

58/30

When recorded, mail to:

Bruce J. Nelson
Nelson Christensen Hollingworth & Williams
5292 College Drive, Suite 203
Murray, UT 84123

E 3469951 B 7987 P 380-409
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
04/13/2022 09:33 AM
FEE \$58.00 Pgs: 30
DEP RT REC'D FOR LAYTON CITY

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS AND
RESERVATION OF EASEMENTS**

15-108-0001
thru 0020

FOR **D**

FAIRFIELD PLACE TOWNHOMES

A TOWNHOME DEVELOPMENT

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATION OF EASEMENTS (the "**Declaration**") is made on this 25 day of March 2022, by **Fairfield Partners, L.L.C.**, a Utah limited liability company, ("**Declarant**"), with reference to the following facts:

A. Declarant is the owner of a certain tract of land located in Davis County, State of Utah, which property is more particularly described as follows:

See attached Exhibit "A"

For purposes of development and marketing, the above-described property is intended to be known as "Fairfield Place Townhomes". In this Declaration, the term "**Property**" shall refer to Property set forth on Exhibit "A" consisting of 19 Lots and Common Area as identified in Exhibit "B", (the "**Plat Map**").

B. Declarant intends to improve the Property by construction thereon of certain residential improvements and common facilities, and to establish thereon a Townhome Development, to be managed, operated, and maintained by an incorporated Association of Owners, for the benefit of the Property as a whole.

C. The development of the Property shall be hereinafter refers to the "**Project**". The Owner of each of the Units shall receive fee title to their individual Lot and the residential dwelling thereon, together with all rights associated with membership in FAIRFIELD PLACE TOWNHOMES OWNERS ASSOCIATION, INC. (the "**Association**").

D. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said Units and the Owners thereof.

E. Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and the Project, and every part thereof, in accordance with the plan for the improvement, sale, and operation of the Property as a townhome development. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant and its successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property or the Project.

Article I.
DEFINITIONS

Section 1.01 Unless otherwise expressly provided, the following words and phrases, when used in this Declaration and in the Project Documents, shall have the following meanings:

- (a) **Articles:** the Articles of Incorporation of the Association, as amended from time to time.
- (b) **Assessment:** that portion of the cost of maintaining, improving, repairing, operating, and managing the Property which is to be paid by the Unit Owners as determined by the Association under this Declaration. Assessments may be designated as Regular Assessments, Extraordinary Assessments, or Special Assessments, as those terms are more specifically defined in Article 6 of this Declaration.
- (c) **Association:** FAIRFIELD PLACE TOWNHOME OWNERS ASSOCIATION, INC., a Utah nonprofit corporation, formed or to be formed by Declarant, the members of which shall be the Owners of Units in the Project.
- (d) **Board or Board of Directors:** the governing body of the Association.
- (e) **Building:** shall mean and refer to a building or buildings containing Units and comprising a part of the Property.
- (f) **Bylaws:** the Bylaws of the Association as amended from time to time. The initial Bylaws shall be as adopted by the incorporating members of the Board of Directors.
- (g) **Common Areas or Common Facilities:** all the real property and improvements located within the Property, other than the Lots and Dwellings, including without limitation, all landscaped areas, driveways, and private roadways and walkways, all of which shall be

managed by the Association for the common use and enjoyment of all Owners. The individual Owners within the Project shall own an undivided interest in the Common Areas and Common Facilities as tenants in common, each with an equal undivided interest therein. The undivided interest in the Common Areas shall not be separated from the Unit to which it appertains. The Common Area is designated as such on the Plat Map, as defined below. Common Areas shall also include the private storm sewer, sanitary sewer lines, sewer laterals and other related improvements (the "**Sewer Improvements**") and culinary water and secondary water facilities within the Common Areas to the point that said sewer facilities reach the public sewer system.

- (h) **Common Expenses:** the actual and estimated expenses of maintenance improvement, repair, operation, insurance, and management of the Common Area and of the exterior and structural components of the Dwellings, expenses of operating and maintaining the private roadways through the Project, expenses of administration of the Association, the costs associated with operating and maintaining of the private utilities and storm drain and Low Impact Development facilities through the Project and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents. Without limiting the generality of the foregoing, Common Expenses shall also include: all commonly metered utility charges for the Property; compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all maintenance, gardening, security and other services benefitting the Common Area; the costs of fire insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property and the directors, officers and agents of the Association; and any other costs incurred by the Association pursuant to its authority for any reason whatsoever, for the common benefit of the Owners.
- (i) **Declarant:** Fairfield Place, L.L.C., a Utah limited liability company, and its successors-in-interest and assigns with respect to the Property, but shall not include members of the public purchasing completed Units.
- (j) **Declaration:** this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as it may be amended from time to time.
- (k) **Dwelling:** that portion of any building (including garage and other improvements) which is located on a single Lot and which is designed and intended for use and occupancy as a single-family residence.
- (l) **Improvements:** the improvements included in the Project are now or will be located upon the Property. The significant improvements contained in the Project include up to four (4) Buildings with garages, picnic areas, asphalt roadways, open parking spaces, concrete sidewalks or walkways and fencing. The location and configuration of the improvements referred to in the forgoing sentence are depicted on the Plat Map. The Project also contains other improvements of a less significant nature, such as outdoor lighting and the landscaping. The Plat Map shows the number of Units, which are contained in the

Buildings in the Project. Said Buildings are composed of the following materials: wooden frame with load and non-load bearing walls studded with wood, first floor of concrete, second floor of wooden joists; combination truss-rafter type roof; surfaced with asphalt shingle roofing; interior walls surfaced with gypsum board; and exterior surfaced with stucco and stone or brick. The improvements shall also include any private utilities and storm drain and LID facilities.

