

DECLARATION OF ACCESS AND UTILITY EASEMENT

THIS DECLARATION OF ACCESS AND UTILITY EASEMENT (this "Declaration") is made this 26th day of August, 2015 (the "Effective Date"), by **RICHMOND AMERICAN HOMES OF COLORADO, INC.**, a Delaware corporation ("Declarant"), having an address of 4350 South Monaco Street, Denver, Colorado 80237. The **BROOKWOOD SUBDIVISION FILING NO. 1 HOMEOWNERS ASSOCIATION, INC.**, a Colorado non-profit corporation, whose address is c/o Teleos Real Estate Transaction Services, 191 University Blvd. #358, Denver, Colorado 80206 (the "Association"), is executing this Declaration at the request of Declarant to evidence its acceptance of and agreement with the provisions hereof.

RECITALS

A. Declarant is the owner of Lot 51, Brookwood Subdivision Filing No. 1, Douglas County, Colorado ("Lot 51"), as set forth on the final plat thereof recorded in the Douglas County, Colorado public records at Reception Number 2006019898 (the "Plat"), Lot 52, Brookwood Subdivision Filing No. 1, Douglas County, Colorado, as set forth on the Plat ("Lot 52"), and Lot 53, Brookwood Subdivision Filing No. 1, Douglas County, Colorado, as set forth on the Plat ("Lot 53"). Lot 51, Lot 52 and Lot 53 may each be individually referred to herein as a "Lot" and collectively as the "Lots."

B. It is anticipated that in the future Lot 51 will be conveyed to a third party homeowner (the "Lot 51 Owner"), Lot 52 will be conveyed to a different third party homeowner (the "Lot 52 Owner"), and Lot 53 will be conveyed to a different third party homeowner (the "Lot 53 Owner"). The Association, the Lot 51 Owner, the Lot 52 Owner and the Lot 53 Owner may each be individually referred to herein as a "Party" and collectively as the "Parties". The Lot 51 Owner, Lot 52 Owner and Lot 53 Owner may each be individually referred to herein as a "Lot Owner" and collectively referred to herein as the "Lot Owners".

C. The Declarant desires to establish, create and declare non-exclusive easements in, to, over, through, upon, under and across that portion of Lot 53 depicted as the shaded "private/emergency access and utility easement for Lots 51 & 52" on the Plat (the "Easement Area"), which shall benefit the Association, Declarant, Lot 51, Lot 52, the Lot 51 Owner, the Lot 52 Owner, their respective Permittees (hereinafter defined), and the successors and assigns of the foregoing, all as set forth in this Declaration.

D. The Association has agreed to accept various obligations related to the Easement Area, as set forth in this Declaration.

DECLARATION

NOW, THEREFORE, know all persons by these presents that Declarant, on behalf of itself and its successors and assigns, covenants and declares as follows:

Courtesy



1. Incorporation of Recitals. The above recitals are hereby incorporated herein and made a part hereof

2. Declaration of Easements.

2.1. Roadway, Vehicular and Pedestrian Easements. Declarant hereby establishes, creates and declares, for the benefit of Declarant and the Association, the Permittees thereof, and the successors and assigns thereof, a perpetual non-exclusive easement in, to, over, through, upon and across the Easement Area for the installation, operation, use, maintenance, repair, removal and replacement of a roadway and all related improvements and/or facilities. Declarant hereby establishes, creates and declares, for the benefit of the Association, Declarant, Lot 51, Lot 52, the Lot 51 Owner, the Lot 52 Owner, the Permittees of the foregoing, and each of their successors and assigns, a perpetual non-exclusive easement in, to, over, through, upon and across the Easement Area for ingress and egress to and from the Lots, including without limitation the passage and accommodation of motorized and non-motorized vehicles and pedestrians.

