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FIRST AMENDMENT AND RESTATEMENT
OF THE AMENDED, COMBINED AND
RESTATED DECLARATIONS OF
COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR FAIRWAY VILLAGE
No.1 SUBDIVISION AND FAIRWAY
VILLAGE No. 2 SUBDIVISION

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This FIRST AMENDMENT AND RESTATEMENT OF THE AMENDED, COMBINED AND RESTATED DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR FAIRWAY VILLAGE NO.1 SUBDIVISION AND FAIRWAY VILLAGE NO. 2 SUBDIVISION ("the Declaration") is made this _____ day of _____, 2009 by Fairway Village Homeowners Association, a Utah non-profit corporation ("the Association").

A. By that certain instrument entitled the "Amended, Combined and Restated Declarations of Covenants, Conditions, and Restrictions for Fairway Village No. 1 Subdivision and Fairway Village No. 2 Subdivision" dated January 25, 2005 and recorded January 26, 2005 as Entry No. 00724638, in Book 01675 Page 626 of the official records of Summit County, Utah ("FV1 & FV2 Declaration") the real property described on Exhibit A (the "Subdivision") hereto became subject to the FV1 and FV2 Declaration which provides that it may be amended upon the approval and consent the Owners of two-thirds of the Lots within the Subdivision.

B. As evidenced by the Certificate of Approval executed by the President of the Association and attached hereto as Exhibit B the Owners of two-thirds of the Lots within the Subdivision have authorized the Association, on behalf of the Subdivision to amend and restate in its entirety the FV1 & FV2 Declaration, as more particularly set forth hereafter.

NOW THEREFORE, the FV1 & FV2 Declaration is hereby amended and restated in its entirety as follows:

ARTICLE I: DEFINITIONS

SECTION 1.01: ADJUNCT OWNER

"Adjunct Owner" shall mean the Owner of any Residence in the Adjunct Section.

SECTION 1.02: ADJUNCT SECTION

"Adjunct Section" shall mean that portion of the Subdivision consisting of Lots 1-12.

SECTION 1.03: ARTICLES OF INCORPORATION

"Articles of Incorporation" shall mean the Articles of Incorporation of Fairway Village Homeowners Association, a Utah nonprofit corporation, as such appear on file with the Utah Division of Corporations and Commercial Code, as amended from time to time.

SECTION 1.04: ASSESSMENT

"Assessment" shall mean any charge imposed by the Association on or against an Owner, whether or not charged proportionately against all Lots, and includes Monthly Assessments, Special Assessments and Individual Lot Assessments.

SECTION 1.05: ASSOCIATION DOCUMENTS

"Association Documents" shall mean collectively the following:

- (a) this Declaration;
- (b) the Articles of Incorporation;
- (c) the Bylaws;

- (d) the Regulations; and
- (e) a document containing the current name, physical address, mailing address, email address and telephone number of the Association Liaison.

SECTION 1.06: ASSOCIATION LIAISON

"Association Liaison" shall mean an individual appointed by the Board to act as the principal contact person for the Members. The Association Liaison may be a Director or the Manager or an employee of the Manager or an employee of the Board or such other individual as the Board shall appoint. In the event that the Board shall fail to appoint an Association Liaison, the Manager shall perform that function.

SECTION 1.07: ASSOCIATION SERVICES

"Association Services" shall mean any services provided to the Owners pursuant to this Declaration, the By-laws, the Regulations or any resolution adopted by the Board, including by way of example and not limitation: removing snow from driveways and providing television cable services

SECTION 1.08: BOARD

"Board" shall mean the governing Board of Directors of the Association, elected in accordance with the Declaration, the Articles of Incorporation and the Bylaws.

SECTION 1.09: BUILDING

"Building" shall mean any of the buildings in which the Townhouses are located.

SECTION 1.10: BYLAWS

"Bylaws" shall mean the Bylaws of the Association, as adopted and amended from time to time by the Board.

SECTION 1.11: COMMON AREAS

"Common Areas" shall mean and refer to that part of the Subdivision which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed on or located thereon.

SECTION 1.12: COMMON EXPENSES

"Common Expenses" shall mean:

- (a) expenses of administration, maintenance, repair, and/or replacement of the Common Areas;
- (b) expenses of operating and administering the Association; and
- (c) expenses determined by the Association in accordance with this Declaration to constitute common expenses.

SECTION 1.13: EMERGENCY REPAIRS

"Emergency Repairs" shall mean any repairs which if not made in a timely manner will likely result in immediate and substantial damage to the Common Areas or to a Townhouse or Townhouses.

and Fairway Village No. 2 Subdivision

SECTION 1.14: INDIVIDUAL LOT ASSESSMENT

"Individual Lot Assessment" shall mean all costs, expenses and charges (excluding Monthly and Special Assessments) that the Association shall charge against an individual Lot or Owner pursuant to this Declaration, the Bylaws or the law. An Individual Lot Assessment shall include any Transfer Fee for which an Owner is liable under Section 17.09.

SECTION 1.15: INSTITUTIONAL MORTGAGEE

"Institutional Mortgagee" shall mean a Mortgagee that has a first mortgage lien on any Lot in the Subdivision and is:

- (a) a bank or other established mortgage lending company or other entity chartered under federal or state laws;
 - (b) an insurance company;
 - (c) or any federal or state agency.
-

SECTION 1.16: LIMITED COMMON AREAS

"Limited Common Areas" are appurtenant to and intended to serve a single Townhouse and shall include:

- (a) that part of the Common Areas identified and described on the Plat as Limited Common Areas; and
 - (b) all driveways, walkways, decks, doorsteps, porches, balconies, patios, shutters, awnings, window boxes, or other apparatus intended to serve a single Townhouse, whether or not located within an area identified and described on the Plat as a Limited Common Area.
-

SECTION 1.17: LOT

"Lot" shall, mean and refer to any of the separately numbered and individually described parcels of land shown on the Plat.

SECTION 1.18: MANAGER

"Manager" shall mean the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Subdivision.

SECTION 1.19: MORTGAGE

"Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.

SECTION 1.20: MORTGAGEE

"Mortgagee" shall mean any persons named as the mortgagee or beneficiary under any mortgage or Deed of Trust by which the interest of any Owner is encumbered; or any successor to the interest of such person under such Mortgage or Deed of Trust.

SECTION 1.21: OWNER

"Owner" shall mean and refer to the person who, or entity which, is the owner of record (in the office of the County Recorder of Summit County, Utah) of a fee or an undivided fee interest in any Lot; and shall include both an Adjunct Owner and a Townhouse Owner. Notwithstanding

any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

SECTION 1.22: PLAT

"Plat" shall mean collectively:

- (a) that certain Record of Survey Map of Fairway Village No. 1 Subdivision, dated December 16, 1979 and recorded December 17, 1979 as Entry No. 162327, in Book M148 Page 188 of the official records of Summit County, Utah; and
- (b) that certain Record of Survey Map of Fairway Village No. 2 Subdivision, recorded June 17, 1981 as Entry No. 180617, in Book 190 Page 52 of the official records of Summit County, Utah, as amended by that certain Record of Survey Map of Fairway Village No. 2 Subdivision, recorded June 17, 1981 as Entry No. 180616, of the official records of Summit County, Utah.

SECTION 1.23: REASONABLE NOTICE

"Reasonable Notice" means written notice posted on the front door of the Residence and, if the occupants of the Residence are present, hand-delivery of the written notice to such occupants at least seventy-two hours prior to any proposed entry.

SECTION 1.24:
REGULATIONS

"Regulations" shall mean the Rules and Regulations of the Association as adopted by the Association from time to time.

SECTION 1.25: RESIDENCE

"Residence" shall mean any residence constructed on any Lot in the Subdivision and shall include both Townhouses and those single-family homes constructed on Lots 1-12 of the Subdivision.

SECTION 1.26:
SUBDIVISION

"Subdivision" shall mean and refer to the entire tract of real property covered by the Plat, a description of which is set forth on Exhibit B.

SECTION 1.27: TOTAL VOTES

"Total Votes" shall mean the number of Lots in the Subdivision, reduced by nine (9) and further reduced by:

- (a) the number of Lots in the Townhouse Section whose Owners are delinquent in the payment of Assessments for a period of more than thirty (30) days; and
- (b) the number of Lots in the Adjunct Section whose Owners are delinquent in the payment of Assessments, for a period of more than thirty (30) days, divided by four (4).

SECTION 1.28: TOWNHOUSE

"Townhouse" shall mean any townhouse constructed on any Lot in the Townhouse Section.

SECTION 1.29: TOWNHOUSE OWNER

"Townhouse Owner" shall mean the owner of a Townhouse.

SECTION 1.30: TOWNHOUSE SECTION

"Townhouse Section" shall that portion of the Subdivision not located within the Adjunct Section.

ARTICLE II: ATTRIBUTES AND RIGHTS OF OWNERSHIP

SECTION 2.01: TITLE

Title to a Lot within the Subdivision may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation joint tenancy or tenancy in common, but no Lot shall be owned legally or beneficially by more than eight owners. No Lot shall be separated as to ownership into time periods. No timeshare arrangement of any kind shall be allowed in the Subdivision.