- (m) **Limited Common Areas:** shall mean and refer to those Common Areas designated herein or in the Plat as reserved or designated by this Declaration for the exclusive use of a certain Unit or Units to the exclusion of the other Units and Owners. Each Unit shall include, as Limited Common Area, exclusive and appurtenant to such Unit, the driveways, porches, rear patio areas, as shown on the Plat.
- (n) **Lot:** any residential Lot shown on the Plat Map of the Project, created for the construction of a Dwelling. The term "Lot" does not include any portion of the Common Area.
- (o) **Member:** a person entitled to membership in the Association as provided herein.
- (p) **Mortgage:** includes a recorded mortgagee, deed of trust, real estate contract, or other instrument creating a security interest in any Unit.
- (q) **Mortgagee:** includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a mortgage on any Unit.
- (r) **Mortgagor:** includes a mortgagor, the trustor of a deed of trust, real estate contract vendee or other individual granting a security interest in any Unit.
- (s) **Owner or Owners:** the record holder or holders or entity title to or a contract vendee's interest in a Unit in the Project. This shall include any person having a fee simple title to any Unit, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. Further, if a Unit is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the "Owner", and the fee owner shall be considered a mortgagee.
- (t) **Person:** any natural person, corporation, partnership, association, trustee, or other legal entity.
- (u) **Plat or Plat Map:** the recorded map or maps prepared by or for Declarant showing the surface of the Property and the division thereof into Lots and Common Area, as amended and/or supplemented from time to time. The Property will be developed in multiple phases. Phase I shall consist of nineteen (19) multi-story "Town Homes" to be known as "Fairfield Place Townhomes," as provided herein and identified in the Plat Map.
- (v) **Project Documents:** this Declaration, the Plat Map, and the Articles and Bylaws of the Association, as each may be amended from time to time.

- (w) **Property or Project** (synonymous): the real property covered by this Declaration and all easements, rights and appurtenances belonging thereto, and all improvements erected or to be erected thereon.
- (x) **Unit**: all elements of individual ownership of a residential interest in the Project, including ownership of a Lot and the Dwelling thereon, a nonexclusive easement and right of use and enjoyment of the remainder of the Common Area, and all rights of membership in the Association.

Article II.

ASSOCIATION, ADMINISTRATION, MEMBERSHIP, VOTING RIGHTS

Section 2.01 Organization of Association. The Association is or shall be incorporated under the name of FAIRFIELD PLACE TOWNHOMES OWNERS ASSOCIATION, INC., in accordance with the requirements of the Utah Non-Profit Corporation Act.

Section 2.02 Duties and Powers. The duties and powers of the Association are those set forth in this Declaration, the Articles and Bylaws, together with the general and implied powers of a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of Utah may lawfully do and which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and Bylaws.

Section 2.03 Membership. The Owner of a Unit shall automatically, upon becoming the Owner of that Unit, become a Member of the Association, and shall remain a Member thereof until such time their ownership ceases for any reason, at which time their membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

Section 2.04 Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of their Unit, 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.

Section 2.05 Class of Membership, Voting Requirements. The Association shall initially have two (2) different classes of voting membership; Class A Members and Class B Members, as described herein and according to the Articles and Bylaws for the Association. As provided herein and such additional governing documents for the Association, reasonable allowance shall be made for a transition from initial total ownership and control by the Declarant to eventual ownership and control by the individual property owners and residents within the Project. The different classes

of voting membership shall be a mechanism to accomplish that objective and such other purposes as may be recognized and established under the Governing Documents of the Association.

Section 2.06 Class A Members. The Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to vote on all issues before the Association to, subject to the following:

- (a) One Vote. Each Unit shall have one (1) vote.
 - (i) Multiple Owners. When more than one (1) Person holds an interest in a Unit, the vote for such Unit shall be exercised as such Persons determine and advise the Secretary of the Association prior to any meeting. In the absence of such notice, the vote of the Unit shall be suspended in the event more than one (1) Person or entity seeks to exercise it.
 - (ii) Leased Unit. Any Owner of a Unit which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

Section 2.07 Class B Members. The Class B Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Units, and who is designated as such in a recorded instrument executed by Declarant. Prior to the Transition Events, as defined below, the Declarant shall have the exclusive right to appoint all members of the Board. The Class B Members shall originally be entitled to three (3) votes per Lot owned or to be developed. The Class B membership shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the following (the "Transition Events"):

- (a) Units Sold. One Hundred Twenty (120) days after the sale (meaning the execution and delivery of a deed to a Unit by Declarant to a person other than Declarant) of seventy-five percent (75%) of the Units (14 Units) in the Project; or
- (b) Three Years. Three (3) years from the date following the first conveyance of a Unit in the Building to a Unit purchaser after effective date of this Declaration; or
- (c) Election. When, in its sole discretion, Declarant so determines.

Section 2.08 Change to Class A Member. From and after the happening of the Transition Events, whichever occurs earlier, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Unit owned. At such time, the Declarant shall call a meeting, in the manner described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

Section 2.09 Membership Meeting. Regular and special meetings of Members of the Association shall be held with the frequency, and time and place, as are accordance with the provisions of the Bylaws of the Association.

Section 2.10 Board of Directors. The affairs of the Association shall be managed by a Board of Directors, which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the Association. Prior to the Transition Events, as defined in Section 2.07 above, the Declarant shall have the exclusive right to appoint all members of the Board of Directors.

Section 2.11 Use of Agent. The Board of Directors, on behalf of the Association, may contract with a professional management agent for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The term of any such contract shall comply with the restrictions set forth in the Bylaws.

Article III. RIGHTS IN COMMON AREA

Section 3.01 Common Area. The Common Area shall include all real property and improvements within the Property, other than the Lots and Dwellings, including without limitation, all landscaped areas, driveways, and private roadways and walkways, all of which shall be managed by the Association for the common use and enjoyment of all Owners. The individual Owners within the Project shall own the Common Area as tenants in common, each with an equal undivided interest therein. The Common Area shall be operated, maintained, and insured by the Association for the use and benefit of Owners of Units in the Project, subject to reasonable rules and regulations enacted according to the Bylaws. Each Unit Owner, through membership in the Association, shall have a nonexclusive right to use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the lawful rights of any other Unit Owners. The Declarant hereby reserves in itself and its successors-in-interest and assigns, all easements (and the right to grant further easements) over and onto the Common Area for ingress to and egress from the Project for the purpose of necessary construction, maintenance, or repair work in connection with the development, use, and occupancy thereof. Each Unit Owner shall also have the rights and easements granted pursuant to the rights set forth herein.

