

After Recording, Return To:  
Heidi, LLC  
212 N. Wahsatch Ave., Suite 301  
Colorado Springs, CO 80903

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
CARRIAGE MEADOW SOUTH AT LORSON RANCH FILING NO. 2**

THIS DECLARATION CONTAINS A MANDATORY ARBITRATION PROVISION IN SECTION 14  
AND A WAIVER OF THE OWNER'S RIGHT TO A TRIAL TO A JURY IN SECTION 14. ALL  
OWNERS WILL BE BOUND BY THESE PROVISIONS.



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
CARRIAGE MEADOW SOUTH AT LORSON RANCH FILING NO. 2**

This Declaration of Covenants, Conditions and Restrictions for Carriage Meadow South at Lorson Ranch Filing No. 2 (the "Declaration") is made this 19th of October 2020, by HEIDI, LLC, a Colorado limited liability company (the "Declarant").

**RECITALS**

A. Declarant is the owner of all of the Lots situated in the City of Colorado Springs, County of El Paso, State of Colorado, which are described on Exhibit A attached hereto and incorporated herein by this reference. Heidi, LLC ("Heidi") is the owner of all of the Tracts situated in the City of Colorado Springs, County of El Paso, State of Colorado, which are described on Exhibit A attached hereto and incorporated herein by this reference; and

B. Declarant desires to subject and place upon the real property described on the attached Exhibit A certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein for the purpose of protecting the value and desirability of said real property and for the purpose of furthering a plan for the improvement, sale and ownership of said real property, to the end that a harmonious and attractive development of said real property may be accomplished and the health, comfort, safety, convenience and general welfare of owners in said real property, or any portion thereof, may be promoted and safeguarded; and

C. A common interest community may be created pursuant to the Act (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the Association, and in the grantor's index in the name of each person executing the Declaration; and

D. This Common Interest Community is a residential planned community. The

subdivision plat for Carriage Meadow South at Lorson Ranch Filing No. 2, which depicts the Property was recorded in the real property records of El Paso County, Colorado on \_\_\_\_\_, at Reception No. \_\_\_\_\_. The Association (as hereinafter defined) shall serve as a unit owners association for the Property (as hereinafter defined); and

E. By its execution of the Consent attached to this Declaration, Heidi consents to the terms and provisions of this Declaration and to inclusion of the Tracts which are described on Exhibit A attached hereto into this Declaration.

### DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property is made subject to this Declaration, and will be owned, held, conveyed, encumbered, leased, improved, used, occupied, enjoyed, sold, transferred, hypothecated, maintained and altered subject to the following covenants, conditions, restrictions, limitations, reservations, exceptions and equitable servitudes. The Association's powers include ownership and maintenance of Common Elements, design review, covenant enforcement, and all other administrative and complementary actions necessary to accomplish the above-stated activities and services as described in this Declaration. The Property is subject to this Declaration pursuant to the terms hereof, the terms hereof shall touch and concern such Property, and shall (i) run with the land and all parts thereof at law and as an equitable servitude; (ii) bind all Persons having or acquiring any interest in said Property or any part thereof; (iii) inure to the benefit of and be binding upon every part of said Property and every interest therein; and (iv) inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner and each Owner's grantees, heirs, assigns and successors in interest, and the Association and its successors in interest. The name of the planned community created by this Declaration is Carriage Meadow South at Lorson Ranch Filing No. 2. The Project shall consist of no more than forty nine (49) Lots. This Declaration is subject to the terms of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq. The Recitals set forth above are hereby made a part of and incorporated into this Declaration.

**ARTICLE 1**  
**DEFINITIONS**

1.1 "Act" means the Colorado Common Interest Ownership Act codified at Colorado Revised Statutes ("C.R.S.") § 38-33.3-101, et seq., as amended.

1.2 "Articles" (sometimes "Articles of Incorporation") means the articles of incorporation of Carriage Meadow South at Lorson Ranch Filing No. 2 Homeowners Association, Inc., a Colorado nonprofit corporation, which have been or will be filed in the office of the Colorado Secretary of State, as the same may be amended from time to time.

1.3 "Assessment(s) " means any assessment levied, charged, or assessed against an Owner in accordance with the provisions of this Declaration, including (but not necessarily limited to) General Assessments, Supplemental Assessments, Reimbursement Assessments and Force Majeure Assessments.