SECTION 2.02: OWNERSHIP OF COMMON AREAS

Each Lot within the Subdivision is hereby allocated an equal undivided interest in the Common Areas. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association.

SECTION 2.03: INSEPARABILITY

Title to no part of a Lot within the Subdivision may be separated from any other part thereof, and each Lot and the undivided interest in the Common Areas appurtenant to each Lot shall always be conveyed, devised, encumbered, and otherwise affected only as a complete disposition of a Lot. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

SECTION 2.04: USE OF PARKING AREAS

An Owner shall have the right to use the outdoor parking spaces within the Subdivision as shown on the Plat, which are not designated as Limited Common Areas, for periodic parking of automobiles and non-commercial trucks on a non-exclusive basis in common with other Owners, and their respective guests and invitees in accordance with the Regulations; provided however that boats, campers, mobile homes, trailers, commercial trucks, recreational vehicles and the like may be parked only within the garage appurtenant to a Residence. The foregoing parking and storage restrictions shall not apply to the parking and storage of construction vehicles and equipment reasonably necessary to construct or repair any Residence or other improvement in or to the Subdivision.

SECTION 2.05: NO ACTION FOR PARTITION

The Common Areas shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

SECTION 2.06: SEPARATE MORTGAGE BY OWNER

Each Owner shall have the right separately to mortgage or otherwise encumber that Owner's Lot. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to that Owner's Lot. Except as otherwise provided herein, any mortgage or other encumbrance of any Lot within the Subdivision shall be subordinate to all of the provisions of this Declaration in the event of foreclosure by private power of sale, judicial foreclosure, or otherwise.

SECTION 2.07: SEPARATE TAXATION

Each Lot within the Subdivision shall be deemed to be a separate parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah, or of any political subdivision, or of any special improvement district, or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Lots in proportion to the undivided interest in Common Areas appurtenant to such Lots. All such taxes, assessments, and other charges on each respective Lots shall be separately levied against the Owner thereof. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.

SECTION 2.08: DESCRIPTION OF LOT

Every contract for the sale of a Lot and every other instrument affecting title to a Lot within the Subdivision may describe the Lot by its identifying number as shown on the Plat. Such description will be construed to describe the Lot, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Lot within the Subdivision and all of the limitations on such ownership.

SECTION 2.09: RIGHT TO ENFORCE DECLARATION

Each Owner shall have the right to seek injunctive relief against, and/or recover damages from, any other Owner, tenant, subtenant or other occupant of a Lot who fails to comply with the provisions of this Declaration. In any such action, the prevailing party shall be entitled to recover costs and reasonable attorneys fees.

ARTICLE III: ATTRIBUTES AND RIGHTS OF TOWNHOUSE OWNERSHIP

SECTION 3.01: INTERIORS OF TOWNHOUSES

Except as otherwise provided in this Declaration, each Townhouse Owner shall have the exclusive right to paint, repaint, tile, wallpaper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of his Townhouse and the surfaces of all walls, ceilings, floors, and doors within such boundaries. Each Townhouse Owner shall also have the right to construct interior partitions or modifications within his Townhouse provided however, that such partitions, improvements and/or modifications:

- (a) receive the prior written consent of the Association;

- (b) shall comply with all applicable laws, ordinances, and building codes;
- (c) shall not interfere with facilities necessary for the support, use, or enjoyment of any other part of the Subdivision;
- (d) shall not impair the structural soundness or integrity of the Building in which it is located; and
- (e) shall not encroach upon the Common Areas or any part thereof, unless the Association shall consent in writing to such encroachment.

SECTION 3.02: MECHANICS LIENS

No labor performed or material furnished for use in connection with any Townhouse with the consent or at the request of any Townhouse Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Townhouse of any other Townhouse Owner not expressly consenting to, or requesting the same, or against any interest in the Common Areas, except the undivided interest therein appurtenant to the Townhouse of the Townhouse Owner for whom such labor shall have been performed and such materials shall have been furnished.

ARTICLE IV: DUTIES AND RESPONSIBILITIES OF TOWNHOUSE OWNERS

SECTION 4.01: MAINTENANCE OF TOWNHOUSES

Each Townhouse Owner at his or her sole cost and expense shall keep the interior of his or her Townhouse in a clean and sanitary condition and in a state of good repair.

SECTION 4.02: UTILITY SYSTEM

Each Townhouse Owner shall maintain, repair and replace, at his or her sole cost and expense, that portion of the utility systems appurtenant to his or her Townhouse, designated as Limited Common Areas, as well as that portion of the utility systems located wholly within and/or servicing only his or her Townhouse.

SECTION 4.03: MAINTENANCE OF LIMITED COMMON AREAS

Each Townhouse Owner at his or her sole cost and expense shall keep the decks, walkways and other Limited Common Areas appurtenant to his or her Townhouse in a clean and sanitary condition and in a state of good repair; *provided however*, that no Townhouse Owner shall be responsible for:

- (a) removing snow from any Limited Common Area for which the Association, under this Declaration, has the responsibility for snow removal; or
- (b) resurfacing, making repairs to or replacing a driveway.

SECTION 4.04: OTHER FIXTURES AND IMPROVEMENTS

Except as otherwise provided in Section 10.09, each Townhouse Owner at his or her sole cost and expense shall keep the following fixtures and improvements appurtenant to his or her Townhouse, whether or not located within a Limited Common Area, in a clean and sanitary condition and in a state of good repair:

- (a) windows, including glass, frames and operating mechanisms;
- (b) exterior doors, including glass, frames, hinges and hardware;
- (c) garage doors, including hardware and opening mechanisms;

- (d) exterior light fixtures;
- (e) roof gutters and heat tape;
- (f) skylights; and
- (g) fireplaces and chimneys;

SECTION 4.05: PEST CONTROL

Each Townhouse Owner shall be responsible for controlling intrusions or infestations of rodents, spiders, hornets, wasps, ants, birds and other creatures that enter the Owner's Townhouse and/or the Limited Common Areas associated with the Owner's Townhouse.

ARTICLE V: DUTIES AND RESPONSIBILITIES COMMON TO ALL OWNERS

SECTION 5.01: AGREEMENT TO PAY ASSESSMENTS

Each Owner by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all Assessments made by the Association for the purposes provided in this Declaration. Such Assessments shall be fixed, established, and collected from time to time as provided in Articles XV, XXVI and XVII.

SECTION 5.02: CONTACT INFORMATION

Each Owner shall ensure that the Association Liaison has on file the following:

- (a) a valid email address at which copies of all notices and documents may be sent;
- (b) a mailing address;
- (c) the telephone number at which the Owner may be contacted; and
- (d) the physical address of the Owner's primary residence.

SECTION 5.03: PAYMENT OF UTILITIES

Each Owner shall pay all costs for utility services furnished to his or her Residence, excepting those utility services for which the Association is responsible under this Declaration.

SECTION 5.04: FAMILIARITY WITH ASSOCIATION DOCUMENTS

An Owner shall at all times be familiar with and maintain a current copy of the Association Documents. In the event that an Owner does not have a current copy of the Association Documents, it is the responsibility of the Owner to obtain from the Association Liaison a copy of the Association Documents. In the event that an Owner has leased part or all of the Owner's residence to a tenant, the Owner is obligated to ensure that the tenant is familiar with and has a current copy of the Association Documents

SECTION 5.05: COMPLIANCE WITH DECLARATION, BYLAWS, ETC.

Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, the Bylaws, the Regulations and the decisions and resolutions of the Association and/or the Board.

SECTION 5.06: REPORT NEED FOR REPAIRS

Each Owner shall promptly report to the Association Liaison the need for any repairs to any portion of the Subdivision that is the obligation of the Association to maintain hereunder.

SECTION 5.07: REIMBURSEMENT FOR COSTS INCURRED AS RESULT OF AN OWNER'S NEGLIGENCE

Each Owner shall reimburse the Association for such costs, if any, in excess of proceeds of insurance, if any, as the Association shall incur for maintaining, repairing or replacing any portion of the Common Areas (including those portions thereof designated in this Declaration as Limited Common Areas) which may be damaged or destroyed by his act or negligence, or by the act or negligence of any of his tenants, invitees, licensees or guests. The total amount of such reimbursement shall be invoiced to the Owner as an Individual Lot Assessment.

ARTICLE VI: USE RESTRICTIONS

SECTION 6.01: 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 Townhouses. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas. Each Owner shall be liable to the Association for any damage to or destruction of any part of the Common Areas caused, directly or indirectly, by the negligent, willful, or malicious act or omission of such Owner or of any of Owner's family, guests, lessees, servants or others who use the Common Areas with such Owner's permission, whether express or implied.

SECTION 6.02: USE OF RESIDENCES

Each Residence shall be used only as a single-family residence. No Lot or Residence shall be used, occupied, or altered in violation of law. No Townhouse shall be used, occupied, or altered so as to jeopardize the support of any other Townhouse. No Lot or Residence shall be used, occupied, or altered so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

SECTION 6.03: OCCUPANTS OF TOWNHOUSES

Under no circumstances may more than one family or more than four (4) unrelated persons permanently reside in a Townhouse. As used in this Section, the term "family" shall be deemed to include spouses, parents, parents-in-law, brothers, sisters, children and grandchildren. In no event shall occupancy of a Townhouse (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom.