- (a) Limited Common Area. The exclusive right to use and occupy each Limited Common Area, as designated herein and on the Plat shall be appurtenant to and shall pass with the title of the Unit with which it is associated. Each Owner of a Unit is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas and facilities reserved exclusively for the use of the Unit, subject to the residual rights of the Association therein. It is anticipated that upon completion of construction, each Unit shall include, as Limited Common Area, the driveways, exclusive and appurtenant to such Unit, driveways, porches, rear patio areas, as shown on the Plat.

Section 3.02 Common Maintenance of Exclusively Owned Areas. As depicted in Exhibit "B", each of the Dwellings are situated on an individual Lot sharing a common wall(s) with other Units, which shall be exclusively owned by recorded title thereof. However, as a townhome development, it is intended that the yards of each Lot, including the driveways, porches, patios and Dwelling exterior shall at all times, be a uniform, well manicured and maintained

residential community with relatively low maintenance responsibilities for the individual owners and with reasonable assurances that all of the areas within the Project will be similarly well cared for and maintained. Therefore, it is agreed that the Association shall contract for regular property maintenance services to keep up the Building exteriors, structures and landscaping within the Project, including but not limited to the Common Area and the front yards and park strips of each Lot within the Project. The Association shall be responsible for the continual upkeep, repair, maintenance, and eventual replacement thereof.

Section 3.03 Partition of Common Area Prohibited. As provided in Section 3.1 hereinabove, the Owners shall each own an equal undivided interest in the Common Area as tenants in common. No Owner shall bring any action for partition or division of any part of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation, management, use, and enjoyment of the Common Area.

Section 3.04 Extent of Easements. The rights and easements of use and enjoyment of the Common Area created by this Declaration shall be subject to such rules and regulations as may be adopted by the Board of Directors according to the Bylaws. Without limiting the generality of the Board's authority to enact reasonable rules and regulations, such easements shall be subject to the following:

- (a) The right of the Board to suspend the rights and easement of any Member, and the persons deriving such rights and easements from any Member, for use and enjoyment of any recreational facilities located within the Common Area, for any period during which the payment of any Assessment against the Member and his Unit remains delinquent; provided, however, that any suspension for either nonpayment of any assessment or breach of any provision in the Project Documents shall not constitute a waiver or discharge of the Member's obligation to pay Assessments as provided in this Declaration;
- (b) The right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Area, and to consent to or otherwise cause the alteration or removal of any existing improvements on the Common Area for the benefit of the Members of the Association; and,
- (c) The right of the Association, acting through the Board, to consent to or join in the grant or conveyance of easements, licenses or rights of way in, on or over the Common Area for purposes not inconsistent with the intended use of the Property as a residential townhome development.

Section 3.05 Damage by Member. Each Member shall be liable to the Association for any damage to the Common Area (including damage to Sewer Improvements) not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence or willful misconduct of the Member, his guests, tenants, or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Area from the Member, or his or their respective family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance

maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Unit of the Member liable for the damage and may be enforced as provided hereby for the enforcement of any other Assessment.

Article IV.
Intentionally deleted.

Article V.
REPAIR AND MAINTENANCE

Section 5.01 Repair and Maintenance Rights and Duties of Association. Subject to the provisions in this Declaration pertaining to eminent domain and destruction of improvements, the Association shall paint, maintain, repair and replace the Common Area and all improvements and landscaping thereon, and the exteriors, including roof and the exterior structural components of all Buildings associated therewith, or shall contract for such maintenance, repair and replacement to assure that maintenance of such areas are in good condition, reasonable wear and tear excepted. However, the Association shall not be responsible for, or be obligated to perform those items of maintenance, repair or improvement, which are the responsibility of the Owners as provided in Section 5.02 below. However, in the event an Owner fails to maintain his Dwelling or to provide other maintenance or repair as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Property, the Board may notify the Owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event the Owner fails to carry out such maintenance within such period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary, lien his Unit for the amount thereof. For the purpose of performing any maintenance, repair or replacement as authorized by this Article, or for purposes of making emergency repairs necessary to prevent damage to the Common Area or to other Dwellings, or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association (and its agents and employees) shall have an irrevocable easement over and onto all portion of the Common Area, and shall also have the irrevocable right, after reasonable notice to the Owner, and at reasonable hours, to enter any Lot and/or Dwelling.

Section 5.02 Repair and Maintenance Rights and Duties of Owners. Except for those portions of the Property which the Association is required or elects to maintain and repair, each Unit Owner shall, at their sole cost and expense, maintain and repair all interior and non-structural components of their Dwelling, keeping the same in good condition, and shall repair all damage to the Common Area for which the Owner is responsible under Section 3.5 above. Additionally, each Owner shall maintain, repair and replace as necessary, all doors and windows (and appurtenant hardware and accessories) to their Dwelling, and any separate air conditioning, water heating, or other separate utility unit which services their Dwelling. Each Owner shall have the exclusive

right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding their Dwelling.

Article VI.
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

Section 6.01 Creation of the Lien and Personal Obligation of Assessments. The Declarant shall establish and the Association shall, at the time of its initial organization, adopt such operating budgets for the project as are reasonably necessary to commence such operations in the full execution of all of the Associations responsibilities provided hereunder. The Declarant, for each Unit owned within the Project, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following Assessments, which shall be established and collected as provided herein and in the Bylaws of the Association: (a) Regular Assessments;(b) Extraordinary Assessments; and (c) Special Assessments.

All Assessments, together with interest, costs, penalties, and actual attorneys' fees, shall be a charge and a continuing lien upon the Unit against which each Assessment is made. Each such Assessment, together with interest, costs, penalties, and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due. No Owner of a Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Unit as provided in herein. The Declarant shall have no responsibility for any charges for Lots Declarant still owns after ownership by others has reached a ninety percent (90%) level.

Section 6.02 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the, entire Project, for the improvement and maintenance of the Common Area, and for the common good of the Project. The Regular Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those portions of the Common Area and the exterior and structural components of all Dwellings which must be replaced on a periodic basis, creation of an adequate contingency reserve, major maintenance reserve, and/or sinking fund for maintenance and repairs of all Common Areas, including the private roadways, if any, located within the Project as shown on the official plat recorded in the office of the Davis County Recorder.

