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ANDREA ALLEN
UTAH COUNTY RECORDER
2023 Aug 30 04:10 PM FEE 40.00 BY MC
RECORDED FOR SARATOGA SPRINGS CITY

WHEN RECORDED, PLEASE MAIL TO:

High Ground Development Inc.
10771 South Rippling Bay
South Jordan, UT 84009
Attn: Heather McDougald

**DECLARATION
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BRIXTON PARK**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIXTON PARK (this "Declaration") is made and executed this 27 day of July, 2023, by Saratoga 262 Partners LLC, a Utah limited liability company, with the address of 10771 South Rippling Bay, South Jordan, UT 84009 ("Declarant").

RECITALS

- A. Declarant is the owner of certain real property in the City of Saratoga Springs, Utah County, Utah, more particularly described on Exhibit A attached hereto (the "Property"). Declarant desires to develop the Property as a single-family residential development to be known as the "Brixton Park Subdivision" (the "Project"). The Project shall consist of single-family Units located on property depicted in Exhibit A.
- B. By this Declaration, Declarant desires and intends to develop a common scheme and planned community on the Project, as shown on the Plat, for the possession, use, enjoyment, repair, maintenance, restoration, and improvement of the Project.
- C. In order to efficiently manage and to preserve the value and appearance of the Project, it is necessary and desirable to create a nonprofit corporation to maintain Common Areas in the Project; to collect assessments and disburse funds as hereinafter set forth; and to perform such other acts as shall generally benefit the Project and the Homeowners. BRIXTON PARK HOMEOWNERS ASSOCIATION, INC., a homeowners association and nonprofit corporation, has or will be incorporated for the purpose of exercising the aforementioned powers and functions. It is intended that this Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Declaration should be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Association.

DECLARATION

NOW, THEREFORE, it is hereby declared that the Project shall be held, sold, conveyed, leased, rented, encumbered, and used subject to the following easements, rights, assessments, liens, charges, covenants, servitudes, restrictions, limitations, conditions, and uses, 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 described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Declarant, and each Owner by acceptance of a deed to a Unit, hereby agree, acknowledge and understand that the Project is not, by execution and recording of this Declaration, being submitted to the provisions of the Utah Condominium Ownership Act, §§ 57-8-1, *et seq.*, Utah Code Ann. (the "Condominium Act"). This Declaration does not constitute a declaration as provided for in the Condominium Act and the provisions of the Condominium Act shall not be applicable to Property or any portion thereof. In addition, the Project is not a cooperative under Title 57, Chapter 23, Utah Code Ann.

ARTICLE I

DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

(a) "Annual Assessment" shall mean the charge levied and assessed each year against each Unit pursuant to Section 4.2 hereof.

(b) "Articles" shall mean and refer to the Articles of Incorporation of the Association.

(c) "Association" shall mean BRIXTON PARK HOMEOWNERS ASSOCIATION, INC., a Utah nonprofit corporation or limited liability company, organized or to be organized to administer and enforce the covenants and to exercise the rights, powers, and duties set forth in this Declaration.

(d) "Board" shall mean the Board of Trustees of the Association.

(e) "Builder" shall mean any person or entity acquiring Units for the purpose of constructing residences for later sale to third parties in the ordinary course of its business.

(f) "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time

(g) "Common Area" shall mean all land within the Project that is now or in the future designated as Common Area by this Declaration and any amendments hereto, areas shown or otherwise designated as Common Area, Open Space, a "private road" or

private utility on the Plat and amendments and supplements thereto, or for which the Association has been granted an easement or which the Association has been permitted to use.

(h) "Common Expenses" shall mean all expenses for maintenance, repairs, landscaping, utilities and taxes incurred on or in connection with Common Areas within the Project, all insurance premiums, all expenses incurred in connection with enforcement of this Declaration, all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Association, and all other expenses which the Association is entitled to incur pursuant to the provisions of this Declaration or its Bylaws. Common Expenses do not include any utility services which are separately billed or metered to individual Units, which separately billed or metered utility services shall be the sole responsibility of the applicable Unit Owner.

(i) "Declarant" shall mean and refer to Saratoga 262 Partners LLC, Inc., a Utah limited liability company and/or any successor to said company which, either by operation of law or through a voluntary conveyance or transfer, comes to stand in the same relationship to the Project as did its predecessor.

(j) "Maintenance Charges" shall mean any and all costs assessed against an Owner's Unit and to be reimbursed to the Association for work done pursuant to Sections 5.2 and 5.3 and fines, penalties and collection costs incurred in connection with delinquent Annual Assessment or Special Assessment pursuant to Section 4.6.

(k) "Member" shall mean any person that is a member of the Association pursuant to the provisions of Section 2.1.

(l) "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Unit. If there is more than one record holder of legal title to a Unit, each record holder shall be an "Owner."

(m) "Plat" shall mean the collective reference to the duly approved and recorded plat previously filed in the office of the Utah County Recorder for the Project, and all future plats for future phases of the Project, if any, which may be added to the Project at Declarant's discretion as provided in Sections 10.12 and 13.4 below.

(n) "Project" shall mean the collective reference to: (i) Brixton Park Subdivision and (ii) all future plats for future phases Brixton Park, if any, which may be added to the Project at Declarant's discretion as provided in Section 11.4 below, as shown on the Plat and governed by this Declaration.

(o) "Property" shall mean and refer to that certain real property located in the City of Saratoga Springs, Utah County, State of Utah, and more particularly described on Exhibit A hereof, as amended from time to time as provided herein.

(p) "Reinvestment Fee" shall mean the charge which may be levied and assessed pursuant to Section 4.9. The Reinvestment Fee assessed, if any, shall be in compliance with Utah Code Ann. §57-1-46, as may be amended or replaced.

(q) "Water Retention Basin" shall mean the land designated on the Plat as Parcel A and other parcels throughout the project designated for water run-off to be held in the event of storms that produce water of higher volume than can be accommodated by normal drainage infrastructure.

(r) "Special Assessment" shall mean any assessment levied and assessed pursuant to Section 4.3.

(s) "Unit" shall mean any of the detached, single-family home building pads, separately numbered and individually described on the Plat and intended for private use and ownership, and any such additional building pads platted in future phases of the Project, if any.

ARTICLE II

MEMBERSHIPS AND VOTING

2.1 **Membership.** Every Owner shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership of a Unit. Membership in the Association shall be mandatory and shall be appurtenant to the Unit in which the Owner has the necessary interest. The rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit, and any such transfer shall automatically transfer the membership appurtenant to such Unit to the new Owner thereof. Each Member shall have a non-exclusive right and easement for use and enjoyment of all Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Notwithstanding the foregoing, a Member's right and easement of use and enjoyment is subject to the following:

(a) The right of the City of Saratoga Springs, Utah County and any other governmental or quasi-governmental body having jurisdiction over the Project to access and have ingress and egress to, from, over and across all Common Areas;

(b) The rights of the Association and the Declarant set forth in this Declaration.

