

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
DIVINE VILLAGE TOWNHOMES**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**, made this \_\_\_ day of March, 2021, by **TBD, LLC**, a Virginia limited liability company, hereinafter referred to as the “Declarant,”

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real property containing 2,25 acres located in the City of Harrisonburg, Virginia, more particularly shown and described on a plat of Blackwell Engineering, PLC., dated the 3<sup>rd</sup> day of March , 2021, captioned “ \_\_\_\_\_ ” which plat consist of 2 sheets attached hereto and made a part hereof and recorded herewith (hereinafter the “Plat”) and recorded in the land records of the Clerk’s Office of the Circuit Court of Rockingham County, Virginia, in Deed Book\_\_\_\_, Page \_\_\_\_; and,

**WHEREAS**, said Property was originally acquired by Declarant from \_\_\_\_\_ by Deed recorded in the land records of the Clerk’s Office of the Circuit Court of Rockingham County, Virginia, in Deed Book \_\_\_\_ , Page \_\_\_\_; and,

**WHEREAS**, Declarant desires to provide for the preservation of the values and amenities on the above-described property and for the maintenance of said common areas; and to this end desires to subject and convey the Property described in Article II to the covenants, conditions, restrictions, easements, reservations, charges and liens, as hereinafter set forth and shown on the Plat, each and all of which is and are for the benefit of the Property; and,

**WHEREAS**, Declarant deems it desirable for the efficient preservation of the values and amenities within the Property to create a non-stock corporation, the Divine Village Property Owners Association, Inc., to be incorporated under the laws of the Commonwealth of Virginia and which shall be delegated and assigned the powers of administering and enforcing the provisions of this Declaration and in collecting and disbursing the assessments and charges hereinafter created.

**NOW, THEREFORE**, Declarant hereby declares that the Property shown on the Plat (including any real property added pursuant to Article II, Section 2, after such additional real property shall have been so added) shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, reservations, liens and charges (and any valid amendments or supplements hereto), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each owner thereof.

**Article I**

**Definitions**

The following words and terms, when used in this Declaration and any valid amendments or supplements hereto (unless the context shall clearly indicate otherwise), shall have the following meanings:

*Section 1.* “Architectural Control Committee” or “ACC” shall mean and refer to the board established in Article VIII herein for the purpose of regulating the external design, appearance and use of the Common Area, Lots and improvements thereon.

*Section 2.* “Association” shall mean and refer to the Divine Village Property Owners Association, Inc., a Virginia non-stock corporation, its successors and assigns.

*Section 3.* “Board of Directors” shall mean and refer to the Board of Directors of the Association.

*Section 4.* “Common Area” shall mean and refer to all real property which is deeded or leased to the Association and designated in said deed or lease as “Common Area.” The term shall also include any personal property acquired or leased by the Association if said property is designated as “Common Area.” All Common Area is to be devoted to and intended for the common use and enjoyment of the Members of the Association, their guests and, to the extent permitted by the Board of Directors, visiting members of the general public, subject to fee schedules and operating rules adopted by the Association. All real property intended to be Common Area may be designated on subdivision plats as “Open Space”, “Common Area” or other designations or descriptions selected by the Declarant for such other property as may be subsequently designated by the Declarant for the common use and enjoyment of the Members of the Association, their guests and, to the extent permitted by the Board of Directors, visiting members of the general public, subject to fee schedules and operating rules adopted by the Association.

*Section 5.* “Declarant” shall refer to (i) TBD, LLC, (ii) any successor to TBD, LLC, with substantially the same ownership, (iii) any person or entity to whom or to which TBD, LLC, may specifically assign its rights and interests under this Declaration, and (iv) any entity which may succeed to the rights and interests of TBD, LLC, pursuant to the terms of this Declaration.

*Section 6.* “Declaration” shall mean and refer to the covenants, conditions, reservations, easements, restrictions, liens and charges and all other provisions herein set forth in this entire document, as the same may from time to time be amended or supplemented.

*Section 7.* “Divine Village” shall mean and refer to all real property which is subject to this Declaration.

*Section 8.* “Lot” shall mean and refer to any separately numerically designated parcel of land within the Property (with the exception of the Common Area) shown on (i) any recorded plat of Divine Village or of any portion of Divine Village and/or (ii) any site plan approved by the City of Harrisonburg, including any future site plats pertaining to Divine Village.

*Section 9.* “Master Plan” shall mean and refer to the unrecorded documents, drawings and plans which represent the conceptual plan for the future development of Divine Village. Since the concept of the future development of Divine Village is subject to continuing revision and change by the Declarant, present and future references to the Master Plan shall be references to the then current version thereof.

*Section 10.* “Member” shall mean and refer to all those Owners who are Members of the Association as defined in Article III, Section 2.

*Section 11.* “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Owner shall not mean and refer to a mortgagee unless and until the mortgagee has acquired title pursuant to foreclosure or through any proceeding in lieu of foreclosure.

*Section 12.* “Phase” shall mean and refer to any property included in any area of the subdivision designated on any plat of the subdivision as “Phase.”

Section 13. "Property" shall mean and refer to (i) that certain real property shown on the Plat and (ii) such additions thereto as shall hereafter be made subject to this Declaration by Supplementary Declarations hereto. The Property and additions thereto by Supplementary Declarations shall be known as Divine Village.

*Section 14.* "Section" shall mean and refer to any property included in any area of the subdivision designated on the plat of subdivision as "Section."

*Section 15.* "Streets" shall mean and refer to the entire right of way on the Plat for the streets, cul-de-sacs, or circles on the Property which provide the Property access for ingress and egress to and from (i) public roads and (ii) property adjoining Divine Village.

Section 16. "Tenant" shall mean and refer to the lessee under a written agreement with an Owner for the renting of a Lot improved by a dwelling, provided said lease is for a period of at least six months' duration.

## **Article II**

### **Property Subject to Declaration**

#### *Section 1—Existing Property.*

(a) The real property which at this time is and shall be held, transferred, sold, conveyed, given, leased, devised, inherited and occupied subject to the covenants, conditions, restrictions, easements, reservations, liens and charges set forth in the Declaration is the Property more specifically described on the Plat in the development known as Divine Village.

(b) The Declarant plans to develop the Property in accordance with the Master Plan, which may be revised from time to time. This statement shall not bind the Declarant, its successors and/or assigns to adhere to the Master Plan in the development of the Property. Subject to its rights to modify the Master Plan as stated herein, the Declarant shall convey to the Association certain property as in the reasonable exercise of its discretion it so chooses, without regard to the relative location of such portions or sections within the overall plan. Once conveyed to the Association, these properties shall become Common Area. The Declarant shall not be required to follow any predetermined sequence or order of improvements in the development of Divine Village and may bring within the plan of this Declaration additional real property and develop the same before completing the development of the Property. The Declarant shall have the full power to add to, subtract from or make changes in the Master Plan regardless of the fact that such actions may affect the relative maximum potential voting strength of the various types of membership of the Association.

*Section 2—Additions to Existing Property.* Declarant shall have the right (but not the obligation) without further consent of the Association or of the other Owners and from time to time and at any time to bring within the plan and operation of this Declaration and the jurisdiction of the Association other real property in the vicinity of the Property, which other real property may be owned by some person or entity other than Declarant. To accomplish this, the Declarant shall record one or more Supplementary Declarations (in the form contemplated in Section 3 below) with respect to the real property being added to the Property. The additions of such property pursuant to this paragraph may alter the relative maximum potential voting strength of the various types of membership of the Association. Declarant's right to add additional property to Divine Village subject to this Declaration shall survive Declarant's development and/or sale of all real property presently included in the Master Plan.

*Section 3—Supplementary Declarations.* The additions authorized herein shall be made by recording a Supplementary Declaration of Covenants, Conditions, Restrictions and Easements with respect to the additional property. Supplementary Declarations shall extend the operation and effect of this Declaration and the jurisdiction of the Association to any such additional property. Any Supplementary Declaration may contain such additions and/or modifications of the provisions of the Declaration as may be necessary or convenient in the sole judgment of Declarant. Metes and bounds not shown on the Plat of Lots, Open Space, Streets and Easements within the boundaries of Divine Village shall also be shown on the plats recorded with Supplementary Declarations.