1.4 "Association" means the Carriage Meadow South at Lorson Ranch Filing No. 2 Homeowners Association, Inc., a Colorado nonprofit corporation, a unit owners' association organized under Section 38-33.3-301 of the Act, its successors and assigns.

1.5 "Association Documents" means this Declaration, the Articles of Incorporation of the Association, the Bylaws, the Rules and Regulations and Guidelines of the Association.

1.6 "Board" means the Board of Directors of the Association.

1.7 "Builder" shall mean and refer to the Declarant and any party that acquires one or more Lots for the purpose of constructing Dwelling Units or other structures or Improvements on such Lot.

1.8 "Bylaws" means the Bylaws of the Association which may be adopted by the Board, as such Bylaws may be amended from time to time.

1.9 "Common Elements" means any real property (which may include, without limitation, platted lots and platted tracts) owned or leased by the Association, other than a Lot (as defined

below), and any easements for access to, ingress and egress to and from, and the installation of utilities within the Project which are held by or assigned to the Association. The Common Elements at the time of recordation of this Declaration, or which must become Common Elements, are described on Exhibit B attached hereto and incorporated herein by this reference. The Limited Common Elements, if any, within the real property at the time of recordation of this Declaration are also described on Exhibit B attached hereto.

1.10 "Covenant Enforcement Committee" or "CEC" shall have the meaning given at Section 4.1 hereof.

1.11 "Declarant" means HEIDI, LLC, a Colorado limited liability company. The term "Declarant" may also include one or more successors in interest which may be designated in writing (which writing shall be Recorded in the Records) by the then existing Declarant and who have purchased or own all or a portion of the Property to the extent such rights have been granted to such parties by this Declaration or assigned by the Declarant in accordance with the requirements of this Declaration.

1.12 "DRC" or "Design Review Committee" shall have the meaning given at Section 3.1 hereof.

1.13 "First Mortgage" means any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering the any Lot within the Project or a portion thereof Recorded in the Records which is guaranteed under the Veterans Administration loan guaranty program or the Federal Housing Authority or having priority of Record over all other Recorded liens except those liens made superior by statute (such as, for example, general ad valorem tax liens, special assessments, mechanics' liens and the Association's lien for Assessments).

1.14 "First Mortgagee" means any Person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such Person under such First Mortgage.

1.15 "Force Majeure Assessments" shall mean those special assessments levied by the Association pursuant to Section 9.9.

1.16 "General Assessment" shall mean the assessments levied by the Association against the Lots to promote the welfare of the Members and for the purpose of covering the annual costs of operating the Association or incurred in connection with any authorized function of the Association, including without limitation costs and expenses associated with covenant enforcement and design review, to maintain the Common Elements and to perform the Association's maintenance obligations, and to fund an adequate reserve fund for the Association.

1.17 "General Common Allocation" means with respect to each Lot, the fractional number obtained by dividing one by the total number of Lots existing in the Project from time to time.

1.18 "General Common Elements" means all of the Common Elements except the Limited Common Elements.

1.19 "Guidelines" means the Guidelines established by the Association for the governance of this Project by the Association as more particularly described at Section 3.1 hereof.

1.20 "Improvements" means the following located or occurring on any portion of the Project: residences, buildings, structures, pools, trampolines, basketball back boards, outdoor play structures, gazebos, hot tubs, tree houses, fences, walls, hedges, plantings, landscaping, "yard art" (including, without limitation, all statues, decorative pieces and other pieces of art located in the yard area of any Lot which are intended to remain in place longer than typical holiday period decorations; holiday period decorations which are in place for less than six weeks are specifically excluded from this definition of Improvements), lighting, poles, driveways, parking areas, sidewalks, patios, decks, signs, changes in any exterior color or shape, excavation and site work, removal of trees or plantings, and any new exterior construction or exterior improvement on a Lot which may not be included in the foregoing. The term "Improvements" includes both original improvements and all later changes and improvements on a Lot.

1.21 "Limited Common Elements" means those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner(s) of a particular Lot or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Lots. The Limited Common Elements, if any, at the time of recordation of this Declaration, are designated by the Act, and/or described on Exhibit B attached hereto. Limited Common Elements may be allocated to Lots in accordance with this Declaration and may be reallocated between or

among Lots in accordance with the Act.