2.2. Utility, Retaining Wall and Drainage Easement. Declarant hereby establishes, creates and declares, for the benefit of the Association, Declarant, Lot 51, Lot 52, the Lot 51 Owner, the Lot 52 Owner, the Permittees of the foregoing, and each of their successors and assigns, a perpetual non-exclusive easement in, to, over, through, upon, under and across the Easement Area for the installation, operation, use, maintenance, repair, removal, replacement and relocation of retaining walls, sanitary sewer lines, storm drains, water and gas mains and lines, electrical power lines, telephone lines, cable/telecommunication service lines, and other utility lines to serve and/or provide access to Lot 51 and Lot 52. All of the utility lines or systems, to the extent practicable, shall be underground, except as may be necessary during periods of repair or temporary service. Any Party exercising its rights under the provisions of this Section 2.2 shall pay all costs and expenses with respect to such improvements, and shall cause all work in connection therewith to be completed, including general clean up and restoration to the condition as was present prior to any such work, other than improvements permitted to be made under this Declaration, as quickly as possible and with a minimum of inconvenience to the Lot Owners. If any of the Lot Owners jointly elect to install common retaining walls, utility lines or systems, all costs and expenses with respect to the installation thereof shall be set forth in a separate agreement between such Lot Owners.

2.3. Surface Water Drainage Easement. Declarant hereby establishes, creates and declares, for the benefit of Lot 51, Lot 52, the Association, Declarant, the Lot 51 Owner, the Lot 52 Owner, the Permittees, and each of their successors and assigns, a perpetual non-exclusive easement for the flow of surface water in, to, over, through, upon, under and across the Easement Area; provided, however, that in no event shall the foregoing easement permit any Party to use the Easement Area in a manner that could cause unreasonable damage to the Lots.

2.4. Use of the Easements. The Lot 53 Owner hereby reserves unto itself and its Permittees and the successors and assigns thereof the right to use the Easement Area for all uses not inconsistent with the foregoing easements, including without limitation the passage and accommodation of motorized and non-motorized vehicles and pedestrians. Notwithstanding

anything to the contrary, no Party shall take any action under this Declaration which would impair the lateral or subjacent support for any improvement on any of the Lots, and no Party shall take any action under this Declaration that unreasonably interferes with the use or enjoyment of a Lot by the Lot Owner thereof. For purposes of this Declaration, "Permittees" shall mean and refer to any tenants, subtenants, licensees, successors, assigns, agents, occupants, employees, contractors, invitees, lenders, customers and visitors of the Lot Owners, as applicable, (including but not limited to emergency vehicles) and the holder of any real property or easement rights relating to the Lots.

3. Non-Interference. No Party, nor any of its Permittees, shall interfere with or obstruct the use and enjoyment of the Easement Area by the Parties or their Permittees for the purposes indicated herein, nor shall any Party or any of its Permittees construct or allow any parking, building, improvement, fence, wall, curb or other barrier or structure in or on the Easement Area that could preclude the Easement Area from being used for its intended purposes hereunder.

4. Maintenance of the Easement Area. Subject to the terms and conditions contained in this Declaration, from and after the date of this Declaration, the Association shall be responsible for the maintenance, repair, replacement and inspection of the Easement Area and all improvements thereon accepted to be maintained by the Association, to the extent necessary, to: (a) maintain the Easement Area and such improvements thereon in good condition and repair; (b) maintain the Easement Area and such improvements thereon in accordance with all applicable laws; and (c) keep the Easement Area passable at all times. Except for the Easement Area and the improvements thereon accepted to be maintained by the Association, each Lot Owner shall be responsible for the maintenance, repair, replacement and inspection relating to its respective Lot and all improvements thereon.

5. Notices. Any notice, request, consent, payment or other communication which any Party hereto is required or permitted to give or make to any other Party under this Declaration shall be in writing and shall be given or made by delivery in person or by first-class mail, postage prepaid, by overnight delivery service or by facsimile or electronic transmission, addressed to the Party at the address shown above or, in the case of the Lot Owners, as shown in the recorded instrument by which such Lot Owner acquired title, or to such other address, facsimile number or email address designated by notice similarly given. Any notice or other communication shall be deemed received upon actual delivery if delivered in person, three (3) business days after the same is deposited in the United States mail as set forth above, one (1) business day after the same is deposited with an overnight delivery service, and upon confirmed transmission if sent by facsimile or electronic transmission.