### **Article III**

#### **Association**

*Section 1—Duties.* Declarant has or will incorporate under the laws of the Commonwealth of Virginia a non-stock corporation to be known as Divine Village Property Owners Association, Inc., to which shall be delegated the powers of owning, maintaining and administering the Common Area; administering and enforcing the covenants, conditions, restrictions, easements and reservations set forth herein; collecting and disbursing the assessments and charges hereinafter created; maintaining the entrance landscaping and signs for Divine Village, including, but not limited to, maintenance, repair and replacement if necessary, of shrubbery, electricity for lights and signs at the entrance and watering the entrance landscaping; performing all other responsibilities required of the Association in Article VII of the Declaration; and promoting the health, safety, common good and general welfare of the residents of Divine Village.

*Section 2—Membership.* Every Owner of a Lot shall be a Member of the Association. In addition, Declarant shall be a Member of the Association for so long as Declarant (i) owns any Lot, (ii) any portion of the real property shown on the Plat and/or (iii) any other real property designed by the Master Plan for addition to Divine Village. Ownership of such Lot (or any portion of additional real property shown on the Plat and/or any other real property designated by the Master Plan for addition to Divine Village in the case of Declarant) shall be the sole qualification for membership.

*Section 3—Voting Rights.* The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of Lots with the exception of the Class B Members. Except as hereinafter set forth, Class A Members shall be entitled to one (1) vote for each Lot owned by a Class A Member. In the event that more than one person or entity holds an interest in any Lot, all such persons or entities shall be Members, and the vote for such Lot shall be exercised as they determine among themselves, but in no event shall more than one vote be cast with respect to any such Lot owned by a Class A Member. The vote of one of the co-owners of a Lot, in person or by proxy, shall bind all owners of such Lot, and the Association may rely conclusively on the representation, either written or oral, of such co-owner that he or she has the authority to vote for the other co-owners of such Lot.

Class B. The Class B Member shall be the Declarant or its successors and assigns. The Class B Member shall be entitled to Twenty-Nine (29) votes plus one (1) vote for each Lot owned by the Class B Member. The Class B membership shall cease at such time as the Class B Member owns no Lot or any portion of the real property shown on the Plat or any other real property designated by the Master Plan to be part of Divine Village.

*Section 4—Board of Directors.* The Board of Directors shall be elected by the Members as set forth in the Bylaws of the Association.

*Section 5—Powers and Duties of Board of Directors.* The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may take any such action on behalf of the Association except that required to be exercised or done by the Members of the Association.

*Section 6—Powers and Duties of the Association.* In addition to the powers and duties of the Association set forth in this Declaration, such powers and duties may also be set forth in the Articles of Incorporation and the By-Laws of the Association, as the same may be amended from time to time.

*Section 7—Quorum.* The quorum required for any action which is subject to the vote of the Members at meetings of the Association shall be as follows:

(a) When a meeting of the Association is called to vote on (i) an increase in the Annual Assessments greater than provided in Article VI, Section 3 hereof; (ii) a Special Assessment as provided for by Article VI, Section 4 hereof; (iii) the gift or sale of any parcel of land designated as a Common Area; (iv) an amendment to this Declaration or termination of this Declaration as provided for in Article XI, Sections 10 or 11, the presence at the meeting of the Members or proxies entitled to cast at least Seventy-five percent (75%) of the total votes of the Membership required for such action shall constitute a quorum.

(b) When a meeting of the Members of the Association is called to vote on any actions other than those described in subparagraph (a) above, the presence at the meeting of the Members or proxies entitled to cast Fifty percent (50%) of the total vote of the Membership required for such action shall constitute a quorum.

(c) If the required quorum is not present at any meeting described in subparagraphs (a) or (b) above, with the exception of any meeting called to vote on the termination of this Declaration, another meeting or meetings may be called subject to the giving of proper notice and the required quorum at each subsequent meeting or meetings shall be one-half of the required quorum at the preceding meeting.

*Section 8—Proxies.* All Members of the Association may vote and transact business at any meeting of the Association by written proxy as described in the Bylaws.

## **Article IV**

### **Property Rights in Common Area and Streets**

*Section 1—Title to Common Area.*

(a) Declarant covenants for itself, its successors and assigns that it shall convey as Common Area to the Association at no cost to the Association all Common Area and other real property intended by the Master Plan to be used as Common Area. Such conveyances shall be subject to (i) all reservations, covenants, conditions, easements, restrictions and limitations imposed by this Declaration as amended or supplemented, including, without limitation, all rights to grant, vacate, revise, relocate or dedicate to public use easements therein, including, without limitation, easements for drainage, utilities, access, signs, sight distance and/or maintenance of critical slopes reserved to the Declarant, its successors and assigns; (ii) all other reservations, conditions, covenants, restrictions and limitations of record at the time of the conveyance; (iii) any restrictions, limitations, conditions or determinations as to the purposes and uses of the conveyed property as stipulated in the deed to the Association; (iv) deeds of trust of record (but the Declarant shall hold the Association and the Property harmless from the lien thereof); (v) the right of the Declarant to locate and dedicate to public use roads therein and (vi) any commitments by

the Declarant to construct certain improvements thereon as stipulated in said deed. Upon conveyance, such parcels of land and improvements thereon shall become Common Area as designated in said deed.

(b) The Association shall not refuse the conveyance or lease to it of any Common Area, and it shall not refuse the designation of any parcel of land as Common Area by the Declarant. After designation of any parcel of land or any improvements thereon as a Common Area by the Declarant or any other third party, the Association shall immediately become responsible for all maintenance and operation of said property and for such additional construction of the improvements thereon as may be authorized by the Association's Board of Directors.

(c) The Declarant reserves the right to revise any plat or plan, either before or after recordation, to change the designation of land intended to be Common Area on any plat or plan, whether recorded or unrecorded, so long as the land whose designation is changed is replaced by other land to be designated Common Area whether such land is within Divine Village or shall be added to Divine Village.

*Section 2—Members' Easements of Enjoyment in Common Area.*

(a) Subject to the provisions of this Declaration, the terms of any Common Area deed, rules and regulations of the Association, and any fees or charges established by the Association or the Declarant, every Member and every guest of such Member, shall have a right and easement of enjoyment in and to the Common Area, and such easements shall be appurtenant to and shall pass with the title to every Lot.

(b) A Member's spouse, parents or children who reside with such Member in Divine Village shall have the same rights and easement of enjoyment hereunder as a Member.

(c) If a Lot is owned and/or occupied as a Tenant by two (2) persons who do not have the relationship of spouse, parent or child to one another, or by a corporation, trust or other legal entity, the resident owners or beneficiaries of which do not have the relationship of spouse, parent or child to one another, such joint Owners or Tenants and entity owners or beneficiaries shall annually appoint one (1) person as the "Primary Member." The Primary Member shall have the same easement of enjoyment in the Common Area as a Member. Each remaining joint owner, joint Tenant or entity owner or beneficiary shall be entitled to an easement of enjoyment in the Common Area by either (i) paying the same use fees as a guest of Member, or (ii) paying to the Association on an annual basis an amount equal to the Annual Assessments charge against the Lot. The payment of such amount shall not entitle any such person or Lot any additional votes in the Association.

*Section 3—Extent of Member's Easement.* The Members' rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association in accordance with its Bylaws to borrow money from Declarant or any lender for the purpose of improving or maintaining the Common Area or providing services authorized herein. In conjunction with such borrowings, the Association may mortgage the Common Area provided, however, that such mortgage is approved by an affirmative vote of two-thirds (2/3) of the Members of the Association voting in person or by proxy at a duly called (in accordance with the Bylaws) meeting of the Members of the Association or by written consent signed by two-thirds (2/3) of the Members of the Association.

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure.

(c) The right of the Association to suspend the rights, voting rights and easements of enjoyment of any Member or any guest of a Member (i) for any period during which the payment of any Assessment against the Lot owned by such Member or other fees or charges against a Member remain delinquent, and (ii) for any period not to exceed sixty (60) days for each infraction of the Association's established rules and regulations. It shall be understood that any suspension for either nonpayment of any Assessment or other payment or breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the Association or other fees or charges.

