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**ANDREA ALLEN**  
**UTAH COUNTY RECORDER**  
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**AMENDMENGT TO AMEND AND  
RESTATED MASTER DECLARATION,  
SUPPLEMENTAL DECLARATION,  
CREATION OF SUB-ASSOCIATION, AND  
SUPPLEMENTARY RESTRICTIONS  
FOR  
FAIRWAY TOWNHOMES  
AT  
SARATOGA SPRINGS**

AMENDMENT TO AMENDED AND RESTATED  
MASTER DECLARATION, SUPPLEMENTAL  
DECLARATION, CREATION OF SUB-ASSOCIATION,  
AND SUPPLEMENTARY RESTRICTIONS

PERTAINING EXCLUSIVELY TO  
SARATOGA SPRINGS DEVELOPMENT  
FAIRWAY TOWNHOMES

Declaration

WHEREAS, the undersigned Saratoga Springs Development LLC (hereafter "Grantor") is and was the developer of certain land in Utah County, Utah, including some 640 acres, more or less, known as the "Saratoga Springs Development"; and

WHEREAS, Grantor is also the Grantor under the Master Declaration of Covenants, Conditions, Restrictions and Easements for Saratoga Springs Subdivision No. 1, Plats 1,3, and , Recorded in the Office of the Utah County Recorder as Entry 12514:1997 in Book 4195 at Page 1. (hereafter "Master Declaration"); and

WHEREAS, the "Master Declaration of Covenants, Conditions, Restrictions and Easements for Saratoga Springs Subdivision No.1" was recorded as Entry No. 12514:1997 in Book 4195, in the Utah County Recorder's Office (the "Master Declaration"); and

WHEREAS, the Master Declaration was amended by the "First Amendment to Master Declaration of Covenants, Conditions, Restrictions and Easements for Saratoga Springs Subdivision No.1" recorded as Entry No. 43500:1998 in the Utah County Recorder's Office (the "First Amendment"), which amendment annexed additional property into the subdivision; and

WHEREAS, the Master Declaration was further amended by the "Second Amendment to Master Declaration of Covenants, Conditions, Restrictions and Easements for Saratoga Springs Subdivision No.1" recorded as Entry No. 77286:1998 in the Utah County Recorder's Office (the "Second Amendment") which amendment annexed additional property into the subdivision; and

WHEREAS, the Master Declaration was further amended by the "Third Amendment to Master Declaration of Covenants, Conditions, Restrictions and Easements for Saratoga Springs Subdivision No.1 for Annexation of Property with Supplementary Restrictions," recorded as Endty No. 31198:2000 in the Utah County Recorder's Office (the "Third Amendment"), which

amendment annexed additional property into the subdivision and further bound such property with additional "supplemental" restrictions. The supplemental restrictions for Plat 11 lots are incorporated into a separate supplemental declaration, without any changes being made to the provisions thereof; and

WHEREAS, an Amended and Restated Master Declaration (hereafter the "Restated Master Declaration") was properly adopted and executed by the Saratoga Springs Owners Association and recorded as Entry No. 8402:2006 on January 24, 2006, and the Amended Master Declaration incorporates and supersedes all prior declarations and amendments to the declarations of all existing phases of Saratoga Springs Subdivision No. 1, and binds all future annexed property; provided that notwithstanding anything to the contrary, the Supplementary Restrictions, as listed above, were not incorporated into or superseded by Restated Master Declaration; and

WHEREAS, the Restated Master Declaration includes statements related to supplemental restrictions of the Master Declaration concerning Plats 7, 8, 12, 13, 15, 23-29, the Lake Lots and Waterside Estates; and

WHEREAS, Wardley Development Saratoga Inc. (hereafter "Sub-developer" or "Successor Grantor") which is also joining in the execution hereof, is the owner of all land known as Fairway Townhomes of the Saratoga Springs Development, more particularly described in Exhibit A, attached hereto and incorporated by this reference (hereafter "Property" or "Subdivision"); and

WHEREAS, under the provisions of the Master Declaration and of the Restated Master Declaration at Article XII, Annexation, as additional land owned and platted by the Grantor adjacent to or in the vicinity of the Property is platted and developed for uses similar to that of the Property, upon election by the Grantor, such shall become subject to the terms of the Restated and Restated Master Declaration by annexing the same as provided herein; and

WHEREAS, under the provisions of the Master Declaration and of the Restated Master Declaration at Article XII, Annexation, this Amendment to the Master Declaration (hereafter "Supplemental Declaration") may supplement the Master Declaration and Restated Master Declaration with additional or different covenants and restrictions applicable to the annexed property, as the Grantor may deem appropriate; and

WHEREAS, under the provisions of the Master Declaration and of the Restated Master Declaration at Section 6.02 Sub-Association(s), Grantor has the sole and absolute right to create one or more Sub-Associations for purposes and in a manner which is not inconsistent with the Master Declaration and the Restated Master Declaration; and

WHEREAS, Grantor desires to annex the Property into the area subject to the Master Declaration and the Restated Master Declaration, and Grantor and Sub-developer also desire to create a Sub-Association and thereby subject the Property to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes herein set forth to (i)

insure the enhancement and preservation of property values, and (ii) provide for the proper design, development, improvement and use of the Property by the Grantor and Sub-developer and all other persons or entities who may subsequently acquire an interest in the Property consistent with a general master plan to approach and (iii) create a residential development of high quality; and

WHEREAS, the name of the Sub-Association shall be the Fairway Townhomes Association (hereafter the "FTSA"); and

WHEREAS, The Property is hereby made subject to this Supplemental Declaration in order to allow for the operation and maintenance of design features exclusive to the Fairway Townhome area, including special Supplementary Restrictions of design (subject to stringent architectural review), along with landscaping and property maintenance and also for the FTSA to manage and maintain special common areas and operations exclusive to Fairway Townhomes such as fences and walls, landscaping and common areas; and

WHEREAS, as provided in the Master Declaration at Article III Definitions (definition of "Grantor" on page 3) and the Restated Master Declaration at Article III- Definitions (definition of "Grantor" on page 5) the rights, privileges and duties of Grantor in the Master Declaration and the Restated Master Declaration may be conveyed to "successors and assigns"; and

WHEREAS, Grantor desires to convey to Sub-developer all of the rights, powers and privileges of the Grantor in the Master Declaration and Restated Master Declaration, but only with regard to the Property and only as it pertains and relates to the Property, retaining in Grantor all of its rights under the Master Declaration and Restated Master Declaration pertaining and relating to all other lands and properties; and

WHEREAS, the Property will be developed in several phases or development units each of which may be a separately platted subdivision which may have unique characteristics, needs and requirements (including varied building types, land use types and ownership alternatives), the Successor Grantor may, from time to time, promulgate further conditions, covenants, restrictions and easements as "supplemental declarations" relating to such separately platted or designated tracts, parcels or subdivisions within the Subdivision;

NOW THEREFORE:

The Grantor and Sub-developer hereby declare that the Property and each lot, tract or parcel thereof (hereafter called "Lot", unless specified to the contrary), is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitudes (hereafter collectively called "covenants and restrictions"), all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof.

The covenants and restrictions set forth in this Supplemental Declaration shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot therein; and shall inure to the benefit of every Lot in the Subdivision and any interest therein; and shall inure to the benefit of and be binding upon the Grantor, the Sub-developer and each Owner, and each successor in interest of each, and may be enforced by the Successor Grantor and by any Owner, or by the Owner's Association, as hereafter provided.

The Property continues to be subject to the Restated Master Declaration, except as specifically provided otherwise in this Supplemental Declaration.

For all purposes and in all functions, the role of the Board of the Saratoga Springs Owners Association (hereafter "SSOA") in the Restated Master Declaration is supplemented by the role of the Board of the FTSA with regard to the Property. The SSOA and FTSA shall each have appropriate jurisdiction to interpret, enforce, or implement the Restated Master Declaration with regard to the Property. All responsibility, authority, rights and functions of the "Association" or "Board" under the Restated Master Declaration are unchanged except as specifically assigned and assumed by the FTSA Sub-Association and its Board of Directors in this Supplemental Declaration.

