Parcel No(s): **SG-BCD-1 through SG-BCD-81**

**SUPPLEMENTAL DECLARATION
FOR BECCO CREEK SUBDIVISION
A NEIGHBORHOOD AT DIVARIO
WITH A NEIGHBORHOOD ASSOCIATION**

THIS SUPPLEMENTAL DECLARATION FOR BECCO CREEK SUBDIVISION, A NEIGHBORHOOD AT DIVARIO ("**Declaration**") is effective when recorded in the office of the Washington County Recorder by Henry Walker Construction, LLC, a Utah limited liability company ("**Declarant**").

RECITALS

A. Declarant is the owner of the real property and improvements currently situated and to-be-constructed thereon as further identified on Exhibit A attached hereto and incorporated herein by this reference, to be known as Becco Creek Subdivision (the "**Project**" or "**Property**"), located in St. George, Washington County, Utah.

B. The Project is subject to that certain *Master Declaration of Covenants, Conditions and Restrictions for Divario, a Master Planned Community Washington County, Utah*, recorded in the office of Washington County Recorder on October 2, 2019 as document number 20190040541 (the "**Master Declaration**").

C. Declarant hereby desires to establish for the mutual benefit of all future Owners and Residents, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein (collectively, the "**Restrictions**"), that shall encumber the Project.

D. Declarant intends that the real property within the Project shall be held, sold, and conveyed subject to the Restrictions that: (i) are for the purpose of protecting the value, desirability, attractiveness, and character of the Project; (ii) shall run with the land; (iii) shall be binding upon all Owners, Residents, Mortgagees, and all other persons hereafter acquiring any interest in the Project; and (iv) shall inure to the benefit of all parties having any right, title, or interest in any part of the Project, and their successors and assigns.

E. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Master Declaration.

DECLARATION

NOW, THEREFORE, Declarant hereby declares, covenants, and agrees that the real property within the Project is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the Restrictions. These Restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Project

and are also in the furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the recitals.

1. DEFINITIONS

- 1.1. “**Act**” shall mean and refer to the Utah Community Association Act as established in Utah Code Ann. §§57-8a-101 *et seq.*, as the same may be amended.
- 1.2. “**Articles**” shall mean the Articles of Incorporation for the Association.
- 1.3. “**Association**” shall mean and refer to the Becco Creek Owners Association, Inc., a Utah non-profit corporation.
- 1.4. “**Board**” or “**Board of Directors**” shall mean and refer to the elected governing body of the Association and/or its governing members.
- 1.5. “**Bylaws**” shall mean the Bylaws of the Association.
- 1.6. “**Declarant**” shall have the meaning given to such term in the preamble.
- 1.7. “**Declaration**” shall have the meaning given to such term in the preamble.
- 1.8. “**Common Area**” or “**Common Areas**” shall mean and refer to those areas designated as such on the Plat or by the Board.
- 1.9. “**Common Expenses**” shall mean all sums lawfully assessed against the Owners for expenses resulting from the administration, maintenance, management, operation, repair, and/or replacement of the Project common area(s); expenses agreed upon as common expenses by the Association or its Board; expenses declared common expenses by the Declaration or the Master Declaration; expenses levied against the Project by the Master Association for its allocated portion of the Master Association’s common expenses, as applicable; and all other charges incurred by the Association or the Board as necessary for the benefit of the Project and its Owners.
- 1.10. “**Declarant Control Period**” shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following: (i) the date on which all of the Lots have been conveyed to purchasers, or (ii) the Declarant executes and records a written document that terminates the Declarant Control Period.
- 1.11. “**Governing Documents**” shall mean the Master Declaration, the Declaration, Articles, Bylaws, and Rules.
- 1.12. “**Lot**” shall mean a separately numbered and individually described plot of land shown on the Plat, designated as a Lot for private ownership, but specifically excludes any common areas, roads, streets, and/or parking areas within the Project. Each Lot shall also be a “**Unit**” as described in the Master Declaration.
- 1.13. “**Master Association**” shall mean and refer to the Divario Master Homeowners Association, a Utah nonprofit corporation, and its successors or assigns.
- 1.14. “**Master Declaration**” shall have the meaning given to such term in the Recitals.