(d) The right of Declarant or the Association to charge reasonable initiation, admission and other fees and dues for the availability and/or use of recreational facilities and services on or about the Common Area.

(e) The right of the Declarant or the Association by its Board of Directors to dedicate to public use or to transfer to the public or to any public or private utility, such utility, drainage, sight distance, access or other easements as it deems necessary on any part of the Common Area.

(f) The right of Declarant to redesignate land as Common Area as set forth in subparagraph (c) of Section 1 of this Article IV.

(g) The right of the Association to give, convey, transfer or sell all or any part of the Common Area, including leasehold interests subject to (i) this Declaration, as amended and supplemented, (ii) all other restrictions and limitations of record at the time of conveyance, and (iii) such conditions as may be agreed to by the Members provided, however, that no such gift, conveyance or transfer of Common Area by the Association shall be effective unless an instrument consenting to such conveyance or transfer signed by Members entitled to cast two-thirds (2/3) of the votes entitled to be cast and, for so long as Declarant is a Class B Member, signed by Declarant, has been recorded, and provided further that written notice of the proposed action is sent to every Member at the property address of such Member's Lot or such other address as the Member may have provided the Association not less than ten (10) days nor more than thirty (30) days in advance by Declarant. The foregoing consent by Members shall not apply to conveyance or transfer of property designated as Open Space or other designation intended to be included in Common Area as defined in Section 4 of Article I of this Declaration on any plat of any Phase or Section of Divine Village or any other property designated by the Master Plan to become Common Area upon conveyance from the Declarant to the Association prior to conveyance of such Common Area or other property from Declarant to the Association.

*Section 4—Streets.* There are shown on the Plat certain streets as shown on the Plat (herein referred to as "Streets"). The Declarant shall cause the Streets to be constructed within the locations as shown on the Plat. Any private Streets not dedicated to public use shall remain under the control and maintenance of the Declarant until such time as the Declarant turns the private Streets over to the Association. Each Owner shall have the right to use the Streets for ingress and egress from and to (i) any public road and (ii) any drive, road or street on property adjoining Divine Village, over which each Divine Village Owner may have rights of ingress and egress, for the Owner, the Owner's family, invitees, guests, tenants, successors or assigns. The Streets may also be used for such purposes by future additions to Divine Village added in accordance with Article II, Section 2 hereof.

(a) Regulation of Traffic and Parking. The Declarant or Association shall have the right and power to place any reasonable restrictions upon use of the streets, including the establishment of speed limits and regulation of parking along the street.

(b) Damage by or Negligence of Owner or Declarant. Notwithstanding any other provision of this Declaration, if the Declarant, or any Owner through his own negligence or through his

construction, development or other unusual activity on his property, causes a Street to be damaged, then he shall be solely and exclusively responsible for the repair of such damage without the benefit of contribution from other owners.

(c) Temporary Construction Easements. The Declarant reserves unto itself, its successors and assigns, temporary, alienable easements within and across those portions of the Lots and Common Area lying within thirty (30) feet of the center line of any Street for the construction and grading of the street and the cutting, filling and grading of slopes and installation of drainage facilities. These temporary construction easements shall terminate upon completion of the Street and its acceptance into the City street system.

## Article V

### Easements

*Section 1—Reservation of Ten-Foot-Wide Easements.* Declarant reserves unto itself, its successors and assigns, perpetual and alienable easements and rights of way ten feet in width (which may be granted, vacated, revised and/or relocated), on, above, through, over, under and across that portion of the property immediately within and along (1) the entire boundary of the Property and all parcels or tracts of land adjoining the Property and all streets adjoining the Property, (2) the boundary lines of Lots and Common Area adjoining Streets within the Property, (3) the rear lines of all Lots, and (4) the boundary lines of all Common Areas, for the purposes of constructing, installing, operating, inspecting, maintaining, repairing, modifying, replacing, removing the extending the following:

(a) Drainage Easement. An easement for storm and surface water drainage including pipes, ditches, culverts, swales and other suitable facilities for the disposition of storm and surface water drainage, and for gradient transition to adjoining Lots and/or Common Area.

(b) Utility Easements. Easements for underground lines, including, without limitation, wires, cables, conduits, sewers, pipes, water mains and other suitable underground equipment and facilities for the conveyance of utilities, including, without limitation, water, sewer, gas, telephone, electricity, cable television, fiber optics, internet connections, exterior lighting and other utilities and public conveniences, including, without limitation, aboveground transformers, meters, switches, connection boxes, manholes, drop inlets, air release valves and other accessories.

(c) Site Distance. Easements for any site distances and/or slopes required by the City of Harrisonburg for use and/or acceptance for public maintenance of the Streets.

(d) General Easements. Easements necessary to meet any other condition or requirement of any governmental authority related to Divine Village and/or development of Divine Village and/or use of and/or acceptance of the streets for public maintenance.

*Section 2—Easements Within Lots and Common Areas.* In addition to the easements ten feet in width described in Section 1 of Article V, the Declarant reserves unto itself, its successors and assigns, perpetual and alienable easements and rights of way (which may be granted, vacated, revised and/or relocated) on, over, through, across and below, within the boundaries of all Lots, all Common Areas and all Streets for the purpose of constructing, installing, operating, inspecting, maintaining, repairing, modifying, replacing, removing and extending any and all of the easements described in Section 1 of this Article V, except within any portion of a Lot or any portion of a Common Area on which the Declarant has approved the construction of or addition to a residential dwelling or commercial or recreational building. Approval by Declarant or the Architectural Control Committee of plans for the construction of or addition to a residential dwelling or commercial or recreational building shall release that portion of any Lot or



Common Area upon which such building is to be constructed from this reservation of easement, provided the improvements are constructed in accordance with such approved plans. Sidewalks, fences, driveways, porches, decks and landscaping may encroach upon the easements reserved in this section provided they are constructed in accordance with plans approved by Declarant or the Architectural Control Committee.

*Section 3—Roof Overhang Easement.* Declarant reserves upon itself, its successors and assigns, perpetual and alienable easements for overhanging roofs. Roofs, including, but not limited to, soffits and gutters, may overhang and penetrate any easement, any adjoining lot, or any Common Area, as the case may be, but the overhanging roof shall be designed with standard gutters, such that water runoff from the dwelling with a roof overhanging or penetrating, is directed to standard downspouts on the front and back of the dwelling. The areas of roof overhangs in compliance with this section shall be deemed to be “overhang easements” for the benefit of the structure projecting as described herein.

*Section 4—Fence and Street Lights.* Declarant reserves unto itself, its successors and assigns, a perpetual and alienable easement and right of way ten (10) feet in width, including five (5) feet on either side of all fencing in the front of each Lot and on either side of all street lights within the property, or the existing foundation of the primary building located on each Lot, whichever is less, for maintenance, repair and replacement of such fences and street lights.

*Section 5—Creation of Platted Easements.* All easements shown on the Plat not previously created are hereby created as shown on and in accordance with the provisions of the Plat and this Declaration.

*Section 6—Entry for Construction, Repairs and Maintenance.* Declarant reserves unto itself, its successors and assigns, and grants the Owner of each Lot, a perpetual and alienable easement ten (10) feet in width on, across, over and above each adjacent Lot or to the existing foundation of the primary building located on each adjacent Lot, whichever is less, for ingress and egress by the Lot Owner to construct, repair and maintain the improvements on such Owner’s Lot. Such ingress and egress shall be made with as little inconvenience to the servient Lot Owner as practical. Whenever such repair and maintenance are necessary, the dominant Lot Owner using this easement will restore surface conditions in the easement area as nearly as practical to the same condition as prior to the use of the easement but shall not be responsible for re-planting trees or shrubs or replacing improvements.

*Section 7—Parking Easement.* Each Lot is subject to an easement for general parking in designated areas to be determined and managed by the Association (“Parking Easement”).

*Section 8— Sidewalk Easement.* Each Lots is subject to an easement for common sidewalks as shown on the Plat. The sidewalk easement shall run twelve inches (12”) outside the internal driveway of each Lot and along the parking lot and the common sidewalks. The Access Easement shall not include the walkways to each Lot’s front door.