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## ARTICLE I

The capitalized terms used in this Declaration shall have the meanings set forth in this Article. Unless the context clearly requires otherwise, the masculine, feminine, and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

- 1.1 **Act** shall mean and refer to the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.
- 1.2 **Architectural Control Committee** or ACC shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.
- 1.3 **Articles** shall mean and refer to the Articles of Incorporation for the FTSA, as amended and restated from time to time.
- 1.4 **Assessments** shall mean any monetary charge or fee imposed or levied by the Association against Owners as provided in this Declaration or other Governing Documents.
- 1.5 **Board or Board of Directors** shall mean and refer to the Board of Directors of the FTSA as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the FTSA. The Board is the governing body of the Association.
- 1.6 **Bylaws** shall mean and refer to the Bylaws of the FTSA as the same may be amended from time to time. A copy of the Bylaws is attached hereto as Exhibit B.
- 1.7 **Common Areas** shall mean all improvements within the Project shown on the Plat and the improvements situated thereon, within the Project that Declarant designates as Common Areas or Open Space on the Plat or other recorded instrument and other real property which the FTSA not or hereafter owns in fee for the benefit of Owners for as long as the FTSA is the owner of the fee, which may include without obligation or limitation, FTSA signs or monuments, open space, landscaped areas outside of the Limited Common Areas, street signage, lighting detached from Living Units, sidewalks, and other similar improvements; any real property or improvements within the Project that the FTSA has the obligation to maintain, repair, or replace for the common benefit of the Owners, as the Board shall determine in its sole and exclusive discretion, including, without limitation all utility and service lines, systems and similar improvements, whether public or private-company owned, intended to serve more than one Living Unit, whether located on a Lot or lying inside of the exterior boundaries of the Living Unit, and any utility any service lines located on a Lot, but outside of the exterior walls of a Living Unit.
- 1.8 **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the FTSA; (c) expenses allocated by the FTSA among the Owners; (d) expenses agreed upon as common expenses by the FTSA or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the FTSA or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.
- 1.9 **Declarant** shall mean and refer to Wardley Development Saratoga Inc.
- 1.10 **Declaration** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for the Fairway Townhomes Subdivision, as may be amended from time to time.
- 1.11 **Design Guidelines** shall mean and refer to those requirements governing the location, color, materials, and architectural design of dwellings, structures, and improvements within the Project as adopted by the Board or ACC as provided herein.
- 1.12 **Director** shall mean and refer to an individual member of the Board of Directors.

1.13 **FTSA** shall mean and refer to the Fairway Townhomes Sub Association profit corporation. Failure of the FTSA to maintain its corporate status will not result in the dissolution of the FTSA.

1.14 **Governing Documents** shall mean collectively, the Declaration, articles of Incorporation, Bylaws, Plat, and any Rules adopted by the Board.

1.15 **Limited Common Areas** shall mean and refer to those Common Areas as "Common Area" or "Open Space" or as described in this Declaration as being reserved for the use and benefit of a designated Lot or Living Unit to the exclusion of other Owners. Whether or not indicated on the Plat, the Limited Common Areas include the driveways appurtenant to each Living Unit and the patios on the rear of each Living Unit.

1.16 **Living Unit or Unit** shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence. The Living Unit shall include, without limitation, the roofs and all exterior surfaces, exterior trim, gutters, downspouts, and foundations. The Living Unit shall also include any mechanical equipment and appurtenances located with any one Living Unit, or located without said Living Unit but designed to serve only that Living Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like. All Pipes, wires, conduits, or other utility lines or installations constituting a part of the Living Unit, and any structural members, parts, components, or any other property of any kind, including fixtures or appliances within any Living Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the building within which the Living Unit is located shall be deemed to be part of the Living Unit.

1.17 **Lot** shall mean and refer to each of the individual Lots within the Project, as shown on the Plat, with the exception of the Common Areas. A Lot shall include any Living Unit or other improvement constructed thereon. There shall be fifty-five (55) Lots within the Project.

1.18 **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the FTSA and Project.

1.19 **Member** shall mean and refer to Lot Owners

1.20 **Mortgage** shall mean and refer to a mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.21 **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.22 **Occupant** shall mean and refer to any Person, other than an Owner, living, dwelling, or staying in a Living Unit. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives living, dwelling, or staying in a Living Unit. Occupants shall be bound by the Restrictions in this Declaration and shall be liable for any fines that are assessed for violations of the Governing Documents. J

1.23 **Owner** shall mean the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Project, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.24 **Party Wall** shall mean and refer to a wall, including without limitation a foundation wall, that forms part of a Living Unit and is located on or adjacent to a boundary line between two or more adjoining Lots owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Living Units, which wall may be separated by a sound board between two or more Living Units.

1.25 **Period of Declarant Control** shall mean the period of time during which the Declarant may enforce the Special Declarant Rights set forth in this Declaration. Such period of time shall commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Lots have been conveyed to purchasers; or (ii) the Declarant executes and records a written waiver of its right to control the FTSA. If the Declarant elects to waive one

or more, but not all of its Special Declarant Rights, then the Period of Declarant Control shall remain effective with respect to all retained Special Declarant Rights.

- 1.26 **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.
- 1.27 **Plat** shall mean a n refer to the official subdivision plat(s) of the Fairway Townhomes Subdivision, filed and recorded in the official records of the Utah County Recorder's Office.
- 1.28 **Project** shall include the real property described in Exhibit A, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean and refer to the Fairway Townhomes Subdivision.
- 1.29 **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.
- 1.30 **Rules** shall mean and refer to the rules, resolutions, regulations, policies, architectural guidelines, etc. Adopted by the Board. The Association's initial Rules are attached hereto as Exhibit C.
- 1.31 **Saratoga Springs Owners Association** the Master Association whose rules also govern the Project. Also referred to as SSOA.

## ARTICLE II

### PROJECT DESCRIPTION

2.1 **Submission** The Declarant hereby confirms that the real property described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant hereby declares that the Project and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, the FTSA, and each Owner, including their respective heirs, successors and assigns.

2.2 **Name.** The Project as submitted to the provisions of the Declaration shall be known as Fairway Townhomes. The Project is not a cooperative.

2.3 **Description of Improvements.** The major improvements contained in the Project will include townhome buildings that are divided into Lots, each with a Living Unit. There are also Common Areas as further provided herein, along with other improvements detailed on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements in the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plat.

2.4 **Common Areas.** The Common Areas of the Project are identified on the Plats.

2.5 **Limited Common Areas.** The Limited Common Area of each Lot shall consist of the areas that are spatially associated with that Lot. If not otherwise identified on the Plat, the Limited Common Areas of each Lot shall generally include the porches, patios, and driveways that are outside the boundaries of the Lot. The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Lot and may not be severed from the ownership of the Lot. All installations or modifications of Limited Common Areas shall be approved by the Association and shall be subject to the discretion to determine the Limited Common Area boundaries if the Governing Documents are found ambiguous.

2.6 **Lots.** Subject to further specification herein, each Lot consists generally of all structures on or within the boundary of the Lot, including, but not limited to: (1) all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures; and (2) in all walls shared with or abutting another Lot, the Lot shall extend to the center of the wall, which shall form the boundary of the Lots sharing the wall. Subject to dividing lines between Lots, and above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Lot is part of the Lot if it; (1) is part of and an integral part of the Lot's structure (such as bay windows, pop-outs, eves, etc., not to include fences, or other appurtenant structures that merely connect to the Lot structure); or (2) was constructed as part of the original construction of the Lot. All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Lot, shall be part of the Lot. All exterior and interior doors, door jams, windows, windowsills, window frames and all components therein, skylights, garages, and garage doors, in or on the boundary of any Lot are part of the Lot.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

3.1 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event an Owner fails or refuses to transfer the membership registered in his name to the purchaser of his Lot, the association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2 **Voting Rights.** Except as otherwise disallowed in this Declaration or the Bylaws or limited by the Special Declarant Rights reserved by the Declarant, Owners shall be entitled to one (1) vote per Lot owned.

3.3 **Multiple Ownership Interests.** If there is more than one Owner of a Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose except towards establishing a quorum.

3.4 **Record of Ownership.** Every Owner shall promptly file the conveyance document (or in the case of contract buyer, a copy of the sales contract) for his Lot with the secretary of the Association who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgagee which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an "Individual Assessment" in accordance with the provisions of article V.

3.5 **Proxies.** An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser or his Lot to vote on all matters coming before the Association for vote provided the same is in further provided in the Bylaws.

## ARTICLE IV

### EASMENTS AND RIGHTS IN COMMON AREAS

4.1 **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas so long as such use is not a nuisance to others. This provision is intended to refer to playground appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member's Lot. This right of easement shall only extend to the Limited Common Area appurtenant to the Lot and not to other Limited Common Areas.