Section 6.03 Regular Assessments. Until the end of the Association's fiscal year immediately following the closing of the sale of the first Unit in the Project, the annual maximum Regular Assessment per Unit shall be such amount as is set forth in the Project budget prepared by Declarant, payable in monthly installments, or such other billing period as the Board determines from time to time. Each Unit's share for the first fiscal year shall also be prorated based on the number of months remaining in that fiscal year. Thereafter, the Board shall determine and fix the amount of the maximum annual Regular Assessment against each Unit at least sixty (60) days in advance of the start of each fiscal year; provided, however, that the maximum annual Regular Assessment may not be increased by more than twenty percent (20%) above the maximum annual

Regular Assessment for the immediately preceding fiscal year, without the vote or written assent of a majority of the voting power of the Association.

Section 6.04 Extraordinary Assessments. In addition to the Regular Assessments authorized above, the Board may levy, in any fiscal year, all Extraordinary Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or of any exterior or structural component of any Dwelling, or to defray any unanticipated or underestimated expense not covered by the Regular Assessment (and, where necessary, for taxes assessed against the Common Area); provided, however, and except as provided in the last sentence of this subsection 6.4, that the aggregate Extraordinary Assessments for any fiscal year shall not exceed ten percent (10%) of the budgeted gross expenses of the Association (excluding reserves) for that fiscal year, without the vote or written assent of over sixty percent (60%) of the voting power of the Association. Notwithstanding any language in this Declaration to the contrary, a one-time extraordinary assessment in an amount equal to two months' of the then-established monthly Association Assessment shall be assessed at the time of closing of the purchase of a Unit by the first Owner thereof, to establish a reserve fund for the Association.

Section 6.05 Special Assessment. In addition to the Regular and Extraordinary Assessments authorized above, the Board may levy Special Assessments (without limitation as to amount or frequency) against all individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Unit into compliance with the provisions of this Declaration and the Bylaws, including actual attorney's fees and costs.

Section 6.06 Allocation of Assessments, Limited Exemption of Declarant. Except for the initial exemption provided to Declarant as provided in this Section 6.06, all Units shall be assessed according to the percentages set forth on Exhibit "C". Notwithstanding the foregoing, Declarant's obligation to pay any Assessment for Units owned by Declarant shall not begin until such time as a Unit owned by Declarant is first occupied or Declarant no longer has control of the Association, whichever is earlier.

Section 6.07 Commencement of Assessment: Due Dates. Except as provided in Section 6.06 above, the Regular Assessments provided for herein shall commence as to all Units in the Project on the first day of the month following closing of the sale of the first Unit in the Project. Due dates of Assessment shall be the first day of each calendar quarter or such other billing period as the Board may determine from time to time. No notice of such Assessment shall be required other than an annual notice setting forth the amount or the periodic Assessment.

Section 6.08 Transfer of Unit by Sale or Foreclosure. The sale or transfer of any Unit shall not affect any Assessment lien, or relieve the Unit from any liability therefor, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Unit pursuant to foreclosure or by deed in lieu of foreclosure of a recorded first mortgage given in good faith and for value shall extinguish the lien of all such Assessments as to payments which became due prior to such sale or transfer

(except for Assessment liens arising prior to recording of the mortgage). Sale or transfer pursuant to mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Section shall be deemed to be Common Expenses collectible from all of the Units including the Unit for which the lien was extinguished. In a voluntary conveyance of a Unit, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the grantor up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such Assessment becoming due after the date of any statement.

Section 6.09 Enforcement of Assessment Obligation: Priorities: Discipline. All charges, fees and/or assessments due hereunder shall be due on the first (1st) day of the month. If any part of any Assessment is not paid and received by the Association or its designated agent within ten (10) days after the due date, an automatic late charge of Ten Dollars (\$10.00) shall be assessed and additional Ten Dollar (\$10.00) sums shall be assessed for each month or fraction thereof from the due date until the Assessment and all late charges are paid. Each unpaid Assessment shall constitute a lien on each respective Unit prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any institutional first mortgage of record made in good faith and for value. Such lien, when delinquent, may be enforced by sale by the Association, its attorney or other person authorized by this Declaration or by law to make the sale of said Owner's Unit, after failure of the Owner to pay such Assessment, in accordance with the provisions of Utah law applicable to the exercise of powers of sale in deeds of trust, or by judicial foreclosure as a mortgage, or in any other manner permitted by law. The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting Owner as allowed by law. Suit to recover a money judgment for unpaid Assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties including actual attorney's fees and costs, and may temporarily suspend the Association membership rights of a Unit Owner who is in default in payment of any Assessment, after notice and hearing according to the Bylaws.

Section 6.10 Taxes Assessed Against Association Common Areas or Personal Property. Pursuant to and consistent with Section 3.1 hereinabove, taxes assessed against the Common Area, or the personal property of the Association, shall be paid by the Owners through assessments from and collection by the Association rather than directly from the Owners.

Article VII.
EASEMENTS AND UTILITIES: COMMON WALLS

Section 7.01 Access, Use and Maintenance Easements. Declarant expressly reserves for the benefit of the Owners, reciprocal, non-exclusive easements for access, ingress and egress over all of the Common Area and for the use and enjoyment of all recreational facilities thereon, including any private streets or driveways in the Common Areas currently existing in the Property, or subsequently added to it, which easements shall be deemed granted by Declarant to the Owners and to the Association for so long as Declarant owns any interest in the Property. Subject to the provisions of this Declaration governing use and enjoyment thereof, the easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a Unit in the Project. Declarant also expressly reserves for the benefit of the Board of Directors and all agents, officers and employees of the Association, nonexclusive easements over the Common Area (including the Limited Common Area) and all Lots and Dwellings as necessary to maintain and repair the Common Area, and to perform all other tasks in accordance with the provisions of this Declaration. Such easements over the Common Area shall be appurtenant to, binding upon and shall pass with the title to, every Unit conveyed.

Section 7.02 Encroachments and Utility Easements. Each Unit within the Property is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction or shifting of any building, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments over adjoining Units or Common Area shall be permitted and that there shall be a valid easement for the maintenance of said encroachments so long as they shall exist.