*Section 9—General Drainage Easement.* The Declarant reserves unto itself, its successors and assigns, perpetual and alienable drainage easements and rights of way (which may be granted, vacated, revised or relocated) above ground and underground in such locations as shown on any recorded plat of subdivision, to construct, maintain, inspect, replace and repair pipes and swales for storm and surface water drainage.

*Section 10—General Provisions.* Declarant reserves unto itself, its successors and assigns, a perpetual and alienable easement of ingress and egress from and to all facilities and easements reserved in this Article, to exercise the rights and obligations reserved in this Article V. The easements provided for herein shall include the right to cut such trees, brush and shrubbery, dig or grade such soil, remove obstructions and take such other similar action as is reasonably necessary in exercising the rights herein reserved, and there shall be no responsibility for the Declarant, its successors and assigns, to replace or reimburse the cost of said trees, brush, shrubbery or obstructions, if cut, removed or otherwise damaged. The rights herein

reserved may be exercised by any licensee or assignee of Declarant and shall include the right to temporarily interrupt utility services as necessary or appropriate upon reasonable notice to the affected Owner. The rights herein reserved shall not be deemed to impose any obligation upon Declarant, its successors and assigns, to provide or maintain the easement or utility service or to be responsible for the lapse or temporary interruption of utility services. If Declarant, its successors or assigns, is unable to reasonably exercise the right of ingress and egress over the easement, it shall have the right of ingress and egress over the property adjacent to the easement. The facilities constructed within the easement shall be the property of the Declarant, its successors or assigns, who shall have the right to inspect, rebuild, remove, repair, improve and make changes, alterations and connections to or extensions of the facilities within the boundaries of the easement. Except as otherwise set forth herein, trees, shrubs, fences, buildings, overhangs or other improvements or obstructions shall not be placed in the easements for utility lines, water lines, sewer lines and appurtenances and facilities for such lines. Each Owner, by accepting a deed for a Lot, agrees to execute any instrument required by Declarant for the purpose of granting to any third party the easements and/or rights reserved to Declarant in this Article V. The easements reserved to Declarant under this Article V shall continue to remain vested exclusively in the Declarant even after such time as Declarant has conveyed some or all of its other rights, title and interest in and to the Lots and all other portions of Divine Village, unless specifically assigned or conveyed as provided in this Declaration.

## **Article VI**

### **Covenant for Assessments**

*Section 1—Creation of the Lien and Personal Obligation of Assessments.* The Declarant, for each Lot owned or to be created within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association in accordance with the provisions of this Article VI: (i) annual assessments or charges to be collected periodically, as hereinafter set forth, (herein “Annual Assessments”), (ii) special assessments for purposes hereinafter set forth, such assessments to be fixed, established, and collected from time to time as hereinafter provided (herein “Special Assessments”), and (iii) assessments for correction of noncompliance with this Declaration and the implementation of it by the Association (herein “Correction Assessments”), all of which are sometimes collectively referred to as “Assessments” or “Assessment.”

Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made in the manner as hereinafter provided. Each Assessment, together with such interest, costs and reasonable attorney’s fees, shall also be the joint and several personal obligation of each of the Owner(s) of such property assessed at the time when the Assessment fell due. The personal obligation shall not pass to such Owner’s successors in title unless expressly assumed by them in writing or unless a memorandum of lien is recorded as set forth in Section 8 hereof.

*Section 2—Purpose of Assessments.* Annual Assessments levied by the Association shall be used (i) for the purposes set forth in Article III, Section 1, (ii) for the purpose of promoting the enjoyment, health, safety, and welfare of the residents on the Property, and (iii) for the repair, improvement, provision, maintenance, enhancement and replacement of the Common Area, drainage facilities, signs, landscaping, grounds, fencing, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area. Annual Assessments shall also be used for establishing reasonable reserves for maintenance and capital expenditures.

The Association shall use such Annual and Special Assessments, to the extent such Assessments are sufficient funds, for the general purposes stated above, and in particular for those functions set forth in Article VII hereof, at such times and in such manner as determined by the Board of Directors.

*Section 3—Basis and Maximum Amount of Annual Assessments.*

(a) The initial maximum Annual Assessment for each improved Lot as of the date of this Declaration shall be \_\_\_\_\_ (\$ \_\_.00). The obligation to pay the Annual Assessment for a Lot shall begin, and become due and payable, upon settlement on the first sale of the Lot following or in conjunction with the issuance of a temporary or permanent certificate of occupancy by the City of Harrisonburg for the dwelling on such lot or upon the first occupancy of the dwelling constructed on the Lot, whichever event shall first occur (the “Commencement Date”). Payment due on the Commencement Date shall be the Annual Assessment prorated for the period from the Commencement Date through December 31 of the year of the Commencement Date. Annual Assessments may be increased by up to ten percent (10%) per year effective January 1 of each year (commencing January 1, 2022) without a vote of the Members, by the Board of Directors, after due consideration of current costs and needs of the Association.

(b) Any increase in the Annual Assessments approved by the Board of Directors in excess of the ten percent (10%) increase described in Section 3(a) above must also be approved by a favorable vote of a majority of the votes cast by Members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) Annual Assessments shall be due in annual installments, or on such other basis (but no more frequently than monthly) as may be determined by the Board of Directors. The payment schedule shall be the same for all properties and all Assessment payments shall be due and payable on the installment due date. When the Commencement Date occurs other than at the beginning of an installment due date the portion of the Annual Assessment due during such installment period prorated through the end of the installment period shall be due on the Commencement Date.

(d) The Board of Directors may authorize a billing agent to collect the Assessments provided for herein.

*Section 4—Special Assessments.* The Association may levy in any assessment year, a Special Assessment applicable to that year only for all Lots obligated at the time of such levy to pay annual assessments during that assessment year, for the purpose of defraying, in whole or in part:

(a) an unexpected or unusually large expense or anticipated expense,

(b) the cost of any construction or reconstruction,

(c) the cost of additions to the Common Area,

(d) the cost of repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto,

(e) the cost of necessary fixtures, equipment and personal property to offer the services authorized herein,

(f) the cost of repayment of any loan made to the Association to enable it to perform the services authorized herein, or

(g) for any other reason found by the Board of Directors to be in the best interests of the Association.

Any Special Assessment must be approved by a favorable vote of a majority of the votes cast by Members who are voting in person or by proxy at a meeting duly called for this purpose. The Association shall

provide notice to each Lot Owner subject to the Special Assessment (i) that the Special Assessment has been levied and (ii) the date or dates upon which it shall be due and payable.

This provision shall be interpreted to mean that the Association may make in anyone year an Annual Assessment up to the maximum set forth above, plus an additional Special Assessment.

*Section 5—Uniform Rate of Assessment.* Special Assessments must be fixed at a uniform rate for all Lots. Correction Assessments shall be fixed on a case-by-case basis and need not be uniform.

*Section 6—Notice of Adjustment of Annual Assessment.* The Board of Directors shall fix the amount of the Annual Assessment for each Lot by January 31 of each Annual Assessment period. Written notice of any adjustment in the Annual Assessment shall be sent to every Owner subject thereto. The Annual Assessments shall be due in annual installments on the first day of March, unless other installment due dates are established by the Board of Directors,

The Association shall, upon written request by an Owner at any time, furnish a certificate in writing signed by an Officer or billing agent of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge set by the Board of Directors may be made by the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

*Section 7—Effect of Nonpayment of Assessments; Remedies of the Association.* Any Assessments (or periodic installments thereof) which are not paid on or before the due date shall be delinquent and shall, together with interest thereon at eighteen percent per annum from the date the installment became due and payable and costs of collection, including a reasonable attorney's fee, become a charge and a continuing lien on the Lot against which each such Assessment is made.

If the Assessment is not paid within thirty (30) days after the due date, the Association may bring an action at law against the Owner(s) personally and there shall be added to the amount of such Assessment the costs of collection, including a reasonable attorney's fee, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee, together with the costs of the action.

The Association may also bring an action to foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or by abandonment of his Lot.