2.2 **Voting Rights.** The Association shall have the following-described two (2) classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners, except Declarant. Class A Members shall be entitled to one (1) vote for each Unit in which the interest required for membership in the Association is held. Although each of the multiple Owners of a single

Unit shall be a Class A Member, in no event shall more than one (1) Class A vote exist or be cast on the basis of a single Unit. Which of the multiple Owners of a single Unit shall cast the vote on the basis of that Unit is determined under Section 2.3 of this Article II.

(b) Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to one hundred and ten (110) votes for each Unit in which the interest required for membership in the Association is held, it being Declarant's express intention that the Class B Member shall control the voting of the Association until the termination of the Class B membership. The Class B membership shall cease, and the Declarant shall become a Class A Member upon the first to occur of the following: (i) the sale and conveyance by Declarant to purchasers of all of the Units owned by Declarant and contained in the Project; (ii) the expiration of fifteen (15) years after the date on which Declarant first conveys to a purchaser fee title to a Unit; or (iii) when, in its discretion, the Declarant so determines. Furthermore, Declarant shall have the right to waive its right to vote as a Class B Member as to one or more matters, while retaining its right to vote as to other matters.

2.3 Multiple Ownership Interests. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. 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. Time-sharing is strictly prohibited for any Unit.

2.4 Lists of Owners. The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit which is owned by such person. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Utah County, Utah. The Association may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it, or at its option, the Association may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Utah County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Association is otherwise advised.

ARTICLE III

ASSOCIATION

3.1 Formation of Association. The Association shall be a nonprofit Utah corporation charged with the duties and invested with the powers prescribed by law and set forth in its Articles and Bylaws and this Declaration. Neither the Articles nor Bylaws of the Association shall,

for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration or any amendments thereto. Specifically, the Association is formed for the limited purpose of owning, operating, and maintaining the Common Area located within the Project, in a manner consistent with the terms of this Declaration, and for the purpose of collecting assessments and disbursing funds for such purpose.

3.2 Registered Agent. The Registered Agent of the Association shall be CT Corporation.

3.3 Board of Trustees and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws of the Association as the same may be amended from time to time. The initial Board shall be composed of three (3) natural persons, designated by Declarant, who need not be Members of the Association. Declarant shall then have the sole power and authority to add and remove Board members until the termination of the Class B membership as provided in Section 2.2(b) above. After the termination of the Class B membership as provided in Section 2.2(b) above, the Board may, upon the majority vote of all Owners of the Units entitled to vote, be expanded to a total of five (5) natural persons, and the additional two persons need not be Members. The Board may also appoint various committees pursuant to Article VIII below and may appoint and hire at Association expense a manager or management company, who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board may task any such manager or management company with running Association meetings, keeping minutes, giving notices, being the custodian of corporate records, maintaining a record of Owners, receiving or giving receipts, paying out debts of the Association, making reports to the Board, and any other duty(ies) incident to the office of secretary or treasurer and such other duties as from time to time be assigned by the Board. The Board shall determine the compensation to be paid to the manager, the management company or any other employee of the Association. At Declarant's option, so long as Declarant owns at least one (1) Unit in the Project, Declarant may appoint one member of the Board.

Unless specifically set forth in this Declaration, no action may be brought by the Association, or its Board, or Officers on behalf of any Owner, as its respective interest may appear, with respect to any cause of action relating to the Common Area and related facilities.

3.4 Personal Liability. Neither the Declarant, any manager or member of Declarant, nor any member of the Board, officer, manager or other employee or committee member of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, negligence, or other matter, of any kind or nature except for acts performed intentionally and with malice.

ARTICLE IV

ASSESSMENTS

4.1 Purpose of Assessments; Assessment Lien. All Members of the Association hereby covenant and agree, and each Owner, except Declarant, by acceptance of a deed to a Unit is deemed to covenant and agree, to pay to the Association the following assessments and charges: (a) Annual Assessments, (b) Special Assessments, (c) Maintenance Charges, and (d) Reinvestment Fees, all such assessments and charges to be established and collected as hereinafter provided. The Annual Assessments and Special Assessments shall include provision for a reasonable reserve fund, as determined by the Board. The Annual Assessments, Special Assessments, Maintenance Charges and Reinvestment Fees, together with interest, costs and reasonable attorneys' fees, shall be secured by a lien (the "Assessment Lien") on the Unit to which they relate, in favor of the Association, which shall be a continuing servitude and lien upon the Unit against which each such assessment or charge is made. The Assessment Lien shall be a charge on the Unit, shall attach from the date when the unpaid assessment or charge shall become due, and shall be a continuing lien upon the Unit against which each assessment is made. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The Assessment Lien may be foreclosed by the Association in substantially the same manner as provided for non-judicial foreclosure of deeds of trust on real property upon the recording of a Notice of Delinquent Assessment or charge as set forth in Section 4.6 hereof and/or the foreclosure rights and methods described in the Community Association Act, Utah Code Ann. ("U.C.A.") 57-8a. In order to facilitate the foreclosure of any such Assessment Lien in the manner provided at law for the foreclosure of deeds of trust, the Board may designate a trustee with full power of sale, to foreclose any such Assessment Liens as directed by the Board. Such trustee, and any successors, shall not have any other right, title or interest in the Project beyond those rights and interests necessary and appropriate to foreclose any Assessment Liens against Units arising pursuant hereto. In any such foreclosure, the Owner of the Unit being foreclosed 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 Units purchased at such sale. If an Owner fails or refuses to pay any Assessment when due, the Board shall have the right, after giving notice and an opportunity to be heard in accordance with the Community Association Act, U.C.A. 57-8a, to terminate an Owner's right (a) to receive utility services paid as a Common Expense and (b) of access and use of any recreational facilities constituting a portion of the Common Areas. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be charged, and is exempt from paying, any assessments, whether Annual, Special, Maintenance or otherwise, with respect to Units owned by Declarant.

4.2 Annual Assessments. Annual Assessments for each Owner of a Unit shall include the Owner's pro rata share of Common Expenses associated with the Common Areas based on

the total amount of Units in the Project. Commencing on the date on which Declarant first conveys to a purchaser fee title to a Unit, an Annual Assessment shall be made against each Unit, except any Unit owned by Declarant, for the purpose of paying (or creating a reserve for) all Common Expenses.

4.3 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, except with respect to Units owned by Declarant, in any assessment period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, or for the purpose of defraying other extraordinary expenses; provided that any such assessment shall be approved by a majority of the Board by vote at a Board meeting. Special Assessments for Common Areas shall be paid pro rata by the Owners of all of the Units based on the total number of Units in the Project.

4.4 Uniform Rate of Assessment. Annual Assessments for Units shall be fixed at a uniform rate for all Units, except Units owned by Declarant, and may be collected on a yearly basis or more frequently if the Board shall so determine.