4.2 **Title to Common Areas.** The Declarant has or will convey title to the various Common Areas to the FTSA.

4.3 **Delegation of Use.** An Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside on the Project. The rights and privileges of such donee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in the preceding Section.

4.4 **Association Easement.** The FTSA , its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents.

4.5 **Easement for Utility Services.** The Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

4.6 **Easements for Encroachments.** If any portion of a Common Area structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot, encroaches upon any other Lot or the Common Area as a result of the manner in which the improvements were initially approved and constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the FTSA, a valid easement for encroachment, and maintenance of such encroachment , shall exist for the life of the improvement or structure.

4.7 **Party Walls.** Each wall which is built as a part of the original construction of Living Units upon the Project and placed on the dividing line between two Living Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Living Unit may share one or more party wall, a common roof, a common exterior back wall, and a common exterior front wall, with an adjacent Living Unit. The Owners acknowledge that certain repairs or maintenance to the roof or exterior wall of the Units may become necessary, which repairs or maintenance cannot be performed on one Unit only, but may necessarily involve the other attached Unit. Therefore, all repairs to the roof and to the surface of the exterior wall of all Units will be made by the FTSA out of FTSA funds.

4.8 **Destruction of Party Wall, Common Roof or Exterior.** If a party wall or common improvement is damaged or destroyed by the fault or negligence of one of the Owners, such damage shall be repaired by the Owner (unless the damage is covered by FTSA's and Owner's insurance) to a condition equal to or better than immediately prior to the damage, and the negligent Owner or Owner at fault shall pay for any and all costs incurred to cure the damage. Should a party wall be damaged or destroyed by any cause other than by default or by an act of negligence of an Owner of the adjacent Unit, the damage shall be rebuilt or repaired to a condition equal to or better than immediately prior to the damage, at the joint expense of

the Owners of the two affected Units, provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Units. Should a common roof or any part of the exterior wall(s) be damaged or destroyed by any cause other than by fault or an act of negligence of an Owner of the adjacent Unit, the damage shall be rebuilt or repaired by the FTSA to a condition equal or better than immediately prior to the damage, at the expense of the FTSA , provided that any amount received from insurance companies for such damage shall first be applied to the restoration of the affected Units.

4.9 **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner, Occupant and guest shall fully and faithfully comply with the FTSA's Rules and Restrictions and shall be jointly and several liable for any fines for violations thereof.

## ARTICLE V

### BUDGET AND ASSESSMENTS

5.1 **Annual Budget.** The Board shall prepare and adopt an annual budget for the FTSA. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and other areas maintained by the FTSA, and for the administration, management, and operation of the FTSA. The Board may revise the budget for time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted shall continue in effect until a new annual budget is adopted. The budget shall be made available to the Owners within thirty (30) days after adoption. Owners may disapprove a budget according to the provisions of the Act.

5.2 **Covenant to Pay Assessments.** After the construction of a Living Unit on a Lot, the issuance of a Certificate of Occupancy for the Living Unit on a Lot, and the closing of a sale to a purchaser of a completed Living Unit on a Lot, each Owner of a Lot with a completed, closed Living Unit, by acceptance of a deed, hereby covenants and agrees with each other and with the FTSA to pay the FTSA all Assessments, including without limitation,, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in the Governing Documents.

5.3 **Purpose of Assessments.** Assessments levied by the FTSA shall be used for the purpose of promoting the health, safety, and welfare of residents of the Project, including but not limited to the appearance and aesthetics of the Project. The use made by the FTSA of funds obtained from Assessments may include, but is not limited to: payment of the cost of taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas and the exteriors of Living Units; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the FTSA to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

5.4 **Declarant's Exemption from Assessments.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lot owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments. However, Declarant may, but is not required, to pay a portion of the Assessments during the initial construction phase of the Project until such time as the FTSA has a sufficient number of Owners to be reasonable capable of paying all the FTSA's Common Expenses

5.5 **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly or quarterly installments on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the FTSA shall give each Owner written notice of the amount.

5.6 **Special Assessments.** The Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Special Assessments over one-thousand dollars (\$1,000) in a calendar year must be approved and assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as reasonable possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided notice. Notwithstanding the foregoing, Declarant may levy Special Assessments in any amount deemed necessary during the Period of Declarant Control without Owner approval.

5.7 **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner for his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Living Unit and its Owner into compliance with the Governing Documents; (d) costs of providing services to the Lot upon request of the Owner; and (e) attorney fees, court or collection costs, fines and other charges relating to any of the foregoing, regardless of whether a lawsuit is filed. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any improvements to adjacent roads, sidewalks, planting areas, equipment, or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the FTSA, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Owner's or his/her Occupant's negligence.

5.8 **Allocation of Assessments.** Except for Individual Assessments, Annual and Special Assessments shall be fixed at a uniform rate for all Lots, unless otherwise provided in the Governing Documents.

5.9 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the FTSA shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

5.10 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association owes the Owner money, or that the FTSA is not properly exercising its duties and powers as provided in this Declaration.

5.11 **Certificate Regarding Payment.** Upon the request of an Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The FTSA may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee as permitted in the Act.

5.12 **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorney fees shall constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorney's fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.13 **Billing and Collection Procedures.** The Board shall have the right to adopt Rules setting forth procedures for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the FTSA to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure, at the address of the Owner on the records of the FTSA, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident at the Project.

5.14 **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.15 **Collection Charge.** If the FTSA does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25.00) late fee each month until the Owner's account (including all collection charges, costs, and attorney's fees) is paid in full. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. The FTSA may compound interest. Collection charges, interest, and/or late fees shall constitute part of the Assessment lien provided above until paid.

5.16 **Collection Action at Law.** The FTSA may exercise any or all of the following remedies to collect delinquent Assessments:

1. The FTSA may suspend such Owner's voting rights.
2. The FTSA shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Assessment or installment thereof is delinquent, the deed records of Utah County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the FTSA, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the FTSA shall be

superior to all other liens and encumbrances except: a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the FTSA's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The FTSA through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.

3. The FTSA may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against an Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
4. If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.
5. The FTSA may terminate utilities paid out of the Common Expense, if any, and the right to use the Common Area.
6. Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.
7. The FTSA shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or equity.

5.17 **Power of Sale.** The FTSA shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale to the FTSA attorney of record, as trustee, for the benefit of the FTSA, for the purpose of securing payment of Assessments under the terms of this Declaration. The FTSA may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

5.18 **Reserve Account.** The Board shall establish a reserve account to fund long-term maintenance of Common Areas and the exteriors of Living Units. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally, liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the FTSA and Board during the Period of Declarant Control.

5.19 **Account Payoff Fees.** The FTSA may charge a fee for providing FTSA payoff information needed in connection with financing, refinancing, or closing of the sale of a Lot as provided for in Utah Code 57—8a-106. The amount of such fee shall be fifty dollars (\$50.00) or as otherwise established in the Rules. Additional paperwork required in a private sale between an Owner and purchaser may be obtained from the Association but may incur additional fees.

5.20 **FTSA Responsibility after Foreclosure.** If the FTSA takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to the Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Mortgagees cannot make any claim against the FTSA for nonpayment of taxes, Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to a failure to pay Assessments.

5.21 **Homestead Waiver.** Pursuant to Utah Code 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are not in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

## ARTICLE VI

### DUTIES AND POWERS OF THE ASSOCIATION

6.1 **Organization of Association.** The FTSA shall serve as the governing body for all Owners. The FTSA shall make provisions for the maintenance, repair, replacement, administration, and operation of the common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the bylaws. The FTSA shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The FTSA shall not be deemed to be conducting a business of any kind, and all funds received by the FTSA shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, or the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the FTSA, or the Board of Directors.