*Section 8—Lien for Payment of Assessments and Subordination of Lien to Mortgages.*

There shall be a continuing lien upon each of the Lots herein, in order to secure the payment of the Assessments (including interest, costs of collection and reasonable attorneys' fees) provided under this Declaration, which lien shall be enforced and perfected in accordance with the provisions of Va. Code § 55.1-1833, (or any redesignated section governing the subject matter thereof) as the same may be amended from time to time. A statement from the Association showing the balance due on any Assessment shall be prima facie proof of the current Assessment balance due and delinquency, if any, due on a particular Lot. The lien provided for herein shall be subordinate to that of any deed of trust recorded prior to the filing of a memorandum of lien for unpaid assessments in the Clerk's Office of the Circuit Court of the City of Harrisonburg.

*Section 9—Exempt Property.* Common Area shall be exempt from the Assessments, charges and liens created herein.

*Section 10—Correction Assessments.* The Declarant or the Association may impose Correction Assessments upon any Lot or Owner in the manner set forth in Article IX, Section 2.

*Section 11—Annual Statements.* The President, Treasurer or such other officer as may have custody of the funds of the Association shall annually prepare and execute a general itemized statement showing the actual assets and liabilities of the Association as of the close of such fiscal year and a statement of revenues, costs and expenses. Such officer shall furnish to each Member of the Association who may make a request therefor in writing a copy of such statement within a reasonable time.

*Section 12—Annual Budget.* Prior to the coming fiscal year, the Board of Directors shall prepare and make available to any Member, upon written request, a budget outlining the anticipated receipts and expenses for the coming fiscal year. The financial books of the Association shall be available for inspection by all Members at all reasonable times.

## **Article VII**

### **Functions of the Association**

*Section 1—Ownership and Maintenance of Properties.* The Association shall be authorized to own, lease and/or maintain Common Area and equipment, furnishings and improvements devoted to, but not limited to, the following uses:

- (a) Landscaped entrances, entrance easements, entrance signs, and street, section and directional signs throughout the Property;
- (b) Streets shown on the Plat not dedicated to public use and accepted by the City of Harrisonburg.
- (c) Indoor and outdoor recreational and community facilities throughout the Property;
- (d) Such Facilities as may be located on the Property;
- (e) Providing any of the services the Association is authorized to offer;
- (f) The stormwater detention and management area shown on the Plat; and,
- (g) Other purposes set out in deeds by which Common Area is conveyed to the Association.

*Section 2—Minimum List of Functions and Services.* The following list shall establish and define the minimum level of functions and services which the Association must furnish to its Members. So long as the Declarant is engaged in the development of the Property and the sale of the Lots, the Association shall not reduce the level of functions and services it furnishes to its Members below such minimum level without the Declarant's prior written consent. The minimum list of functions and services the Association is to provide is as follows:

- (a) Provide or procure the administrative services necessary to carry out the Association's obligations and business under the terms of this Declaration, the Articles of Incorporation and the By-Laws, including, but not limited to, legal, accounting, financial and communications services.
- (b) Administer and enforce the covenants and restrictions established in this Declaration and Supplementary Declarations, including, but not limited to the following:
  - (i) Setting, levying and collecting Assessments and notifying the Members of such Assessments;
  - (ii) Preparing accurate indices of Members;
  - (iii) Operating an Architectural Control Committee when the responsibilities of such Committee as described herein are delegated to the Association by Declarant;

- (iv) Maintaining and operating all Common Area;
  - (v) Holding annual meetings and special meetings as required, including elections for Board of Directors as required and giving proper notice of such meetings;
  - (vi) Preparing Annual Statements and Annual Budgets and making financial books of the Association available for inspection by the Members at reasonable times.
- (c) Maintain, repair and replace all Common Area and all easements not publicly owned.
- (d) After construction of any improvements on Common Area, to maintain and operate such improvements, including the establishment of rules, regulations and appropriate charges as it deems fit and proper.
- (e) Within the Common Area provide, maintain and replace as necessary the following: Association or Declarant installed signs, entrance fencing, walkways, lighting, landscaping and trees, if any, at the entrance to Divine Village or any Phase of Divine Village and directional, section and street signs installed by the Declarant or the Association as deemed appropriate by the Board of Directors, and execute and maintain in effect such maintenance bonds as may be required by governmental agencies.
- (f) Provide regular and thorough maintenance, repair, replacement and clean-up of all neighborhood and subdivision signs and facilities in the Common Area, except as provided by the City of Harrisonburg.
- (g) Maintain, mow, trim, repair, and replace grass, landscaping, shrubs, trees, fencing, plantings, sprinkler systems, subdivision signs and other improvements located within any signage easement on the Property.
- (h) Maintain and post any and all governmental maintenance and performance bonds as shall be required by governmental agencies in connection with Divine Village and perform the obligations of Declarant under any agreement with any governmental agency in connection with the subject for which such bond is required to be maintained, as and when such obligations shall be assigned to the Association by Declarant. Upon such assignment to the Association, if any certificate of deposit, bond, etc. posted by Declarant is assigned to the Association, the Association shall pay Declarant the then value of the certificate of deposit with accrued interest or any other refund amount to which Declarant would have been entitled had Declarant's obligation been otherwise satisfied on the date of such assignment.
- (i) Maintain and annually review insurance coverages including the following: general liability insurance in a minimum amount of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate to cover the Association, Declarant and the Owners as a group and hazard insurance coverage on all Common Area and improvements on the Common Area, including personal property owned by the Association, in an amount equal to the full replacement value of such improvements and personal property owned by the Association. All insurance policies purchased by the Association shall be for the benefit of the Association, the Declarant, the Owners and their mortgagees as their interests may appear.
- (j) Provide appropriate directors and officers legal liability insurance and indemnify persons pursuant to the provisions of the Articles of Incorporation and By-Laws.
- (k) When the Declarant assigns to the Association any of the rights reserved to it in this Declaration and/or any other covenants and restrictions of record or any requirements and obligations imposed upon it by the City of Harrisonburg or any other governmental agency, including the enforcement thereof, the Association shall accept and assume responsibility, for such rights, requirements and obligations, and any obligations which are incident thereto.

- (l) Establish and maintain reasonable reserves to accomplish all of the above.
- (m) Comply with the provisions of the Virginia Property Owners' Association Act as the same may be amended from time to time.
- (n) The Association shall maintain and have full responsibility for all stormwater best management practices ("Stormwater BMPs"), including, but not limited to, maintenance of any detention pond, piping and guttering.

*Section 3—Authorized Services.* In addition to the minimum list of functions and services set forth above, the Association shall be authorized, but not required, to provide the following services:

- (a) Such services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this Declaration, which may include providing parking areas, lighting, fire protection, insect and pest control and/or recreational programs.
- (b) Administrative services including, but not limited to, legal, accounting, financial and communications services (including, but not limited to, community newsletters and newspapers) to inform Members of activities, notice of meetings and referendums and other issues and events of community interest.

## **Article VIII**

### **Architectural Control**

*Section 1—Purpose.* Declarant shall regulate the external design, appearance, use, location and maintenance of improvements and landscaping on the Property to preserve and enhance values and to preserve the general character and color, tone and architectural compatibility of the area as originally constructed.

*Section 2—Architectural Control Committee.* The provisions of this Article VIII shall be implemented by the Architectural Control Committee ("ACC"). For so long as Declarant owns any of the Property or any real estate designated in the Master Plan to be a part of Divine Village, the ACC shall consist of one or more persons or entities appointed by Declarant. Such persons may, but need not, be Members of the Association. At such time as Declarant so chooses, Declarant may transfer the power to appoint members of the ACC to the Association. The Board of Directors shall then appoint a minimum of three and a maximum of five Members to the ACC. Each appointee on the ACC shall serve at the pleasure of the person or entity which appointed them, and accordingly, ACC members may be replaced at any time for any reason whatsoever. The ACC shall act by a majority of its members conducting the review.

Declarant may transfer to the ACC the rights and obligations described hereinabove on a Section by Section or Phase by Phase basis, while preserving Declarant's rights and obligations described hereinabove with regard to all of the rest of the Property and any other real property designated in the Master Plan to be a part of Divine Village.