Declarant also expressly reserves for the benefit of itself and its successors-in-interest and assigns, including the Association, easements over and under the entire Property (together with the right to grant and transfer the same) for the installation, repair, and maintenance of sanitary sewer, water, electric, gas, telephone, cable television, and other utility lines and services, as may be deemed appropriate to service the Project.

Section 7.03 Owners' Rights and Duties With Respect to Utilities. The rights and duties of the Owners of Units within the Project with respect to utilities shall be as follows:

- (a) Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air conditioning conduits, ducts, flues or other utility or service

connections are located or installed within the Project, which connections, or any portion thereof, lie in or upon or beneath Lots or Dwellings owned by other than the Owner of a Dwelling served by said connections, the Owners of any Dwellings served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Dwelling or to have the Association or utility companies enter upon the Dwellings in or upon or below which said connections, or any portion thereof lie, to repair, replace and generally maintain said connections as and when necessary.

- (b) Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air conditioning conduits, ducts, flues or other utility or service connections are located or installed within the Project, which connections serve more than one Dwelling, the Owner of each Dwelling served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his Dwelling.
- (c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board, which shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

Section 7.04 Owner's Rights and Duties With Respect to Common Walls.

- (a) General Rules of Law to Apply. The Owner of any Dwelling which shares a common wall with another Dwelling shall be deemed to own the one-half (1/2) of the wall nearest his Dwelling, and shall have an exclusive and perpetual easement over the remainder of the Common Wall for support and maintenance. 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.
- (b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- (c) Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the costs of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.
- (d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole costs of furnishing the necessary protection against such elements.

- (e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Lot and shall pass to such Owner's successors in title.
- (f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Article VIII.
RESIDENCE AND USE RESTRICTIONS

Section 8.01 In addition to all of the covenants contained herein, the use of the Property and each Unit therein is subject to the following:

- (a) Use of Individual Dwellings. No Dwelling shall be occupied and used except for single-family residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein. An Owner shall have the right to rent out their Unit to a tenant or tenants, under such terms and conditions as may be deemed appropriate by the Owner; provided that any tenant shall occupy the Unit subject to all terms and conditions of the Project Documents. No such lease shall be for a term of less than six (6) months.
- (b) Nuisances. No noxious, illegal, or offensive activities shall be carried on in any Dwelling, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Dwelling, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.
- (c) Use of Individual Dwellings. No Dwelling shall be occupied and used except for single-family residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein. An Owner shall have the right to rent out their Unit to a tenant or tenants, under such terms and conditions as may be deemed appropriate by the Owner; provided that any tenant shall occupy the Unit subject to all terms and conditions of the Project Documents. No such lease shall be for a term of less than six (6) months.
- (d) Signs. No Signs advertising Units for sale or rent may be displayed on the Property or on any portion of the Property, unless first approved by the Board or the Architectural Committee, and unless such signs comply with any and all local ordinances. Notwithstanding the preceding sentence, until all Units in all phases of the Project have been sold, the Declarant shall have the right to advertise Units for sale, provided Declarant complies with the requirements of Layton City with respect to such advertising.

- (e) Animals. No animals or birds of any kind shall be raised, bred, or kept in any Dwelling, or on any portion of the Property; except that no more than two (2) usual and ordinary household pets such as dogs, cats, or birds, may be kept, provided that they are not kept, bred or maintained for any commercial purposes and they are kept under reasonable control at all times. Any such dog shall be kept on a leash at all times when the dog is in the Common Area. Owners shall prevent their pets from soiling any portions of the Common Area and in the event a pet does soil a portion of the Common Area, the Owner or person in control of such pet shall immediately clean up after the pet. The Board may enact reasonable rules respecting the keeping of animals within the Project, including noise restrictions, and may designate certain areas in which animals may not be taken or kept, or they may require that specific animals not be allowed on any part of the Property. No pet allowed hereunder shall be larger than ten (10) pounds in weight. It is intended that all permitted pets shall be small household pets, to be kept indoors and not left outdoors overnight and such shall, at no time, become a nuisance to the other Owners within the Project.
- (f) Garbage and Refuse Disposal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. All garbage or trash receptacles, including recyclable containers, shall be stored in the garage except on trash collection days. Trash, garbage and other waste shall not be kept except in sanitary containers and shall be kept in the garage. No equipment, garbage cans, or storage piles may be kept outside of any Dwelling.
- (g) Radio and Television Antennas. No alteration to or modification of a central radio or television antenna system or cable television system, whichever is applicable, shall be permitted, and no Owner may be permitted to construct, use, or operate his own external radio, television antenna, or other electronic antennae without the consent of the Board. No Citizens Band or other transmission shall be permitted on the Property. Notwithstanding the foregoing, an Owner may install a small satellite dish on his Dwelling as long as such equipment is installed on the back of a Dwelling and not visible from the front of any Building.
- (h) Clothes Line. No exterior clothes lines shall be erected or maintained and (there shall be no outside laundering or drying of clothes.
- (i) Power Equipment and Car Maintenance. No power equipment or car maintenance of any nature shall be permitted on the Property. Provided however, car washing or polishing may be done, but only in the Limited Common Area appurtenant to that Unit.
- (j) Recreational Vehicles. No boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property shall be parked or stored in or upon any of the Common Areas or Limited Common Areas. Any boats, trailers, recreational vehicles, trucks or commercial vehicles belonging to Owners or other residents of the Property must fit within and be stored and kept within the Owner's garage.

- (k) Parking Restriction. No permanent parking shall be allowed in front of the garages of the Units. The garage cannot be used as personal or rented storage space, which forces the car(s) out of the garage. Said parking regulation shall be strictly enforced.
- (l) Window Covers. Curtains; and drapes (with a white lining), shutters, or blinds of a neutral color may be installed as window covers, subject to the Board's absolute discretion. No window shall be covered with aluminum foil or similar material. No window tinting or mullions shall be allowed without the prior written approval of the Architectural Committee.
- (m) Sculptures/Flags. No outdoor sculptures and/or flags shall be permitted except by written approval of the Architectural Committee. Nothing stated herein shall be deemed to be a prohibition on display of the flag of the United States of America in accordance with U.C.A. §57-27-102 and United States Code Title 4 Chapter 1.
- (n) Fences. The original fencing established and installed by Declarant as part of the original Project design shall be preserved and maintained by the Owners and by the Association, as the case may be according to the location of such fencing. Thereafter, all new and/or additional fencing must be approved by the Architectural Committee as provided herein.
- (o) 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.

