



SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE LAKE AT CHERRY LANE NO. 7 SUBDIVISION

This SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE LAKE AT CHERRY LANE NO. 7, (hereinafter the "**Second Amendment**") is made as of the 4 day of MAY, 2016, by the Fairway Townhome Owners Association, Inc., an Idaho non-profit corporation (referred to hereinafter as the "**Association**").

RECITALS:

A. The Association is the managing entity of the following described real property (hereinafter referred to as the "**Property**"):

The Lake at Cherry Lane No. 7 Subdivision, according to the official Plat thereof, recorded in Book 77 of Plats at Pages 8068 and 8069, as Instrument No. 98094556, recorded on the 1st day of October, 1998, official records of Ada County, Idaho.

B. The Property and all of the Lots, Common Area and improvements located therein are subject to the terms of that certain Declaration of Covenants, Conditions and Restriction of The Lake At Cherry Lane No. 7 Subdivision dated December 15, 1998 and recorded as Instrument No. 98123295 in the official records of Ada County, Idaho (the "**Master Declaration**"), as amended by that certain Amendment To Declaration of Covenants, Conditions and Restrictions Of The Lake At Cherry Lane No. 7 Subdivision, dated May 14, 2002 and recorded as Instrument No. 103143172 in the official records of Ada County (the "**First Amendment**") (The foregoing described Master Declaration and the First Amendment are collectively referred to hereinafter as the "**Declaration**").

C. A Special Meeting of the Members of the Association was properly called, noticed and held on May 4, 2016 (the "**Special Meeting**"), whereby, pursuant to Article XIII, Section 3 of the Declaration, Members of the Association holding a minimum of sixty-six and two-thirds percent (66-2/3%) of the voting rights of the Association, appeared in person or by proxy and voted, approved and signed this Second Amendment.

NOW, THEREFORE, in consideration of the foregoing Recitals, the approvals obtained at the Special Meeting of the Members, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, THE UNDERSIGNED, hereby certify that a Special Meeting of the Members of the Association was properly called, noticed and held on May 4, 2016 (the "**Special Meeting**"), whereby, pursuant to Article XIII, Section 3 of the Declaration, Members of the Association holding a minimum of sixty-six and two-thirds percent (66-2/3%) of the voting rights of the Association, appeared in person or by proxy and voted, approved and signed this Second Amendment as follows:

All capitalized terms not otherwise defined in this Second Amendment shall have the meanings set forth in the Declaration.

ARTICLE 1. DEFINITIONS

The following definitions are hereby added to Article I of the Master Declaration:

3. Common Area. The definition of the term "Common Area" as set forth in Article I, Section 3 of the Declaration is hereby deleted and replace with the following: "Common Area" shall mean all real property and improvements thereon (including private streets, recreational facilities, private street signs, common street lighting, storm drainage facilities, the perimeter fence installed by the Declarant) owned by the Association or provided for the common use and enjoyment of all Owners as set forth in the Declaration and this Second Amendment, including the following:

Lots 52, 74 and 83 in Block 8, The Lake at Cherry Lane No. 7 Subdivision, according to the official Plat thereof, recorded in Book 77 of Plats at Pages 8068 and 8069, as Instrument No. 98094556, recorded on the 1st day of October, 1998, official records of Ada County, Idaho;

And

Lot 33 in Block 8, The Lake at Cherry Lane No. 5 Subdivision, according to the official Plat thereof, recorded in Book 75 of Plats at Pages 7700 and 7701A, official records of Ada County, Idaho.

15. Assessment. "Assessment" or "assessment" as that term is used in the Declaration and this Second Amendment means all sums chargeable by the Association against a Lot, Owner and/or Dwelling Unit, including without limitation, (a) Regular, Special, and Limited Assessments as more particularly described in Article III Section 3 of the Declaration and as otherwise provided in this Second Amendment, including those expenses attributable to less than all Owners in the case of Limited Assessments, (b) charges and fines imposed by the Association; (c) interest and late charges on any delinquent account, and (d) cost of collection, including reasonable attorney fees, incurred by the Association in connection with the collection of a delinquent Owner's account.