- 1.15. "**Mortgage**" shall mean a mortgage, deed of trust, or trust deed, or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.
- 1.16. "**Mortgagee**" shall mean and refer to any person or entity names as a mortgagee of a mortgage or beneficiary under, or holder of, a deed of trust or trust deed.
- 1.17. "**Owner**" shall mean and refer to the record title owner, whether one or more Person, of fee simple title to any Lot in the Project, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.
- 1.18. "**Person**" shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or other legal entity capable of holding title to real property.
- 1.19. "**Plat**" shall mean and refer to the subdivision plat recorded herewith entitled "[--]" consisting of one or more sheets, prepared and certified by a licensed Utah Registered Land Surveyor, including any replacements thereof, or additions thereto.
- 1.20. "**Proceeding**" shall mean and refer to a lawsuit, arbitration, mediation, or an administrative or governmental hearing.
- 1.21. "**Project**" or "**Property**" shall have the meaning given to such terms in the Recitals.
- 1.22. "**Residence**" shall mean and refer to an attached residential structure which is designed and intended for use and occupancy as a multi-family residence, together with all improvements located on the Lot with are used in connection with such Residence.
- 1.23. "**Restrictions**" shall have the meaning given to such term in the Recitals.
- 1.24. "**Rules**" shall mean and refer to any rules or regulations created by the Board, pursuant to its authority under the Articles, this Declaration, and/or the Bylaws, to govern the Association. It shall also mean and refer to any "Rules and Regulations" of the Master Association as defined in the Master Declaration.

2. LAND USES, COMMON AREAS, AND EASEMENTS

- 2.1. Land Use and Building Type. All Lots shall be used only for multi-family residential purposes. No professional, business, or commercial uses shall be made of the same, or any portion thereof. The provisions of this Section 2.1 shall not preclude an occupant who is engaged in individual professional work (e.g., accountant, bookkeeper, among other approved professional undertakings) without external evidence thereof (e.g., signage, excessive vehicular or foot-traffic), so long as: (i) such occupant conducts its activities in conformance with all ordinances; (ii) such business activity is merely incidental to the use as a Residence; (iii) such occupant does not solicit or invite the public to the Lot or Residence as part of such business activity.
- 2.2. Common Areas and Easement. Following recordation of the Declaration, Declarant shall convey all Common Area to the Association. Thereafter, each Owner shall have a right and easement of use and enjoyment in and to the Common Areas. Such right shall be appurtenant to and shall run with each Lot and shall not be separate therefrom.

- 2.3. Limitation on Common Areas and Easement. The rights granted to each Owner in Section 2.2 are subject to the following limitations:
- 2.3.1. The right of the Association to impose reasonable limitations on the number of guests or invites per Owner who at any given time are permitted to use the Common Areas.
 - 2.3.2. The right of the Association to suspend voting rights for any period of time during which any assessment against an Owner's Lot remains unpaid, not to exceed sixty (60) days for any infraction of this Declaration or the Rules; and for successive sixty (60) day periods if any such infractions are not corrected during any prior 60-day suspension.
 - 2.3.3. The right of the Association to regulate the use of the Common Areas through Rules and to prohibit access to those Common Areas such as landscaped areas not intended for use by the Owners or their guests.
 - 2.3.4. The right of any applicable governmental authority having jurisdiction over the Project to access and rights of ingress and egress within the Project to provide police and fire protection, school transportation, and all other governmental services.
- 2.4. Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot, or Common Areas, nor shall anything be done or placed on any Lot or Common Areas which interferes with or jeopardizes the quiet enjoyment of other Lots or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the Association's insurance or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.
- 2.5. Recreational Vehicles. Except as allowed by the Rules, the parking of boats, trailers, motorhomes, large trucks, commercial vehicles, other recreational vehicles, or the like (as determined by the Board) may not be parked within the Project. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot, street, or other Common Area, except for emergency repairs or repairs performed within a garage.
- 2.6. Pets. Up to two (2) common domestic pets per Lot is allowed. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including but not limited to requirements for registration and the use of leashed and noise barking limitations, animal size restrictions, and allowed animal types. All pets must be registered in advance with the Association. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules adopted by the Board from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (i) it causes damage to property of anyone other than its owner; (ii) it causes unreasonable fouling of the air by odors; (iii) it causes unsanitary conditions; (iv) it defecates on any Common Areas of another Owner and the feces are not immediately cleaned up by the responsible party; (v) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (vi) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area and dogs, and other pets determined by the Board, shall be leashed whenever outside a Lot.

