



**THE GREENS AT FAIRWAY PARK**

**AMENDED AND RESTATED TOWNHOME DECLARATION**

**This Amended and Restated Townhome Declaration** ("Declaration"), made this 7<sup>th</sup> day of March, 2019 by The Greens at Fairway Park LLC, a Colorado limited liability company ("Declarant"), repeals, revokes and replaces The Greens at Fairway Park Townhome Declaration recorded March 5, 2019 as Reception No. 658947 in the office of the Gunnison County, Colorado Clerk and Recorder.

**Recitals**

A. Declarant is the Owner of certain improved real property situated in the County of Gunnison, State of Colorado, which is more particularly described on attached **Exhibit A** ("Property").

B. Declarant intends to create a planned community under the Colorado Common Interest Community Act, C.R.S. Sections 38-33.3-101 through 33-33.3-402 (the "Act") by dividing the Property and the improvements thereon into six (6) separate townhome parcels to be designated as Units 1, 2, 3, 4, 5 and 6 which are more particularly described on the plat of The Greens at Fairway Park ("Plat") referred to below.

C. Declarant will convey the townhome units, each of which is connected to another unit by a party wall and subject to certain protective covenants, conditions, restrictions, reservations, lien rights and charges as set for the in this Declaration and on the Plat.

**Now, therefore**, Declarant hereby declares that all such units shall be held, sold and conveyed subject to the following easements, reservations, restrictions, liens, charges, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, representatives, successors and assigns, and shall inure to the benefit of each unit owner.



**ARTICLE 1**

**Description of Townhome Unit**

1.1 Every instrument affecting the title to a townhome unit may describe that unit as follows:

Lot \_\_\_\_\_, The Greens at Fairway Park, according to the Replat of Townhome Plat of Fairway Park at Skyland, Phase II, bearing Reception No. 543061 ("Plat") and the Amended and Restated Townhome Declaration of The Greens at Fairway Park bearing Reception No. #658976 in the office of the Gunnison County Clerk and Recorder, County of Gunnison, State of Colorado.

1.2 Such method of description shall be sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect the unit and all other appurtenant properties and property rights and incorporate all of the rights, duties, limitations and burdens incident to ownership of a unit as described in this Declaration.

1.3 The maximum number of units that Declarant will create on the Property is six (6) units in three (3) buildings.

**ARTICLE 2**

**Party Wall**

2.1 The wall that is constructed as a common part of two adjacent townhome units in each building and which is located between such townhome units constitutes a party wall, as shown on the Plat. Except as is otherwise provided herein, the cost of reasonable repairs, maintenance and replacement of such party wall shall be the joint expense of the owners of the units adjacent to such wall. The term "owner" as used herein shall mean the record owner, whether one or more persons or entities, of a fee simple title to such units.

2.2 Except as otherwise provided herein, the cost of repairs and maintenance of the finished surface of the party wall located within a unit shall be the sole expense of the owner of that unit.

2.3 If the party wall is damaged or destroyed by the act, default or negligence of the owner of one unit, such owner shall rebuild said wall and shall compensate the other owner for any damage to the property of the other unit owner.



2.4 To the extent that damages to the party wall are covered by insurance, the insurance proceeds shall be used and applied to repair, restore and replace the party wall. Any deficiency shall be the joint expense of the owners, without prejudice, however, to the right of any owner to demand a larger contribution from the other owner under any rule of law regarding liability for negligent or willful acts or omissions.

2.5 Notwithstanding any provision of this Declaration to the contrary, an owner who by his negligent or willful act or omission causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

2.6 An owner shall have the right to maintain and repair any utility installations located within a party wall and in so doing, shall restore the party wall to its original condition. Notice shall be given to the adjoining owner prior to undertaking any such action. All such undertakings will be done so as to avoid or minimize damage to the adjoining owner's property.