16. Association Maintenance Areas. "Association Maintenance Areas" as that term is used in this Second Amendment shall mean the Common Area, the roofs and exterior painted surfaces of the Dwelling Units and the landscaping located within the front yard setback area of a Dwelling Unit. Association Maintenance Areas do not include the following: paved surfaces, driveways, walk ways, courtyards or patios located on a Lot or any other landscaping located within courtyards or side yard or back yard setback areas, or improvements or personal property located on or in a Lot or Dwelling Unit.

17. Limited Assessment. "Limited Assessment" as that term is used in this Second Amendment means an Assessment levied against a Lot, Dwelling Unit or Owner by the Association for the following costs and expenses incurred by the Association: (a) hazard and/or casualty insurance deductibles (or an Owner's proportionate share thereof), relating to any hazard or casualty insurance that the Association is obligated to carry under the Declaration or this Second Amendment and that arise due to events or conditions existing or arising on a Lot, Dwelling Unit or the improvements thereon, whether or not caused by an Owner or its tenants, guests, invitees or licensees; (b) costs and expenses resulting from the Associations maintenance,

repair and replacement of the roof or roofs of a Dwelling Unit caused by acts of God or the acts, omissions or negligence of an Owner or its tenants, guests, invitees or licensees; (c) costs and expenses resulting from the Association's maintenance, repair and replacement of the exterior paint of the Dwelling Unit, caused by acts of God or the acts, omissions or negligence of an Owner or its tenants, guests, invitees or licensees; (d) any cost or expenses of corrective or enforcement actions against an Owner, Lot or Dwelling Unit resulting from the acts, omissions or damage caused by an Owner or any tenant, invitee or licensee of an Owner, including without limitation, fees, attorney fees and costs, management fees, costs and all other repair and replacement costs and expenses incurred in bringing an Owner's Dwelling Unit or Lot or conduct into compliance with the provisions of the Declaration and/or this Second Amendment.

18. Regular Annual Assessment. "Regular Assessment" or "annual assessment" as those terms are used in the Declaration or this Second Amendment include an Assessment by the Association to provide for the payment of all expenses growing out of or connected with the management and maintenance of the Property as a whole, including costs and expenses incurred by the Association relating to the maintenance, repair and replacement of the Common Area and Association Maintenance Areas.

19. Special Assessment. The term "Special Assessment", "special assessment" or "Special assessment" as that term is used in the Declaration or this Second Amendment, shall include an Assessment by the Association for the purpose of defraying, in whole or in part, the costs of any new acquisitions, financing and/or new capital improvement, construction or reconstruction or unexpected or extraordinary repairs, maintenance or replacement of the Property, Common Area, Association Maintenance Areas or any part thereof, including, without limitation, snow and ice removal, or for any expense incurred or to be incurred as provided in this Second Amendment, or in the event that the Regular Assessment assessed for any particular year is or will become inadequate to meet the expenses of the Association.

ARTICLE III. HOMEOWNERS ASSOCIATION

The following provisions are hereby added as Section 3(A)(3)(4) of Article III, of the Master Declaration:

3. Levy of Limited Assessments. In addition to any regular annual Assessments or Special Assessments, the Association, through majority approval of the Association's Directors, may levy Limited Assessments against any Owner, Lot or Dwelling Unit. All such Limited Assessments, together with interest, costs of collection and reasonably attorney fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Limited Assessment is made. Each such Limited Assessment, together with interest, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot until paid in full, but shall not be the personal obligation of successors in title, unless expressly assumed.

4. Notice and Assessment Due Date. Unless the Directors of the Association establishes a different schedule for the payment of Limited Assessments levied pursuant to this Second Amendment or unless otherwise required by law, Limited Assessment levied pursuant to this Section 2 shall become delinquent if not paid within thirty (30) days of written notice. The Association may bring an action against any delinquent Owner and may foreclose the Limited Assessment lien against such Owner's Lot as provided in the Declaration and/or this Second Amendment and/or as otherwise allowed by law. The Association expressly

reserves its rights to file any liens against such Owner's Lot pursuant to city, county and state law for any payment not timely made by the Owner.

ARTICLE III, SECTION 3(J) OF THE DECLARATION IS HEREBY DELETED AND REPLACED WITH THE FOLLOWING "J. SUBORDINATION OF THE LIEN TO MORTGAGES":

J. SUBORDINATION OF LIEN TO MORTGAGES

The lien for the Assessment provided for herein in connection with a given Lot shall not be subordinate to the lien of any Mortgage junior to any such Assessment lien. The sale or transfer of any Lot shall affect neither the Assessment lien provided for herein, nor the creation thereof by the recordation of an Assessment lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall Assessments as provided for in the Declaration or this Second Amendment.