- 2.7. Nuisances. No resident shall create, maintain, or permit a nuisance in, on, or about the Project. For purpose of this Section 2.7, a “nuisance” includes any behavior which annoys, disturbs, or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their Lot. A nuisance includes but is not limited to the following:
- 2.7.1. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in, or about a Lot or the Common Areas.
 - 2.7.2. The storage of any items, property, or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses.
 - 2.7.3. The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board.
 - 2.7.4. The storage of any substance, thing, or material upon any Lot or in the Common Areas that will emit any foul, unpleasant, or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents in the Project.
 - 2.7.5. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas.
 - 2.7.6. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress, or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order.
 - 2.7.7. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests, or invitees.
 - 2.7.8. Excessive noise in, on, or about any Lot or the Common Area, especially after 10:00 PM (Utah time) and before 7:00 AM (Utah time).
 - 2.7.9. Allowing a dog, or other pet as determined by the Board, to be unleashed while outside a fenced Lot.
 - 2.7.10. Continuous barking, meowing, or other animal noises.
 - 2.7.11. Allowing a pet to defecate in the Common Areas or another Lot, or failing to immediately clean any feces deposited by a pet in the Common Area.
- 2.8. Signs. The Association may regulate and restrict signs in the Project. Unless otherwise designated in the Rules, lawn signs are prohibited, except "For Sale" or "For Rent" signs that may be placed in the front yard of a Lot, or as directed by the Board. All other signs may only be erected or maintained in the Project, whether in a window or otherwise, with the prior approval of the Board.

- 2.9. Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for the shortest time necessary to effect such collection. The Association may adopt additional Rules for the storage and concealment of trash containers.
- 2.10. Parking. Owners and residents shall utilize their garages for parking. At no time shall any vehicle be parked at an entrance to or in front of a garage or walkway or at any other location within the Project, which would impair vehicular or pedestrian access, or snow removal. Parking on private streets within the Project is prohibited. Common Area parking stalls (if any) shall be subject to and governed by Rules and may be assigned by the Board. The Association may charge a fee for the use of any assigned parking stalls, which are intended to be used as vehicle parking spaces only and are restricted to such use. The Board may adopt additional Rules relating to the parking of vehicles within the Project, including, without limitation: the size and dimensions of the vehicles parked within the Project; the allowance or prohibition of street parking; the admission and temporary parking of vehicles within the Project; the use of the undesignated parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Board; the right to remove or cause to be removed any vehicles that are improperly parked; the time visitor spaces may be used; and the levying of fines against Owners and residents who violate, or whose invitees violate, such Rules.
- 2.11. Window Coverings. Every Owner shall be obligated to ensure that window coverings are installed within their Residence within one (1) month of purchasing or taking possession. Furthermore, the Board is authorized to adopt and implement reasonable Rules pertaining to the type, color, material, etc. of window coverings.
- 2.12. Leases. The leasing of Residences is permitted. Any agreement for the leasing, rental, or occupancy of a Lot (hereinafter in this Section referred to as a "lease") shall be in writing. Upon request of the Board, a copy of any leasing agreement shall be provided to the Board along with the name and contact information for all adult tenants, vehicle information of the tenants, and any other information deemed necessary by the Board. No Owner shall be permitted to lease his/her Lot for transient, hotel, or seasonal purposes. All leases shall be for an initial term of no less than thirty (30) days. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his or her entire Lot. All leases shall provide that the tenant is subject to and shall abide by the Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within ten (10) days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. If the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so. Timeshare interests are prohibited.
- 2.13. Energy Conservation Equipment. Solar energy collector panels and attendant hardware or other energy conservation equipment shall be prohibited from being constructed or installed on any Lot in the Project. Notwithstanding the forgoing, if the Board elects to allow energy conservation equipment in the Project, then the Board may adopt Rules for the installation of solar panels or other energy conservation equipment in the design guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot or Residence. Solar panels or other equipment shall not be installed so as to be visible

from any Lot or street in the Project without prior approval from the Board as a variance. The Board shall have the sole discretion to determine compliance with the design guidelines.