### **ARTICLE 3**

#### **Administration and Management**

3.1 The operation and management of The Greens at Fairway Park shall be undertaken by The Greens at Fairway Park Association, a Colorado nonprofit corporation, which has been formed and will be operated as a unit owners' association on behalf of all owners ("Association"). Declarant shall convey the common areas shown on the Plat to the Association, which shall own and administer such common areas for the benefit of all unit owners. The Association shall have the right to adopt and enforce reasonable rules and regulations regarding the use of units and common areas and facilities, on condition that such rules and regulations are not inconsistent with this Declaration or the Plat.

3.2 The Association shall be responsible for managing The Greens at Fairway Park and for levying assessments for common expenses, which shall include but not be limited to snow removal, exterior building maintenance, driveway and parking area maintenance and plowing, liability insurance, fire and extended insurance on the common elements, all landscaping and care of grounds, common lighting, exterior decoration, painting, repairs and renovations, refuse collection, water and sewer charges, wages, legal and accounting fees, management fees and all expenses and liabilities incurred under or by reason of this Declaration.



3.3 The Association shall levy periodic or special assessments to cover common expenses, the payment of any deficit remaining from a previous period and the creation of a reasonable contingency fund or other reserve or surplus fund as well as payment of all other costs and expenses relating to The Greens at Fairway Park.

3.3.1 Assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the Association.

3.3.2 Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned.

3.3.3 Any common expense or portion thereof benefitting fewer than all of the units shall be assessed exclusively against the units benefitted.

3.3.4 If any common expense is caused by the negligence, fault or misconduct of any unit owner, the association may assess that expense exclusively against such owner's unit.

3.3.5 Each unit owner is liable for assessments made against such owner's unit during the period of ownership of such unit. No unit owner may be exempt for liability payment of the assessments by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made.

3.3.6 Any past-due common expense assessment or installment thereof shall bear interest at the rate established by the Association not exceeding twenty-one percent per year.

3.4 In addition to all remedies set forth in the Act, the Association shall have the right to utilize the lien provisions of Article 8, below, to initiate all reasonable efforts, in court or otherwise, to collect assessments for common expenses from owners, who shall be personally responsible for such common expenses and the assessments common expense.

3.5 The Association, the Fairway Park at Skyland Association, Gunnison County and/or the owner of any unit shall have the authority to enforce any provision of this Declaration. Prior to initiating any enforcement action, the Fairway Park at Skyland Association shall provide the Association with written notice of the claimed violation and provide the Association with at least one month to cure such violation.



3.6 If any unit is owned by more than one person, or by a limited liability company, partnership, joint venture, corporation or other such entity, the owners shall designate to the Association, in writing, the name and address of the agent of the owner to whom all legal or official assessments, liens, levies or other notices may be properly and lawfully mailed. Upon failure to so designate an agent, the Association shall send all notices to the owner's address as listed in the records of the Gunnison County Treasurer.

3.7 The common expense liability and votes in the Association allocated to each unit are set forth in **Exhibit B**. The interests allocated to each unit have been calculated as follows:

3.7.1 The percentage of liability for common expense, on the basis of number of units.

3.7.2 The number of votes in the Association, on the basis of number of units.

#### **ARTICLE 4**

##### **Insurance**

4.1 The Association shall maintain, to the extent reasonably available:

4.1.1 Property insurance on the common elements for broad form covered causes of loss; except that the total amount of insurance shall not be less than the full insurable replacement cost of the insured property; and

4.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the common elements in an amount not less than \$2,000,000, insuring the executive board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a unit owner and Association board member. The unit owners shall be included as additional insured but only for claims and liabilities arising in connection with the ownership, existence, use or management of the common elements. The insurance shall cover claims of one or more insured parties against other insured parties.

4.1.3 The insurance coverage maintained by the Association shall comply in all respects with all requirements of the Act.



4.1.4 The Association shall furnish proof of insurance coverage to any owner upon request.

4.2 The owner of any Unit shall at all times maintain fire and extended coverage in an amount equal to the full replacement value of his Unit, without deduction for depreciation, to the extent such insurance coverage is available for the Unit. Such coverage shall include the building exterior, interior, all fixtures, improvements, appliances, and personal property. The Association shall be named as an additional insured under such policy of insurance as its interest may appear. The owner shall furnish to the Association current certificates of insurance verifying that such fire and extended coverage is in full force and effect. In the event that the owner of any Unit shall fail to keep and maintain in full force and effect such fire and extended coverage, the Association shall have the right to obtain such insurance coverage as to the Unit and assess the owner for all costs to obtain such insurance.