4.5 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the twelve month period beginning January 1 of each year. The Board, in its sole discretion from time to time, may change the Assessment Period by recording with the County an instrument specifying the new Assessment Period. The Board shall fix the amount of the Annual Assessment against each applicable Unit at least thirty (30) days in advance of the end of each Assessment Period. Written notice of the Annual Assessment shall be sent to each Member. Failure of the Association to send a bill to any Member shall not relieve the Member of liability for payment of any assessment or charge. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Unit have been paid.

4.6 Effect of Nonpayment. Any assessment or charge or installment thereof not paid when due shall be deemed delinquent and in the discretion of the Board may bear interest from thirty (30) days after the due date until paid at the rate of interest of eighteen percent (18%) per annum, and the Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The Board may also record a Notice of Delinquent Assessment or Charge (the "Notice") against any Unit as to which an assessment or charge is delinquent. The Notice shall be executed by an officer of the Association or a member of the Board, set forth the amount of the unpaid assessment, the name of the delinquent Owner, and a description of the Unit. The Board may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency, and recording a release of such lien, which fixed fee shall be treated as part of the Maintenance Charge of the Association secured by the Assessment Lien. The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment and/or foreclose the lien against such Owner's Unit. No Owner may waive or otherwise avoid liability for the assessments

provided for herein by non-use of the benefits derived from assessments or abandonment of such Owner's Unit.

4.7 Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has loaned funds with a Unit as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges. Except as provided above, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Unit. Sale or transfer of any Unit shall not affect the Assessment Lien.

4.8 Fines. Without limiting the foregoing, the Association shall have the right after written notice to a violating Member, and the Member's failure to cure such violation within ten (10) days following receipt of the written notice, to assess a fine against any violating Member in the amount of up to \$100 per day from the date of the written notice for each violation of this Declaration (which amount shall be approved by the Board of the Association). Each fine shall become part of the Assessment Lien.

4.9 Reinvestment Fees. Subject to the terms and conditions of Section 4.9(b) below, the Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section 4.9. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

(a) Upon the occurrence of any sale, transfer or conveyance (as applicable, a "Transfer") of any Unit, but excluding the initial sale or Transfer by or to Declarant or an affiliate or successor of Declarant, the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board from time to time. The initial Reinvestment Fee shall be the lesser of (a) \$200.00, or (b) the maximum rate permitted by applicable law.

(b) Notwithstanding anything to the contrary contained in this Section 4.9, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

(i) Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.

(ii) Any Transfer to the Association or its successors.

(iii) Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Unit transferred.

(iv) Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution, except for a sale of a Unit by the estate of an Owner.

(v) Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, removing clouds on titles, and any exchange of Units between Declarant and any original purchaser from Declarant of one or more Units being Transferred to Declarant in such exchange.

(vi) Any lease of any Unit or portion thereof for a period of less than thirty years.

(vii) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

(viii) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

(c) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee.

ARTICLE V

MAINTENANCE

5.1 Common Areas. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas in the Project. This maintenance will include the installation of landscaping (excluding landscaping on or associated with any particular Unit) and the appropriate upkeep and repair of all Common Areas, including, without limitation, the sweeping, mowing, watering, snow removal (excluding snow removal on any sidewalks, driveways or porches on or associated with any particular Unit), repair, replacement and maintenance. The Association shall have the power to grant easements for utilities or other purposes on or under the Common Areas to the extent that the Board deems it necessary or advisable. The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of such properties shall be taken by the Board or by its duly delegated representative. All landscaping installed upon the Common Areas shall be installed, and thereafter maintained, in accordance with applicable city ordinances and, to the extent required by such ordinances, approved in advance by the City of Saratoga Springs.

5.2 Water Retention Basin. The Association, or its duly delegated representative, shall maintain and otherwise manage the Water Retention Basin as a portion of the Common Area for the Project. This maintenance will include the installation of landscaping (excluding landscaping

on or associated with any particular Unit) and the appropriate upkeep and repair of the Water Retention Basin, including, without limitation, mowing, watering, repair and maintenance. The Board shall be the sole judge as to the appropriate maintenance of the Water Retention Basin. All landscaping installed upon the Water Retention Basin shall be installed, and thereafter maintained, in accordance with applicable city ordinances and, to the extent required by such ordinances, approved in advance by the City of Saratoga Springs.

5.3 Assessment of Certain Costs. In the event that the need for maintenance or repair of Common Areas or any other areas maintained by the Association is caused through the willful or negligent act of any Owner (except Declarant), his or her family, guests or invitees, the cost of such maintenance or repairs shall be added to and become part of the Maintenance Charge to which such Owner's Unit is subject and shall be secured by the Assessment Lien.

5.4 Improper Maintenance. In the event any portion of any Unit, except Units owned by Declarant, is so maintained or used by an Owner as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Units or other areas of the Project which are substantially affected thereby or related thereto; or in the event any portion of a Unit, except Units owned by Declarant, is being used in a manner which violates this Declaration; or in the event any Member, except Declarant, is failing to perform any of its obligations under this Declaration or standards of the City of Saratoga Springs, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Member that unless corrective action is taken within ten (10) days, the Board may cause such action to be taken at such Owner's cost. If at the expiration of such ten (10) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become part of the Maintenance Charge and shall be secured by the Assessment Lien.

ARTICLE VI

RIGHTS AND POWERS OF ASSOCIATION

6.1 Association's Rights. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. In the event of any conflict between the Articles and Bylaws and this Declaration, the terms of this Declaration shall control. In the event of any conflict between the Articles and Bylaws, the terms of the Articles shall control.

6.2 Rights of Enforcement. The Association, as the agent and representative of the Members, and the Declarant shall have the right to enforce the covenants, conditions, restrictions, liens, and charges now and hereafter imposed by the provisions set forth in this Declaration by any proceeding at law or in equity. If the Association or Declarant prevails in any proceeding at law or in equity to enforce the provisions of this Declaration, the Association or Declarant is entitled to an award of its costs and reasonable attorneys' fees associated with the

action. Failure by the Association or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6.3 Insurance. The Association may obtain in its name and keep in full force and effect at all times, insurance policies for such casualty and public liability and other insurance policies as the Board deems necessary or desirable. The cost of such insurance shall be a Common Expense. The Association shall have no duty or obligation to procure or maintain insurance of any kind on any particular Unit.

6.4 Creation of Sub-Associations. The Association may, at any time, upon the affirmative vote of the Class B Member or, if after the termination of the Class B membership as provided in section 2.2(b) above, upon the affirmative vote of sixty-seven percent (67%) of the Class A members, form one or more sub-associations for any purpose.

ARTICLE VII

ARCHITECTURAL STANDARDS

All exterior design, landscaping and changes or alterations to existing use, landscaping and exterior design and development shall be subject to Saratoga Springs City regulations and ordinances set forth, among other places, in the Saratoga Springs City Code.

ARTICLE VIII

ADVISORY COMMITTEE(S)

8.1 Purpose. In order that the Board may be advised in its ongoing decision-making regarding the Project and the Property, the Board may institute various advisory committees responsible for advising the Board on specific projects, strategies, and procedures (each, an "Advisory Committee").