Section 8.02 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 8 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit Owner shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold Declarant harmless therefrom.

Article IX.
INSURANCE

Section 9.01 Duty to Obtain Insurance: Types. The Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments), with such limits as may be considered desirable by the Board, but not less than One Million Dollars (\$1,000,000.00) in combined single limit coverage (taking into consideration the requirements of mortgagees), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any other property under its jurisdiction. The Board shall also cause to be obtained and maintained fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Area and all Dwellings and, if economically feasible, those portions of the Dwellings consisting of all fixtures, installations, or additions comprising a part of the Dwellings and all built-in or set-in appliances, cabinets and initial basic floor coverings, as initially installed or replacements thereof in accordance with the original plans and specifications for the Project, or as installed by or at the expense of the Owners. Such insurance shall be maintained for the benefit of the Association, the Owners, and the mortgagees, as their interests may appear as named insured; subject, however, to loss payment requirements as set forth herein. The Board of Directors shall purchase such other insurance as necessary, including, but not limited to, errors and omissions, directors', officers' and agents' liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall be deemed desirable for the Project.

Section 9.02 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

Section 9.03 Right and Duty of Owners to Insure. It is the responsibility of each Owner to provide insurance on his personal property and upon all other property and improvements within his Dwelling. Nothing hereby shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to persons or property occurring inside the Owner's Dwelling or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. Each Owner shall also carry insurance of not less than \$10,000 of dwelling coverage A under their HO6 or similar-type policy. In the event of a Property claim that arises from within a Unit, the Owner is responsible for the Association's deductible, or up to \$10,000 if covered by the Owner's insurance. Such Owner's individual HO6 or similar-type

policy is primary, and the Association's insurance is secondary.

Section 9.04 Notice of Expiration Requirements. If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be canceled, terminated or expired by their terms, without twenty (20) days prior written notice to the Board, Declarant, Owners and their respective first mortgagees: (provided that Declarant, such Owners or mortgagees have filed written requests with the carrier for such notice) and every other person in interest who requests such notice of the insurer.

Section 9.05 Insurance Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners.

Section 9.06 Trustee for Policies. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insured under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 9.1 above shall be paid to the Board of Directors of the Association. The Board shall have full power to receive and to receipt of the proceeds with same to be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article 10 of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire of first mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in this Declaration.

Section 9.07 Actions as Directors. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners shall have the exclusive right to bind such parties in respect to all matters affecting insurance earned by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance.

Section 9.08 Required Waivers. All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) Subrogation of claims against the Owners and tenants of the Owners;
- (b) Any defense based upon co-insurance;
- (c) Any right of set-off, counterclaim apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (d) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising

from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured, and

- (e) Any right of the insurer to repair, rebuild or replace, and, if the improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured.

Article X.
DESTRUCTION OF IMPROVEMENTS

Section 10.01 Damage to Common Area. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Area, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article 9 hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy all Extraordinary Assessment for the deficiency and proceed with such restoration and repair.

Section 10.02 Damage to Dwellings. Except as otherwise provided in this Declaration, in the event of any destruction of any Dwelling or Dwellings, it shall be the duty of the Owners) of the Dwelling or Dwellings to restore and repair the same to its/their former condition, as promptly as practical, under the supervision of the Board. The proceeds of any insurance maintained pursuant to Article 9 hereof for reconstruction or repair of the Property shall be made available for such purpose, unless otherwise provided herein. The Dwelling or Dwellings shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than the estimated cost of restoration and repair, the Owners) of the Dwelling or Dwellings shall be responsible for the deficiency, and the Board shall have the power to levy a Special Assessment to secure payment of the deficiency. In the event more than one Dwelling is damaged or destroyed, the available insurance proceeds shall be allocated according to the estimated costs of repair and restoration of each Dwelling.

Section 10.03 Alternate Plans for Restoration and Repair. Notwithstanding the provisions of Section 10.1 and 10.2, the Association shall have the right, by a vote of seventy-five percent (75 %) of the voting power of the Association, to make alternate arrangements respecting the repair, restoration or demolition of the damaged portion of the Property. The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocation of any necessary Assessments. Any plan adopted pursuant to this subparagraph shall be adopted within sixty (60) days of the damage or destruction and shall be supported by the vote of any Owner whose Dwelling has been physically damaged, to the extent the proposed plan affects the reconstruction of such Dwelling.

Section 10.04 Appraisal of Damages. In the event the parties affected by damage or destruction to the Property cannot agree, within twenty (20) days of the date of the damage, on the estimated cost of repair or the allocations referred to in this Article 10, the Association shall appoint three (3) independent appraisers having at least five (5) years full-time appraisal experience in Summit County, Utah, to appraise the damage and establish allocations among various damaged portions of the Property. Within forty-five (45) days after the selection of the appraisers, a majority of the appraisers shall set the estimated cost of repairs and allocations. If a majority of the appraisers are unable to agree within the stipulated period of time, the average of the three (3) appraisals shall be utilized. If, however, the low appraisal and/or the high appraisal are/is more than fifteen percent (15%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one appraisal is disregarded, the average of the two remaining appraisals shall be utilized. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be utilized. The cost of the appraisals required by this subparagraph shall be paid by the Association and reimbursed by the Owners through an Extraordinary Assessment.

Section 10.05 Interior Damage. With the exception of any casualty or damage insured against by the Association pursuant to Article 9 of this Declaration, restoration and repair of any other damage to the interior of any individual Dwelling, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Dwelling so damaged. In the event of a determination to rebuild the Property after partial or total destruction as provided in this Article 10, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

Article XI.