4.3 In addition, an owner shall at his own expense carry insurance for homeowner's liability, theft, and other insurance covering personal property damage or loss, which shall name the Association as an additional insured. Such liability coverage shall be no less than \$500,000.00. Owners are required to provide proof of such coverage to the Association annually.

## ARTICLE 5

### Architectural Control

5.1 No building, fence, structure or improvement of any kind shall be erected, placed or altered on any unit or anywhere else on the Property until the building plans, specifications and plan showing the nature, kind, shape, height, materials and location of such building, fence, structure or improvement shall have been submitted to and approved in writing by the Association.

5.2 The selection of color, type of paint, exterior decoration, and any exterior materials shall be subject to the written approval of the Association.

5.3 To the extent reasonably practicable, the Association shall endeavor to maintain a uniform exterior appearance for all buildings on the Property.



## ARTICLE 6

### Use Restrictions

6.1 The units shall be used for residential and home occupation purposes only. "Home occupation" means the conduct of a business, occupation, or trade in a unit that is incidental and secondary to the residential use and does not change the residential character of the Property. No client or customer visits shall be allowed.

6.2 No structures of a temporary character, trailer, tent, shack, materials, equipment or other building shall be located on any portion of said Property at any time either temporarily or permanently, except to the extent such materials or equipment may be required for the repair of the building or other work being performed on the Property.

6.3 No animals, livestock, or poultry of any kind shall be raised, bred or kept on the Property, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. No more than two pets of the same species shall be allowed in any unit. Such household pets shall be adequately maintained and cared for in order to avoid constituting a nuisance to another owner or occupants of neighboring properties.

6.4 Owners of dogs shall:

6.4.1 Not allow their dogs to bark or otherwise disturb, threaten, scare, injure or otherwise bother any person or any animal;

6.4.2 Immediately clean up and properly dispose of the dog's waste; and

6.4.3 At all times control their dogs by leash or voice command.

6.5 To protect birds, all cats shall be confined indoors.

6.6 No unit shall be used in any way or for any purpose that may endanger the health or unreasonably disturb by noise, dust, fumes, vibration or otherwise, the owner or occupant of another unit or neighboring properties.

6.7 All fixtures and equipment installed within a unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the unit, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament or do any



act or allow any condition to exist that will adversely affect any other unit or its owner or the owner or occupant of neighboring properties.

6.8 Owners of Units shall be solely responsible for the care, maintenance, repair and replacement of the roofs, chimneys, doors, windows, structural components and utility service of their Units. In addition to all regular repairs and maintenance or replacements by such owners, the owners shall be responsible to replace a roof in its entirety in the event the Association determines that, due to time and deterioration, such roof needs to be replaced in its entirety. The repair or replacement of any roof shall be in a manner pre-approved by the Association. In the event that any owners fail to properly maintain, repair and replace any such roof, door, window, chimney, structural components or utility service, then the Association shall have the authority to do such maintenance, repair or replacement and to assess the owners of such Units for all costs, fees and expenses incurred therefor and to issue a default assessment against the Owners' Units in the event the same is not paid to the Association within thirty (30) days from the date of billing.

6.9 The exterior of each unit shall be kept and maintained in a neat, clean and orderly condition and appearance at all times. No personal property shall be stored on the outside part of any unit. Clotheslines are prohibited

6.10 No unit owner shall have or allow more than two motor vehicles to be parked outside at any time. The following are prohibited from The Greens at Fairway Park unless parked or stored within a fully enclosed garage:

6.10.1 Motor homes, recreational vehicles (RVs) and campers mounted on pickups;

6.10.2 Pick-up campers not mounted on a pickup;

6.10.3 Motorcycles, all-terrain vehicles (ATVs) and snowmobiles;

6.10.4 Trailers of any kind;

6.10.5 Boats, kayaks, inflatable rafts and other watercraft;

6.10.6 Inoperable vehicles (a vehicle which has not been driven under its own power for a period of two weeks or longer);

6.10.7 Bicycles, skis, snowboards, sleds and other recreation equipment;





6.10.8 Construction equipment, tools, snow blowers and other equipment; and

6.10.9 Trucks larger than 1 ton trucks.

6.11 The Association shall remove snow from around the ground floor windows of each unit with sufficient frequency to maintain at times unrestricted emergency egress through each such window.