SECTION 6.04: NO NOXIOUS OR OFFENSIVE ACTIVITY

No noxious or offensive activity shall be carried on, in or upon any Lot or any part of the Subdivision, nor shall anything be done or placed in or upon any Lot or any part of the Subdivision which is or may become a nuisance or which may cause disturbance or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any Lot or any part of the Subdivision that are or may become unsafe or hazardous to any person or property.

SECTION 6.05: RESTRICTIONS ON SIGNS

No signs, flags, or advertising devices of any nature, including without limitation, commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Subdivision, without prior inspection and written approval of the Association, except as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association.

SECTION 6.06: PETS AND ANIMALS

No animals, livestock or poultry of any kind shall be raised, bred or kept in any Residence or on any Lot or in the Common Areas or Limited Common Areas without the express written permission of the Association. The Association hereby consents to the keeping of dogs, cats, or other common household pets, not collectively to exceed three (3), in a Residence, subject to Rules and Regulations of the Association, and provided that they are not kept, bred or maintained for any commercial purpose. Each Owner who desires to keep a pet in his Residence, other than a common household pet, shall apply in writing to the Association for permission to keep such pet. In no event shall any pet be permitted in any portions of the Common Areas unless carried or on a leash. Each Owner who keeps a pet in a Residence shall indemnify and hold all other Owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having a pet in the Subdivision. If a pet disturbs other Owners by barking or biting or in other ways becoming obnoxious, the Association will give notice to the Owner of such pet to cause such annoyance to be discontinued; and if such annoyance is not discontinued and corrected, the Association may revoke its permission to keep the pet in the Subdivision and notify the Owner of the pet to remove the pet from the Subdivision. In the event the Owner fails to remove the pet from the Subdivision within 10 days from the date of notice from the Association, the Association shall have the right to cause the pet to be removed from the Subdivision and to charge the cost thereof to the Owner as an Individual Lot Assessment.

SECTION 6.07: NO ALTERATION OF COMMON AREAS

Nothing shall be installed, modified, altered or constructed in or removed from the Common Areas except upon the prior written consent of the Association, including the following, by way of example and not limitation:

- (a) placement of statuary or yard ornamentation or other decoration of any kind;
- (b) installation of free-standing basketball sets, swing sets, slides, playground equipment, sheds, barns, tents, tree houses or other such structures or device;
- (c) installation of air conditioning systems;
- (d) installation of electric fences to control pets; and
- (e) modification of the existing landscaping by installing, removing and/or replacing trees, flowers, grass, shrubs, irrigation systems and other landscaping features.

SECTION 6.08: NO OBSTRUCTIONS

No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Association shall consent thereto in writing.

SECTION 6.09: NO ACTIVITIES CAUSING POTENTIAL DAMAGE TO TOWNHOUSES

No Townhouse Owner shall bring anything into his Townhouse or permit anything to be done in his Townhouse that will cause damage to the Building. No Townhouse Owner shall overload the floor of his Townhouse. No Townhouse Owner shall permit the use or operation in his Townhouse of any equipment, machinery, or other apparatus that will in any manner injure, vibrate, or shake the building, adjoining Townhouses, or portions thereof.

SECTION 6.10: PROHIBITION OF DAMAGE AND CERTAIN ACTIVITIES

Except with the prior written consent of the Association, nothing shall be done or kept in any Townhouse, in the Common Areas, or in any other part of the Subdivision that would result in cancellation of the insurance on the Subdivision or any part thereof, nor shall anything be done or kept in any Townhouse that would increase the rate of insurance on the Subdivision or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Townhouse or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees, or invitees of such Owner.

ARTICLE VII: TOWNHOUSE PARTY WALLS

SECTION 7.01: GENERAL PRINCIPLES

Each wall constructed as part of the original construction of the Townhouses that is located on a boundary line common to two Lots shall constitute a party wall. Except as herein modified and expanded, all legal and equitable principles relating to party walls shall govern and apply to such walls.

SECTION 7.02: MAINTENANCE

The cost of reasonable maintenance and repair of a party wall shall be shared by the Townhouse Owners who make use of the wall in proportion to such use. Costs associated with maintenance or repairs benefiting only one Townhouse Owner (such as interior painting or redecorating) shall be borne solely by the Townhouse Owner benefited.

SECTION 7.03: DESTRUCTION

If a party wall is destroyed or damaged by fire or other casualty, any Townhouse Owner who has used the wall may restore it. Any Townhouse Owner thereafter making use of the wall shall contribute to the cost of restoration in proportion to such use; provided, however, that the foregoing portion of this sentence shall not prejudice or limit any Townhouse Owner's right to obtain a larger contribution under any legal or equitable principle regarding liability for negligent or willful acts or omissions.

ARTICLE VIII: EASEMENTS

SECTION 8.01: EASEMENT OF USE AND ENJOYMENT

Except with respect to the Limited Common Areas, each Owner shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot.

SECTION 8.02: LIMITATIONS ON EASEMENT OF USE AND ENJOYMENT

A Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- (a) the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;
- (b) the right of Summit County and any other governmental or quasi-governmental body having jurisdiction over the Subdivision to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Subdivision for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and
- (c) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association.

SECTION 8.03: LIMITED COMMON AREAS- TOWNHOUSE OWNERS

Each Townhouse Owner shall have an exclusive right and easement of use and enjoyment in and to, and ingress and egress through, over, upon, and across that portion of the Limited Common Areas that is identified on the Plat by the same number by which that Townhouse Owner's Lot is identified. Such right and easement shall be subject however to all use restrictions and limitations, obligations of maintenance and other easements imposed or created by this Declaration. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Townhouse Owner may delegate the right and easement of use, enjoyment, ingress and egress described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot

SECTION 8.04: EASEMENT FOR EMERGENCY REPAIRS

There is hereby granted to the Association and its agents a right of ingress and egress to, from, upon and across each Townhouse and all Limited Common Areas for the purpose of making Emergency Repairs at any time as necessary to prevent damage to the Common Areas, to the Limited Common Areas or to any Townhouse. Prior to entering a Townhouse for such purposes the Association shall make an effort to provide Reasonable Notice to the occupants of the Townhouse. The Association may repair any damage to the Townhouse and/or its contents resulting from such entry with Association funds as a Common Expense, provided that the Association shall have determined in its absolute and unfettered discretion that under all of the circumstances it is appropriate to do so.

SECTION 8.05: EASEMENTS FOR CERTAIN UTILITIES

The Association may hereafter grant easements for utility purposes for the benefit of the Subdivision, including the right to install, lay, maintain, repair and replace cable television wires and facilities, water mains and pipes, sewer lines, gas mains, telephone wires and equipment,

and electrical conduits and wires over, under, along and on any portion of the Common Areas, and each Owner hereby grants the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Owner, such instruments as may be necessary to effectuate the foregoing. Said power of attorney is coupled with an interest.

SECTION 8.06: EASEMENTS FOR ENCROACHMENTS

If any part of the Common Areas encroaches or shall hereafter encroach upon any Townhouse, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Townhouse encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Townhouse, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Townhouses. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Building or any improvements constructed or to be constructed within the Subdivision; by error in the Plat; by settling, rising, or shifting of the earth; or by changes in position caused by repair or reconstruction of the Subdivision, or any part thereof, in accordance with the provisions of this Declaration.

SECTION 8.07: ASSOCIATION'S RIGHT TO USE COMMON AREAS

The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas (other than Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

SECTION 8.08: EASEMENT DEEMED CREATED

Any conveyance of a Lot within the Subdivision hereafter made shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific references to such easements appears in any such conveyance.

ARTICLE IX: FAIRWAY VILLAGE HOMEOWNERS ASSOCIATION

SECTION 9.01: FORMATION AND PURPOSE

The Fairway Village Homeowners Association (previously defined in this Declaration as the "Association") was incorporated as a Utah non-profit corporation in accordance with the Articles of Incorporation for the purpose of administering the Subdivision. The Association's purpose is reaffirmed in this Declaration. The Association's administration of the Subdivision shall be done in accordance with this Declaration, the Association's Articles of Incorporation and the Association's Bylaws, as well as all municipal, county, state and federal laws and regulations applicable to the Subdivision or any part thereof.

SECTION 9.02: 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.

SECTION 9.03: CLASSES OF MEMBERS

There shall be two classes of members: Townhouse Members and Adjunct Members. Adjunct Members are those Members who are Owners of Lots 1 through 12 as shown on the Plat. Townhouse Members are the Owners of the remaining lots in the Subdivision. Where it is unnecessary to distinguish between Townhouse Members and Adjunct Members in this Declaration, they are referred to collectively as "Members".