6.2 **Legal Organization.** The FTSA may be incorporated as a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the FTSA. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

6.3 **General Powers and Obligations.** The FTSA shall have, exercise and perform all of the following powers, duties, and obligations:

- 1) The powers, duties, and obligations granted to the FTSA by this Declaration, its Bylaws, and the articles of incorporation;
- 2) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- 3) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;
- 4) The powers, duties, and obligations not reserved specifically to Owners; and
- 5) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the FTSA pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the FTSA may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the FTSA made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

6.4 **Specific Powers and Duties.** The powers and duties of the FTSA shall include, without limitation, the following:

- 1) **Maintenance and Services.** The FTSA shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.
- 2) **Insurance.** The FTSA shall obtain and maintain enforce policies for insurance as provided in this Declaration or the Bylaws of the FTSA. The FTSA shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

- 3) **Rulemaking.** The FTSA, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Project as is may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Project. Pursuant to Utah Code section 57-8a-218(15), the requirements of Utah Code 57-8a-218(1) through (13), except subsection (1)(b)(ii), are hereby modified to not apply to the FTSA.
- 4) **Assessments.** The FTSA shall adopt budgets and impose and collect Assessments as provided inn Article V of this Declaration.
- 5) **Enforcement.** The FTSA shall perform such act, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the FTSA. The FTSA may assess fines to Owners, Occupants, or their guests for violations of the Governing Documents in accordance with the provisions of the Governing Documents and the Act.
- 6) **Title to Common Areas.** The FTSA shall hold title to all Common Areas conveyed to it by Declarant or other persons and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the FTSA shall have the right to contest or compromise any such taxes or assessments. The FTSA Board is empowered to grant easements, negotiate, settle, sell or convey title of, adjust legal description boundaries to any private or government entity, if it deems such action to be in the best interest of the FTSA.
- 7) **Employment of Agents, Advisers, and Contractors.** The FTSA may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the FTSA, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. Any agreement with a Manager shall not exceed a term of one (1) year, renewable by agreement of the parties for a successive one (1) year term, and shall be terminable by the FTSA upon no more then sixty (60) days' advanced notice. The Board has no authority to enter into a management agreement or contract inconsistent with the terms of the Governing Documents or that provides for a termination fee or requirement for termination for cause.

**6.5 Liability.** A member of the Board or any officer of the FTSA shall not be liable to the FTSA or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful misconduct. In the event any Board member or any officer of the FTSA is made a party to any proceeding because the individual is or was a director or officer of the FTSA, the FTSA shall defend, indemnify, and hold harmless such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board member or officer id found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.

**6.6 Board of Directors.** The governing body of the FTSA shall be the board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the FTSA. Board members shall be elected pursuant tot the provisions set for the in the Bylaws. The Bylaws lmay set forth requirements for serving on the Board. Without limiting the gerality of the foregoing, the Board may appoint one or more "Committees", and such Committees (which may soncist of one or more Members, as determined by the Board) shall have such authority and duties as may be determined form time to time by

the Board relating to the budgeting, operation, financial management and administration of the Project ("Delegated Duties). While any Committee established by the Board shall report to the Board regularly regarding its activities, the Board may by express directive relinquish and transfer all authority and responsibility with respect to such Delegated Duties to an applicable Committee. Notwithstanding the foregoing, during the Period of Declarant Control, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint Board Members. Declarant appointed Board Members shall not be bound by the qualification requirements in the Bylaws.

6.7 **Registration with the State.** In compliance with Utah Code 57-8a-105, the FTSA shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required by law.

6.8 **Management.** The Project may be managed by a professional manager, selected by the Declarant, or upon the termination of the Period of Declarant Control, shall be selected by the Board to assist in the management and operation of the Project and may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause. Following the Period of Declarant Control, the Board shall have the option to either renew the contract with the Manager selected by the Declarant or hire a different Manager.

## ARTICLE VII

### MAINTENANCE

7.1 **Association Maintenance.** The FTSA shall maintain, repair, and replace the Common Areas together with all improvements thereon and all easements appurtenant to the Common Areas, including private utility lines located outside of the exterior walls of a Living Unit, landscape and drainage easements, and personal property owned by the FTSA. The FTSA shall maintain, repair, and replace the following exterior surfaces of the Living Units: (a) each Living Unit's exterior brick, hardie board or other material that directly makes up the exterior of a Living Unit (but not including the backing to which the exterior material is affixed) and (b) the roof of each Living Unit, including only the roof shingles and the felt and plywood undersurface to which the shingles are attached, and (c) gutters and down spouts. Maintenance, repair and replacement of all other structural parts of the Living Units, including but not limited to attic space, foundations, patio posts, floor joists, and garage doors, shall remain the responsibility of the Unit Owner, unless repair or replacement is covered by the FTSA's insurance. Exterior maintenance by the FTSA shall not include glass surfaces, entry doors, or garage doors. A maintenance allocation chart has been attached hereto as Exhibit D, which further defines and clarifies FTSA and Owner maintenance, repair, and replacement responsibilities. The FTSA shall maintain any fence dividers or golf netting that are installed by the Declarant.

The maintenance allocations provided in this Article shall clarify, expand upon, and supersede any maintenance provisions contained in the Plat or other Governing Documents. The Common Areas and building exteriors shall be maintained in a safe condition and in good workmanlike manner such as to carry out the purpose for which such areas are intended. The Board in its sole discretion shall determine the maintenance standard of the Common Areas and the exteriors of the Living Units. The FTSA shall have no obligation to perform any maintenance or repair to the interior or any Living Unit or any landscaping installed by an Owner without the FTSA's express agreement for such maintenance.

7.2 **Services.** The FTSA shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Project, including, without limitation, landscaping and garbage/trash removal services (unless provided by the city).

7.3 **Owner Maintenance.** Except for the areas maintained by the FTSA as outlined in Section 7.1 above, each Living Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Living Unit. Each Owner shall have the maintenance responsibilities regarding the Owner's Living Unit as set forth in the Maintenance Chart Attached hereto as Exhibit D, including the responsibility to maintain any attic space, foundation, patio posts, floor joists, and garage doors that are part of a Living unit. Such maintenance shall also include repair or replacement of window glass on such Owner's Living Unit and the repair or replacement of exterior stairs, landings, patios, sidewalks and driveways, and the portion of any utility lines that only serve that Living Unit and are located within the Living Unit. The FTSA shall have no obligation regarding maintenance or care of the interior of any Unit except as expressly covered by insurance or in the Maintenance Chart attached as Exhibit D, or elsewhere in this Declaration. No Owner shall attach anything to the exterior of their Living Unit without the prior written consent of the Board. Each Owner shall be responsible for performing all snow removal on the sidewalk and driveways located on their Lot or Limited Common Area.

Notwithstanding the foregoing the FTSA shall be responsible to maintain the landscaped areas of the Limited Common Areas. However, the FTSA shall not be responsible to maintain any unapproved landscaping nor included within the original construction of the Project, except at the discretion or approval of the Board.

Owners shall be responsible to maintain, repair, and replace non-perimeter fences installed by a Lot Owner, and which are not part of the Project's original construction but which have been approved by the Board. In the event, the backyard portion of a Lot or Limited Common Area is not enclosed by a fence upon initial construction, the FTSA may grant permission for an Owner to enclose such area with approved fencing; but, such approval must be made in writing at the discretion of the Board. No approval to enclose the Limited Common Area shall be granted unless the Owner agrees to cover the cost of construction and any necessary alterations to the existing area, as the Board so determines; and, includes a gate to enable the FTSA to maintain landscaping within the bounded area as provided herein. In the event an Owner fails to provide unrestricted access to the landscaped area within an enclosed fence, the FTSA shall have no obligation to maintain, repair, or replace such areas while access is restricted, to maintain, repair, or replace landscaping, irrigation systems, or any other unmaintained or damaged property arising out of or resulting from the Owner's failure to provide unrestricted access.

The cost and responsibility to maintain, repair, and replace any portion of such non-perimeter fence, which serves, benefits, or bounds one Lot or backyard Limited Common Area shall be borne exclusively by the Owner bounded thereby. When such non-perimeter fences serve, benefit or otherwise mark a boundary of two or more Lots or backyard Limited Common Areas, the responsibility and cost to maintain, repair and replace the shared portion of such fences shall be borne pro rata by all Owners of backyard Limited Common Areas bounded thereby.

Further descriptions of Owner maintenance, repair and replacement responsibilities are contained in the maintenance allocation chart attached as Exhibit D.

7.4 **Owner Maintenance Neglect.** The FTSA shall have the power and authority without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon; but only if the Owner fails to maintain and repair such Lot or Improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this

Declaration or any Rules of the FTSA. All costs incurred by the FTSA shall be assessed to the Owner as an Individual Assessment. The Board shall have the sole authority and discretion to decide whether an Owner has failed to meet its maintenance obligations. Except as necessary to prevent personal injury or property damage in an emergency, the FTSA shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein. All costs incurred by the FTSA in remediating Owner maintenance neglect shall be an Individual assessment against the Owner's Lot as provided in Article V.