- 2.14. Variations. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 2 if the Board determines in its discretion (by unanimous vote): (i) either that the restriction would create an unreasonable hardship or burden on an Owner or resident, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (ii) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the other Owners or residents of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.
- 2.15. Master Association and Owner Easements. The Master Association shall have non-exclusive easements to access and use the Common Areas to perform their duties as required under the Master Declaration. The Master Association shall also have non-exclusive easements to the Lots and Residences as needed to perform its duties and obligations established under this Declaration and the Master Declaration. Each Owner shall have a non-exclusive easement for ingress and egress purposes as needed to access their Lots, Residences, and any common areas of the Master Association.
- 2.16. Compliance with Restrictions and Rules. Each Owner and guests shall comply with the Restrictions and shall fully and faithfully comply with the Rules.
- 3. ASSOCIATION AND VOTING**
- 3.1. Association Rights and Powers. The Association shall have such rights and powers as are set forth in this Declaration, that shall include all rights and powers as may be reasonably necessary in order to affect the purposes of the Association as set forth herein.
- 3.2. Association Maintenance. The Association shall maintain, repair, replace, and otherwise manage all Common Areas and any improvements constructed thereon. The Board shall use a high standard of care in providing for the repair, management, and maintenance of the Common Areas, with the standard of such maintenance being at the Board's sole discretion.
- 3.3. Owner Maintenance. Each Owner shall be responsible for exterior and interior maintenance of its respective Lot and Residence, including, but not limited to, foundations, roofs, exterior walls and surfaces, soffits, fascia, gutters, downspouts, windows, garage doors, exterior doors and trim, driveways, patios, porches, stoops, stairways, railings, and utility lines that solely service the Lot or Residence, as well as all interior improvements. Owners shall also be responsible for all landscaping on their Lots and to maintain, repair, and replace fences located on their Lot, if any. The cost and responsibility to maintain, repair, and replace any portion of such fence, which serves, benefits, or binds only one Lot shall be borne exclusively by the Owner bound thereby. Maintenance and repair obligations required in this Section 3.3 shall be carried out pursuant to the requirements of this Declaration, and the Rules. The Master Association shall have the power and authority without liability to any Owner to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereof (including a Residence) but only if the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement on a Lot in violation of this Declaration and the Rules. All costs incurred by the

Master Association may be added to and become part of the Project assessments appurtenant to the Lot and shall be secured by an assessment lien.

- 3.4. Intentional or Negligent Damage. To the extent any maintenance or repair is required as a result of an Owner's, or its guests, invitees, licensees, tenants, or similar third party, negligence or intentional actions or inactions, the cost of such maintenance or repairs shall be borne exclusively by such Owner and will be added to and become part of the Project assessments appurtenant to the Lot, its Owner, and shall be secured by an assessment lien.
- 3.5. Rules. The Board shall have the authority to adopt and establish Rules as it may deem necessary for the maintenance, operation, management, and control of the Project. The Rules may restrict and govern the use of Common Areas. The Rules may not be inconsistent with this Declaration, the Master Declaration, the Articles or Bylaws. Upon adoption, the Rules shall have the same force and effect as if they were set forth herein. The Board may from time to time alter, amend, and repeal Rules and use their best efforts to see that they are strictly observed by all Owners and their guests, invitees, tenants, and similar third parties. Owners and their guests, invitees, tenants, and similar third parties are responsible to ensure that the Rules are strictly observed then in effect as well as the covenants and restrictions contained herein and shall be jointly and severally liable for their violations and resulting fines. During the Declarant Control period, the Rules and any applicable design guidelines may be adopted without being subject to the requirements of Utah Code Ann. §57-8a-217.
- 3.6. Right of Entry and Inspection. During reasonable hours and upon reasonable notice to the Owner, the Association, through its Board, any Board member, the Declarant, manager, or any authorized representative of them shall have the right to enter upon and inspect any Lot, and the improvements constructed or being constructed thereon (except for the interior portions of any completed and occupied Residence), to determine compliance with this Declaration, the Master Declaration and the Rules and such persons shall not be deemed guilty of trespass by reason of such entry. In addition, the Association shall have an easement and right of entry upon any Lot at any time without notice in order to perform emergency repairs. Failure to respond to Board demands to comply may be deemed an emergency. Owners shall be responsible for any costs incurred by the Association as a result of entering upon a Lot under this Section 3.6 and shall indemnify and hold harmless the Association, Board members, Declarant, manager, or any authorized representative of any of them for all damages related to such entry, except for such damages resulting from recklessness or bad faith.
- 3.7. Voting. Except as otherwise disallowed in this Declaration or limited by the Special Declarant Rights reserved by the Declarant, voting with respect to any matters relating to the Project and this Declaration shall be limited to only the Owners and Project members but shall otherwise be in accordance with the provisions of the Master Declaration.

4. INSURANCE

- 4.1. Property Insurance. The Association shall maintain a blanket policy of property insurance covering the Common Areas and all buildings containing Residences, including all permanent fixtures and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.
- 4.1.1. The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture,

improvement, or betterment installed in or to the Residences or otherwise permanently part of or affixed to the Common Areas or Residences, including, without limitation, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, wall coverings, and windows.