SECTION 9.04: VOTING RIGHTS -TOWNHOUSE MEMBERS

Except as otherwise provided in Section 9.06, each Townhouse Member shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In the event there is more than one Townhouse Member with an ownership interest in a particular Lot, the vote relating to such Lot shall be exercised as such Townhouse Members may determine among themselves. A vote cast at any Association meeting by any of such Townhouse Members, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Townhouse Member with an ownership interest in the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

SECTION 9.05: VOTING RIGHTS -ADJUNCT MEMBERS

Except as otherwise provided in Section 9.06, each Adjunct Member shall be entitled to one-quarter (1/4) vote for each Lot in which the interest required for membership in the Association is held. In the event there is more than one Adjunct Member with an ownership interest in a particular Lot the vote relating to such Lot shall be exercised as such Adjunct Members may determine among themselves. A vote cast at any Association meeting by any of such Adjunct Members, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Adjunct Member with an ownership interest in the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

SECTION 9.06: SUSPENSION OF VOTING RIGHTS

The voting rights of any Member who is delinquent in the payment of any Assessment for a period of more than sixty (60) days shall be suspended and not considered in the determination of any quorum required under this Declaration or the Bylaws; nor shall the vote of such delinquent Member be considered in determining the Association's Total Votes. The delinquent Member shall not be permitted to cast a vote, either personally or by proxy, for or against any action that the Member would otherwise be entitled to vote upon.

SECTION 9.07: ANNUAL MEETING

The Association shall hold an annual meeting of the Members on the third Saturday in May of each year or on such other date as the Board shall determine. The Board shall give all Members thirty days written notice of the date, place and time of the annual meeting. At the annual meeting the Members shall:

- (a) elect Directors to replace any Directors whose terms expire on the date of the annual meeting;
- (b) review the Association accounts and financial statements for the preceding fiscal year and the operating budget proposed for the upcoming fiscal year;

- (c) receive from the President a report on the status of the Subdivision;
- (d) decide any matters submitted by the Board to the Members for decision, including the propriety and amount of any Special Assessment required for the upcoming fiscal year.

SECTION 9.08: SPECIAL MEETINGS OF THE MEMBERS

Special Meetings of the Members may be called by the Board or by Members holding a majority of Total Votes. The Board shall give all Members thirty days written notice of the date, place and time of the special meeting. At the special meeting the Members shall take action on any matters that the Board deems appropriate to submit to the Owners for decision.

SECTION 9.09: QUORUM

Members holding a majority of Total Votes, present or represented by proxy at any meeting of the Association, shall constitute a quorum. If, however, less than a quorum of Members is present or represented by proxy at any meeting, a majority of those present or represented thereat may, after the lapse of at least thirty (30) minutes, adjourn the meeting to a future time and the Board shall give notice of the adjourned meeting by electronic message, courier, mail or personal service to each Member entitled to vote who was absent from such meeting. At such adjourned meeting, the total number of Members present or represented by proxy shall constitute a quorum and any business may be transacted which might have been transacted at the meeting originally called.

SECTION 9.10: PROXIES.

Any Member may be represented and vote by a proxy or proxies appointed by an instrument in writing. No such proxy shall be valid after the expiration of three (3) months from the date of its execution, unless the Member executing it specifies therein the length of time for which it is to continue in force. Subject to the above, any proxy duly executed is not revoked and continues in full force and effect until an instrument revoking it or a duly executed proxy bearing a later date is filed with the Board. Proxies must be filed with the President prior to commencement of any meeting of the Members or they cannot be used at such meeting. All questions touching the qualifications of Members and the validity of proxies, and the acceptance or rejection of votes, shall be decided by the President.

SECTION 9.11: CONSENT OF MEMBERS IN LIEU OF MEETING

Any action which may be taken by the vote of the Members of the Association at a meeting may be taken without notice or a meeting if authorized by the written consent of Members holding a majority of Total Votes, which written consent may consist of an email; provided however, that if this Declaration, the laws of the State of Utah, the Articles of Incorporation or the Bylaws require any greater proportion of voting power for such action at a meeting, then such greater proportion of written consent shall be required. Where action is authorized by written consent no meeting of the Members need be called or noticed. The following additional provisions shall govern any application of this Section:

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.
- (b) The total number of votes required for authorization or approval under this Section shall be determined as of the date on which the last consent is signed.

- (c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Member thereof shall not be considered or taken into account for any purpose.
- (d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

ARTICLE X: DUTIES OF THE ASSOCIATION

SECTION 10.01: OPERATION AND MAINTENANCE OF COMMON AREAS

Except as otherwise provided elsewhere in this Declaration, the Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair. In performing its obligations concerning maintenance of Townhouses exteriors, the Association shall be bound by the provisions of Article XIV and all rules and regulations promulgated by the Architectural Control Committee.

SECTION 10.02: COLLECTION OF ASSESSMENTS

The Association shall collect all Assessments levied on the Owners in accordance with this Declaration.

SECTION 10.03: INSURANCE

The Association shall obtain insurance for the Subdivision in accordance with Article XIII.

SECTION 10.04: UTILITIES

The Association shall pay for all water, sewer, garbage collection, electrical, gas, other necessary or desirable utility services for the Common Areas (and for the Lots to the extent not separately metered or billed).

SECTION 10.05: BUILDINGS

The Association shall be responsible for the maintenance and repair of the exterior of the Buildings, including painting and repair and replacement of trim, siding and roofs; provided however, that in the case of windows, exterior doors, garage doors light fixtures, rain gutters and other exterior fixtures and improvements, the repair and/or maintenance of which is the responsibility of Townhouse Owners pursuant to Article IV, the Association shall be responsible for ensuring that each Townhouse Owner keeps the same in good, clean, attractive, safe, and sanitary condition, order, and repair.

SECTION 10.06: LANDSCAPING

The Association shall be responsible for the maintaining and repamng all landscaping features in the Common Areas and Limited Common Areas, including grass cutting, fertilizing, pruning, planting, weeding, sprinkler repairs, irrigation and pest control. The Association may however delegate some or all of these responsibilities to individual Townhouse Owners pursuant to a written contract in form satisfactory to the Association in which the Townhouse Owner assumes responsibility for maintaining flower beds located on Common Areas or Limited Common Areas immediately adjacent to the Owner's Townhouse.

SECTION 10.07: SNOW REMOVAL

The Association shall contract for the removal of snow from walkways leading to the front doors of Townhouses and those portions of the Common Areas and Limited Common Areas through which vehicles travel or on which they are parked, including driveways.

SECTION 10.08: DRIVEWAYS

The Association shall be responsible for repairing, replacing and resurfacing all driveways located in Common Areas or Limited Common Areas.

SECTION 10.09: RAIN GUTTERS

The Association shall be responsible for cleaning all Townhouse rain gutters at such time or times as the Association shall deem necessary.

SECTION 10.10: CORRECTIVE ACTION

If any Owner fails to perform any act required of such Owner by this Declaration, the Bylaws, the Regulations or any municipal, county, state or federal law, regulation or order; or if any Lot or Residence shall develop an unsanitary or unclean condition or fall into a state of disrepair and the Owner of such Lot shall fail to cure such violation or correct such condition or state of disrepair promptly following written notice from the Association, the Association shall undertake such performance or cure such violation or correct or eliminate such unsanitary or unclean condition or state of disrepair, which may include entering said Lot without liability to the Owner for trespass or otherwise ("Corrective Action"). The Association shall charge and collect from the defaulting Owner the entire cost and expense, including reasonable attorneys' fees, incurred by the Association in effecting such Corrective Action. Any such amount shall be deemed to be an Individual Lot Assessment upon the Owner and such Owner's Lot, and shall be due and payable with the payment for the Monthly Assessment that falls due next following notification by the Association to the Owner of the Individual Lot Assessment.

SECTION 10.11: POLICIES AND PROCEDURES

The Association shall from time to time issue written policies, procedures and resolutions interpreting and implementing the provisions of this Declaration, including, by way of example and not limitation, policies, procedures and resolutions that set forth:

- (a) the meaning of the phrase "clean and sanitary condition and in a good state of repair", as that phrase is used generally in this Declaration and specifically in Sections 4.03 and 4.04;
- (b) the procedure that an Owner must follow in order to obtain permission from the Association to make modifications to a Common Area, as required by Section 6.07; and
- (c) the procedures that the Association will follow in connection with taking Corrective Action pursuant to Section 10.10.

SECTION 10.12: NO DUTY TO INSPECT

Nothing contained in this Declaration shall be construed so as to impose any duty upon the Association to inspect the Common Areas, Limited Common Areas or Townhouses for dangerous, unsafe or unsanitary conditions or compliance with this Declaration, the Bylaws, the Regulations or any municipal, county, state or federal law, regulation or order.

SECTION 10.13: LIMITATION OF CONTRACTUAL LIABILITY OF ASSOCIATION

Nothing contained in this Declaration shall be construed so as to impose any contractual liability upon the Association for failing to take any of the following actions, except to the extent funds shall be available and the action shall be deemed necessary and appropriate by the Association:

- (a) maintain the Common Areas, including snow removal;
- (b) take any Corrective Action;
- (c) take action against any Owner for non-compliance with any provision in this Declaration or any federal, state or local statute, regulation or order, other than an Owner's failure to pay an Assessment when due; or
- (d) maintain or repair landscaping features in the Common Areas and/or Limited Common Areas.