7.5 **Maintenance Caused by Owner Negligence.** If the need for maintenance or repair of Common Areas or Limited Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the FTSA and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth above) to which such Lot is subject.

## ARTICLE VIII

### INSURANCE

**NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.**

8.1 **Insurance.** The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The FTSA may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, imbedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

8.2 **Property Insurance.**

1) The FTSA shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Living Units, fixtures, and building services equipment as provided in the Act. The FTSA may maintain broader coverage if afforded by the insurance contract.

a) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Living Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Living Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

- b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage
- c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Living Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
- d) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

(2) **Owner Responsibility for Payment of Deductible.** If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

- (a) The Association's policy provides primary insurance coverage, and:
  - i) the Owner is responsible for the Association's policy deductible; and
  - ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
- (b) An Owner that has suffered damage to any combination of a Living Unit or a Limited Common Area appurtenant to a Living Unit ("Living Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Living Unit Damage ("Living Unit Damage Percentage") for that Living Unit to the amount of the deductible under the Association's property insurance policy; and
- (c) If an Owner does not pay the amount required under Subsection b) above within 30 days after substantial completion of the repairs to, as applicable, the Living Unit or the Limited Common Area appurtenant to the Living Unit, the Association may levy an assessment against the Owner for that amount.

(3) **Claims Under the Deductible.** If, in the exercise of its business judgement, the Board determines that a claim is likely not to exceed the Association's policy deductible:

- (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible;
- (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible; and
- (c) the Association need not tender the claim to the Association's insurer.

(4) **Deductible Notice.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide any increase in the deductible , it shall be responsible for paying any increases amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

(5) The Association shall have no obligation to obtain or maintain any insurance covering Owner's personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

8.3 **Comprehensive General Liability (CGL) Insurance.** The FTSA shall obtain CGL insurance insuring the FTSA, the agents and employees of the FTSA , and the Owner's, against liability incident to the use, ownership or maintenance of the Common Area or membership in the FTSA. The coverage limits under such policy shall not be less than one million dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the FTSA or another Owner.

8.4 **Director's and Officer's Insurance.** The FTSA shall obtain Directors' and Officers' liability insurance protecting the Declarant, the Board, the officers and the FTSA against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

8.5 **Theft and Embezzlement Insurance.** The FTSA shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operation and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board of Directors members of the FTSA, (b) employees and volunteers of the FTSA, (c) any Manager of the FTSA, (d) officers, directors, and employees of any Manager of the FTSA, and (d) coverage for acts.

8.6 **Workers Compensation Insurance.** The Board of Directors shall purchase and maintain in effect worker's compensation insurance for all employees of the FTSA to the extent that such insurance is required by law and as the Board deems appropriate.

8.7 **Certificates.** Any insurer that has issued an insurance policy to the FTSA shall issue a certificate of insurance to the FTSA , and upon written request, to any Owner or Mortgagee.

8.8 **Named Insured.** The named insured under any policy of insurance shall be the FTSA; and the Declarant shall be listed by name as an additional insured under any and all policies of insurance. The Declarant and each Owner shall also be an insured under all property and CGL insurance policies.

8.9 **Right to Negotiate All Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the FTSA's property insurance policy are payable to an Insurance Trustee if one is designated, or the FTSA, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the FTSA shall hold any insurance proceeds in trust for the FTSA, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be

repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the FTSA. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property had been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Living Units. Each Owner hereby appoints the FTSA, or any Insurance Trustee, as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

- 8.10 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the entire voting interest of the FTSA, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the FTSA shall enter an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.
- 8.11 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the FTSA and under direct authorization of the FTSA, and Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 8.12 **Waiver of Subrogation Against Owners and FTSA.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Declarant, the FTSA and the Owners and their respective affiliates, agents and employees.
- 8.13 **Applicable Law.** This Declaration is specifically subjecting the FTSA to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this FTSA.

## ARTICLE IX

### USE RESTRICTIONS

- 9.1 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and living units.
- 9.2 **Use of Lots and Living Units.** All Lots are intended to be improved with single-family living units and are restricted to such use. Except as may be approved to the contrary, each living unit shall be used only as a single-family living unit. No gainful occupation, business, trade, or other nonresidential use shall be conducted on any Lot or living unit without the prior written consent of the Board and applicable government entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that: only normal residential activities would be observable outside of the living unit; the business activity does not involve persons coming on to the project who do not reside in the Project; the business activity does not involve the solicitation of Occupants or Owners; the business will not result in the increase of the cost of the FTSA's insurance; and that the activities would not be in violation of applicable local ordinances.
- 9.3 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, living unit, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, living units, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid

laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the FTSA's insurance or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof.

9.4 **Recreational Vehicles.** No boats, jet skis, snowmobiles, trailers, motorhomes, large trucks, commercial vehicles, RV's or the like belonging to Owners or other Occupants of the Project shall be parked within the Project for a period exceeding forty-eight (48) hours unless parked within the Owner's enclosed garage. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot, street or other Common Areas, except for emergency repairs to vehicles. The Board is authorized to adopt Rules that vary or expand upon the restrictions set forth in this Section.

9.5 **Pets.** No more than one (1) pet may be kept on any single Lot, and no pet may be kept on a Lot that weighs more than 60 lbs. Within 30 days of the time a pet occupies a living unit, the Owner of the living unit shall register the pet with the Board using the Association's pet registration form. If an Owner fails to register a pet that has occupied a living unit for more than 30 days, the FTSA may fine that Owner \$200 per month until the pet is registered. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including but not limited to restrictions on the types of pets, additional requirements for registration with the FTSA, and noise limitations. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules adopted by the Board from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Limited Common Area of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passerby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Areas or Limited Common Area of another Member and shall be leashed or restrained whenever outside a living unit. The FTSA may levy Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet, including burn spots in the lawn from urine.

9.7 **Nuisances.** No resident shall create, maintain, or permit a nuisance in, on or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance. A nuisance includes but is not limited to, the following.

- 1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- 2) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- 3) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board;
- 4) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the
- 5) The creation of maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

- 6) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;
- 7) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the FTSA by other residents, their guests or invitees;
- 8) Too much noise in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m., or use of outside speakers or amplifiers;
- 9) Too much traffic in, on or about any Lot or Common Area, especially after 10:00 p.m. and before 7:00 a.m.;
- 10) Allowing a pet to be unleashed while outside of the living unit or fenced patio;
- 11) Continuous barking, meowing, or other animal noises; and
- 12) Allowing a pet to urinate or defecate in the Common Areas or failing to clean up immediately any feces deposited by a pet in the Common Area.

**9.8 Smoking.** No Owner, family member of an Owner, tenant, lessee, resident, occupant, guest, business invitee, visitor or any other person (collectively referred to as "Resident") shall smoke cigarettes, electronic cigarettes, cigars, or any other tobacco product, marijuana, illegal substance, or any other substance that emits smoke, including vaping, anywhere within the FTSA's Common Area or Limited Common Area that is within 25 feet of a Unit. This prohibition shall include but not be limited to Common Areas, enclosed Common Areas within the Project and all porches, patios and parking areas. The term "smoke", "smoking" or "tobacco" as used herein includes the inhaling, exhaling, burning, or carrying of any lighted cigarette, cigar or other tobacco product, vaping, marijuana, illegal substance, or any other substance or item that emits smoke or a smoke-like substance.

**9.9 Signs.** The FTSA may regulate and restrict signs in the Project to the extent permitted by law. The Board may adopt Rules for the regulation of signs. Unless otherwise designated in the Rules, lawn signs are prohibited, except "For Sale" or "For Rent" signs that may be placed outside the main entry of the living unit or as directed by the Board. All other signs may only be erected or maintained on the Project, whether in a window or otherwise, with the prior written approval of the Board of Directors. Signs may not exceed 18" X 24" in size and may only be posted into the ground with wire or stakes not more than 1' diameter.

**9.10 Trash Containers and Collection.** All garbage and trash shall be placed and kept in common dumpsters within the Project. No garbage, trash or refuse of any type may be placed in any dumpster that is visible above the dumpster or is placed outside.