DECLARANT'S RIGHTS AND RESERVATIONS

Section 11.01 Declarant is undertaking the work of construction of the Project and the creation of the Townhome Development on the Property. The completion of that work and the sale or other disposition of the Units is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and said Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its contractors, or subcontractors from doing on the Property, whatever is reasonably necessary or advisable in connection with the completion of the work; or
- (b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Property as a residential community and disposing of the same in parcels by sale or other disposition; or

- (c) Prevent Declarant from maintaining such sign or signs on any of the Property as may be necessary for the sale or disposition thereof; or
- (d) Prevent Declarant, its successors in interest and assigns, from entering into an exclusive long term contract on behalf of the Association, with a company to provide to each Owner cable television service, the cost of the same to be considered a common area expense; or
- (e) Prevent Declarant, its successors in interest, and assigns, from selling to a third party the rights to build upon the real property which subsequent Phases of the Project may be built. Declarant, its successors in interest and assigns, shall however, be obligated, if an election is made to develop subsequent Phases of the Project, to develop the Phases consistent with the requirements of this Declaration. So long as Declarant, owns one or more of the Units established and described in this Declaration and except as otherwise specifically provided herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration.
- (f) In the event Declarant shall convey all of its right, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation or liability hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 11.02 Disclaimer Of Fiduciary Duties: Except to the extent of the limited fiduciary duties imposed upon Declarant in *Davencourt At Pilgrims Landing Homeowners Association v. Davencourt at Pilgrims Landing, LC*, 2009 UT 65 (Utah 2009), to the maximum extent permitted by law, Declarant, and its managers, members, officers and agent hereby disclaim any and all fiduciary duties, duties or obligations to the Association, the Owners, or any other Person of any kind or nature.

Section 11.03 Indemnity. If Declarant or any Director, officer, manager, member or agent of Declarant is a made a party, or is threatened to be made party to or is involved as a defendant in any action, suit or proceeding, by reason of the fact that such Person is or was a manager or member of the Declarant, or is or was serving at the request of the Declarant as a Director, officer or representative of the Association or Declarant, shall be indemnified and held harmless to the fullest extent legally permissible under the laws of the State of Utah as in effect from time to time, against all expenses, liability and loss (including, without limitation, attorneys' fees, judgments, fines and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Person in connection therewith. Such right of indemnification shall be a contract right that may be enforced in any manner desired by such Person. Such right of indemnification shall not be exclusive of any other right that such managers, Directors members or representatives may have or hereafter acquire, and without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any other agreement, vote of members, provision of law or otherwise, as well as their rights under this Section.

Section 11.04 Expenses Advanced. Expenses incurred by any Person in defending any

action, suit or proceeding by reason of any act or omission of Declarant, managers or members acting as a director manager or member shall he paid by the Association as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt or any undertaking by or on behalf of the Person to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the Association.

Section 11.05 Insurance. Without limiting the application of the foregoing, the Association shall cause the Association to purchase and maintain insurance or make other financial arrangements on behalf of any Person who is or was a Declarant, a manager or member of the Declarant or a member of the Board of the Association against any liability asserted against such Person and incurred in any capacity or arising out of such status, to the fullest extent permitted by the laws of the State of Utah, whether or not the Association would have the power to indemnify such person. The indemnification and advancement of expenses provided in this Article shall continue for a person who has ceased to be a director, member, manager, employee or agent, and inures to the benefit of the heirs, executors and administrators of such a person.

Article XII. RIGHTS OF MORTGAGEES

Section 12.01 In order to induce various lenders and lending agencies to participate in the financing of Units within the Project, this Article 12 is included in this Declaration. To the extent these added provisions, pertaining to the rights of such lenders and lending agencies conflict with any other provisions of this Declaration or any other of the Project Documents, these added restrictions shall control. For purposes of this Article 12, the terms "**Eligible I Holder**" and "**Eligible Insurer Guarantor**" refer to an Institutional First Mortgage Holder, Insurer or Guarantor of any Institutional First Mortgage on a Unit, who has provided a written request to the Association, to be notified of any proposed amendment or action described in Section 12.06 or Section 12.07 below.

Section 12.02 Notwithstanding any other provision of the Project Documents, no amendment or violation of the Project Documents shall operate to defeat or render invalid the rights of any Institutional First Mortgagee of a Unit made in good faith and for value, provided that after the foreclosure of any such mortgage, such Unit shall remain subject to the Project Documents.

Section 12.03 Each Institutional First Mortgagee of a mortgage encumbering any Unit, which obtains title to such Unit pursuant to judicial foreclosure or the powers provided in such mortgage, shall take title to such Unit free and clear of any claims for unpaid Assessments or charges against such Unit which accrued after the time such mortgagee recorded its mortgage, and prior to the time such mortgagee acquires title to such Unit.

Section 12.04 Institutional First Mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours; (2) require from the Association the submission of annual audited financial reports and other financial data; (3) receive written notice of all meetings of the Owners; and (4) designate, in writing, a

representative to attend all such meetings.

Section 12.05 Each Owner hereby authorizes the Institutional First Mortgagee of a first mortgage on his Unit to furnish information to the Board concerning the status of the first mortgage and the loan which it secures.

Section 12.06 Unit Owners shall have the right to amend the Project Documents according to their terms, subject to the rights of Eligible Holders to participate in the amendment process as provided in this Section. Amendments of a material nature shall be agreed to by (i) the Declarant (so long as there are two classes of voting power); and (ii) Unit Owners representing at least sixty-seven percent (67%) of the total votes in the Association (excluding votes residing in Declarant, so long as two classes of voting power exist). Additionally, approval must be obtained from Eligible Holders representing at least fifty-one percent (51 %) of the votes of Limits that are subject to mortgages held by Eligible Holders. A change to any of the following would be considered as material:

- (a) Voting rights;
- (b) Assessments, assessment liens, or subordination of assessment liens;
- (c) Reserves for maintenance, repair and replacement of Common Area;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Common Area, or rights to its use;
- (f) Boundaries of any Unit;
- (g) Convertibility of Units into Common Area or vice-versa;
- (h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (i) Insurance or fidelity bonds,
- (j) A decision by the Association to establish self management when professional management had been previously required by an Eligible Holder;
- (k) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (l) Any action to terminate the legal status of the Project after substantial destruction or condemnation (when Unit Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation, approval must be obtained from Eligible Holders representing at least sixty-seven percent (67%) of the votes

of Units that are subject to mortgages held by Eligible Holders); or

- (m) Any provision that expressly benefit mortgage holders, insurers or guarantors.