6.12 No sign shall be installed on the Property without prior written approval by the Association and the Skyland Community Association.

**ARTICLE 7**

**Easements**

7.1 Each unit shall be subject to an easement for encroachment created by construction, settling and overhang as designed or constructed by Declarant, and a valid easement for such encroachment and its maintenance shall and does exist. If a townhome building is partially or totally destroyed and then rebuilt, the owners of the units agree that encroachments of parts of the adjacent unit for construction shall be permitted and that a valid easement for said encroachments and their maintenance shall exist.

7.2 There is hereby created a nonexclusive blanket easement upon, across, over and under all of the units and the improvements situated thereon, in favor of the Association for the benefit of all owners for:

7.2.1 The installation, replacement, repair and maintenance of all utilities and common facilities including but not limited to water, sewer, gas, telephone, electricity, internet and cable television, together with the lawn sprinkler system and parking areas.

7.2.2 Exterior building and roof maintenance.

7.3 There is hereby created a nonexclusive easement for ingress and egress and parking for the benefit of all owners, upon, over, and across the common parking/driveway areas depicted on the Plat of The Greens at Fairway Park. No parking of vehicles shall be allowed on the common driveway or parking/driveway area so as to impede access thereto or to any unit.



## ARTICLE 8

### Remedy for Nonpayment

8.1 The Association, has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to Section 38-33.3-302 (1) (j), (1) (k), and (1) (1), Section 38-33.3-313 (6), and Section 38-33.3-315 (2) of the Act are enforceable as assessments.

8.2 If any common expense of an owner or any assessment or other charge levied by the Association is not paid within thirty (30) days after notice thereof is given, such amount shall, upon recording by the Association of a lien statement in the office of the Gunnison County Clerk and Recorder, become a lien upon the unit of the nonpaying owner and shall continue to be such a lien until fully paid. This lien shall be the superior lien to any first mortgage or first deed of trust and shall be enforceable in an action for the collection of a debt and to enforce the aforesaid lien by all methods available, including foreclosure by an action brought in the name of the Association in a like manner as foreclosure of a mortgage under the statutes of the State of Colorado.

8.3 The lien provisions of this Declaration shall not bar the Association, the Fairway Park at Skyland Association or an owner from seeking such other injunctive or monetary relief as provided in this Declaration or as may be allowed at law or in equity. All remedies shall be cumulative.

8.4 The Association shall be awarded all costs, including reasonable attorneys' fees and costs, incurred in collecting any assessments or charges levied by the Association or in enforcing any provision of this Declaration.

8.5 The Association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally, or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen calendar days after the receipt of the request and is binding on the Association, the executive board and every unit owner. If no statement is furnished to the unit owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request.



8.6 In collecting past-due assessments and other delinquent payments, the Association shall:

8.6.1 Adopt and comply with a collections policy that meets the requirements of Section 38-33.3-209.5 (5) of the Act; and

8.6.2 Make a good-faith effort to coordinate with the unit owner to set up a payment plan that meets the requirements of the Act.

A payment plan negotiated between the Association and the unit owner must permit the unit owner to pay off the deficiency in equal installments over a period of at least six months. Nothing in this section prohibits the Association from pursuing legal action against a unit owner if the unit owner fails to comply with the terms of his or her payment plan. A unit owner's failure to remit payment of an agreed-upon installment, or to remain current with regular assessments as they come due during the six-month period, constitutes a failure to comply with the terms of his or her payment plan.

## ARTICLE 9

### Miscellaneous

9.1 If any portion of this Declaration is declared invalid or unenforceable, such invalidity or unenforceability shall in no wise affect any other provisions of this Declaration.

9.2 To the extent that they are not inconsistent with this Declaration, the general rules of law regarding party walls shall apply to The Greens at Fairway Park.