- 4.1.2. At a minimum, the blanket policy shall afford protection against loss or damage by: (i) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft, and (ii) all perils normally covered by “special form” property coverage.
- 4.1.3. The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement costs of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
- 4.1.4. The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (i) a “Guaranteed Replacement Cost Endorsement” under which the insurer agrees to replace the insurable property regardless of the cost, and (ii) a “Replacement Cost Endorsement” under which the insurer agrees to pay up to one hundred percent (100%) of the property’s insurable replacement cost but not more. If the policy includes a co-insurance clause, it must include an “Agreed Amount Endorsement” which must waive or eliminate the requirement of co-insurance.
- 4.1.5. Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) “Inflation Guard Endorsement” if available; (ii) “Building Ordinance or Law Endorsement” (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (iii) “Equipment Breakdown” if the Project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of \$2,000,000 or the insurable value of the building containing the equipment.
- 4.1.6. The costs of the property insurance for the Common Areas and the Residences shall be allocated as a Project assessment.
- 4.1.7. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner then the Association’s policy provides primary insurance coverage, and: (i) the Owner is responsible for the Association’s policy deductible; and (ii) the Owner’s policy, if any, applies to that portion of the loss attributable to the Association’s policy deductible. The Association shall provide notice to each Owner of the Owner’s obligation under this Section 4.1.7 for the Association’s policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.
- 4.1.8. If, after exercising business judgment, the Board reasonably determines that a claim is not likely to exceed the Association’s policy deductible: (i) the Owner’s policy shall be considered the policy for primary coverage to the amount of the Association’s policy deductible; (ii) an Owner who does not have a policy to cover the Association’s property

insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (iii) the Association need not tender the claim to the Association's insurer.

4.1.9. The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal property and each Owner shall be responsible for obtaining and maintaining such personal property insurance. Further, the Master Association shall not have any obligation to maintain any insurance covering the Residences, Lots or any Common Areas.

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

4.3. Named Insured. The named insured under any policy of insurance shall be the Association.

4.4. Right to Negotiate Claims and Losses and Receive Proceeds The Association is hereby expressly and irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association with respect to the Project and its activities under the Declaration and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association pursuant to this Section 4.4 shall be payable to the Association. Any proceeds resulting from damage to the Common Areas shall be used to repair the damage unless otherwise approved by a majority of the Owners who are voting at a meeting called for such purpose. Any excess proceeds may be retained by the Association as reserves or to reduce future assessments or, if distributed to the Owners, such proceeds shall be distributed to them and their Mortgagees as their interest may appear at a uniform rate.

5. FINANCES AND OPERATIONS

5.1. Creation of Lien and Personal Obligation of Assessment. Each Owner, by acceptance of a deed or conveyance from Declarant therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay the Association assessments or charges and interest, costs of collection and a reasonable attorney fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligations of: (i) the Person who was the Owner of such Lot at the time the assessment fell due, and (ii) successors-in-title who took title when assessments were delinquent. This lien and personal obligation of assessment shall be separate and independent from that benefitting the Master Declarant as set forth in the Master Declaration.

5.2. Annual Assessments. Each year the Board shall prepare, or cause the preparation of, and adopt an annual budget for the Project. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Project. The annual assessment shall be in the sole discretion of the Board. The Board may

revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. The budget shall be made available to the Owners within thirty (30) days after adoption.

- 5.3. Special Assessments. In addition to annual assessments, the Association may levy a special assessment payable over such period as the Board may determine for the purpose of defraying, in whole or in part, any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Special assessments must be approved and assented to by a majority of the Owners present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any special assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice.
- 5.4. Allocation of Assessments. Annual and special assessments shall be fixed at a uniform rate for all Lots, unless otherwise provided in this Declaration.
- 5.5. Individual Assessments. In addition to annual and special assessments, the Board may levy individual assessments against a Lot and its Owner for: (i) administrative costs and expenses incurred by the Board in enforcing the Declaration or Rules against the Owner or its guests; (ii) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of a Owner or its guests; (iii) any other charge, fine, fee, expense, or cost designated as an individual assessment by the Board, including, without limitation, action taken to bring a Lot Owner into compliance with the Declaration and Rules; (iv) costs of providing services to the Lot upon request of the Owner; and (v) attorney's fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration. The aggregate amount of any such individual assessment shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an individual assessment against the Lot(s) benefited, unless such work was necessitated by the Owners' or their guests' negligence.
- 5.6. Declarant's Exemption. Anything to the contrary notwithstanding, the Declarant and builders exempted by the Declarant in its sole discretion, shall not be obligated to pay any assessments on any Lot owned by it until such time as the Declarant or exempted builder elect in writing to pay assessments, and only for so long as the Declarant or exempted builder elect to pay assessments.
- 5.7. No Offsets. All assessments shall be payable in the amount specified by the Board and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association owes the Owner money, or that the Association is not properly exercising its duties and powers as provided in this Declaration.
- 5.8. Certificate Regarding Payment. Upon the request of an Owner, prospective purchaser, Mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, Mortgagee, or

encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater if so provided in the Act.