SECTION 10.14: NO TORT LIABILITY OF ASSOCIATION TO THIRD PARTIES

Nothing contained in this Declaration shall be construed so as to impose any liability upon the Association for personal injuries or property damages to guests, invitees, trespassers, or other third parties arising out of the Association's failure to perform any duty or obligation imposed upon the Association by this Declaration.

SECTION 10.15: FINANCIAL RECORDS

The Association shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Areas, specifying and itemizing the maintenance and repair expenses of the Common Areas and any other expenses incurred. Records and the vouchers authorizing the payments involved shall be available for examination by the Owners at convenient hours of weekdays. At least thirty days prior to the annual meeting of the Members, the Association shall provide to the Owners the Association's financial statements for the preceding fiscal year and a proposed operating budget for the upcoming fiscal year for approval at the annual meeting of the Members.

SECTION 10.16: POWERS

The Association shall have all powers necessary or desirable for discharging of its duties under this Declaration, the Regulations, the Bylaws and/or any municipal, county, state or federal law, regulation or order, including by way of example and not limitation the following:

- (a) Employment of Manager. The Association may by written contract delegate in whole or in part to a Manager such of the duties, responsibilities, functions, and powers hereunder of the Association as are delegable. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Subdivision for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.
- (b) Miscellaneous Goods and Services. The Association may obtain the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Subdivision, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain legal and accounting services necessary or desirable in connection with the operation of the Subdivision or the

enforcement of this Declaration. In addition to the foregoing, the Association may acquire water, sewer, garbage collection, electrical, gas, other necessary or desirable utility services for the Common Areas (and for the Lots to the extent not separately metered or billed); insurance; bonds; and other goods and services common to the Lots.

- (c) Real and Personal Property. The Association may acquire and hold real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise.
- (d) Rules and Regulations. The Association may, from time to time, make reasonable rules and regulations governing the use of the Lots, the Common Areas, the Limited Common Areas, and all parts of the Subdivision, which rules and regulations shall be consistent with the rights and duties established by this Declaration.
- (e) Policies and Procedures. The Association may issue written policies, procedures and resolutions interpreting and implementing the provisions of this Declaration, which policies, procedures and resolutions shall be consistent with this Declaration.
- (f) Enforce Compliance with Declaration. The Association may take judicial action against any Owner to enforce compliance with this Declaration or to obtain damages for noncompliance therewith, as permitted by this Declaration or by law.
- (g) Granting Easements. The Association may grant or create, on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Areas.
- (h) Contracts. Leases. Deeds. etc. The Association shall have the power to enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.
- (i) Bank Accounts. The Association shall have the power to open bank accounts on behalf of the Association and to designate the signatures therefor.
- U) Landscaping. The Association shall have the power to modify the existing landscaping by removing and/or replacing trees, flowers, grass, shrubs, irrigation systems and other landscaping features.
- (k) Litigation. The Association shall have the power to bring, prosecute and settle litigation for itself, the Association and the Subdivision.
- (l) Assessments. The Association shall have the power set the amount of Monthly, Special and Individual Lot Assessments and to record Assessment Liens and collect Assessments.
- (m) Insurance. The Association shall have the power to obtain insurance for the Association with respect to the Common Areas and the Limited Common Areas, as well as workmen's compensation insurance, fidelity insurance, officers and directors insurance and other insurance as required.

ARTICLE XI: BOARD OF DIRECTORS

SECTION 11.01: ADMINISTRATION OF THE ASSOCIATION BY BOARD OF DIRECTORS

Except as otherwise provided in this Declaration, the Association shall administer the Subdivision through and be governed by a Board of Directors (previously defined in this Declaration as the "Board"), selected in accordance with this Declaration. The Association may

act only through its Board and any act taken by the Board shall be deemed an act of the Association.

SECTION 11.02: COMPOSITION

The Board shall consist of five Directors elected at the Annual Meetings of the Members to three-year terms.

SECTION 11.03: OFFICERS

The Board shall elect a President and such other officers as the Board shall consider appropriate.

SECTION 11.04: PRESIDENT OF BOARD TO SERVE AS PRESIDENT OF ASSOCIATION

The President of the Board shall serve as President of the Association and shall preside at all meetings of the Members.

SECTION 11.05: VACANCY

In the event of a vacancy in the office of Director, a majority of the remaining Directors shall select a replacement Director to serve until the next annual meeting of the Members.

SECTION 11.06: ANNUAL MEETING

The Board shall conduct its annual meeting immediately following the annual meeting of the Members.

SECTION 11.07: CONSENT OF DIRECTORS IN LIEU OF MEETING

Any action which may be taken by the vote of Directors at a meeting, may be taken without notice or a meeting if authorized by the written consent of a majority of Directors; provided however, that if this Declaration, the laws of the State of Utah, the Articles of Incorporation or the Bylaws require any greater proportion of voting power for such action at a meeting, then such greater proportion of written consent shall be required. Where action is authorized by written consent no meeting of the Board need be called or noticed. For purposes of this Section, "written consent" may consist of an email from a Director authorizing the proposed action.

SECTION 11.08: DUTIES

All duties and responsibilities of the Association as set forth in this Declaration, the Articles of Incorporation and the Bylaws, as well as all municipal, county, state and federal laws and regulations applicable to the Subdivision or any part thereof, shall be performed by the Board without the consent or approval of the Members, except that the following actions may only be taken after Members of the Association holding the indicated percentage of Total Votes have approved the action:

- (a) dispose of any real, personal or mixed property by the Board wherein the value of such property exceeds \$5,000 without prior approval of Members holding a majority of the Total Votes;
- (b) settle any litigation, claim, demand or other adversarial conflict that results in a liability against the Board, the Association or the Subdivision in excess of Twenty-Five Thousand Dollars (\$25,000.00) without prior approval of Members holding a majority of the Total Votes;

- (c) impose a Special Assessment without prior approval of a Members holding a majority of Total Votes;
- (d) increase the Monthly Assessment by more than Ten Percent (10%) in any calendar year without prior approval of Members holding a majority of the Total Votes;
- (e) amend this Declaration without prior approval of Members holding two-thirds (2/3) of the Total Votes;
- (f) amend the Plat without prior approval of Members holding two-thirds (2/3) of the Total Votes.

SECTION 11.09: POWERS

The Board shall have all powers necessary or desirable to perform its duties, including those powers of the Association listed in Section 10.13 and those powers listed elsewhere in this Declaration.

SECTION 11.10: LIMITATION OF LIABILITY

No member of the Board, the Architectural Review Committee or any other committee of the Association, and no officer of the Association shall be personally liable to the Association or its Members or to any Owner for damages for breach of fiduciary duty, mistake of judgment, negligence, tortious acts or other conduct but this Section shall not eliminate or limit the liability of such for acts or omissions that involve intentional misconduct, fraud or a knowing violation of law. No member of the Board, the Architectural Review Committee or any other committee of the Association, and no officer of the Association shall be personal liable in contract under any agreement, instrument or transaction entered into by them on behalf of the Association. Further, no member of the Board, the Architectural Review Committee or any other committee of the Association, and no officer of the Association shall have any personal liability arising out of the use, misuse or condition of the Subdivision or any part thereof that might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as Directors, officers or committee members.

SECTION 11.11: INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify and hold harmless all officers and Director, their heirs and personal representatives, from and against all personal liability and all expenses, including attorneys' fees, incurred, imposed or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, to which he shall be, or shall be threatened to be, made a party by reason of the fact that he is or was a member of the Board or an officer or assistant officer of the Association, other than to the extent, if any, that such liability or expense shall be attributable to his willful misconduct or bad faith; provided that in the case of any settlement the Board shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such officer or Director may be entitled as a matter of law or agreement.

ARTICLE XII: ADJUNCT MEMBERS

SECTION 12.01: LIMITATION ON SERVICES

Notwithstanding anything to the contrary contained in this Declaration, Adjunct Members shall be entitled only to the following services:

- (a) access to and use over and across and snow plowing of the private roadways together with maintenance, repair and replacement of the private roadways of the Subdivision;
- (b) normal garbage pick up;
- (c) administrative support by the Association.

SECTION 12.02: ASSESSMENTS

The Monthly and Special Assessments assessed against Lots owned by Adjunct Members shall be determined by the Board in the exercise of its discretion but in no event shall said Assessments be more than twenty-five percent of the amount assessed against Lots owned by Townhouse Members, provided however, that an Adjunct Member shall be obligated to pay a Special Assessment only after the Board has determined by written resolution that the Special Assessment is reasonably related to the services provided by the Association to Adjunct Members pursuant to this Article.

SECTION 12.03: PERMISSIBLE BUILDING AREAS

The permissible building areas for Lots 1 through 12 for the location of single family residences and the authorized size of the structure to be placed on each lot are as shown on Exhibit A to the First Amendment to Declaration of Covenants, Conditions, and Restrictions of Fairway Village No. 2 Subdivision, dated April 21, 1988 and recorded May 5, 1988 as Entry No. 289937 in Book 476, Page 442 of the official records of Summit County, Utah, which Exhibit A is incorporated by reference as though fully set forth herein.