The following provisions are hereby added as Section 3(L) of Article III, of the Master Declaration:

L. ENFORCEMENT OF ASSESSMENTS; LIENS

1. Right to Enforce. In additions to the rights set forth in the Declaration, the Association has the right to collect and enforce its Assessments, including establishing and charging any fees, fines, penalties, late charges and/or interest accrued thereon pursuant to the provisions of the Declaration and this Second Amendment. Each Owner shall be deemed to covenant and agree to pay each and every Assessment provided for in the Declaration and this Second Amendment, including any fees, fines, penalties, late charges and/or interest accrued thereon, and agrees to the enforcement of all Assessments. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of the Declaration and this Second Amendment, each Owner agrees to pay reasonable attorneys' fees and costs, including the costs and expenses for any lien releases, in addition to any other relief or remedy obtained against such Owner. The Directors of the Association or its authorized representative may enforce the obligations of the Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity, or the Directors of the Association may exercise the power of foreclosure and sale pursuant the terms of the Declaration and this Second Amendment or as otherwise provided by law. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

2. Assessment Liens.

(a) Creation. In addition to the rights set forth in the Declaration, there is hereby created a claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against such Unit pursuant to the Declaration and this Second Amendment together with interest thereon at the maximum rate permitted by law and all fees, fines, penalties and all costs of collection which may be paid or incurred by the Association making the Assessment in connection therewith, including reasonable attorneys' fees. All sums assessed in accordance with the provisions of the Declaration and this Second Amendment shall constitute a lien on such respective Lot upon recordation of an Assessment lien with the Ada County Recorder. Such Assessment lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the Assessment lien except for tax liens for real property taxes on

any Lot and any Assessment on any Lot in favor of any municipal or other governmental assessing body which by law, would be superior thereto. The Association may cause to be recorded with the Ada County Recorder, such Assessment lien and/or notice of lien.

(b) Notice of Assessment Lien. Upon default of any Owner in the payment of any Assessments issued hereunder, the Association may cause to be recorded in the office of the Ada County Recorder, an Assessment lien. The Assessment lien shall state the amount of such Assessment and other authorized charges (including the cost of recording such notice), a sufficient description of the Lot against which the same have been assessed, and the name of the record Owner Section 45-810. Each Assessment lien shall constitute a separate lien, but any number of Assessments may be included within a single Assessment Lien. Upon payment to the Association of such Assessment and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. The Association may demand and receive the cost of preparing and recording such release before recording the same. thereof, and provide any other required information as required by Idaho Code

(c) Method of Foreclosure. Such lien may be foreclosed by appropriate action in court or by sale by the Association, its attorney or other person authorized to make the sale. Such sale shall be conducted in accordance with the provisions of the Idaho Code applicable to the exercise of powers of sale in deeds of trust or any other manner permitted by law. The Directors of the Association are hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting such power of sale or foreclosure.

(d) Required Notice. The Association shall deliver all notices required by law to an Owner prior to recording an Assessment lien and prior to proceeding with foreclosure of such Assessment lien.

The following provisions are hereby added as Section 5 of Article III, of the Master Declaration:

Section 5. FINES AND PENALTIES.

- A. The Association shall have the authority to impose fines and penalties for an Owner's failure to timely and strictly comply with terms and restrictions set forth in the Declaration and this Second Amendment. Notwithstanding the foregoing authority no such fine or penalty shall exceed One Hundred Dollars (\$100.00) per day of non-compliance with the Declaration and this Second Amendment.
- B. Prior to assessing such fine or penalty, the Directors of the Association shall by majority vote approve the fine or penalty to be assessed against an Owner, Lot and/or Dwelling Unit.
- C. Each Owner subject to a fine or penalty approved by the Directors of the Association shall be given thirty (30) days written notice and opportunity to cure the stated non-compliance before any such fine or penalty is charged, or as otherwise may be required by law at the time. In the event the Owner corrects the stated non-compliance within said thirty (30) day period, the Directors of the Association shall

withdraw and cancel the fine and/or penalty other than such costs incurred by the Association in enforcing compliance, including without limitation, reasonable attorney fees and costs. In the event the Owner commences correction within said thirty (30) day period and continues to diligently correct the non-compliance in good faith until fully resolved, the Directors shall not enforce the fine as long as the Owner continues to diligently correct the stated violation and timely complete such correction in good faith. Notwithstanding, correction of such stated violation, the Association shall be entitled to collect its cost of notice and enforcement, including reasonable attorney fees and costs

- D. No portion of such fine or penalty shall be used to increase the pay of any Director or agent of the Association.