If the Association determines that an addition or amendment to the Project Documents is not a material change, the approval of Eligible Holders shall be implied by the failure of an Eligible Holder to submit a response to a written proposal for an amendment within thirty (30) days after the proposal is made.

Section 12.07 Each Eligible Holder and each Eligible Insurer or Guarantor is entitled to timely written notice of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of the Projector the Unit securing its mortgage;
- (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;
- (c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action that requires the consent of a specified percentage of Eligible Holders.
- (e) In addition to the foregoing, the Board shall have the power and authority, without the vote of the Association, to enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of any generally recognized Institutional lending institution so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their residential Units, if such agencies or lending institutions approve the Property as a qualifying Project under their respective policies, rules and regulations, as adopted from time to time.

Article XIII.
DURATION AND AMENDMENT

Section 13.01 Duration. This Declaration shall continue in full force for a term of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded, meeting the requirements of an amendment to this Declaration as set Forth in Section 13.2. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Unit from the concomitant membership of the Association, as long as this Declaration shall continue in full force and effect.

Section 13.02 Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. A resolution adopting a proposed amendment may be proposed by all Owners at a meeting of the Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members of the Association representing not less than sixty-seven percent (67 %) of the total voting power of the Association (both classes combined). Notwithstanding the foregoing, the following special voting provisions shall apply:

- (a) Amendments of a material nature shall be enacted in compliance with the provisions of Article 12 of this Declaration;
- (b) The specified percentage of the voting power necessary to amend a specified provision of this Declaration shall be not less than the percentage of affirmative votes prescribed for action to be taken under that provision;
- (c) A certificate, signed and sworn to by two (2) officers of the Association, that the record Owners of the required number of Units have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact.

The Association shall maintain in its files the record of all such votes of written consents for a period of at least four (4) years. Such a certificate reflecting any amendment which requires the written consent of any of the record holders of Institutional First Mortgages shall be signed and sworn to by such first mortgagees.

Article XIV.
GENERAL PROVISIONS

Section 14.01 Enforcement. The Board or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court. Any such action by the Board shall be taken on behalf of three (3) or more Unit Owners, as their respective interests may

appear, with respect to any cause or action relating to the Common Area or more than one Unit. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

Section 14.02 Invalidity of Any Provision. Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

Section 14.03 Conflict of Project documents. If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order; Plat Map; Articles; Bylaws; and rules and regulations of the Association. Notwithstanding the foregoing, any provision in any of the Project Documents which is for the protection of Institutional First Mortgagees shall have priority over any inconsistent provision in that document or in any other Project Document.

The undersigned, being the Declarant herein, has executed this Declaration on the _____ day of March 2022.

DECLARANT:

FAIRFIELD PLACE, L.L.C.

By: PARKE WK 
Its: PRESIDENT

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this 25th day of March 2022, before me, the undersigned, a Notary Public in and for the State of Utah, duly commissioned and sworn, personally appeared HUGH PARKE PRESIDENT to me known to be a managing member of FAIRFIELD PLACE, L.L.C., a Utah limited liability company, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument by authority of its operating agreement. PARKE WK

WITNESS my hand and official seal hereto affixed the day and year first above written.

Michelle Williams
Notary Public



Exhibit "A"

BOUNDARY DESCRIPTION

PART OF LOT 1 AND ALL OF LOT 2, CHRISTENSEN DENTAL SUBDIVISION, RECORDED AS ENTRY #2153576 IN THE OFFICE OF THE DAVIS COUNTY RECORDER, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF THE ASPEN HEIGHTS SUBDIVISION AMENDED, SAID POINT IS SOUTH 00°02'40" WEST 1422.67 FEET (1430.50 FEET, BY RECORD) ALONG THE SECTION LINE AND SOUTH 87°30'00" EAST 122.67 FEET, ALONG THE NORTH LINE OF SAID CHRISTENSEN DENTAL SUBDIVISION TO THE WEST LINE OF SAID ASPEN HEIGHTS SUBDIVISION AND SOUTH 01°03'57" EAST 169.83 FEET ALONG SAID WEST LINE FROM THE NORTHEAST CORNER OF SECTION 21, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE ALONG

THE FOLLOWING FIVE (5) COURSES:
1) SOUTH 01°03'57" EAST 225.72 ALONG SAID WEST SUBDIVISION LINE; 2) SOUTH 89°10'44" WEST 256.63 FEET; 3) SOUTH 00°02'15" EAST 2.25 FEET; 4) SOUTH 89°57'45" WEST 2.25 FEET TO THE EAST LINE OF FAIRFIELD ROAD; 5) NORTH 00°04'33" EAST 200.42 FEET ALONG SAID EAST LINE TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 88°36'24" EAST 154.93 FEET ALONG THE SOUTHERLY LINE OF SAID LOT 1; THENCE NORTH 56°41'37" EAST 47.29 FEET; THENCE NORTH 88°36'24" EAST 60.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.222 ACRES.

Exhibit "C"

Address	Lot # On Plat	Undivided Interest in Common Area	Assessment Percentage	Votes
664 N Fairfield Rd	1	5.26%	5.26%	1
670 N Fairfield Rd	2	5.26%	5.26%	1
674 N Fairfield Rd	3	5.26%	5.26%	1
678 N Fairfield Rd	4	5.26%	5.26%	1
665 N Roselyn's Way	5	5.26%	5.26%	1
671 N Roselyn's Way	6	5.26%	5.26%	1
675 N Roselyn's Way	7	5.26%	5.26%	1
679 N Roselyn's Way	8	5.26%	5.26%	1
668 N Tenkids Way	9	5.26%	5.26%	1
672 N Tenkids Way	10	5.26%	5.26%	1
676 N Tenkids Way	11	5.26%	5.26%	1
680 N Tenkids Way	12	5.26%	5.26%	1
893 E Robert Road	13	5.26%	5.26%	1
897 E Robert Road	14	5.26%	5.26%	1
901 E Robert Road	15	5.26%	5.26%	1
905 E Robert Road	16	5.26%	5.26%	1
909 E Robert Road	17	5.26%	5.26%	1
913 E Robert Road	18	5.26%	5.26%	1
915 E Robert Road	19	5.26%	5.26%	1
TOTAL		100.00%	100.00%	19