ARTICLE XIII: INSURANCE

SECTION 13.01: INSURANCE

The Association shall secure and at all times maintain the following insurance coverages:

- (a) A policy or policies of fire and casualty insurance with extended coverage endorsement, for the full insurable replacement value of all improvements existing on all lots in the subdivision and all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "The Fairway Village Homeowners Association for the use and benefit of the individual Lot Owners and mortgagees, as their interests may appear."
- (b) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use, or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Subdivision or of the Owners. Limits of liability under such insurance shall be not less than \$300,000.00 for anyone person injured, \$500,000.00 for all persons injured in anyone accident, and \$100,000.00 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

SECTION 13.02: OTHER INSURANCE PROVISIONS

The following additional provisions shall apply with respect to insurance:

- (a) In addition to the insurance described above, the Association shall secure, and at all times, maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Subdivision in construction, nature and use.
- (b) All policies shall be written by a company holding a rating of "M" or better from Best's Insurance Reports.
- (c) The Association shall have the authority to adjust losses.
- (d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Members or their mortgagees.
- (e) Each policy of insurance obtained by the Association shall, if reasonably possible, contain:
 - i. a waiver of the insurer's subrogation rights with respect to the Association, the owners, and their respective directors, officers, agents, employees, invitees, and tenants;
 - ii. a provision to the effect that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners;
 - iii. a provision to the effect that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent, or employee of the Association without prior written demand that the defect be cured;
 - iv. a provision to the effect that it cannot be cancelled, suspended or invalidated without ten (10) days advance written notice to all mortgagees who have requested notice from the insurance company;
 - v. a provision to the effect that all proceeds of insurance will be used to rebuild and that the Association shall be obligated so to do unless proceeds are paid pro rata to mortgagees; and
 - vi. a provision to the effect that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

ARTICLE XIV: ARCHITECTURAL CONTROL

SECTION 14.01: ARCHITECTURAL CONTROL COMMITTEE

The Board may appoint a three-member Architectural Control Committee (the "Committee"), the function of which shall be to ensure that all improvements and landscaping within the property harmonize with existing surroundings and structures. The Committee may but need not be composed of Members. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.

SECTION 14.02: SUBMISSION TO COMMITTEE

No Townhouse or accessory or addition to a Townhouse which is visible from the Common Areas, or other improvement of a Lot which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Townhouse shall be performed unless plans and specifications therefor have first been submitted to and approved by the Committee.

SECTION 14.03: STANDARD

In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to ensure that all improvements, construction, landscaping, and alterations on Lots within the Subdivision conform to and harmonize with existing surroundings and structures, provided however, that the Committee shall not be bound by the colors and materials used in the original construction of the Buildings and may in the exercise of its discretion:

- (a) change the color scheme of the existing exterior paint;
- (b) with respect to replacing the existing roofs, approve the use of composite, metal, tile or other non-wood shingles or roofing materials; or
- (c) change the style of the existing exterior light fixtures.

SECTION 14.04: APPROVAL PROCEDURE

Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period, it shall be deemed to have approved the plans and specifications submitted.

SECTION 14.05: CONSTRUCTION

Once begun, any improvements, construction, landscaping alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Common Areas and of the Lots in the vicinity of the activity. In the event Townhouses or the Common Areas are damaged by causes covered by insurance, all insurance proceeds to the extent required shall be used for rebuilding.

SECTION 14.06: PREVIOUS ARCHITECTURAL GUIDELINES SUPERCEDED

This Article shall supercede and replace all prior architectural guidelines, limitations and restrictions applicable to any Lot in the Subdivision.

SECTION 14.07: NO LIABILITY FOR DAMAGES

The Committee shall not be held liable for damages by reason of any action taken by the Committee under this Article.

SECTION 14.08: ADOPTION OF REGULATIONS

The Committee shall adopt guidelines and regulations setting forth its policies and procedures, which guidelines and regulations shall be approved by a majority vote of the Board.

ARTICLE XV: ASSESSMENTS

SECTION 15.01: PURPOSE OF ASSESSMENTS

Assessments levied by the Association shall be used by the Association to discharge its duties and obligations under this Declaration, the Articles of Incorporation, the Bylaws, the Regulations and all applicable federal, state and local statutes, regulations and orders.

SECTION 15.02: PERSONAL OBLIGATION AND LIEN

Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association all Assessments levied by the Association, together with interest and costs of collection. All Assessments shall be, constitute, and remain a charge and continuing lien upon the Lot with respect to which such Assessment is made; and the personal obligation of 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.

SECTION 15.03: MONTHLY ASSESSMENTS

Each Lot shall be subject to a Monthly Assessment, which shall be set by the Association from time to time. The Monthly Assessment shall be payable monthly unless the Association shall elect to collect the aggregate three-month amount of the Monthly Assessment each calendar quarter.

SECTION 15.04: SPECIAL ASSESSMENTS

The Association may levy Special Assessments for the purpose of defraying, in whole or in part any expense or expenditure not reasonably capable of being fully paid with funds generated by Monthly Assessments. The Association may require that a Special Assessment be paid in full with a single payment or it may provide for partial payments over time.

SECTION 15.05: INVOICES; DUE DATE OF AN ASSESSMENT

The Association shall issue an invoice to each Owner for each Assessment for which the Owner is liable and shall provide in the invoice the date on which payment of the invoice is due ("Due Date"). Any Assessment or any part of an Assessment not paid by the Due Date shall be deemed delinquent and shall accrue simple interest at the rate of eighteen percent (18%) per annum commencing on the day after the Due Date.

SECTION 15.06: CERTIFICATE REGARDING PAYMENT

Upon the request of any Owner or prospective purchaser 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.

ARTICLE xyi: THE ASSOCIATION'S REMEDIES AGAINST NON-COMPLIANT OWNERS

SECTION 16.01: NO LIMITATION OF REMEDIES

The Association shall have all remedies available at law or in equity against any Owner who violates or fails to comply with any provision of this Declaration or any decision, order or ruling made by the Association or the Board in exercise of those powers granted to the Association and/or the Board under this Declaration or under any applicable federal or state law, regulation or order. All remedies enumerated herein shall be deemed additional to and not in lieu of all other available remedies.

SECTION 16.02: MANNER OF EFFECTING SERVICE OF PROCESS

In any action by the Association against an Owner the Association shall effect service of process on the defendant Owner as follows:

- (a) The Association shall first attempt to serve the Owner personally with summons and complaint in the manner provided in the Utah Rules of Civil Procedure.
- (b) In the event that the Association is unable to achieve personal service on the defendant Owner pursuant to Paragraph (a) of this Section, then the Association shall serve the President of the Association, whom each Owner does hereby appoint as his or her agent for service of process for the purposes of this Paragraph (b) of this Section; and, concurrently therewith, the Association shall (i) mail a copy of the Summons and complaint to the Owner at the mailing address that the Owner has filed with the Association Liaison pursuant to Section 5.02; (ii) leave a copy of the summons and complaint with anyone occupying the Owner's residence but if there is no occupant, then a copy of the summons and complaint shall be posted on or left against the door of the Owner's Residence; and (iii) if the Owner has filed an email address with the Association Liaison, send an electronic copy of the summons and complaint to the Owner at such email address. Service under this Paragraph (b) shall be deemed effected on (i) the third day after mailing or (ii) the day on which the summons and complaint was left at the Owner's Residence or (iii) the day on which a copy of the summons and complaint was sent electronically to the Owner, whichever date occurs last ("Date of Service"). Any Owner served under this Paragraph (b) shall have thirty days from the Date of Service in which to file an answer or other responsive pleading.
- (c) The Association's right to effect service of process under Paragraph (b) shall be conclusively established by the affidavit of a person authorized by the laws of Utah to serve process that the defendant Owner could not be personally served.

SECTION 16.03: INJUNCTIVE RELIEF

The Association shall have the right to seek injunctive relief against any Owner who violates any of the use restrictions or other provisions of Article VI and for purposes of such an action for injunctive relief, it is conclusively presumed that:

- (a) The Association's remedy at law is inadequate;
- (b) The Association and its members will suffer irreparable injury if injunctive relief is not granted; and
- (c) The Association has no obligation to exhaust any administrative remedies that may be available under this Declaration or any federal, state or local statute or regulation.

SECTION 16.04: RIGHT TO RECOVERY OF ATTORNEYS FEES

In any action brought by the Association against an Owner to enforce any provision in this Declaration or any federal, state or local statute, regulation or order, the prevailing party shall be entitled to an award of reasonable attorneys fees.

SECTION 16.05: SUSPENSION OF SERVICES

The Association, acting through its Board of Directors, may suspend any or all Association Services to any Owner who is more than sixty days delinquent in the payment of any Assessment.

ARTICLE XVII: ASSESSMENT LIENS

SECTION 17.01: CREATION

Any Assessment or part thereof not paid by the Due Date shall, together with accrued and accruing interest and costs of collection, be, constitute, and remain a continuing lien on the Lot against which the Assessment was levied (Assessment Lien").

SECTION 17.02: PERFECTION

The Association shall perfect an Assessment Lien by recording a Notice of Lien in the form necessary to conform to any applicable statute, rule, regulation or order.