**9.11 Parking.** No vehicles may be parked on the streets within the Project. Owners, Occupants, and tenants must first use their garages before other vehicles may be parked outside of the garage. No Occupant of the Project may park their vehicle in any of the guest parking stalls within the Project. No vehicle may be parked in the guest parking area for more than 24 consecutive hours. Vehicles shall not be parked at an entrance to or in front of a garage or walkway or at any other location within the Project, which would impair vehicular or pedestrian access, or show removal. Common Area parking stalls (if any) shall be subject to and governed by FTSA Rules and may be assigned by the Board. The FTSA may charge a fee for the use of any Common Area parking stalls, which are intended to be used as vehicle parking spaces only and are restricted to such use. The Board may adopt additional Rules relating to the parking of vehicles within the Project, including, without limitation: the size and dimensions of the vehicles parked within the

Project; the admission and temporary parking of vehicles within the Project; the use of the undesignated parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Board; the right to remove or cause to be removed any vehicles that are improperly parked; the time visitor spaces may be used; and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.

- 9.12 **No Patio/Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture and portable barbecue grills in good condition which may be maintained on backyard patios. Said patio furniture shall conform with standards set by the FTSA.
- 9.13 **Leases.** The leasing of living units is permitted. The Board may adopt Rules to regulate the leasing of living units which may include, but are not limited to: requiring a copy of each lease to be provided to the Board, reporting of name and contact information for all adult tenants, reporting of vehicle information of the tenants, and any other information deemed necessary by the Board. Unless otherwise modified by FTSA Rule, the following leasing restrictions shall apply: no Owner shall be permitted to lease his/her living unit for transient, hotel, or seasonal purposes; all leases shall be for an initial term of no less than six (6) months; daily or weekly rentals are prohibited; no Owner may lease individual rooms to separate persons or less than his or her entire living unit; and all leases shall provide that the tenant is subject to and shall abide by all Governing Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within 10 days after delivery of written notice of the creation of a nuisance or violation of the Governing Documents by a tenant, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. If the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the FTSA the authority to do so.
- 9.14 **Solar Energy Systems.** Solar energy systems and attendant equipment shall be prohibited from being constructed or installed in the Project. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Project, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot, living unit, or townhome buildings. Solar panels or other equipment shall not be installed so as to be visible from the streets in the Project without prior approval from the FTSA as a variance. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. If an approved solar energy system (installation, operation, maintenance, or otherwise) causes costs to the FTSA, then the Board may allocate these costs to the Owner who requested or benefit from the installation as the Board in its sole discretion determines. The costs arising under this Section shall be assessed and collected as an Individual Assessment. The FTSA or the Board shall have the sole discretion to determine compliance with the Design Guidelines and this Section.
- 9.15 **Satellite Dishes and Antennas.** Satellite dishes and television antennas are not permitted.
- 9.16 **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (i) either that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (ii) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the FTSA or other Owners of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is not inconsistent with the Act.

## ARTICLE X

### ARCHITECTURAL CONTROLS

10.1 **Architectural Control Committee.** The Board may appoint a three (3) member Architectural Control Committee, the function of which shall be to ensure that all improvements and landscaping within the Project harmonize with existing surroundings and structures. The ACC need not be composed of Owners. If the ACC is not appointed, the Board shall perform the duties required of the ACC. The Declarant shall act as the ACC during the Period of Declarant Control.

10.2 **Architectural Controls.** To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite, and designs shall be limited to those approved by the ACC. In the event of any reconstruction of an improvement or a residential Living Unit due to a casualty, the design, quality, and appearance of the reconstructed home shall be substantially the same as the structure initially built, unless otherwise approved by the ACC. No landscaping, grading, excavation, building, fence, wall, residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications, have been approved in writing by the ACC. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade within the Project, shall be subject to the prior written approval of the ACC. Once approved by the ACC, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the ACC. Subsequent to receiving approval of the ACC and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit, as needed, from the city.

Except for the initial construction authorized by Declarant, no construction, reconstruction, or modification of a home or landscaping may commence without approval by the ACC of the working, drawings including, but not limited to, the following:

- 1) A site plan to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations of floors from a designated point on the street.
- 2) Detailed floor plans showing dimensions and measurements.
- 3) Detailed elevations, indicating all materials and colors and showing existing and finished grades.
- 4) Detailed sections, cross and longitudinal.
- 5) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights etc.

Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence. The ACC will base its approval of construction plans, specifications, landscaping plans, and other alterations upon compliance with any design guidelines adopted by the FTSA. Any costs incurred by the FTSA in reviewing plans, specifications, or the like shall be assessed against the requesting Owner as an Individual Assessment. The ACC may also establish a reasonable fee for reviewing plans and specifications. Owners proposing improvements are also required to be in compliance with the Saratoga Springs Owners Association Architectural Control approvals.

10.3 **Design Guidelines.** The Board may adopt design guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the project.

- 1) The Declarant shall have sole and full authority to amend the design guidelines during the Period of Declarant Control. The Declarant's right to amend the design guidelines shall continue even if it delegates reviewing authority to the ACC. Upon termination or delegation of the Declarant's right to amend, the Board shall have the right to amend the design guidelines, if any.

- 2) The design guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board and ACC. The design guidelines may also designate landscaping requirements. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.
- 3) Amendments to the design guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the design guidelines as amended.

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

**10.5 Period of Declarant Control** shall mean the period of time during which the Declarant may enforce the Special Declarant Rights set forth in this Declaration. Such period of time shall commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Lots have been conveyed to purchasers; or (ii) the Declarant executes and records a written waiver of its right to control the FTSA. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then the Period of Declarant Control shall remain effective with respect to all retained Special Declarant Rights.

**10.6 Variances.** The ACC may authorize variances from compliance with any of the architectural provisions of this Declaration or design guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be in writing and must be signed by all of the members of the ACC (or Board if acting as the ACC). If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

**10.7 Liability for Damages.** The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it made pursuant to this Article.

## ARTICLE XI

### ENFORCEMENT

**11.1 Enforcement of Governing Documents.** The FTSA, Declarant, or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration and other Governing Documents, including the right to prevent any violation of such and the right to recover damages and other sums for such violation(s). The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorney fees. Occupants, guests, and invitees shall be personally liable for any fine assessed as a result of their action in violation of the provisions of the Governing Documents. Failure to enforce any covenant or restriction within the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE XII

### SPECIAL DECLARANT RIGHTS

**12.1 Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- (1) Any improvement shown on the Plat or included in the Project;
- (2) Any other buildings, structures, or improvements that Declarant desires to construct in the Project, or any other real estate owned by Declarant, regardless of whether the same ever becomes part of the Project.

**12.2 Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights, which shall remain in effect during the entire Period of Declarant Control, or for the maximum period allowed by law:

- (1) the right to maintain sales offices, model living units, and signs advertising the Project or any living unit at any location in the Project;
- (2) the right to use casements through the Common Areas as set forth in this Declaration;
- (3) the right to dedicate the roads and streets within the Project;
- (4) the right to convert any part of the Project to a different regime of residential ownership;
- (5) the right to create or designate additional Common Area or Limited Common Area within the Project;
- (6) the exclusive right to act as the Board of Directors, or appoint or remove board Members in Declarant's sole discretion, during the Period of Declarant Control;
- (7) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- (8) the right to set all assessments for the FTSA including annual, special, and individual assessments;
- (9) the right to set all fines and fees for the FTSA including but not limited to, collection fees, architectural review fees, and fines for violations of FTSA Rules;
- (10) the exclusive right to amend the Declaration, Bylaws, and Rules of the FTSA without approval from any Members;

- (11) the right to exert any right allowed to the Board or the FTSA pursuant to the Act and this Declaration;
- (12) the right to make and adopt FTSA Rules without being subject to the requirements of Utah Code 57-8a-217; and
- (13) pursuant to Utah Code 57-8a-211(10), Utah Code 57-8a-211(2) through (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund and Reserve Fund during the Period of Declarant Control.

12.3 **Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the FTSA or any of the Owners.

12.4 **Interference with Special Declarant Rights.** Neither the FTSA nor any Owner may take any action or adopt any Rules that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

12.5 **Limitation on Improvements by FTSA.** Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the FTSA nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

12.6 **Transfer of Special Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the Utah County Recorder.

12.7 **Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and living unit prior to the contracting for the conveyance of the Lot to a purchaser.

12.8 **Period of Declarant Control.** Shall mean the period of time during which the Declarant may enforce the Special Declarant Rights set forth in this Declaration. Such period of time shall commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Lots have been conveyed to purchasers; or (ii) the Declarant executes and records a written waiver of its right to control the FTSA. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then the Period of Declarant Control shall remain effective with respect to all retained Special Declarant rights.