1.22 "Living Unit" or "Dwelling Unit" shall mean and refer to any structure situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

1.23 "Lot" means and refers to any plot of land shown upon the Plat or any other Recorded subdivision map or plat affecting the Property as listed on Exhibit A intended for fee simple ownership and development of a single family residence. The term "Lot" is synonymous with the term "unit" as defined in the Act.

1.24 "Lots That May Be Included" means forty nine (49) Lots, which shall be the maximum number of Lots that may be subject to this Declaration. However, the aforesaid number of Lots That May Be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in the Community.

1.25 "Member" means any Person who is a member of the Association pursuant to Section 7.3.

1.26 "Mortgage" shall mean and refer to a mortgage, deed of trust, or other similar security instrument held or owned by a First Mortgagee which encumbers any Lot and/or Living Unit.

1.27 "Owner" means a Person or Persons (including Declarant) owning a Recorded fee simple interest in a Lot from time to time. Such term shall include a contract vendee under an installment land sales contract, but shall not include (i) the vendor under such a contract; or (ii) a Person holding an interest in a Lot merely as security for the performance of an obligation (unless and until such a security holder becomes an owner in fee simple of a Lot).

1.28 "Period of Declarant Control" means that period commencing upon Recordation of this Declaration and terminating no later than the first to occur of the following: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than the Declarant; or (ii) two years after the last conveyance of a Lot by the Declarant in the ordinary course of business. Notwithstanding the foregoing, the Declarant may voluntarily (i) terminate the Period of Declarant Control, which election shall be in the sole discretion of the Declarant; and/or (ii) surrender the right to appoint and remove officers and members of the Board

before termination of the Period of Declarant Control, but in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or the Board, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

1.29 "Person" means a natural individual or any other entity with the legal right to hold title to real property.

1.30 "Plat" means the subdivision plat of Carriage Meadow South at Lorson Ranch Filing No. 2, Recorded in the Records of El Paso County, Colorado, on \_\_\_\_\_, at Reception No. \_\_\_\_\_, and any other subdivision plats for any portion of the Property which may be recorded in the Records, as the same may be amended or supplemented from time to time (the "Plat").

1.31 "Project" means the development known as Carriage Meadow South at Lorson Ranch Filing No. 2 consisting of the Property.

1.32 "Property" means all of the real property described on attached Exhibit A, along with any and all improvements now in place or hereafter constructed thereon.

1.33 "Records" means the official real property records of El Paso County, Colorado; "to Record" means to file for recording in the Records; and "of Record" and "Recorded" means having been recorded in the Records, and "Recording" means the act of recording a document or instrument in the Records.

1.34 "Reimbursement Assessments" shall mean those Assessments levied by the Association pursuant to Section 9.8.

1.35 "Residential Use" means use for dwelling purposes but does not include Dwelling Units primarily used for commercial income from, or service to, the public.

1.36 "Restrictions" is defined in Section 4.1.

1.37 "Rules and Regulations" is defined in Section 5.31.



1.38 "Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

1.39 Intentionally Omitted.

1.40 "Special Declarant Rights" means the rights hereby reserved for the benefit of Declarant and successors to the Declarant (to the extent provided herein) to perform the following acts as specified in the Act and this Declaration: (i) to maintain sales offices, management offices, signs advertising and marketing all or any portion of the Property and model homes; (ii) to use easements through the Property for the purpose of performing the services stated in this Declaration within the Project; (iii) to make the Property subject to this Declaration; (iv) to merge or consolidate with a common interest community of the same form of ownership; (v) to appoint or remove any officer of the Association or any member of the Board during the Period of Declarant Control, and to amend this Declaration pursuant to §§ 38-33.3-205(4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), and 38-33.3-210 (with respect to any development right reserved in this Declaration) of the Act; and (vi) such rights as stated in Section 7.1 relating to the Association and such rights as stated in Article 12 of this Declaration. The Special Declarant Rights shall not terminate until the earlier of: (a) twenty (20) years from the date of recordation of this Declaration, or (b) the Declarant's recording of a written statement that Declarant has surrendered such Special Declarant Rights; except that such rights with respect to the appointment of officers and directors may be exercised and will terminate in accordance with Section 7.1 hereof.

1.41 "Subdivision" means a parcel of land which has been shown on a final and Recorded subdivision plat approved pursuant to, and in accordance with, the laws of the City of Colorado Springs, State of Colorado, as the same may be amended from time to time.

1.42 "Supplemental Assessments" shall mean those Assessments levied by the Association pursuant to Section 9.7.