8.2 Creation. Each Advisory Committee shall consist of at least one (1) person, the majority of which shall constitute a quorum, and the concurrence of the majority shall be necessary to carry out the provisions applicable to that particular Advisory Committee. In the event of death or resignation of any member of an Advisory Committee, the Board shall have full authority to appoint another person to fill the said vacancy. The term for each Advisory Committee member shall be set forth by the Board at the institution of that particular Advisory Committee. All members of any Advisory Committee must be Owners at the time of their appointment. Should any Advisory Committee member move his or her residence outside of the Project, such member shall automatically be deemed to have resigned and the Board may designate a new Advisory Committee member as a replacement.

8.3 Powers. Each Advisory Committee is hereby authorized to perform (or to retain the services of one or more consultants to advise and assist that particular Advisory Committee in performing) the functions prescribed by the Board. The Board shall, concurrently with its

appointment of an Advisory Committee, provide that particular Advisory Committee with an "Appointment Statement" which sets forth the Advisory Committee's term (e.g., perpetual, for a term of months/years, or ad-hoc for the duration of a specific project or task), job description, goal and mission statement, and any relevant timetables. Each Advisory Committee shall make recommendations to the Board in the manner requested by the Board and according to the timetable set forth by the Board.

ARTICLE IX

MORTGAGEE REQUIREMENTS

9.1 Notice of Action. The Board shall maintain a roster containing the name and address of each Eligible Mortgagee as such term is defined herein. To be considered an "Eligible Mortgagee," a first mortgagee shall provide the Board with a certified copy of its recorded first mortgage and the name and address of the first mortgagee and a statement that the mortgage is a first mortgage together with a written request that it receive notice of the matters and actions described below. The Board shall strike an Eligible Mortgagee from the roster upon request by such Eligible Mortgagee or upon the Board's receipt of a certified copy of a recorded full release or satisfaction of the eligible mortgage. The Board shall give notice of such removal to the Eligible Mortgagee unless the removal is requested by the Eligible Mortgagee. Upon the Board's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor;

(b) Any delinquency in the payment of Assessments or charges owed by an Owner whose Unit is subject to a mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; and

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association in accordance with Section 6.3, above.

9.2 Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Project documents, membership register, books, records, and financial statements available for inspection by Members or by Eligible Mortgagees. Generally, these documents shall be available during the Association's normal business hours, and may be maintained and kept at the office of the manager for the Association. The Association may, as a condition to permitting a Member to inspect the membership register or to its furnishing information from the register, require that the Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Member's interest in the Association.

9.3 Subordination of Lien. The Assessment or claim against a Unit for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the first mortgage affecting such unit, and the first mortgagee thereunder which comes into possession of or which obtains title to such Unit shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the first mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, Assessment Lien, or claim which is described in the preceding sentence as being subordinate to a first mortgage, or as not to burden a first mortgagee which comes into possession or which obtains title to a Unit, shall be collected or enforced by the Association from or against a first mortgagee, a successor in title to a first mortgagee, or the Unit affected or previously affected by the first mortgage concerned.

9.4 Notice to Eligible Mortgagee. The Association shall give timely written notice of the events listed in Section 9.1 above to any Eligible Mortgagee who requests such notice in writing.

9.5 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Area are not timely paid, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes. Prior to paying any taxes, such first mortgagee or first mortgagees shall provide thirty (30) days advance written notice to the Board, which notice shall specify the nature of the taxes and suggest a reasonable cure period for such payments.

9.6 Priority. No provision of this Declaration or the Articles gives or may give a Member or any other party priority over any rights of mortgagees pursuant to their respective mortgages in the case of a distribution to Members of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Area. All proceeds or awards shall be paid directly to any mortgagees of record, as their interests may appear.

ARTICLE X

COVENANTS, CONDITIONS AND RESTRICTIONS

10.1 Land Use and Building Type. No Unit shall be used for other than residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Unit other than one (1) single-family dwelling, not to exceed the height limitation for the applicable zone of the City of Saratoga Springs as specified at the time of recordation of the Plat. All such dwellings shall meet the minimum size requirements of the City of Saratoga Springs as specified at the time of the recordation of the Plat. The side yard for each building shall meet the minimum requirements of the City of Saratoga Springs.

10.2 Construction Time. There is no time limit for beginning construction; however, upon commencement, the construction time for the exterior portion of any structure shall not exceed twelve (12) months from start to finish. "Start" shall be the instant any foliage is cut or removed in anticipation of the landscaping or construction to be built. All building debris, excavation, dirt, etc. associated with the building process shall be removed within the twelve (12) month period. Such debris and excavation dirt shall not be permitted on any of the streets or sidewalks within the Project.

10.3 Building Location. No building shall be located on any detached single family unit nearer than the minimum building set-back, side street and side lot lines required by the City of Saratoga Springs, as set forth on the Plat.

10.4 Landscaping. Any trees, lawns, shrubs, or other planting provided by Declarant, including without limitation, those provided in the Common Area shall be properly nurtured and maintained by the Association.

No planting or structures shall be placed or permitted which may damage or interfere with established slope ratios, create erosion, or change the direction of drainage channels. All materials used to retain and contour the slope of any Unit or improvement must conform with the natural beauty and color of the Property and must be approved to the extent required by applicable city ordinances of the City of Saratoga Springs.

Each dwelling shall have installed surrounding it an outdoor sprinkler system for irrigation.

Landscaping of the front yard areas of individual Units shall be installed prior to the issuance of a certificate of occupancy by the City of Saratoga Springs relating to a residence constructed on such Unit, provided that with respect to residences completed during the winter months, such landscaping shall be installed on or before the immediately following May 15. Each Owner shall install Landscaping in the rear and any side yard areas of such Owner's Unit within 12 months of purchasing said unit. Landscaping shall be maintained by each individual Owner unless the Plat provides for the maintenance of such landscaping to be provided by the Association as a part of the Common Area. Landscaping of Common Areas shall be maintained by the Association. Landscaping may include a combination of lawns, shrubs, or ground cover. Ground cover may include vegetative vines, low-spreading shrubs, or annual or perennial flowering or foliage plants. Ground cover may also include mineral or non-living organic permeable material. Mineral ground cover may include such materials as rocks, boulders, gravel, or brick over sand.

10.5 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

10.6 Accessory Structures. Patio structures, trellises, sunshades, gazebos, awnings, window treatments, blinds, flags, and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures, and materials of the dwelling and shall be integral to the architecture of the house.

10.7 Exterior Antennas, Lights, and Power Lines. Exterior antennas are prohibited without the prior written approval of the Board. Exposed metal flues, vents, ventilator, or other metallic rooftop protrusions shall be coated or painted with a neutral color which will blend harmoniously with the surrounding Property. Satellite TV dishes will be allowed, provided they are placed or screened so they are not readily visible to neighboring Units and streets. All power lines and similar type cables shall be buried underground. No short-wave radio antennas may be constructed on any Unit or attached to any structure thereon without the prior written approval of the Board.