SECTION 17.03: PRIORITY

An Assessment Lien shall have priority over all other liens, claims and encumbrances excepting:

- (a) tax liens for real property taxes;
- (b) assessments in favor of any municipal or other governmental body or assessment district; and
- (c) the lien of any Institutional Mortgagee.

SECTION 17.04: FORECLOSURE

The Association may foreclose an Assessment Lien in the manner provided by law for the foreclosure of mortgages on real property ("Judicial Foreclosure"). Alternatively, the Association may foreclose an Assessment Lien in the manner provided by law for the foreclosure of deeds of trust ("Non-Judicial Foreclosure") and to that end, hereby designates First American Title Insurance Company as trustee and grants and conveys the Association's rights in the Subdivision, IN TRUST, to First American Title Insurance Company, as trustee, with full power of sale, to foreclose Assessment Liens as directed by the Association. The Association may, at any time, designate one or more successor trustees, in the place of First American Title Insurance Company, in accordance with provisions of Utah law for the substitution of trustees under deeds of trust. Such trustee, and any successors, shall not have any other right, title or interest in the Subdivision beyond those rights and interests necessary and appropriate to foreclose Assessment Liens. In any such foreclosure, the Owner of the Lot being foreclosed upon shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the Assessment Lien being foreclosed. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

SECTION 17.05: FORECLOSURE OF ASSESSMENT LIEN WITHOUT PREJUDICE TO OTHER REMEDIES OF THE ASSOCIATION

The Association shall not be obligated to proceed with either Judicial Foreclosure or Non-Judicial Foreclosure before bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments.

SECTION 17.06: RIGHT TO RECOVERY OF COLLECTION COSTS

In any Judicial Foreclosure or Non-Judicial Foreclosure of an Assessment Lien, the Association shall be entitled to recover the full amount of the Assessment Lien, together with all accrued interest, foreclosure fees, attorneys fees, costs of collection and any other sums due to the Association.

SECTION 17.07: ASSESSMENT LIEN TO SURVIVE CONVEYANCE OR OTHER TRANSFER

Except as otherwise provided in the Section immediately following, an Assessment Lien shall not be extinguished by but shall survive the conveyance or other transfer of a Lot, including judicial or non-judicial foreclosure of a lien or mortgage.

SECTION 17.08: EXTINGUISHMENT BY FORECLOSURE BY INSTITUTIONAL MORTGAGEE

An Assessment Lien shall be extinguished only upon the sale through judicial or non-judicial foreclosure of a Mortgage held by an Institutional Mortgagee and encumbering the Lot against which the Assessment Lien has been recorded. The purchaser at such foreclosure sale, including an Institutional Mortgagee, shall be liable for all Assessments accruing after the foreclosure sale and in the event of non-payment by the purchaser the Association shall have all rights and remedies available to the Association at law or equity or under the terms of this Declaration, including by way of example and not limitation, the right to perfect and foreclose an Assessment Lien under this Article.

SECTION 17.09: TRANSFER FEE

Each purchaser of a Lot, other than an Institutional Mortgagee who acquired title to the Lot upon the sale through judicial or non-judicial foreclosure of the Institutional Mortgagee's Mortgage, shall pay to the Association immediately upon becoming the Owner of the Lot a Transfer Fee equal to the aggregate amount of all Assessments unpaid by previous Owners of the Lot and without regard to whether the Association shall have recorded an Assessment Lien against the Lot, or if it did, whether that Assessment Lien was extinguished by sale of the Lot through judicial or non-judicial foreclosure. The obligation to pay this Transfer Fee shall be the personal obligation of each purchaser and the Association may enforce this obligation against all such purchasers or each of them by utilizing any or all remedies provided to the Association pursuant to this Declaration, including the right to sue the purchaser or purchaser directly and the right to perfect, and if necessary foreclose, an Assessment Lien against the Lot. Upon such payment in full, the Association shall record a release of all Assessment Liens, if any, recorded against the Lot.

SECTION 17.10: ASSOCIATION'S RIGHT TO COLLECT RENTS AND PROFITS AND APPOINT A RECEIVER

Upon recordation of a Notice of Lien the Association shall have the right, with or without taking possession of the Lot, to collect all rents, royalties, issues and profits arising out of the ownership of the Lot. Failure or discontinuance of the Association at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by the Association of the right, power and authority to collect the same. Nothing contained herein, nor the exercise of the right by the Association to collect, shall be, or be construed to be, an affirmation by the Association of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the Assessment Lien to any such tenancy, lease or option. In furtherance of the Association's rights under this Section, the Association shall have the right to appoint a receiver to enter upon and take possession of the Lot or any part thereof, sue for or

otherwise collect said rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, against the Assessment Lien.

ARTICLE XVIII: MORTGAGE PROTECTION

SECTION 18.01: NOTICE OF DEFAULT

Upon receipt of a written request from a Mortgagee holding a Mortgage encumbering a Lot, the Association shall notify such Mortgagee in writing in the event that the Owner of the Lot encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on the Owner's part to perform any of his obligations under this Declaration.

SECTION 18.02: PROHIBITED ACTIONS

Unless all of the Institutional Mortgagees of the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled, by act, omission or otherwise:

- (a) To abandon, partition, subdivide, sell, dedicate, or transfer all or any part of the Common Areas;
- (b) To seek to abandon or materially alter the arrangement which is established by this Declaration;
- (c) To change, waive, abandon, or cease enforcement of the arrangement created under this Declaration concerning architectural control, party walls, or maintenance of the exteriors of Living units and of the Common Areas; or
- (d) To fail to maintain the fire, casualty and extended coverage insurance provided for in this Declaration.

SECTION 18.03: RIGHT TO EXAMINE BOOKS AND RECORDS

Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association.

SECTION 18.04: UNPAID TAXES AND PREMIUMS

In the event any taxes on the Common Areas are not timely paid, or in the event required fire, casualty, and extended coverage insurance on the Lots and Common Areas is not maintained or the premiums therefor are not paid when due, any Mortgagee or any combination of Mortgagees may, jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association, together with interest thereon from the date of expenditure at the rate of ten percent (10%) per annum.

ARTICLE XIX: CONDEMNATION

SECTION 19.01: CONDEMNATION

If at any time or times all or any part of the Subdivision shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Subdivision in lieu of condemnation, but

under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Townhouse or portion thereof, or the common areas and facilities or any portion thereof, is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by a condemning authority, the Board shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Subdivision and to any Institutional Holder of any first mortgage on a Townhouse in the Subdivision.

SECTION 19.02: PROCEEDS

All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Board, on behalf of the Association as herein provided.

SECTION 19.03: COMPLETE TAKING

In the event the entire Subdivision is taken by power of eminent domain, condominium ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

SECTION 19.04: PARTIAL TAKING

In the event less than the entire Subdivision is taken by power of eminent domain, the following shall occur:

- (a) Allocation of Award. As soon as practicable, the Board shall, on behalf of the Association, apportion the condemnation award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:
 - i. the total amount apportioned to taking of, or injury to, the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Townhouses have been taken) in proportion to their respective undivided interests in the Common Areas;
 - ii. the total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Townhouses that have not been taken, in proportion to their respective undivided interests in the Common Areas;
 - iii. the respective amounts apportioned to the taking of or injury to a particular Townhouse shall be allocated and distributed to the Owner of such Townhouse;
 - iv. the total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determined to be equitable under the circumstances;
 - v. if apportionment or allocation is already established by negotiation, judicial decree, statute, or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;
 - vi. distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as appropriate; and
 - vii. no provision of this Article or any other provision in this Declaration, the Articles, or the Bylaws shall entitle the owner of a Townhouse or other party to priority over any Institutional Holder of any first mortgage on such Townhouse with respect to

the distribution to such Townhouse of the proceeds of any award, settlement, or proceeds from any eminent domain or condemnation proceedings.

(b) Continuation and Reorganization. If less than the entire Subdivision is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate, but shall continue. In such event the Subdivision shall be reorganized as follows:

i. If any partial taking results in the taking of an entire Townhouse, then the Owner thereof shall cease to be a Member of the Association and all voting rights and the undivided interest in the Common Areas appertaining to such Townhouse shall be reallocated to, and shall appertain to, the remaining Townhouses in proportion to their respective undivided interests in the Common Areas.

ii. If any partial taking results in the taking of a portion of a Townhouse and if no determination is made by the Board that such taking makes it impractical to use the remaining portion of such Townhouse for any lawful purpose permitted by this Declaration, then the fair market value of such remaining portion of the Townhouse shall be determined by the Board and all voting rights and the undivided interest in the Common Areas appertaining to such Townhouse shall be reduced in proportion to the diminution in fair market value of such Townhouse resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Townhouse shall be reallocated to, and shall appertain to, such Townhouse and the other respective undivided interests in the Common Areas; provided, however, that such Townhouse shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence.

iii. If any partial taking results in the taking of a portion of a Townhouse and if there is a determination made by the Board that such taking makes it impractical to use the remaining portion of such Townhouse for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Townhouse shall be reallocated to and shall appertain to the remaining Townhouses in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Townhouse shall thenceforth be part of the Common Area.

iv. The Board shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Subdivision under the provisions of this Section, provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board shall defer thereto and proceed in accordance therewith.