- 5.9. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt Rules setting forth procedures for billing and collection of assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any assessment or charge under this Declaration. Assessments shall be paid in a timely manner. Payments are due in advance on dates established by the Board. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an assessment is delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Section 5.9 or the Act.
- 5.10. Collection Charge. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: Delinquent accounts shall be charged a twenty-five dollar (\$25) late fee each month until the Owner's account (including all collection charges, costs, and attorney fees) are paid in full. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, attorney fees, and/or late fees shall constitute part of the assessment lien provided above until paid. The Association may by Rules increase the amount of the late fee described above.
- 5.11. Collection Action at Law. The Association may exercise any or all of the following remedies to collect delinquent assessments:
- 5.11.1. The Association may suspend such Owner's voting rights.
- 5.11.2. The Association shall have a lien against each Lot for any assessment levied against the Lot and any fines or other charges imposed under this Declaration against the Owner of the Lot from the date on which the assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any assessment or installment thereof is delinquent, the Association, by and through its Board or any manager, may file a notice of lien in the deed records of Washington County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except: a lien or encumbrance recorded before the Declaration was recorded; a first or second security interest on the Lot secured by a Mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.
- 5.11.3. The Association may bring an action to recover a money judgment for unpaid assessments, fines, and charges under this Declaration against the Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

- 5.11.4. If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such assessments to the extent of the amount so paid.
- 5.11.5. The Association may terminate utilities paid out of the Common Expense and the right to use Common Areas.
- 5.11.6. Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.
- 5.11.7. The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, other law, or in equity.
- 5.12. Power of Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §§57-1-20 and 57-Ba-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 5.13. Reserve Account. From the annual assessments received by the Association, the Board may establish such reserve funds in such amounts as the Board deems reasonably prudent for the maintenance, repair, and replacement of the Common Areas and for other Association purposes relating to the Project. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a reserve account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Declarant Control Period.
- 5.14. Association Responsibility After Foreclosure. If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Mortgagees cannot make any claim against the Association for nonpayment of taxes, assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to a failure to pay assessments.
- 5.15. Homestead Waiver. Pursuant to Utah Code §57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 5.16. Master Declaration Assessments: Declarant Exemption. The assessments provided for in this Declaration are in addition to any assessments levied and payable pursuant to the Master Declaration.

5.17. Exempt Property. Common Areas shall be exempt from all Master Declaration assessments and Project assessments.

6. ARCHITECTURAL CONTROLS

6.1. Design Guidelines. Subject to approval from the Master Association, the Board may adopt design guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the Project.

6.1.1. After receiving approval from the Master Association, the Declarant shall have sole and full authority to amend the design guidelines during the Declarant Control Period. The Declarant's right to amend the design guidelines shall continue even if it delegates reviewing authority to the Board. Upon termination or delegation of the Declarant's right to amend, the Board shall have the right to amend the design guidelines subject to approval from Master Association.

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

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

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

6.3. Variances. With Master Association approval, the Declarant and Board may authorize variances from compliance with any of the architectural provisions of this Declaration or design guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any restrictions of the

Governing Documents, other than those specifically identified in the variance, nor shall it affect a Owner's obligation to comply with all governmental laws and regulations.

- 6.4. Liability for Damages. The Declarant and Board and Master Association shall not be held liable for damages because of any action, inaction, approval, or disapproval by it made pursuant to this Article 6.

7. ENFORCEMENT

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

8. RIGHTS OF FIRST MORTGAGEE

- 8.1. Title in Mortgagee. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for all assessments levied while it holds title to the Lot.
- 8.2. Notice of Default by Owner. In the event an Owner neglects for a period of sixty (60) days or more to cure any failure on his/her part to perform his/her obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.
- 8.3. No Priority. No provision herein is intended, nor shall it be construed, to give any Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

9. SPECIAL DECLARANT RIGHTS

- 9.1. Improvements. Declarant hereby reserves the right, without obligation, to construction, upon approval from the Master Declarant under the Master Declaration:
- 9.1.1. Any improvements shown on the Plat.
- 9.1.2. Any other buildings, structures, or improvements that Declarant desires to construct in the Project, or any other real estate owned by Declarant.
- 9.2. Other Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, and regardless of anything in the Declaration or Master Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law:

- 9.2.1. the right to maintain sales offices, model homes, and signs advertising the Project or any Lot at any location in the Project;
 - 9.2.2. the right to use easements through the Common Areas as set forth in this Declaration;
 - 9.2.3. the exclusive right to veto Board decisions relating to the Project during the Declarant Control Period;
 - 9.2.4. unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
 - 9.2.5. the right to veto Rules and design guidelines adopted by the Board; and
 - 9.2.6. the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.
- 9.3. Exercising Special Declarant Rights. Declarant may exercise the special declarant rights at any time prior to the later to occur of the date on which the Declarant Control Period expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its special declarant rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any special declarant right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that special declarant right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any special declarant right described in this Article 9 and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.
- 9.4. Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rules or design guidelines that interferes with or diminishes any special declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section 9.4 shall be null and void and have no force or effect.
- 9.5. Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (i) termination of the Declarant Control Period, or (ii) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.
- 9.6. Transfer of Special Declarant Rights. The Declarant may transfer, convey, assign, or share all or some of its rights, exemptions, or authority created or reserved under this Declaration to any Person.
- 9.7. Changes by Declarant. So long as it is approved by the "Declarant" under the Master Declaration, nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot prior to the contracting for the conveyance of such to a purchaser.
- 9.8. Easements reserved to Declarant.

- 9.8.1. The reservation to Declarant, its successors and assigns, of nonexclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Areas, and over those strips of land running along the front, rear, side, and other Lot lines of each Lot shown on the Plat.
- 9.8.2. An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.
- 9.8.3. Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.
- 9.8.4. The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over, and across the Common Areas for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.
- 9.8.5. The Declarant reserves unto itself and its successors and assigns, the right to dedicate all roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot(s) in the Project except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Declarant.
- 9.8.6. Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope
- 9.9. Dispute Resolution. Declarant, Association, its officers and directors, and all Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, condition, or sale of any part of the Townhomes Project or any improvements thereon ("Claims") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.
- 9.9.1. Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:

- 9.9.1.1. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
 - 9.9.1.2. The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
 - 9.9.1.3. The proposed remedy;
 - 9.9.1.4. The fact that Claimant will meet with Respondent to discuss in good faith, ways to resolve the Claim; and
 - 9.9.1.5. That the Person alleged to be responsible shall have one hundred and eighty (180) days to cure or resolve the claim.
- 9.9.2. Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in Negotiation.
- 9.9.3. In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with a Proceeding against the Respondent following one hundred and eighty (180) days of the original notice.
- 9.9.4. Before initiating any Proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:
- 9.9.4.1. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
 - 9.9.4.2. Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least seventy-two (72) hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting; and
 - 9.9.4.3. Receive approval from at least two-thirds (2/3) vote of all Owners, who must be present in person or by proxy at the special meeting, to initiate any proceeding of the Claim against the Declarant and/or its affiliate, if applicable.
- 9.9.5. Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Article 9. The parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs

incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

9.9.6. Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 9.9.6, the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any proceeding; (ii) any institution, prosecution or maintenance of, or intervention in, a proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 9.9.6, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Board member who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 9.9.6 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the proceeding; and (iii) this Section 9.9.6 may not be amended or deleted at any time without the express prior written approval of: (a) not less than sixty-seven percent (67%) of the total voting power of the Owners, (b) not less than seventy-five percent (75%) of the Association Board, and (c) the Declarant during the Declarant Control Period. Any purported amendment or deletion of this Section 9.9.6 or any portion hereof, without all of these express prior written approvals shall be void.

9.9.7. The dispute resolution procedures in this Article 9 are in addition to and are not superseded by those protections provided to the Declarant by the Act, including, but not limited to, Utah Code§ 57-8a-229.

9.9.8. ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS ARTICLE 9 AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE 9.

10. AMENDMENTS

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

10.2. Amendments by Association. After termination of the Declarant Control Period,, amendments to this Declaration or Plat may be proposed by either a majority of the Board members or by Owners holding at least forty percent (40%) of the voting interests of the Owners. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Except as otherwise provided herein, this Declaration may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Owners and a majority of the Association's Board. If the paster project is still controlled by the Master Declarant under the Master Declaration, approval from the Master Declarant is required before any amendments to this Declaration take effect. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Washington

County Recorder. In such instrument the Board shall certify that the vote required by this Section 10.2 for amendment has occurred. If a Lot is owned by more than one owner, the vote of any one owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature used for voting shall be required. Any amendment that negatively impacts, as determined by the Declarant, the Declarant's right to develop, construct, and sell Lots and Residences within the Project shall be null and void unless it is approved by the Declarant so long as the Declarant has an interest in the Project or intends to develop, construct, or sell additional Lots and/or Residences within the Project.