ARTICLE VII: MAINTENANCE RESPONSIBILITY

Sections 1 and 2 of Article VII of the Declaration are hereby deleted and replaced in their entirety with the following:

“Section 1. Association Responsibilities. The Association shall have the responsibility to maintain and repair the Common Area and Association Maintenance Areas as those terms are defined in this Second Amendment. The Association shall determine the frequency and need for maintenance and repair of the Common Area and Association Maintenance Areas, including the roofs and exterior paint of the Dwelling Units.

If the need for such maintenance and repair of the Common Area or Association Maintenance Area is caused through an Act of God, casualty, negligence or the omission or acts of an Owner or its tenants, guests or invitees, the cost of such maintenance or repair shall be the responsibility of the Owner and assessed to such Owner as a Limited Assessment.

Section 2. Owner’s Responsibility. Each Owner shall maintain and keep in good order and repair his/her/its Lot and Dwelling Unit, including without limitation, the exterior of his/her/its Dwelling Unit, private decks, landscaping, yards, patios, walkways, driveways, concrete surfaces, fences, and courtyards contiguous to the Unit. Owners are responsible for such maintenance including roof repair and exterior painting in the event the maintenance or repair or damage is caused by an Act of God, casualty, negligence or acts or omissions of the Owner or its tenants, guests or invitees. In the event an Owner fails to comply with its duties as set forth herein, the Association shall have the right to take such legal action as may be necessary in order to compel such compliance. In the event of damage or destruction of a Dwelling Unit by fire or other casualty, the Owner must commence repair and/or replacement of the Dwelling Unit and related improvements and landscaping within ninety (90) days of the damage or destruction, and diligently and timely continue to such repairs and replacements in good faith until full completion. No Owner shall alter or modify, including painting or staining, any Common Area or Association Maintenance Area, without the written consent of the Directors of the Association. Each Owner shall notify the Association of any unsafe condition existing in on or around the Common Area or Association Maintenance Areas. Additionally, nothing shall be stored in or placed on any Common Area or Association Maintenance Areas except upon the written consent of the Directors of the Association.”

ARTICLE IX. BUILDING RESTRICTIONS

Section 3 of Article IX of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 3. Construction Requirements: Each dwelling unit may have wood siding. The exterior surfaces of each dwelling unit shall have such colors as may be approved by the Architectural Control Committee. All roofs shall be comprised of 25-year architectural shingles, grey in color, with Duraridge caps or equivalent (as may be approved by the Architectural Control Committee). All windows shall be of the anodized type or better (no raw aluminum frames). All fireplace chimneys must be of masonry or metal and, if metal, shall be wrapped with the same materials as exist on other areas of the exterior of the Unit to within one foot of the top cap. Each Dwelling Unit must have at least two exterior lights illuminating the garage door openings and one exterior light for the front entryway(s). All driveways must be concrete.

Section 4 of Article IX of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 4. Landscaping:

A. Prior to occupancy of the Dwelling Unit located thereon, each Lot shall be fully landscaped in the front yard with grass (seeded or rolled sod) at least one (1) deciduous tree of at least one and one-half (1-1/2) inches in diameter or a conifer tree at least six feet in height and shrubs or bushes all having been approved by the Architectural Control Committee. During construction of the Dwelling Unit there shall be installed in the front yard within ten feet (10') of the front boundary line, a photosensitive pole light designed to switch on automatically at sunset and off at sunrise with a minimum bulb power of 60 watts.

B. The Owner's landscape maintenance responsibility.

(1) Owners are responsible for the planting, removal, and replacement of all landscaping on their respective Lots, except within the Association Maintenance Area. All such planting, removal and/or replacement of landscaping, including trees and shrubs in the courtyard requires the prior approval of the Architectural Control Committee.