10.8 Nuisances; Construction Activities. Prior to commencing construction on a Unit the Owner of such Unit, except Declarant, shall post with the Association a one thousand dollar (\$1,000.00) cash construction bond to cover any damage done by Owner or their contractors, subcontractors and materialmen to streets, sidewalks, curbs and utilities lines and pipes, or any clean-up expense caused by such construction activities. If no damage is done, and no repairs or clean-up is required from such Owner's construction activities, the bond, or the remaining portion thereof shall be refunded to Owner within sixty (60) days of completion of construction activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. Normal construction activities and parking in connection with the building of improvements on a Unit shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber, and other building materials will be piled only in such areas as are reasonably necessary to construct the improvements. In addition, any construction equipment and building materials stored or kept on any Unit during construction of improvements may be kept only in such areas as are reasonably necessary to construct the improvements.

No articles, material, equipment, or vehicles of any nature shall be parked or stored on any street location within the Property. Licensed, regularly used passenger vehicles (i.e., visitor vehicles) may be parked on streets within the Property for brief periods of time (i.e., less than twenty-four (24) hours). Overnight parking of such vehicles should generally be restricted to the driveway of the dwelling being visited. Notwithstanding the foregoing, Declarant or any Builder may park or store vehicles on the street within the Property to the extent necessary or convenient for Declarant to conduct its business with regard to the Project.

The use of motorcycles and other motorized recreational vehicles which may produce audible annoyance to the Owners shall be limited to ingress and egress of the Property.

No oil or gas drilling, development, operations, refining, storage, quarrying, or mining operations of any kind shall be permitted upon any Unit.

The burning of rubbish, leaves, or trash on the Property is prohibited. Trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection.

No Owner shall permit anything or condition to exist upon any Unit which shall induce, breed, or harbor infectious plant diseases or noxious insects.

The Board, in its sole discretion, shall have the right to determine the existence of any nuisance.

10.9 Signs. Except as provided in this Section 10.9, no signs of any kind shall be displayed to public view on any Unit except one sign of not more than five square feet advertising the property for sale or rent. The placement of signs, graphics, or advertisements which are permanent in nature or represent advertisement for small business conducted in the home or on a Unit is prohibited. Banners, flags, lighting or decoration of the exterior of any dwelling for the purpose of promoting the dwelling for sale is strictly prohibited. Nothing in this Section 10.9 shall be construed to prevent Declarant or a Builder from displaying any signs, graphics, banners or advertisements of any size or nature advertising the Project or any unit or part of the Property for sale, rent or other purpose.

10.10 Animals. No animal, bird, fowl, poultry, or livestock of any kind shall be raised, bred, or kept on any Unit except pursuant to applicable City of Saratoga Springs ordinance.

10.11 Repair of Building. No building or structure on any Unit shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then such building or structure shall be immediately repaired or rebuilt or shall be demolished.

10.12 Restriction on Further Subdivision, Property Restrictions, and Rezoning. No Unit shall be further subdivided or separated into smaller units by any Owner, and no portion less than all of any such Unit, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the Plat or other instrument creating the subdivisions, easement, or other interest. No further covenants, conditions, restrictions, or easements shall be recorded by any Owner or other person against any Unit without the provisions thereof having been first approved in writing by the Board, and any covenants, conditions, restrictions, or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Unit and no applications for variances or use permits shall be filed with any

governmental authority unless the proposed use of the Unit has been approved by the Board and the proposed use otherwise complies with this Declaration.

10.13 Non-Residential Use. No gainful occupation, profession, or other non-residential use shall be conducted on any Unit, and no persons shall enter onto any Unit for engaging in such uses or for the purpose of receiving products or services arising out of such usage; provided, however, gainful occupations or professions may be operated or maintained in a Unit provided that: (i) any such business, profession or trade may not require heavy equipment or create a nuisance within the Project, (ii) may not noticeably increase the traffic flow to the Project, (iii) may not be observable from outside the Unit, and (iv) may only be carried on following approval from the city with jurisdiction over the matter, pursuant to all applicable state and city laws, rules and ordinances in effect at the time any such use is requested. Specifically, it is contemplated that certain "home office" businesses, professions or trade which rely heavily on the Internet and other similar type of technological advances may be operated or maintained within a Unit, subject to the foregoing limitations and all other limitations of this Declaration.

10.14 Fuel Storage. No tank for storage of fuel may be maintained above the surface of the ground without the prior written consent of the Board, except for fuel tanks in reasonable size and quantity which are customarily maintained and used in connection with the enjoyment and maintenance of a home (including but not limited to barbeque, lawn mower and related equipment, and so forth).

10.15 Building Material Storage. Excluding with respect to the initial construction of residences within the Project, no building material of any kind or character shall be placed or stored upon any Unit until the Owner thereof is ready to commence improvements, and then the material shall be placed within the property lines of the Unit upon which the improvements are to be erected and shall not be placed in the streets or between the curb and the property line.

10.16 Reservation of Access, Maintenance, and Utility Easements. Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and for sewer, drainage and water facilities, and maintenance of the respective Units by the Owners or agents authorized to conduct maintenance on behalf of the Owner, (whether servicing the Property or other premises or both) over, under, along, across and through the Property, together with the right to grant to Saratoga Springs and Utah County, or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof.

10.17 Solar Equipment. Solar panels (if any) are to be integrated into roof design. Panels and frames must be compatible with roof colors, and all equipment must be screened from view.

10.18 Pools, Spas, Fountains, Game Courts. Pools, spas, fountains, and game courts shall be located to avoid impacting adjacent properties with light or sound. Pool heaters and pumps must be screened from view and sound insulated from neighboring houses. Nothing herein shall be construed as permitting the construction of skateboard areas and/or similar area ramps, which structures shall be prohibited.

10.19 Fences and Walls. Fencing and walls shall be constructed of materials consistent with the colors, textures, and materials approved for the dwelling and shall be integral to the architecture of the house.

10.20 Parking and Storage. No major mechanical work or repairs are to be conducted in streets or front yards. No inoperative vehicle shall be placed or remain on any Unit adjacent street for more than forty-eight (48) hours. No commercial-type vehicles and no trucks shall be parked or stored on the front yard setback of any Unit or within the side yard buildings setback on the street side of a corner Unit, or on the residential street except while engaged in transportation. Trailers, mobile homes, trucks over three quarter ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors, and maintenance or commercial equipment of any kind shall be parked or stored behind the front yard setback in an enclosed area screened from street view. Sufficient side yard gate access should be planned and provided for in the design of the home to permit ingress, egress, and storage of trailers and recreational type vehicles on the side and rear yards. The storage or accumulation of junk, trash, manure, or other offensive or commercial materials is prohibited. No pads used for the storage of vehicles or other material either temporarily or permanently shall be constructed within the side or the front yard setback requirements of a given Unit.