12.9 **Easements Reserved to Declarant.**

- 1) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated as an easement area over the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.
- 2) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.
- 3) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.
- 4) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.
- 5) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Declarant.
- 6) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

12.10 **No Modification of Declarant Rights.** The Special Declarant Rights in this Declaration or other Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until at least six (6) years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempt to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

## ARTICLE XIII

### RIGHTS OF FIRST MORTGAGE

13.1 **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for all Assessments levied while it holds title to the Lot.

13.2 **Notice of Default by Owner.** In the event an Owner neglects, for a period of sixty (60) days or more, to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the FTSA, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.

13.3 **Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds of condemnation awards for losses to or a taking of Common Areas.

## ARTICLE XIV

### RIGHT OF ENTRY

14.1 **Right to Enter Lots and Living Units.** The FTSA acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice of at least forty-eight (48) hours to enter upon or into any Lot or living unit, without trespass, and regardless of whether or not the Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs or correct any violation of any of the Declaration or Rules, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Article V. Notice shall not be necessary in case of an emergency originating in or threatening such living unit or any other part of the Project, including the sound or sight of running water in a living unit, the smell or sight of smoke in a living unit, abnormal or excessive noises, and foul smell. Owners shall also maintain up-to-date emergency contact information records with the FTSA, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the FTSA as a result of entering a living unit under this Section and shall defend, indemnify and hold harmless the FTSA for all damages related to such entry, except for such damages resulting from intentional or willful misconduct.

## ARTICLE XV

### REINVESTMENT FEE

15.1 **Adoption of Reinvestment Fee.** The FTSA hereby adopts a Reinvestment Fee. The amount of the Reinvestment Fee shall not exceed 0.5% of the value of the unit being sold. The Reinvestment Fee shall be paid by the purchaser of a unit whenever a unit is sold, transferred, or conveyed to a new owner.

15.2 **Amount of Reinvestment Fee.** The Reinvestment Fee shall initially be in the amount of \$250.00. By written resolution, the Board is authorized to increase or decrease the amount of the Reinvestment Fee,

but in no event shall the Reinvestment Fee exceed the amount of 0.5% of the value of the unit being transferred.

- 15.3 **Increases.** If the Board determines that an increase in the amount of the Reinvestment Fee is justified, it shall file for record in the office of the Utah County Recorder an amendment to this Amendment, in the form of a Board Resolution, setting forth the amount of the new Reinvestment Fee.
- 15.4 **Runs with the Land.** The Reinvestment Fee and the covenant to pay the Reinvestment Fee runs with the property described in Exhibit A and is intended to bind successors in interest and assigns of the real property described in Exhibit A, attached hereto.
- 15.5 **No Additional Reinvestment Fees.** The existence of this Reinvestment Fee precludes the imposition of an additional Reinvestment Fee on the property described in Exhibit A, attached hereto, however may be in addition to any Reinvestment Fee charged by the Saratoga Springs Owners Association.
- 15.6 **Duration.** The duration of the Reinvestment Fee covenant is for a period of 50 years.
- 15.7 **Purpose.** The purpose of the Reinvestment Fee required to be paid herein is for the use and improvement of the FTSA's Common Areas and the other areas the FTSA is required to maintain.
- 15.8 **Exceptions.** The FTSA Reinvestment Fee shall not be enforced in the following circumstances or situations:
  - 1) an involuntary transfer;
  - 2) a transfer that results from a court order;
  - 3) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;
  - 4) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution or;
  - 5) the transfer of burdened property by a financial institution, except, a financial institution shall be required to pay the Association's costs directly related to the transfer of the burdened property in an amount of \$250.

## ARTICLE XVI

### AMENDMENTS

- 16.1 **Amendments by Declarant.** Until after the termination of the Period of Declarant Control, the Declaration and the Plat may be amended solely by the Declarant without any additional approval required. In addition, during the Period of Declarant Control, no other amendment shall be valid or enforceable without the Declarant's prior written consent.
- 16.2 **Amendments by FTSA.** After the termination of the Period of Declarant Control, this Declaration may be amended upon the affirmative vote of at least fifty-one percent (51%) of the voting interests of the FTSA. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Utah County Recorder. In such instrument, the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature used for voting shall be required. Notwithstanding, the

foregoing, the Members' authority to amend Articles XII and XVII of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles XII and XVII shall be null and void unless such amendment is in compliance with the amendment provisions and restrictions therein.

## ARTICLE XVII

### DISPUTE RESOLUTION

**17.1 Introduction.** Prior to purchasing a Lot, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Lot and living unit the Owner is purchasing regarding any aspect of the Project. Moreover, if any warranty is provided, it identifies only those items warranted by the Declarant or the builder. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty is any warranty is provided, and having paid market price for a Lot in the condition the Lots and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any other builder or subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners by purchasing a Lot and the Declarant agree and acknowledge that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners, as set forth herein. In addition, the FTSA and the Owners agree that they take ownership and possession of the Lots, living units, and Common Areas AS IS, with no warranties of any kind except otherwise required as matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or habitability, to the full extent allowed by law.

**17.2 Alternative Dispute Resolution Without Limitation.**

- (a) **Bound Parties.** The Declarant, the FTSA, the Owners, and the officers, directors, managers, members, employees, representatives, agents, successors, and assigns of any of the foregoing (collectively, "Bound Parties"), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Lots that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 17.3 in a good faith effort to resolve such Claim.
- (b) **Claims.** As used in this Article, the term "Claim" means any claim, grievance, or dispute arising out of or relating to:
  - (i) the interpretation, application, or enforcement of the Governing Documents;
  - (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;
  - (iii) Any allegation that a condition in any of the Lots, living units, or Common Area is a construction defect;
  - (iv) Any disagreement as to whether an alleged construction defect has been corrected;

- (v) Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any dispute;
- (vi) the design or construction of improvements on the Project, other than matters of aesthetic judgement to be determined by the FTSA or ACC under the Design Guidelines and other provisions of Article X hereof, which shall not be subject to review and shall not be subject to this Article.
- (c) **Exclusions from Definition of Claims.** The following shall not be considered "Claims" unless all Parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 17.3:
  - (i) any suit by the FTSA to collect assessments or other amounts due from any Owner;
  - (ii) any suit by the FTSA to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article X of this Declaration (relating to the Design Guidelines);
  - (iii) any suit that does not include the Declarant, any affiliate of the Declarant, or the FTSA as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;
  - (iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 17.3;
  - (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 17.3(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article;
  - (vi) any suit of dispute between (a) Declarant or its affiliates and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by Declarant or its affiliates, in connection with the Project;
  - (vii) any suit or dispute involving a governmental entity as a party.

### 17.3 **Dispute Resolution Procedures.**

- (a) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:
  - (i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;
  - (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
  - (iii) the Claimant's proposed resolution or remedy
  - (iv) the person alleged to be responsible for the acts giving rise to the Claim shall have six months to cure or resolve the Claim; and
  - (v) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim
- (b) **Right to Cure.** For any Claim arising from a dispute over the construction of improvements within the Project, the Claimant shall provide Respondent six months to rectify, alter or fix the claimed

defect(s) in the improvements. The expiration of this six-month cure period shall be a prerequisite to Claimants ability to initiate litigation as permitted under Section 17.4 below. For all Claims involving alleged defects in construction, the negotiation mediation and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.

- (c) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.
- (d) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the FTSA (if the FTSA is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.
  - (i) **Waiver of Claim for Failure to Appear or Participate.** If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.
  - (ii) **Termination of Mediation Proceedings.** If the parties do not settle the Claim within 30 days after the submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.
  - (III) **Costs of Mediation.** Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.
- (e) **Settlement.** Any Claim settlement through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportion) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

17.4 **Initiation of Litigation by FTSA.** The requirements of this Section are intended to be in addition to those requirements set forth in Section 57-8a-228 of the Act. After expiration of the Period of Declarant Control, the FTSA may not bring a legal action against a Declarant, a Board of Directors, an employee, and independent contractor, an agent of the Declarant, or the previous Board of Directors related to the Period of Declarant Control unless:

- (a) The Right to Cure period set forth in Section 17.3(b) above has expired;
- (b) the legal action is approved in advance at a meeting by Owners holding at least 51% of the total allocated voting interests of the Owners in the FTSA;

- (i) Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received the information required by Section 17.5(a) and (b) below.
- (c) the FTSA provides each Owner with the items described in Section 17.5(a) and (b), below;
- (d) the FTSA establishes a trust account, described in Section 17.5(c) below; and
- (e) the FTSA first goes through the procedures described in Section 17.3 above, and giving notice and an opportunity to resolve the dispute that is the basis of the Claim and proposed legal action.
- (f) The procedures and approval required in the preceding subsections (a) through (c) shall not be required for actions or proceedings:
  - (i) initiated by Declarant during the Period of Declarant Control on behalf of the FTSA;
  - (ii) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
  - (iii) initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);
  - (iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
  - (v) to defend claims filed against the FTSA or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Period of Declarant Control. Any such amendment shall also be approved by a vote of 51% of the total votes of the FTSA.