*Section 3—Required Approval to Commence Work.* No exterior improvements, alterations, repairs, painting, changes of paint or stain color, roofing, changes of roof color, excavations, changes in grade, clearing, major landscaping or other work which in any way alters any Lot from its natural or improved state on the date when said Lot was first conveyed in fee by Declarant shall be made or done upon the Property without the prior written conditional approval of the ACC, except as otherwise provided herein. No building, fence, wall, residence or other structures or changes to any existing structures upon the Property shall be made until given prior written conditional approval of the ACC, except as otherwise provided herein. It is not the intent of the Declarant to require approval for work simply to return the

exterior of any structure on a Lot to its prior approved condition whether by re-painting or re-staining using the same prior approved color(s) or re-roofing or repairing using the prior approved material(s) and color(s).

*Section 4—Procedure.* None of the improvements, changes or other work described in detail in Article VIII, Section 3 above shall be commenced until plans and specifications therefor showing the nature, size, kind, shape, height, materials, colors and location of the same shall have been submitted to ACC and conditionally approved in a writing signed by ACC after consideration of the details of the submission and the purpose of the Guidelines as set forth herein. ACC may set a fee for review by ACC in conjunction with requests for conditional and final approvals. In addition to the items set forth herein, the ACC may adopt additional procedures or standards as to the information it requires to be submitted to it with any request for approval.

*Section 5—Conditional Approval Presumption.* In the event that the ACC fails to approve, modify or disapprove in writing a request for approval required herein within thirty (30) days after plans, specifications or other appropriate materials have been submitted in writing to it, the submitted plans and specifications shall be deemed to have been conditionally approved. The burden shall be upon the Owner to show the date of the submission and that the plans and specifications were properly submitted to the ACC.

*Section 6—Conditional and Final Approval.* Preconstruction approvals granted by the ACC herein shall be deemed to be conditional approvals. They shall become final approvals upon the ACC's inspection of the completed improvements, modifications or repairs, if ACC finds the completed work to be as set forth in the plans and specifications submitted to and conditionally approved by ACC. In the event that the actual completed modifications, improvements or repairs do not, in the judgment of the ACC, conform to the plans and specifications approved by it, then the ACC's conditional approval, whether given in writing or by presumption, may be withdrawn. It shall be incumbent upon the Owner to notify the ACC in writing upon completion of the work that he requests final approval. The ACC shall then have ten (10) business days to inspect and grant or refuse final approval in writing. If final approval is refused, the Owner shall make changes and resubmit until final approval is obtained.

*Section 7—Final Approval Presumption.* In the event that appropriate equitable action, together with the filing of a *lis pendens*, has not been commenced within 90 days after the completion of any construction, improvements or alterations, it shall be conclusively presumed that such construction, improvements or alterations have received final approval by the ACC.

*Section 8—No Approval.* Should an Owner commence any work which requires ACC's approval without ACC's conditional approval or complete any work without seeking ACC's final approval within thirty (30) days of completion, the ACC, the Association or any Member may take appropriate legal or equitable action and may cause a *lis pendens* to be filed against such Owner's Lot, except as set forth herein. Furthermore, the ACC or the Association has the right (but not the obligation) to correct any violation and impose Correction Assessments as set forth in Article IX, Section 2.

*Section 9—Declarant's Exemption.* Declarant, its successors and assigns and the agents, contractors and/or subcontractors of Declarant and its successors and assigns are exempt from the approval requirements, both conditional and final, of this Article VIII. Declarant, its agents, contractors and/or subcontractors shall not be required to seek or obtain the consent or approval of the ACC or of the Association for any matter governed by the provisions of this Article VIII.

*Section 10—Email and Facsimile Approvals.* ACC approvals delivered by email or facsimile shall be binding as if the same contained original signatures.



*Section 11—Variances.* The ACC shall have the right to grant a reasonable variance or adjustment from individual restrictions set forth in the Declaration and/or on any plat of Divine Village in order to overcome practical difficulties and to prevent unnecessary hardships, provided such variance will not be materially detrimental to neighboring Lots or defeat the general purposes of this Declaration; provided, however, that nothing in this document shall be deemed or construed as relieving a property owner from any state statute or local ordinance requiring a property owner to obtain the approval of a governmental authority for any such variance or adjustment.

## **Article IX**

### **Use Restrictions**

*Section 1—Limitation on Use of Lots and Common Area.* The Property, including Lots and Common Area, shall be occupied and used as follows:

(a) Residential Use. All Lots shall be used for residential purposes and customary recreational and accessory uses and purposes incidental thereto. The use of a portion of a dwelling on a Lot as a home office by the Owner or Tenant thereof, if permitted by the City of Harrisonburg Zoning Ordinance, shall be considered a residential use, provided that the use of the Lot does not, as determined by the Declarant in its sole discretion, create undue customer, client or delivery traffic to and from the Lot. The provisions of this paragraph shall not prohibit the Declarant or any builders permitted by the Declarant from using any house or other dwelling unit on a Lot as a model home or as a sales office for homes in Divine Village.

(b) Single Family Dwellings No building, except as herein provided, shall be erected, altered, placed or permitted to remain on any of the Lots other than one townhome to be used as a single family dwelling. Said townhouse dwelling shall not exceed three (3) stories in height.

(c) Exterior Completion. The exterior of each structure must be completed within twelve months (and yard/landscaping must be completed within 12 months) after the commencement of construction of same, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamity. The failure to timely complete the exterior of any improvements or landscaping required herein may be enforced by the Declarant by means of a Correction Assessment.

(d) Nuisance. No noxious, boisterous or offensive activity shall be carried on upon the Property or any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner or a fire hazard or safety hazard to any other Owner or to any improvement. The Declarant shall have the authority to determine whether any activity conducted upon any part of the Property constitutes a nuisance upon the submission to it of a complaint in writing by any Owner regarding such activity. The Declarant shall have full authority and power to abate any nuisance found to be existing by Declarant, after Declarant has given the Owner written notice specifying the nature of the nuisance, if the Owner fails to abate said nuisance within a reasonable time after such notice. Construction and land development activities of the Declarant or builders shall not be considered a nuisance.

(e) Clothes Drying. No clothing, laundry or wash shall be aired or dried except inside the unless otherwise approved by the ACC.

(f) Inoperable Vehicles. No inoperable vehicle shall remain on the Property, or any part of the Property, for more than 48 hours. The Declarant may conclusively define what is an inoperable motor vehicle.

(g) Vehicles. Vehicles of any kind or description which do not have a current license and a valid inspection sticker shall not be kept or maintained on the Property, or any part of the Property. The maximum number of vehicles which may be maintained by any Owner shall be three (3).

(h) Recreational and Other Vehicles. No mobile home, trailer, camper, bus, recreational vehicle, dune buggy, tow truck, tractor, backhoe, boat, trailer or truck over 3/4 ton rated capacity shall be placed, stored or parked on the Property, or any part of the Property, either temporarily or permanently. Additionally, the Declarant shall have the power to regulate or prohibit the placement, storage or parking, whether temporary or permanent, within the Property of any vehicle which in the opinion of the Declarant detracts from the general aesthetic character and harmony of Divine Village by reason of: (i) the general disrepair or dilapidated state of such vehicle, (ii) the types or quantities of materials or items stored on or within such vehicle, or (iii) the unusual or tasteless exterior appearance of such vehicle. The provisions of this section shall in no way limit or proscribe the rights of Declarant and its approved home building contractors and their agents, contractors and subcontractors to park vehicles related to construction activities upon the Property.

(i) Signs. No sign of any kind shall be displayed to the public view on or from any Lot, street, the Common Area, or on or from within any structure (including in windows) located on any Lot, except (i) those signs approved in writing by the Declarant; (ii) those signs used by the Declarant, its real estate sales/marketing agents, or the Association for the following purposes: street name signs, directional signs, Common Area facilities signs, Lot number signs, model signs, model home signs, subdivision and section signs, construction signs, open house signs, for sale/marketing signs and sold signs; (iii) those signs used for the following purposes by "Initial Builders" (builders of the initial improvements on Lots sold to such builders by Declarant) and the real estate sales/marketing agents for the Initial Builders: for sale/marketing signs, model home signs, open house signs and sold signs; (iv) those signs, if any, which shall be required by the City of Harrisonburg or any governmental agency; (v) "For Sale" signs and information boxes in connection with the resale of any residence; and (vi) political signs in connection with state, federal and local elections of the size and character typically displayed on residential front yards in the City of Harrisonburg.