10.21 Additional Easements.

(a) Easements for Encroachments. If any part of the Common Areas as improved now or hereafter encroaches upon any Unit or if any structure constructed by Declarant on any Unit now or hereafter encroaches upon any other Unit or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Unit shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Unit or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

(b) Easements for Construction and Development Activities. Declarant reserves for itself and each Builder easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of residences on Units, (b) improvement of the Common Areas and construction, installation

and maintenance thereon of other infrastructure improvements and other facilities designed for the use and enjoyment of some or all of the Owners, and (c) construction, installation and maintenance on lands within, adjacent to, or serving the Property of other facilities planned for dedication to appropriate governmental authorities. The reservations contained in this paragraph shall expire twenty-five (25) years after the date on which this Declaration was first filed for record in the Office of the County Recorder of Utah County, Utah.

10.22 Declarant's Exemption. Declarant is exempt from all conditions and restrictions set forth in this Article X. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project. Nothing contained in this Declaration shall be construed to prevent the operation by Declarant of model homes within the Project or the designation and/or operation of parking areas for such model homes.

ARTICLE XI

AMENDMENTS

11.1 Term; Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of thirty (30) years from the date of recordation. From and after such date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting sixty-seven percent (67%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. This Declaration may be terminated at any time if at least ninety-five percent (95%) of the votes cast by all Owners shall be cast in favor of termination at an election held for such purpose. If the necessary votes are obtained, the Board shall cause to be recorded in the office of the Utah County Recorder a "Certificate of Termination," duly signed by the President and Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, the covenants herein contained shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

11.2 Amendments. This Declaration may be amended by recording in the office of the Utah County Recorder a "Certificate of Amendment," duly signed and acknowledged as required for a Certificate of Termination. The Certificate of Amendment shall set forth in full the amendment adopted and shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws of the Association, the Owners casting sixty-seven percent (67%) of the votes at the election voted affirmatively for the adoption of the amendment. So long as Declarant is the Owner of any Unit in the Project, this Declaration may be amended or terminated only with the written approval of Declarant.

11.3 Unilateral Amendment. Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Unit. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing; or (c) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without limitation, the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA), or any similar agency). Further, so long as Declarant is the Owner of any Unit in the Project, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect title to any Unit without the consent of the affected Owner. Such amendments may include, but are not limited to, changing the nature or extent of the uses to which such property may be devoted or readjustment of Unit line boundaries in connection with the location and development of the Project.

11.4 Expansion of Project. Declarant shall have the right in its sole discretion, without the consent of Owners, Members or the Board, upon recording a Certificate of Amendment signed by Declarant to expand the Project to include additional parcels, phases and Units, and/or to add to the development known as Brixton Park, all of which additional property shall, upon recording such Certificate of Amendment, be subject to the same covenants, conditions and restrictions as set forth in this Declaration. Each Owner by the acceptance of a deed to a Unit in the Project shall be deemed to have consented to all the provisions of this section.

ARTICLE XII

DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE

12.1 Bound Parties. Declarant, the Association, their officers, directors, affiliates, agents, employees and contractors, all Owners, consultants, and any person not otherwise subject to this Declaration, but who agrees to submit to this Article XII (including any design professionals, subcontractors, and suppliers), shall each be referred to individually as a "Bound Party" and collectively as the "Bound Parties".

12.2 Claims. Except for exempt claims as set forth in Section 12.3, all actions or claims (other than claims relating to the agreement between Declarant and Owner for the purchase and sale of a Unit within the Project ("Purchase Agreement") or made pursuant to the limited warranty provided by Declarant to a purchaser (the "Limited Warranty")) (i) by the

Association against any one or more of the Bound Parties, (ii) by any Owner(s) against any one or more of the Bound Parties, or (iii) by both the Association and any Owner(s) against any one or more of the Bound Parties, arising out of or relating to the Project, including the Declaration, the Bylaws, the Articles, the rules and regulations promulgated under this Declaration or any other documents related thereto (the "Project Documents"), the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including construction defects, surveys, soils conditions, grading, specifications, installation of improvements (including residential dwelling units) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Project or any improvements thereon (collectively, "Dispute(s)") shall be subject to the provisions of this Article XII. Declarant and each Owner acknowledge that the provisions set forth in this Article XII shall be binding upon Declarant, current and future Owners of the Project and upon the Association, whether acting for itself or on behalf of any Owner(s).

12.3 Exempt Claims. Nothing in this Declaration is intended to limit, expand or otherwise modify the terms of any Limited Warranty or Purchase Agreement related to a Unit or dwelling thereon (each a "Superseding Agreement"), and claims under a Superseding Agreement will, subject to the terms of such Superseding Agreement, be arbitrated in accordance with any binding arbitration provisions set forth in the Superseding Agreement. Notwithstanding any contrary provision of this Article XII, the following shall not be Disputes and shall not be subject to the provisions of this Article XII: (a) any legal action by the Association to collect Annual Assessments, Special Assessments, Maintenance Charges, Reinvestment Fees, or any other amounts due from an Owner; (b) any legal action by the Association or Declarant to obtain a temporary or permanent restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of Article X; (c) any action, legal or otherwise, by the Association against an Owner imposing fines and related charges; and (d) any legal action to enforce an arbitration award provided in this Article XII.

12.4 Notice. Any person or entity (Including the Association) with a Dispute claim ("Claimant") shall notify the applicable Bound Party (the "Notified Bound Party") in writing, by certified mail, return receipt requested of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice"). Compliance with this section tolls all applicable statutes of limitation and repose for one hundred eighty-five (185) days. Tolling of all applicable statutes of limitation and repose immediately ceases if a claimant abandons, waives or dismisses its claim. In no event shall the Dispute be submitted for mediation or arbitration after the date when institution of a legal or equitable proceeding based on the underlying claims in such Dispute would be barred by the applicable statute of limitations or statute of repose.

12.5 Right to Inspect and Right to Corrective Action – Claim Related to Property. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed thirty (30) days, the Notified Bound Party and the Claimant shall meet at a mutually acceptable place within the Project to discuss the claim. If the Dispute involves property, then at such meeting or at such other mutually agreeable time, the Notified Bound Party and the Notified Bound Party's

representatives shall have full access to such property and shall have the right to conduct inspections of such property, and testing, including destructive or invasive testing in a manner deemed appropriate by the Notified Bound Party (provided the Notified Bound Party shall repair or replace any property damaged or destroyed during such inspection or testing), which right shall continue until such time as the Dispute is resolved as provided in this Section. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Notified Bound Party elects to take any corrective action, the Notified Bound Party and the Notified Bound Party's representatives and agents shall be provided full access to the Project and the property that is the subject of the claim to take and complete corrective action, including, without limitation, any necessary redesign.

12.6 No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in Section 12.5 above shall be construed to impose any obligation on the Notified Bound Party to inspect, test, repair or replace any item within the Project or any property, which is the subject of a Dispute, for which the Notified Bound Party is not otherwise obligated under applicable law or by any Superseding Agreement (if applicable). The right of the Notified Bound Party to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated.