9.3 The singular wherever used herein shall be construed to mean the plural when applicable and necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or individuals, male or female, shall in all cases be amended as though in each case fully expressed.

9.4 Except for Gunnison County and the Fairway Park at Skyland Association, none of the terms, conditions or covenants contained in this Declaration shall be deemed to be for the benefit of any person not a party hereto, and no such person shall be entitled to rely hereon in any way or manner. For purposes of this section, "party" shall include Declarant, the owners, and their heirs, representatives, successors and assigns.



9.5 Neither this Declaration nor the Plat of The Greens at Fairway Park shall be amended except by an instrument signed in writing by the owners of four (4) of the units, which instrument shall be recorded in the office of the Gunnison County Clerk and Recorder. Approval by holders of deeds of trust and/or mortgages shall not be required.

9.6 This Declaration shall be interpreted in accordance with the law of the State of Colorado. Any litigation brought to enforce or interpret the provisions of this Declaration shall be brought in a court of competent jurisdiction in Gunnison County, Colorado, and the prevailing party in such litigation or in any arbitration shall be awarded all reasonable attorneys' fees and costs, including expert witness fees and costs.

9.7 A unit may not be conveyed pursuant to a time-sharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes.

9.8 All leases and rental agreements shall be in writing and subject to the reasonable requirements of the Association.

9.9 All easements and licenses to which the project is presently subject are recited in **Exhibit A**. In addition, the project may be subject to other easements granted by the Declarant as shown on the Plat.

9.10 Notwithstanding the amendment provisions in Sections 9.5 and 10.1.1 of this Declaration, Section 1.4 shall not be amended.

## ARTICLE 10

### Rights Reserved to Declarant

10.1 The Declarant specifically reserves the right to exercise in any order all Development Rights and Special Declarant Rights as set forth the Act and this Declaration for the maximum time limit allowed by law, including, without limitation, the following:

10.1.1 The right to amend the Declaration as set forth in the Act.

10.1.2 The right to appoint or remove any officer of the Association or any director of the Association during the declarant control period, as provided in the Act.





## EXHIBIT A

### Property Description

Phase II, including Lots 1C, 2C, 3C, 4C, 5C and 6C, Fairway Park at Skyland, according to the Replat of Townhome Plat of Fairway Park at Skyland, Phase II, recorded June 11, 2004 as Reception No. 543061, County of Gunnison, State of Colorado.

### Easements and Licenses

1. A right of way for ditches or canals constructed by the authority of the United States pursuant to United States Patent recorded in Book 101 at Page 428.
2. Easements on Plat of Skyland - Initial Filing recorded as Reception No. 363852 and on the Amended Plat of Portions of Skyland recorded as Reception No. 473132.
3. Non-exclusive Easement for access as set forth in instrument recorded as Reception No. 373292.
4. Deed, Grant of Licenses, Reservation and Grant of Easements and Option Agreement recorded in Book 785 at Page 323, and rerecorded in Book 787 at Page 103.
5. Easements on Townhome Plat of Fairway Park at Skyland - Phase I recorded as Reception No. 495495; Townhome Plat of Fairway Park at Skyland - Phase 2 recorded as Reception No. 513419; Boundary Line Adjustment of Lot 1B recorded as Reception No. 513989; Replat of Lot 1A, Lot 2A, Lot 3A, Lot 1B and Lot 2B recorded as Reception No. 543060; Replat of Townhome Plat of Fairway Park at Skyland - Phase II recorded as Reception No. 543061; and Amended Townhome Declaration for Fairway Park at Skyland recorded as Reception No. 654495.
6. Easements in the Covenant & Easement Agreement recorded as Reception No. 654496.
7. Easements reserved in the Bargain & Sale Deed recorded as Reception No. 654497.



**EXHIBIT B**

**TABLE OF INTERESTS**

<u>Unit</u>	<u>Share of Common Expenses</u>	<u>Vote in the affairs of the Association</u>
1	1/6	1
2	1/6	1
3	1/6	1
4	1/6	1
5	1/6	1
6	1/6	1