11. MISCELLANEOUS

- 11.1. Notices. Any notice required or permitted to be given to any Owner according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as a Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no email or mailing address has been provided, the physical address of the Lot owned by said Owner shall be used for notice purposes.
- 11.2. Interpretation and Severability. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.
- 11.3. Covenants Run with the Land. This Declaration and all provisions hereof shall constitute covenants that run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.
- 11.4. No Waiver. Failure by the Association or by any Owner to enforce any Restrictions or provision herein contained, or contained in the Rules or design guidelines, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restrictions or provision.
- 11.5. Security. The Declarant or Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owners and residents agree by purchasing or residing at a Lot in this Association that the Association, Declarant, and the Board are not insurers of their safety or well-being or of their personal property, and that each Owner and resident assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND RESIDENT

UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, DECLARANT, AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER AND RESIDENT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE TOWNHOMES PROJECT.

- 11.6. Effective Date. This Declaration and any amendment hereof shall take effect upon its filing in the office of the Washington County Recorder.

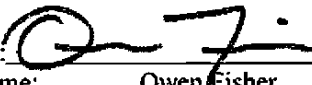
[Remainder of page left intentionally blank. Additional pages follow.]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed a duly authorized representative as of the date set forth below.

DECLARANT

HENRY WALKER CONSTRUCTION, LLC,
a Utah limited liability company

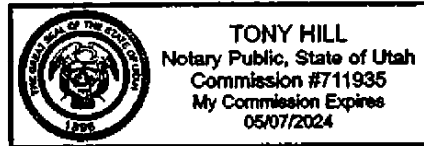
By: J. Fisher Companies, LLC,
a Utah limited liability company
Its: Manager

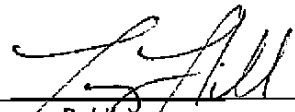
By: 
Name: Owen Fisher
Its: Manager
Date: DECEMBER 29, 2023

STATE OF UTAH)
 §
COUNTY OF DAVIS)

On this 29 day of December, in the year 2023, personally appeared before me Owen Fisher, whose identity is personally known to me and who by me duly sworn/affirmed, did say that he is the Manager of J. Fisher Companies, LLC, the Manager of Henry Walker Construction, LLC, and that said document was signed by him in behalf of said limited liability company by authority of its governing documents, and said Owen Fisher acknowledged to me that said limited liability company executed the same.

Witness my hand and official seal.




(Notary Public)

(Seal)

EXHIBIT A
(Project Legal Description)

Beginning at a point on the easterly line of Divario Canyon Drive, said point being North 88°32'37" West 865.26 feet along the section line and North 2,139.20 feet from the Southeast Corner of Section 28, Township 42 South, Range 16 West, Salt Lake Base & Meridian, and running; thence northeasterly the following (2) courses along said easterly line of Divario Canyon Drive; thence North 24°07'59" East 329.98 feet; thence Northeast 784.33 feet along an arc of a 897.00 foot radius curve to the right (center bears South 65°52'00" East, long chord bears North 49°10'58" East 759.58 feet with a central angle of 50°05'57") to the southwesterly line of Plantations Drive; thence southeasterly the following (2) courses along said southwesterly line of said Plantations Drive; thence Southeast 45.58 feet along an arc of a 30.00 foot radius curve to the right (center bears South 15°51'24" East, long chord bears South 62°19'50" East 41.32 feet with a central angle of 87°03'07"); thence North 71°11'45" East 45.00 feet; thence Southeast 409.58 feet along an arc of a 1,150.00 foot radius curve to the left (center bears North 71°11'47" East, long chord bears South 29°00'25" East 407.42 feet with a central angle of 20°24'23"); thence South 50°47'23" West 199.24 feet; thence South 64°53'04" West 51.63 feet; thence South 77°09'41" West 45.67 feet; thence South 57°21'36" West 74.16 feet; thence South 81°32'42" West 114.32 feet; thence South 53°45'08" West 59.62 feet; thence South 56°50'09" West 147.37 feet; thence South 66°41'43" West 150.07 feet; thence South 63°44'45" West 177.57 feet; thence North 71°43'36" West 101.97 feet to the Point of Beginning.

"Boundary Description for PA-18" (Labeled as such for reference purposes only)