12.7 Mediation. If the parties to the Dispute fail to resolve the Dispute pursuant to the procedures described in Section 12.5 above, within sixty (60) days after delivery of the Claim Notice, the Claimant shall send the Notified Bound Party in writing, by certified mail, return receipt requested, notice of their intent to mediate the Dispute ("Mediation Notice"). If the Claimant fails to send the Mediation Notice to the Notified Bound Party within sixty (60) days after delivery of the Claim Notice, then the claim of Claimant shall be deemed waived and abandoned and all applicable Bound Parties shall be relieved and released from any and all liability relating to the Dispute.

12.8 Mediator. Mediation shall be completed by a private mediator mutually agreed to by the Claimant and Notified Bound Party. If the Claimant and Notified Bound Party are unable to agree on a mediator, within thirty (30) days after delivery of the Mediation Notice, the parties shall request JAMS, Judicial Arbitrator Group, Inc. (the "ADR Provider"), to appoint, within the shortest possible period of time, a mediator to conduct the mediation. Any mediator (either mutually agreed to by the Claimant and Notified Declarant Party or selected in the process described above) shall be an attorney in good standing in the State of Utah or an expert in the construction industry and/or common interest community matters, as applicable dependent on the Dispute and shall have at least ten (10) years of experience mediating residential construction defect matters and/or common interest community matters, as applicable.

12.9 Conduct of Mediation. Mediation shall be conducted in the County in which the property is located. Mediation shall be commenced within forty-five (45) days after the delivery of the Mediation Notice. Any settlement of a Dispute through mediation shall be documented in writing by the mediator and signed by the parties. If the case does not resolve in its entirety,

the mediator shall, within two (2) business days thereafter, issue a memorandum of non-settlement and immediately send the notice to all interested parties.

12.10 Parties Permitted at Mediation. The Claimant and Notified Bound Party expressly agree that any and all material providers, construction subcontractors, construction sub-subcontractors, or any other person or entity involved in the development of the Unit or any dwelling located thereon or any other property that is subject to the Dispute claim, supply of materials or construction of the Unit or any other Property that is subject to the Dispute, and any other persons with personal knowledge concerning the Dispute shall be permitted to participate in the mediation between the Claimant and Notified Bound Party.

12.11 Expenses. The Claimant and Notified Bound Party expressly agree to split evenly the cost of mediation. Specifically, the Claimant and Notified Bound Party agree that the mediator's fee and cost shall be borne equally.

12.12 Exclusion Agreement. Any admission, offers of compromise or settlement negotiations or communications at the mediation or involved in the mediation process, shall be excluded in any subsequent dispute resolution forum.

12.13 Compliance with Procedures. No litigation or other action (including arbitration) shall be commenced against the Notified Bound Party or any Bound Party without complying with the procedures described in this Article XII.

12.14 Arbitration. If the parties to the Dispute fail to resolve the Dispute pursuant to the procedures described in Sections 12.7 – 12.11 above within thirty (30) days after the mediator issues a memorandum of non-settlement, the Claimant may send the Notified Bound Party in writing, by certified mail, return receipt requested, notice of their intent to arbitrate the Dispute claim ("**Arbitration Notice**"). If the Claimant fails to send the Arbitration Notice to the Notified Bound Party within thirty (30) days after the mediator issues a memorandum of non-settlement, then the claim of the Claimant shall be deemed waived and abandoned and all other applicable Bound Parties shall be relieved and released from any and all liability relating to the Dispute. No other Dispute may be joined or consolidated with the Dispute unless agreed to in writing by all parties.

12.15 Arbitrator. Arbitration shall be completed by a single private arbitrator mutually agreed to by the Claimant and Notified Bound Party. If the Claimant and Notified Bound Party are unable to agree on an arbitrator, the parties shall request that the ADR Provider select an arbitrator in accordance with the Rules (as defined in Section 12.17 below). Any arbitrator (either mutually agreed to by the Claimant and Notified Declarant Party or chosen by the ADR Provider) shall be an attorney in good standing in the State of Utah or an expert in the construction industry or common interest community matters, as applicable and shall have at least ten (10) years of experience arbitrating residential construction defect matters or common interest community matters, as applicable. An arbitrator shall be selected within the shortest possible period after receipt of the mediator's memorandum of non-settlement. If the amount claimed under the Dispute exceeds \$1,000,000.00, the arbitration shall be heard and determined by three (3)

arbitrators, unless the parties agree to have a single arbitrator hear the Dispute. If three (3) arbitrators are to hear the dispute, the Notified Bound Party and the Claimant, shall each select an arbitrator and those two (2) arbitrators shall agree on the selection of a third arbitrator.

12.16 Place. The arbitration proceeding shall be conducted in the County in which the property is located. The time, date, and location of the proceeding shall be determined by the arbitrator(s).

12.17 Rules. The parties expressly agree that any arbitration and mediation proceedings involve and concern interstate commerce and are governed by the Federal Arbitration Act (9 U.S.C. Sec. 1, et. Seq.) to the exclusion of any conflicting or inconsistent state or local law, ordinance, judicial rule, and to the extent that any state or local law, ordinance or judicial rule shall be inconsistent with any provision of the rules of the ADR Provider, the rules of the ADR Provider shall govern the proceedings and the subject Dispute shall not be resolved by or in a court of law or equity (the "Rules"). Any question about whether a matter is a Dispute, and/or whether such matter is covered by this Article XII shall be determined by the arbitrator.

12.18 Authority. Except as limited by Section 12.13, the arbitrator shall have the authority to try all issues, whether of fact or law and the arbitrator shall have the same authority and power as the trial court judge on all issues (fact or law), including motions to dismiss, motions for summary judgment, scheduling orders, discovery disputes, default applications and default judgments

12.19 Commencement of Proceeding. Arbitration shall be commenced within thirty (30) days after the Arbitration Notice is sent to the Notified Bound Party. This deadline may only be extended by the mutual agreement of the parties. If the arbitration proceeding has not commenced within thirty (30) days after the Arbitration Notice is sent to the Notified Bound Party, then the claim of the Claimant shall be deemed waived and abandoned and all applicable Bound Parties shall be relieved and released from any and all liability relating to the Dispute.

12.20 Parties Permitted at Arbitration. The Claimant and Notified Bound Party expressly agree that any and all material providers, construction subcontractors, construction sub-subcontractors, or any other person or entity involved in the development of the Unit or any other Property that is the subject to the Dispute claim, supply of materials or construction of the Unit or any other Property that is subject to the Dispute claim, and any other persons with personal knowledge concerning the Dispute shall be permitted to participate in the arbitration between the Claimant and Notified Bound Party. The parties further agree that no Dispute may be arbitrated as a class action.

12.21 Arbitration Expenses. Each party shall bear its own attorneys' fees, experts' fees and costs associated in any way with the Dispute.

12.22 Arbitration Award. The Claimant and Notified Bound Party agree that the arbitration shall be final and binding. Unless otherwise agreed by the parties, the arbitrator shall render a written arbitration award within thirty (30) days after the conclusion of the arbitration

hearing. The arbitrator's award shall not be disclosed publicly and shall not establish precedent. The arbitrator's award shall be final and binding and may be filed for enforcement with any court of competent jurisdiction in accordance with applicable law. The arbitrator's award shall address each claim to be resolved and provide a summary of the reasons therefore and the relief granted.