(2) For those Dwelling Units with adjoining garages the Owners shall be responsible for the shrubs and plants in the planting strip that extends between the driveway of such Lots, from the garage to the sidewalk or street. Replacement of trees and shrubs requires the approval of the Architectural Control Committee.

(3) For Dwelling Units without a courtyard, Owners shall be responsible for the space behind the entry sidewalk and between sidewalks adjacent to the Dwelling Unit, subject to the approval of the Architectural Control Committee.

(4) Owners that have over planted/landscaped areas within the Association Maintenance Areas or Common Areas, shall be responsible for the cost of planting/landscaping including the Association's cost for returning the Common Area and/or Association Maintenance Areas to the original landscape configuration.

All planting and/or landscaping by an Owner is subject to the prior approval of the Architectural Control Committee.

(5) Owners are responsible for maintenance and replacement of all soil-aid, perm-a-bark or other gravel/rock ground covering on their respective Lots, except within the Association Maintenance Area. All such soil-aid, perm a-bark or other gravel/rock

ground covering requires the prior approval of the Architectural Control Committee prior to installation, removal and/or replacement.

C. The Association landscape maintenance responsibility.

- (1). The Association will provide lawn care and tree and shrub trimming within the Common Areas and Association Maintenance Areas.
- (2). The Association will be responsible for removal, replacement and planting costs for trees and shrubs in the Commons Areas and Association Maintenance Areas.
- (3). The Association will be responsible for the removal and replacement costs of dead or dying trees and shrubs in the Common Areas and Association Maintenance Areas, with a tree or shrub as determined by the Architectural Control Committee. The Architectural Control Committee will select the replacement plant in consultation with the Owner, but may choose a different plant species or one of lower cost.
- (4) The Association may remove and/or replace healthy trees or shrubs if the plant is overgrown, could potentially cause property damage, is causing a hazard or obstruction, or is a nuisance to other homeowners.

ARTICLE X: INSURANCE AND BOND

The following provisions are hereby added as Section 4 of ARTICLE X, of the Master Declaration:

Section 4. Owner's Insurance Obligations. Notwithstanding anything contained in the Declaration to the contrary, each Owner, at each Owner's sole cost and expense, shall obtain liability, loss and casualty insurance on such Owner's Lot and Dwelling Unit (including the roof, exterior paint, and landscaping on such Owner's Dwelling Unit and Lot) against liability, loss and casualty, including minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders for similar Lots and Dwelling Units, on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based upon full replacement cost, covering such other risks as the Owner may deem appropriate. All such insurance on the Owner's Lot and Dwelling Unit shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents and guests of any of them, if such insurance can be obtained in the normal practice without material additional premium charge for the waiver of rights of subrogation.

The insurance policy(s) required above shall be written with a financially responsible insurance company licensed to do business in the state of Idaho. Each insurance policy shall be maintained in such amounts as necessary to provide for the full replacement of the insured Lot and Dwelling Unit and related improvements, including all of the fixtures, interior finishes, betterments and improvements located on or within the Dwelling Unit.

THE UNDERSIGNED Association, certifies that a Special Meeting of the Members of the Association was properly called, noticed and held on May 4, 2016 (the "Special Meeting"), whereby, pursuant to Article XIII, Section 3 of the Declaration, Members of the Association holding a minimum of sixty-six and two-thirds percent (66-2/3%) of the voting rights of the Association, appeared in person or by proxy and voted, approved and signed this Second Amendment, AND all institutional holders of First Mortgages on all Lots covered by the Declaration have given written approval of the this Second Amendment as required by Article XII of the Declaration. Fairway Townhome Owners Association, Inc., an Idaho non-profit corporation.

By: [Signature]
Print: Richard Michael Munkres
Its: President
Date: 10-18-2016

STATE OF IDAHO)
) ss.
County of Ada _____)

On this 18 day of October, 2016, before me, a Notary Public, personally appeared Richard Michael Munkres known or identified to me to be the President of Fairway Townhome Owners Association, Inc., an Idaho non-profit corporation, the company that executed the instrument or the person who executed the instrument on behalf of said company, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at 1116 Palms Dr. Caldwell ID
My Commission Expires: 8-1-2021