**17.5 Informed Vote.** Before the Owners, as Members of the FTSA may vote to approve any claim of legal action, the FTSA shall first provide each Owner with:

- (a) A written notice stating:
  - (i) that the FTSA is contemplating legal action;
  - (ii) the percentage vote required for approval of the litigation;
  - (iii) the date, time, and location of any Member meeting that has been scheduled to discuss the litigation or to vote on the approval of litigation;
  - (iv) a description of the claims that the FTSA desires to pursue in sufficient detail to permit each Member to reach an informed decision on the litigation matter; and
- (b) A written report from an attorney licensed to practice in Utah, which provides an assessment of:
  - (i) The likelihood that the legal action will succeed;
  - (ii) The likely amount in controversy in the legal action;
  - (iii) The likely cost of resolving the legal action to the FTSA's satisfaction; and
  - (iv) The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective lot buyer's ability to obtain financing for a lot due to a pending legal action.

- (v) In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.
- (c) Before the FTSA commences any legal action as authorized above, the FTSA shall:
  - (i) allocate an amount equal to 10% of the cost estimated to resolve the legal action not including attorney fees; and
  - (ii) place the 10% allocated funds in a trust account that the FTSA may only use to pay the costs to resolve the legal action.

Sections 17.4 and 17.5 do not apply to an Association that brings a legal action that has an amount in controversy of less than \$25,000.00.

- 17.6 **Strict Compliance Required.** Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions in this Article. The Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breeching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including experts and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.
- 17.7 **Warranties.** The FTSA shall have no right to seek the performance of or take assignment of any rights in any warranties against the Declarant, and the Owner shall have no right to assign any rights of any kind to the FTSA related to pursuing litigation against the Declarant.
- 17.8 **Common Area Actions.** Unless specifically set forth in this Declaration, no action may be brought by the FTSA, its Board of Directors, or its Officers on behalf of an Owner, as its respective interest may appear, with respect to any cause of action relating to the Common Areas and facilities.
- 17.9 **Amendment Limitation.** The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Period of Declarant Control.

## ARTICLE XVIII

### MISCELLANEOUS

- 18.1 **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the FTSA at the time notice is sent. If no email or mailing address has been provided, the physical address of the Lot owned by said Owner shall be used for notice purposes.
- 18.2 **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in

writing to such transaction from Members entitled to cast the required percentage of membership votes. The FTSA may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act.

- 18.3 **Dissolution.** The FTSA may be dissolved by the affirmative assent in writing from 90% of the Owners. Upon dissolution of the FTSA, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the FTSA assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article V.
- 18.4 **Interpretation and Severability.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.
- 18.5 **Covenants to Run with Land.** This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the FTSA and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration.
- 18.6 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the FTSA, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the common Area facilities and buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 18.7 **No Waiver.** Failure by the FTSA or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 18.8 **Condemnation.** If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot, the Board shall cause the award to be utilized for repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the FTSA. If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, then that Lot's interest in the Common Areas shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking.
- 18.9 **Security.** The Declarant or FTSA shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the FTSA may have an obligation to maintain, and the FTSA shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any in effectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this FTSA that the FTSA, Declarant, and the Board are not insurers of the safety or well-being of

Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the FTSA. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, DECLARANT, AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

18.10 **Golf Liability.** Given that Lots within the FTSA are located with property and Common Areas adjacent to the course, and despite following accepted course design principles in locating appropriate Lots, Owners should keep in mind that there will be times when stray golf balls may land or strike the land or structures of the living unit. This is an adherent risk of being located along the course, and Owners should design their use to account for this inevitability. Lot Owners within the FTSA herein specifically indemnify the developers of the Fairway Townhomes Project and golf course operators for any injury, liability or damages to their person or property, as a result of Lot location near the golf course.

18.11 **Effective Date.** The Declaration and any amendment hereof shall take effect upon its filing in the office of the Utah County Recorder.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

Dated this 3 day of August, 2023

GRANTOR:

SARATOGA SPRINGS DEVELOPMENT LLC

Lyon E. Wardley  
By Lyon E. Wardley, Manager

SUCCESSOR GRANTOR:

WARDLEY DEVELOPMENT SARATOGA INC.

Lynn E. Wardley  
By Lynn E. Wardley President

STATE OF UTAH Nevada )  
 ) ss.  
County of Clark eb )

On this 3 day of August, 2023, before me appeared Lynn E. Wardley and Lynn E. Wardley known to me as the signor of the above document did acknowledge to me that he is Manager of Saratoga Springs Development LLC and also President of Wardley Development Inc. and that he being fully authorized to execute the above document in behalf of the corporation, did attach his signature to the same.

EgutBGS

Notary Public

Residing at: Clark County

My Commission Expires: 1-24-2026

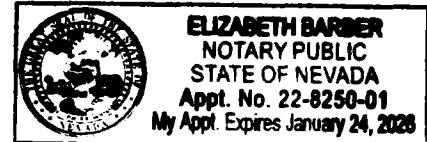
STATE OF UTAH Nevada (S)

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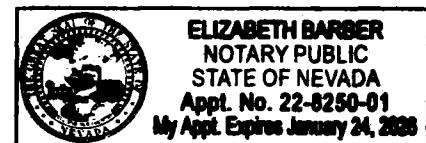
) ss.

County of Clark

)



On this 3 day of August, 2023, before me appeared Lynn E. Wardley known to me to be the signor of the above document, who did acknowledge to me that he did attach his signature to the same.



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Nevada  
County of Clark)

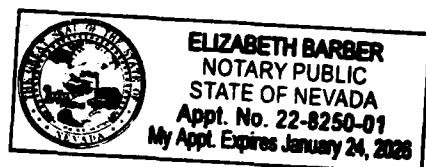
On 8.3.2023 before me, Elizabeth Barber  
(insert name and title of the officer)

personally appeared Lynn E. Wardley,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Elizabeth Barber (Seal)



## **EXHIBIT A**

### **LEGAL DESCRIPTION**

### **BOUNDARY DESCRIPTION**

A PARCEL OF LAND SITUATED IN THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED SOUTH 89°44'12" EAST ALONG SECTION LINE 1819.10 FEET AND NORTH 834.13 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 1; THENCE NORTH 23°43'00" EAST 224.90 FEET; THENCE SOUTH 77°24'28" EAST 369.14 FEET; THENCE SOUTH 83°45'57" EAST 356.77 FEET; THENCE SOUTH 28°09'57" EAST 153.88 FEET; THENCE ALONG THE NORTHERLY BOUNDARY OF FAIRWAY BOULEVARD THE FOLLOWING THREE COURSES AND DISTANCES: 1) SOUTH 55°50'00" WEST 269.63 FEET, 2) ALONG THE ARC OF A 372.00 FOOT RADIUS CURVE TO THE RIGHT 583.28 FEET THROUGH A CENTRAL ANGLE OF 89°50'17" (CHORD BEARS NORTH 79°14'51" WEST 525.34 FEET), AND 3) ALONG THE ARC OF A 261.50 FOOT RADIUS CURVE TO THE LEFT 175.77 FEET THROUGH A CENTRAL ANGLE OF 38°30'44" (CHORD BEARS NORTH 53°35'05" WEST 172.48 FEET) TO THE POINT OF BEGINNING.

CONTAINS: 5.938 ACRES WITH 55 UNITS.

## **EXHIBIT B**

### **BYLAWS OF FAIRWAY TOWNHOMES SUB ASSOCIATION**

These BYLAWS OF FAIRWAY TOWNHOMES SUB ASSOCIATION (FTSA) effective upon recording in the Utah County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

#### **RECITALS**

- A. The Association is organized for all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.
- B. These Bylaws are adopted to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project