(j) Temporary Structures. No structure of temporary character, mobile home, tent or trailer shall be used on any Lot or the Common Area at any time as a residence.

(k) Drainage. No Owner shall interfere unreasonably with the natural drainage of surface water from his Lot to the detriment of any other Lot.

(l) Antennas, Satellite Dishes. Except as otherwise required by law to be permitted, no exterior or roof antenna or satellite dish or similar device shall be attached to or installed on any Lot or on the exterior portion of any structure on any Lot.

(m) Boundary Revisions. No Lot may be subdivided or its boundary lines changed except with the prior written consent of the Declarant. The Declarant expressly reserves to itself, the right to re-plat any Lot or Lots owned by it and shown on any subdivision plat of the Property in order to create a modified building Lot or Lots and to take such other steps as are reasonably necessary to make such re-platted Lot suitable and fit as a building site, including but not limited to, the relocation of easements, Common Area, rights of way, and other amenities to conform to the new boundaries of said re-platted Lot.

Declarant may combine two or more contiguous Lots into one larger Lot. Following the combining of two or more Lots into one larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in interpretation of these covenants, particularly with respect to easements and building setbacks.

(n) Mailboxes and Newspaper Boxes. No mailbox or newspaper box shall be erected or maintained nor shall the exterior appearance of any mailbox or newspaper box be altered on or adjacent to any Lot unless the proposed mailbox or newspaper box is of a design pre-approved by the Declarant or until the proposed mailbox or newspaper box design, color and location have been approved in writing signed by the ACC. No real estate sales information box shall be permitted to be mounted on any mailbox or newspaper box.

(o) Exterior Appearance. Every Owner shall be responsible for maintaining a neat exterior appearance of his Lot and improvements thereon, including, but not limited to, reasonable maintenance of the dwelling and other improvements, lawn, trees and shrubbery. In compliance herewith, each Owner shall maintain and mow the grass on his Lot so that it does not exceed six (6) inches in length. Each Owner shall maintain all decks, porches and patios in a neat and orderly fashion and shall not use them for permanent storage.

(p) Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on the Property, or any part of the Property, except that dogs, cats or other domesticated household pets (collectively "Household Pets") may be kept on Lots, subject to rules and regulations adopted by the Association. No Household Pet except cats shall be permitted off the Lot occupied by such Household Pet's Owner except on a leash. Owners of Household Pets shall promptly clean up and properly dispose of said pet's feces wherever deposited on the Property. In no event shall more than four of domestic pet be kept.

(q) Fences. No fence may be erected upon any Lot except as approved by the ACC.

(r) Trees. No living tree with a diameter greater than six inches upon any Lot or Common Area may be cut down or removed after the conveyance of the Lot from the Declarant without the prior express written permission of the Architectural Control Committee. A landscape plan shall be submitted with the plans and specifications for cutting, such plan to show existing trees and shrubs and to clearly indicate those to be removed. Regardless of size, trees planted by Declarant or the agents, contractors or subcontractors of Declarant in any buffer area, Common Area, or landscape easement may not be cut down or removed without Declarant's prior written permission. No trees may be removed where prohibited by any ordinance, plan, permit or other governmental requirements or where approval of the City of Harrisonburg is required, except in accordance with the site plan for Divine Village. Permission shall not be required to remove any dead tree or any tree consumed by disease on any Lot or Common Area. Replacement of any vegetation, including any tree, that dies after conveyance or occupancy of an improved lot, is the sole responsibility of the Owner.

(s) Hedges. No hedge shall be planted or permitted to grow over three and one-half (3½) feet high along the property line, nor shall any growth be permitted by any lot owner or tenant to extend beyond his property line.

(t) Trash, Etc. No trash, garbage or other refuse shall be burned upon the premises, except that the builder or developer may burn debris for the purpose of cleaning the land or preparing any dwelling for occupancy.

(u) Wood Stove. No wood stove (including freestanding and those inserted in existing fireplaces) shall be installed, maintained, or used on or within any Lot, Parcel, or Condominium Unit, unless the following conditions are met:

- (i) Installation, maintenance, and/or use shall at all times be in compliance and conformity with all local and state building and fire codes and regulations;
- (ii) Annual cleaning of the wood stove and flue serving the wood stove by and at the expense of the Owner of such wood stove;
- (iii) Immediate correction and elimination by and at the expense of the Owner of such wood stove of any unsafe or hazardous condition which may occur or be discovered at any time; and
- (iv) Annual inspection of the wood stove and flue serving such wood stove by a designated agent or subcontractor of the Association, with the cost of such annual inspection paid by the Owner of such wood stove.

*Section 2—Correction Assessments and Remedies.* In the event that any Owner shall violate or fail to comply with the Architectural Control provisions set forth in Article VIII or violate or fail to comply with anyone or more of the Use Restrictions set forth in Section 1 of this Article IX (herein the “Violation”), such Owner shall be liable for Correction Assessments provided that such Owner shall have been sent prior written notification by the Declarant or Association or their agents, employees, or attorneys (hand delivered or sent by registered or certified mail to the Owner at the Lot address or the Owner’s last known address on file with the Association) of such Violation. In the event such Violation is not stopped, halted or corrected within the time set forth in such written notification, then, without further notice, the Declarant or Association (or their agents, contractors or employees) are hereby irrevocably granted permission to come upon the Lot of said Owner and may cause such Violation to be fully or partially stopped, halted or corrected, without liability for so doing, and may cause any and all costs incurred (including interest and attorney’s fees) in connection therewith to be charged as a Correction Assessment to such Owner. The Declarant or the Association has the right (but not the obligation) to correct the Violation or in its discretion to partially correct such Violation. Correction Assessments may be collected as other Assessments in any of the manners specified in Article VI hereof, including suit at law or by equitable action. The remedy herein provided shall be in addition to any other remedy provided or allowed by law or equity and shall not be deemed an exclusive remedy. Election of one remedy shall not act as a bar to the subsequent or concurrent use of other available remedies.

## **Article X**

### **Single Family Townhomes**

*Section 1—Owner Occupancy.* Divine Village shall include Twenty-Nine (29) townhomes, which shall be sold individually for owner occupancy.

*Section 2—Party Walls, Shared Maintenance and Appearance.*

- (a) Common Appearance. Each pair of attached residences shall have a common party wall for the residences along the common boundary line between the lots on which each attached pair of residences are built. It is anticipated that the pair of dwellings that are to be built on two adjacent lots which share a party wall will appear, as viewed from the street on which they front, to be only one dwelling, and the party wall shall not extend above the roof line or be visible from the outside of such dwellings, and both of such dwellings shall share the same roofline. The exteriors of all such dwellings shall appear to be a single dwelling with the one with which it shares a common

wall. This shall include, among other things, roofs, the color and siding on the house, the shutters and other exterior window treatments, the front yards, and any structures, shrubbery or landscaping of the front yards. The Declarant hereby releases any easement along the side of each lot along which a party wall is built.

(b) Party Walls:

(i) General Rules of Law to Apply: The general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto, except to the extent that such general rules of law have been modified in this Declaration.

(ii) Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall.

(iii) Destruction by Fire or Other Casualty: Subject to the other provisions of this Declaration, if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(iv) Obligation to Repair: In the event that any dwelling which shares a party wall is damaged or destroyed by fire, windstorm or other casualty, the owner of such damaged or destroyed dwelling shall be responsible for and bear the cost of rebuilding, reconstruction or restoration to the same conditions and appearance as existed prior to the damage or destruction. Such rebuilding or repair shall be commenced within sixty (60) days of such damages and shall be completed within twelve (12) months of the date of such damage. Such reconstruction and/or repairs shall conform in all respects to the dwelling with which it shares a party wall so that the two dwellings shall appear as one dwelling as viewed from the street.

(v) Waterproofing: Notwithstanding any other provisions of this Declaration, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(vi) Right to Contribution Runs with Land: The right of any Owner to contribution from any other Owner under this Declaration shall be appurtenant to the land and shall pass to such Owner's successors in title.