(c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by its provisions specified in Article XX hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

ARTICLE XX: DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDINGS

SECTION 20.01: ASSOCIATION AS ATTORNEY IN FACT

All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place, and stead for the purpose of dealing with the Subdivision

upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute an appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

SECTION 20.02: DEFINITION OF REPAIR AND RECONSTRUCTION

Repair and reconstruction of the improvements as used herein means restoring the Subdivision to substantially the same condition in which it existed prior to the damage or destruction, with each Townhouse and the Common Areas having substantially the same vertical and horizontal boundaries as before.

SECTION 20.03: PROCEDURES

In the event any part of the Subdivision is damaged or destroyed, the Association shall proceed as follows:

- (a) Notices to Institutional Mortgagees. The Association shall give timely written notice to any Institutional Mortgagee holding a first Mortgage on a Townhouse in the event of substantial damage to or destruction of the Townhouse or any part of the Common Areas.
- (b) Estimate of Costs. As soon as practicable after an event causing damage to or destruction my part of the Subdivision, the Association shall obtain complete and reliable estimate of the costs to repair and reconstruct that part of the Subdivision damaged or destroyed.
- (c) Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Subdivision, such repair and reconstruction shall be carried out.
- (d) Insufficient Insurance- Less than 75% Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Subdivision, and if less than seventy-five percent (75 %) of the Subdivision is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.
- (e) Insufficient Insurance - 75% or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Subdivision, and if seventy-five percent (75 %) or more of the Subdivision is damaged or destroyed, such damage or destruction shall be repaired and reconstructed as provided herein, if, but only if, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75 %) of the Total Votes of the Association to carry out such repair and reconstruction. If, however, the Owners shall not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction, the Association shall record in the office of

the County Recorder of Summit County, State of Utah, a notice setting forth such facts. Upon the recording of such notice the following shall occur:

i. The Subdivision shall be deemed to be owned in common by the Owners;

ii. The undivided interest in the Subdivision owned in common which shall appertain to each Owner shall be the percentage of the undivided interest previously owned by such Owner in the Common Areas;

iii. Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Subdivision; and

iv. The Subdivision shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Subdivision, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit * hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Subdivision owned by such Owner.

SECTION 20.04: PRIORITY OF INSTITUTIONAL MORTGAGEES

In no event shall an owner of a Townhouse or any other party have priority over the Institutional Mortgagee holding a mortgage on such Townhouse with respect to the distribution to such Townhouse of any insurance proceeds.

ARTICLE XXI: MISCELLANEOUS

SECTION 21.01: DELIVERY OF NOTICES AND DOCUMENTS

The delivery any notice or document required or permitted to be given to any Owner under this Declaration shall be effected electronically to the Owner's last known email address, unless an Owner shall request in writing that hard copies of all notices and documents be delivered by mail or courier, in which event the Owner shall be billed for the cost of such delivery as an Individual Lot Assessment.

SECTION 21.02: AMENDMENT

Any amendment of this Declaration shall be accomplished through the recordation of an instrument executed by the Association. In such instrument an officer or director of the Association shall certify that the vote required by this Declaration for amendment has occurred.

SECTION 21.03: INTERPRETATION

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 construed whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. This Declaration shall be liberally construed to effect all of its purposes.

SECTION 21.04: COVENANTS TO RUN WITH LAND

This Declaration and all the 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 owner of each Lot, all parties who hereafter acquire any interest in a Lot or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns.

SECTION 21.05: EFFECTIVE DATE

This Declaration and any amendment hereof shall take effect on its being filed for record in the Office of the County Recorder of Summit County, Utah.

FAIRWAY VILLAGE HOMEOWNERS ASSOCIATION



By: Norm Simon, President

STATE OF UTAH)
) ss
COUNTY OF SUMMIT)

On the 17TH DAY OF DECEMBER 2009, personally appeared before me Norm Simon who being by me duly sworn, did say that he is the President of Fairway Village Homeowners Association, a Utah non-profit corporation, and that the foregoing instrument was signed on behalf of said Corporation by authority of its by-laws or resolution of its Board of Directors, and said Norm Simon acknowledged to me that said Corporation executed the same. In addition, the said Norm Simon certified to me that this First Amendment and Restatement of the Amended, Combined and Restated Declarations of Covenants, Conditions and Restrictions for Fairway Village No. 1 Subdivision and Fairway Village No. 2 Subdivision has received the required votes from Association Members.

) 2009.

NOTAR

 ERIC G. EASTERLY
NOTARY PUBLIC- STATE OF UTAH
2524 FAIRWAY VILIAGE DR.
PARK CITY, UT 84060
Comm. Exp. 05/01/2012

EXHIBIT A

LEGAL DESCRIPTION

The Subdivision which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property situated in Summit County, State of Utah.

PARCEL 1 – FVL-16 THROUGH FVL-43

Beginning at the Northwest corner of Park Meadows Subdivision No. 6A, as recorded said point also being North 00° 01' 43" East 1775.15 feet along a section line and East 152.25 feet from the East quarter corner of, Section 4, Township 2 South Range 4 East, Salt Lake Base and Meridian, said point being on a 367.00 foot radius curve to the right, the radius point of which bears South 74° 35' 39" West 367.00 feet; thence Southeasterly along the arc of said curve 40.02 feet; thence South 78° 30' West 313.99 feet; thence North 11° 30' West 30.00 feet; thence North 40° 25' West 80.62 feet; thence North 69° 20' West 418.16 feet; thence North 22° 00' West 355.00 feet; thence North 95.23 feet to a point on a 665.76 foot radius curve to the left, the radius point of which bears North 8° 09' 25" East 665.76 feet; thence Southeasterly along the arc of said curve 54.11 feet to a point of a 447.00 foot radius reverse curve to the right, the radius point of which bears South 3° 30' West 447.00 feet; thence Southeasterly along the arc of said curve 154.08 feet to a point of tangency; thence South 66° 45' East 162.00 feet to a point of a 367.00 foot radius curve to the right, the radius point of which bears South 23° 15' West 367.00 feet; thence Southeasterly along the arc of said curve 158.53 feet to a point of a 433.00 foot radius reverse curve to the left, the radius point of which bears North 48° 00' East 433.00 feet; thence Southeasterly along the arc of said curve 211.60 feet to a point of a 367.00 foot radius reverse curve to the right, the radius: point of which bears South 20° 00' West 367.00 feet; thence Southeasterly along the arc of said curve 349.70 feet to a point of beginning.

PARCEL 2- FVL-2-1 through FVL 2-73

Beginning at a point South 00°01'43" West 897.892 feet along section line and North 89°58'17" West 205.173 feet from the Northeast corner of Section 4, Township 2 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 40°25'00" East 80.62 feet; thence South 11°30'00" East 30.00 feet; thence North 78°30'00" East 313.99 feet to a point on the Westerly right-of-way line of Meadows Drive as dedicated, said point being on the arc of a 367.00 foot radius curve to the right, center bears South 80°50'33" West 367.00 feet, central angle equals 29°54'27"; thence along said right-of-way the next four courses, 1) Southwesterly along the arc of said 367.00 foot radius curve 191.568 feet to a point of a 758.00 foot radius reverse curve to the left, center bears South 69°15'00" East 758.000 feet, central angle equal 42°35'00"; thence, 2) Southeasterly along the arc of said curve 563.360 feet to a point of a 567.00 foot radius reverse curve to the right, center bears South 68°10'00" West 567.00 feet, central angle equals 60°10'00"; thence, 3) Southwesterly along the arc of said curve 595.411 feet to a point of a 616.311 foot radius reverse curve to the left center bears South 51°40'00" East 616.311 feet, central angle equals 14°50'00"; thence, 4) Southwesterly along the arc of said curve 159.557 feet; thence North 66°30'00" West 77.08 feet; then North 13°00'00" West 818.42 feet thence South 75°00'00" West 102.49 feet; thence due North 53°30'00" feet; West 100.57 feet; thence due North 392.56 feet; thence North 22°00'00" West 387.91 feet; thence South 69°20'00" East 418.16 feet to the point of beginning. Contains 14.536 acres.

EXHIBIT B

AFFIDAVIT OF THE

PRESIDENT

STATE OF UTAH
)
COUNTY OF SUMMIT)⁵⁵

The undersigned, being duly sworn under oath says:

I am the current President of the Fairway Village Homeowners Association. I certify that there are 55 voting Members in the Fairway Village No. 1 Subdivision and Fairway Village No. 2 Subdivision, of whom 37 cast a vote in favor of adopting the First Amendment and Restatement of the Amended, Combined and Restated Declarations of Covenants, Conditions and Restrictions for Fairway Village No. 1 Subdivision and Fairway Village No. 2 Subdivision, which is more than 66.67% of the voting powers of the owners of lots in Fairway Village No. 1 Subdivision and Fairway Village No. 2 Subdivision.

A handwritten signature in black ink, appearing to be "J. L.", written over a horizontal line.