12.23 WAIVERS.

NOTICE: BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE XII AND WAIVES THE RIGHT TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE XII. SPECIFICALLY, AND WITHOUT LIMITATION, EACH SUCH PERSON WAIVES THE RIGHT TO SUBMIT A DISPUTE IN ARBITRATION AS A REPRESENTATIVE OR MEMBER OF A CLASS AND TO HAVE SUCH DISPUTE ARBITRATED AS A CLASS ACTION AND ALSO WAIVES THE RIGHT TO HAVE THE DISPUTE RESOLVED BY A COURT, INCLUDING THE RIGHT TO FILE A LEGAL ACTION AS THE REPRESENTATIVE OR MEMBER OF A CLASS OR IN ANY OTHER REPRESENTATIVE CAPACITY. EXCEPT AS OTHERWISE SET FORTH IN SECTION 12.3, THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE XII, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A DISPUTE. BY ACCEPTANCE OF A DEED OR BY ACQUIRING ANY OWNERSHIP INTEREST IN ANY PORTION OF THE PROJECT, EACH OWNER HAS VOLUNTARILY ACKNOWLEDGED THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A DISPUTE.

12.24 Required Consent of Declarant to Modify. This Article XII shall not be amended except in accordance with the terms of this Declaration and only with the express written consent of the Declarant while the Declarant has any ownership interest in the Property, has any outstanding sureties relative to the Property, or has any reserved rights under this Declaration.

12.25 Required Consent of Owners for Legal Action. Any action or claim instituted by the Association (which action or claim shall be subject to the terms of Article XII) against any one or more of the Bound Parties, arising out of or relating to the Project, including the Declaration or any other Project Documents, the use or condition of the Project or the design or construction of or any condition on or affecting the Project, including construction defects, surveys, soils conditions, grading, specifications, installation of improvements (including residential dwelling units) or disputes that allege negligence or other tortious conduct, fraud, misrepresentation, breach of contract or breach of implied or express warranties as to the condition of the Project or any improvements, shall have first been approved by Owners representing at least seventy-five percent (75%) of the votes in the Association

12.26 Notice to Owners. Prior to obtaining the consent of the Owners in accordance with Section 12.25, the Association must provide written notice to all Owners, which notice shall (at a minimum) include (a) a description of the nature of any action or claim (the "Claim"), (b) a description of the attempts of Notified Bound Party to correct such Claim and the opportunities provided to the Notified Bound Party to correct such Claim, (c) a certification from an engineer licensed in the State of Utah that such Claim is valid along with a description of the scope of work necessary to cure such Claim and a resume of such engineer, if applicable, (d) the estimated cost to repair such Claim, if applicable, (e) the name and professional background of the attorney proposed to be retained by the Association to pursue the Claim against the Notified Bound Party and a description of the relationship between such attorney and member(s) of the Association's Board of Directors (if any), (f) a description of the fee arrangement between such attorney and the Association, (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim against the Notified Bound Party and the source of the funds that will be used to pay such fees and expenses, (h) the estimated time necessary to conclude the action against the Notified Bound Party, and (i) an affirmative statement from the Association's Board of Directors that the action is in the best interest of the Association and its Members.

In the event the Association recovers any funds from the Notified Bound Party (or any other person) to repair a Claim, as applicable, any excess funds remaining after repair of such Claim shall be paid into the Association's reserve fund.

12.27 Notification to Prospective Purchasers. In the event that the Association commences any action or claim or becomes a Notified Bound Party, all Owners must notify prospective purchasers of such action or claim and must provide such prospective purchasers with a copy of the Claim.

ARTICLE XIII

MISCELLANEOUS

13.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by the covenants and provisions hereof.

13.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

13.3 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the

right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities, and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration.

13.4 General Reservations. Declarant reserves the right to grant, convey, sell, establish, amend, release, and otherwise deal with easements, reservations, exceptions, and exclusions with respect to the Property which do not materially interfere with the best interests of Owners and/or the Association including, but not limited to, access and utility easements, road easements, pedestrian and equestrian easements, pedestrian and hiking trails, and drainage easements. Declarant further reserves the right to make minor amendments and corrections to the Plat, to alter the boundary of Units or building pads, to combine Units or building pads, and to change the size and product type of Units in the Project, the density and number of Units in the Project, so long as Declarant owns the affected Unit(s). Such changes shall not materially alter the boundaries of the Common Areas.

13.5 Run with the Land. Declarant for itself, its successors, and assigns, hereby declares that all of the Property shall be held, used, and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in the Property.

[Signature page follows]

IN WITNESS WHEREOF, Declarant has executed this Declaration this 28 day of July, 2023.

DECLARANT:

Saratoga 262 Partners LLC

By: [Signature]
Larry Myler, Manager

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 28 day of July, 2023, by Larry Myler, the Manager of Saratoga 262 Partners LLC on behalf of said corporation.

[Signature]
Notary Public
Residing at Pleasant Grove, UT

My Commission Expires:
May 24, 2025



Exhibit A

Brixton Park Phase A

BOUNDARY DESCRIPTION

A PART OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 5 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID SOUTHWEST QUARTER WHICH IS 1047.92 FEET SOUTH $89^{\circ}50'07''$ EAST FROM THE WEST QUARTER CORNER OF SAID SECTION; RUNNING THENCE SOUTH $89^{\circ}50'07''$ EAST, 299.92 FEET TO THE BEGINNING OF A 3,425.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $20^{\circ}56'57''$ AN ARC DISTANCE OF 1252.29 FEET (CHORD BEARS SOUTH $13^{\circ}48'57''$ EAST, 1245.33 FEET); THENCE SOUTH $68^{\circ}07'36''$ WEST, 118.09 FEET TO THE BEGINNING OF A 12.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHERLY ALONG SAID CURVE THROUGH CENTRAL ANGLE OF $92^{\circ}31'49''$ AN ARC DISTANCE OF 19.38 FEET (CHORD SOUTH $21^{\circ}51'41''$ WEST, 17.34 FEET) TO THE BEGINNING OF A 3555.50 FOOT RADIUS COMPOUND CURVE TO THE LEFT; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $1^{\circ}13'55''$ AN ARC DISTANCE OF 76.46 FEET (CHORD BEARS SOUTH $25^{\circ}01'11''$ EAST, 76.46 FEET); THENCE SOUTH $41^{\circ}55'32''$ WEST, 63.72 FEET; THENCE SOUTH $64^{\circ}00'43''$ WEST, 88.32 FEET; THENCE NORTH $90^{\circ}00'00''$ WEST, 391.62 FEET; THENCE NORTH $0^{\circ}00'00''$ EAST, 1425.65 FEET TO THE BEGINNING TO THE POINT OF BEGINNING.

CONTAINS: 601,268.88 SQ. FT. OR 13.803 ACRES, MORE OR LESS.