(c) Exterior Maintenance: The roofs and gutters and the two adjacent dwellings shall be the same and when they need re-roofing, both adjacent dwellings shall be re-roofed at the same time by the same roofer and using the same shingles (or other roofing material) for both dwellings. The cost of the re-roofing and/or gutters shall be borne by the owners of each dwelling in direct proportion to the square footage of the roof over each dwelling and in direct proportion to the amount of gutters used on each dwelling. In the event the owners of the two adjacent dwellings cannot agree on whether or not the roofs and/or gutters shall be repaired or reroofed, either party may request the opinion of the ACC, and the decision of the ACC shall be final and binding on both parties.

(d) Exterior Painting, Siding, Shutters, Etc.: The exterior of the two dwellings sharing a party wall shall at all times be maintained so as to give the appearance, as viewed from the street, of being a single residence. When any exterior painting of, or replacement of, siding or shutters is to be done,

it shall be done on both dwellings at the same time, using the same materials on both dwellings. The cost shall be borne by the owners of each dwelling in direct proportion to the cost of labor and materials used on each dwelling. In the event the owners of two adjacent dwellings cannot agree on whether or not the exterior is in need of such exterior work, either party may request the opinion of the ACC and the decision of the ACC shall be final and binding on both parties.

(e) Front Yard, Landscaping, Etc. The fronts of each of the two dwelling units sharing a party wall shall have yards, landscaping and other lawn treatment to give the appearance of there being one yard in front of a single dwelling. Any changes in the landscaping or shrubbery or treatment of the combined front yard of the two adjacent dwellings have to be submitted to the ACC for its approval.

## **Article XI**

### **General Provisions**

*Section 1- Enforcement.* The Declarant and Association shall have the right to enforce, by any proceeding at law or in equity, all easements, covenants, conditions, restrictions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any Supplementary Declaration and may seek damages for violations of such provisions. Before seeking injunctive relief against any Owner, the Owner shall be given the opportunity for a hearing before Declarant or the Board of Directors. Fourteen (14) days prior written notice in accordance with Section 3 hereof of a hearing shall be given to the Owner by hand delivery or certified mail return receipt requested. An Owner may also seek to enforce any of these covenants and restrictions against another Owner. The enforcing Owner must also give notice and the opportunity for a hearing before the Declarant or Board as aforesaid. Failure by the Declarant, the Association or by any Owner to enforce any easement, covenant, condition, restriction, reservation, lien or charge herein contained shall in no event be deemed a waiver of the right to do so thereafter.

*Section 2—Entry for Repair.* The Declarant or the Association or the agents of either may enter any Lot or Property and take such actions (including but not limited to actions to repair, improve, clean, preserve, clear, remove or correct a breach of this Declaration) as deemed advisable with regard to any Lot and exterior improvements thereon in connection with any use restriction or maintenance required by this Declaration. Any such entry shall not be deemed a trespass.

*Section 3—Notices.* Unless otherwise specifically provided, any notice required by this Declaration to be sent by the Declarant, Board of Directors or the Association to any Owner or Member shall be deemed given if either hand delivered or mailed by first class mail to the Lot address or to the last known address on file with the Association of such Owner or Member, if different from the Lot address. The date of hand delivery or the date of mailing shall be deemed to be the date notice was given. Unless otherwise specified, a notice shall be given no more than thirty (30) nor less than ten (10) days prior to the event noticed. Notice to anyone of two or more joint Owners or Members whose membership derives from one Lot shall be deemed to constitute notice to all. It shall be the obligation of each Owner and Member to notify the Association in writing of any change of address.

*Section 4—Fees and Costs.* The Declarant and/or the Association, in seeking enforcement of the provisions of this Declaration or damages due to violation thereof, shall be awarded court costs and reasonable attorney's fees, if it substantially prevails.

*Section 5—Severability.* Invalidation of anyone or more of the provisions of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

*Section 6—Interpretation.* The provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the Master Plan for development at Divine Village.

*Section 7—Waiver of Restrictions.* Declarant reserves for itself, its successors and assigns, including, without limitation, the Association and/or the ACC, the right, to the extent permitted by law, to waive in whole or in part any and all of the covenants, conditions, restrictions and reservations contained in the Declaration and/or any Supplementary Declaration and/or shown on the Plat or any plat attached to any Supplementary Declaration hereafter recorded, as the same may apply to any Lot or Common Area.

*Section 8—Limited Liability.* In connection with all reviews, acceptances, inspections, permissions, consents and/or required approvals by or from the Declarant, the Association, including the Board of Directors, and/or the ACC, the Declarant, the Declarant's agents, the Association, including the Board of Directors and/or the ACC, shall not be liable to any Owner, Member or other person on account of any claim, damage or expense suffered or incurred by or threatened against an Owner, Member or such other person arising out of or in any way relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted, withheld or denied.

*Section 9—Gender and Number.* Where appropriate to the context, language expressed in (i) one gender shall include the other genders, and (ii) the singular shall include the plural and *vice versa*.

*Section 10—Amendment.*

(a) Declarant reserves unto itself, and each Owner by acceptance of a deed or other instrument of conveyance to any Lot agrees, that Declarant shall have the right to unilaterally amend this Declaration or any corporate documents related to the Association for the earlier of (i) fifteen years from the date of the recordation of this Declaration or (ii) until Declarant has conveyed all Lots in Divine Village to third parties other than third party entities controlled by (a) any entity identified in the Declaration as Declarant or (b) any person or persons who hold a controlling interest in any entity identified in the Declaration as Declarant.

(b) Additionally, the covenants, conditions, restrictions and reservations of this Declaration may be modified or amended by (i) an instrument signed by Declarant and any other Members together constituting more than three-fourths (3/4) of the total number of votes of Members, or (ii) subject to Declarant's written consent as hereinafter set forth, an instrument signed by the President and Secretary of the Association after being approved by more than one-half (1/2) of the votes cast by Members who are voting in person or by proxy at a meeting duly called and noticed for this purpose. Any modification or amendment must be properly recorded, stating the modification or amendment, the effective date and relevant information (date, notice, quorum, number of votes for and against) about the meeting at which it was approved. So long as Declarant is a Class B member no amendment of the Declaration shall be made without the written consent of Declarant in Declarant's sole discretion.

*Section 11—Duration.* The covenants, conditions, restrictions and reservations of this Declaration, including any modifications or amendments thereto, shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Declarant, the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years unless rescinded by the vote of more than two-thirds (2/3) of the votes cast by Members who are voting in person or by proxy at a meeting duly called and noticed for such purpose, which meeting shall require a quorum of at least seventy-five percent (75%) of the total votes entitled to be cast.

*Section 12—Non-Waiver.* The failure of the Declarant, the Association and/or any Owner to enforce any rights, reservations, restrictions, easements or conditions contained in this Declaration, regardless of how long such failure shall continue, shall not constitute a waiver of or bar of such right to enforcement. The remedies granted hereunder are cumulative, and the exercise of anyone or more shall not be deemed an election of remedies or waiver of the right to pursue other remedies.

*Section 13—Insurance.* The risk of loss or damage to the property by fire, windstorm casualty, or other cause is the responsibility of each Owner. Every Owner shall also maintain his own liability insurance. Hazard Insurance must have a Class VI or better rating as reflected in the most recent edition of Best’s Rating Guide. Each Owner shall name the Association individually as an additional interested party in their policy for the benefit of the other Lot Owners without naming them. A proper mortgage endorsement clause will be attached to the policy with a loss payable clause in favor of the mortgages on each Lot and the Association as their interest may appear. Each Owner shall provide proof of such insurance upon purchase of a Lot, and provide proof of renewal no less than annually.

*Section 14—Priority of First Mortgages.* No provision of this Declaration, the Bylaws, or the Rules and regulation, if, when and as promulgated, shall be construed to grant to any Lot Owner, or to any other party, any priority over any rights of first mortgages of the Lots pursuant to their first mortgages in the case of a condemnation award for the taking of Lots and Utility Easement or any portions thereof.

WITNESS the following signatures and seals:

**TBD, LLC**

By \_\_\_\_\_ (SEAL)

Managing Member

COMMONWEALTH OF VIRGINIA,  
CITY of HARRISONBURG, to-wit:

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid this \_\_\_\_ day of December, 2020, by \_\_\_\_\_, Managing Member of TBD, LLC, a Virginia limited liability company, on behalf of the company.

My Commission Expires:

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