6. Enforcement; Attorneys' Fees; Waiver. In the event that any Party commences any action or proceeding against another Party to enforce the provisions hereof, the prevailing Party's remedy shall be limited to injunctive relief and damages for the alleged breach of on any of the provisions of this Declaration, and no Party shall have the unilateral right to terminate this Declaration. The prevailing Party in such action shall be awarded, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorneys' fees and costs, but in no event consequential, punitive, special, incidental,

or similar losses or damages. No waiver by any Party of any default under this Declaration shall be effective or binding upon such Party unless made in writing. No waiver of any default shall be deemed a waiver of any other or subsequent default hereunder.

7. No Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

8. Severability. If any provision of this Declaration is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Declaration, then the legality, validity and enforceability of the remaining provisions of this Declaration shall not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Declaration a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which shall be legal, valid and enforceable.

9. Governing Law. The terms and conditions of this Declaration shall be governed and construed under the laws of the State of Colorado, without giving effect to any conflict of laws principles.

10. Conveyance of Property. The benefits and burdens of this Declaration and the easements created hereunder shall run with the Lots and be appurtenant thereto (including any parcels into which the Lots may be subdivided), with the effect that any person or entity which acquires an interest in the Lots or any portion thereof shall be entitled to such benefits and bound by such burdens. In the event any Lot Owner shall convey its fee interest in all or a portion of its Lot, said Lot Owner shall automatically be freed and relieved, from and after the date of such transfer or conveyance, of all liability with respect to the performance of any agreement or obligation on the part of the Lot Owner contained in this Declaration thereafter to be performed with respect to such Lot or the portion thereof conveyed, except for any obligation which accrued or was incurred prior to the transfer or conveyance. It is intended hereby that the agreements and obligations contained in this Declaration on the part of each of the Lot Owners shall be binding upon such Parties only during the period of its ownership of its respective Lot and that the conveying Lot Owner shall remain liable only for its breach of an obligation hereunder which occurred prior to the date of conveyance. Any grantee of a fee interest in a Lot or any portion thereof shall automatically be deemed to have assumed the obligations of the Lot Owner hereunder that is its predecessor in title.

11. Entire Agreement. This Declaration constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior understandings or agreements. This Declaration may be modified and/or terminated only by a writing duly executed by the Parties and recorded in the real property records of Douglas County, Colorado.

12. No Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of any property to or for the general public or for any public purposes whatsoever, it being the intention that this Declaration shall be strictly limited to and for the purposes herein expressed.

13. Captions. The section and subsection captions used in this Declaration are included for convenience only, and shall be irrelevant to the construction of any provision of this Declaration.

14. Estoppel Statement. Each Party shall, within ten (10) days after written request from another Party (the "Requesting Party"), deliver a written statement which may be relied upon by the Requesting Party or any successor, assignee, transferee, mortgagee or tenant of the Requesting Party, setting forth whether or not the Requesting Party has fully complied with the provisions of this Declaration and, if not, setting forth in reasonable detail the nature of any violations. Failure to deliver such statement within the said ten (10) day period shall be conclusive evidence against the Party failing to deliver such notice (the "Second Party") that the Requesting Party has fully complied with its obligations under this Declaration, insofar as such obligations affect the Second Party, as of the date the request was made.

15. Term. The terms, covenants, provisions and conditions of this Declaration shall be effective automatically upon the recordation of this Declaration in the real property records of Douglas County, Colorado. This Declaration will continue in full force and effect in perpetuity, unless and until terminated by a duly recorded instrument, executed by all of the Parties subject to this Declaration on the date of such termination.

[Signature Pages Follow]