1.43 "Townhome Lot" means a Lot intended for development of a single family attached Dwelling Unit and part of a multi-unit townhome building.

1.44 "Unbuilt Lots" means those Lots that do not contain a Dwelling Unit on which a certificate of occupancy, or its equivalent, has been issued by the applicable governmental authority. "Unbuilt Lots" includes, without limitation, those Lots on which the Dwelling Unit on such Lot has been destroyed (for example, by fire or other casualty). However, the "Unbuilt Lots" that are referenced in the preceding sentence shall each cease to be an "Unbuilt Lot" when such Lot contains a Dwelling Unit on which a certificate of occupancy, or its equivalent, has been issued by the applicable governmental authority.

## ARTICLE 2

### DEVELOPMENT OF THE PROPERTY

2.1 Subdivision and Development by Declarant. The Property has been subdivided into Lots for single-family residential development and Tracts pursuant to the Plat and is a unified planned development community. The intended development of, and restrictions upon, each portion of the Property is intended to benefit each other portion and the whole thereof.

## ARTICLE 3

### DESIGN REVIEW COMMITTEE

3.1 Committee and Design Guidelines. There is hereby established a Design Review Committee ("DRC") which members shall be appointed by the Declarant during the Period of Declarant Control and thereafter appointed by the Board of the Association. The Board may act as the DRC if there are no persons willing to accept the Declarant's or the Board's appointment as a member of the DRC. The DRC shall be responsible for the ministerial administration and application of the Design Guidelines (the "Guidelines") to facilitate the purposes and intent of this Declaration. All such Guidelines shall be prepared and adopted by the Board and administered by DRC and the Board, as necessary. The Board may promulgate, amend, vary, repeal and augment the Guidelines from time to time, in its sole discretion (with the input of the DRC) based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of Project, or other factors considered necessary or desirable to fulfill the intent of the Guidelines. The Guidelines shall be binding on all property governed by this Declaration. In the

event of any conflict between the Guidelines and this Declaration, this Declaration shall control. The Guidelines may include, among other things, those restrictions and limitations set forth below.

3.1.1 Standards establishing an architectural theme and requirements pertaining to building style and design, construction materials and site planning, and for variances from such standards.

3.1.2 Procedures for making application to the DRC for approval, including the documents to be submitted and the time limits in which the DRC must act to approve or disapprove any submission.

3.1.3 Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Guidelines.

3.1.4 Designation of building setbacks.

3.1.5 Minimum and maximum square foot areas of living space that may be developed on any Lot.

3.1.6 Limitations on the height of any Dwelling Unit or other Improvement.

3.1.7 Specifications for the location, dimensions and appearance or screening of any fences, accessory structures, antennae or other such Improvements.

3.1.8 Landscaping regulations, including landscaping requirements for any easement area.

3.1.9 General instructions for the construction, reconstruction, refinishing or alteration of an Improvement.

3.1.10 Rules for construction activities, as well as maintaining construction sites and adjacent areas.

3.2 DRC Membership and Organization. The DRC shall be composed of not less than three (3) nor more than five (5) persons. The DRC may include one or more design professionals. All members of the DRC shall be appointed, removed and replaced by the Board of the Association in its sole discretion after expiration of the Period of Declarant Control.

3.3 Purpose and General Authority. No Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless plans and specifications therefor shall have been first submitted to and approved in writing by the DRC. All requests for review of any proposed Improvement or change shall be submitted to the DRC. The DRC shall review, study and provide an approval or disapproval regarding the proposed Improvements, including landscaping, on the Property, all in compliance with this Declaration and as further set forth in the Guidelines and such rules as the Association may establish from time to time to govern its proceedings. If any Owner is applying for a variance to the Guidelines or Restriction, such application must be submitted to the DRC as set forth above for review and consideration. No Improvement shall be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor shall any construction, repair or reconstruction be commenced until plans for the Improvements shall have been approved by the DRC; provided, however, that Improvements that are completely within a building may be undertaken without such approval, provided such Improvements do not affect the structural integrity of a building, or impact other common or shared areas between Lots. All Improvements shall be constructed only in accordance with approved plans.

3.4 DRC Approval. The DRC, by majority vote, shall approve plans and specifications submitted to it only if it determines that the construction, alteration, and additions contemplated thereby, and in the location as indicated, will comply with this Declaration and the Guidelines, and will serve to preserve and enhance the values of the Lots within the Project and will maintain a harmonious relationship among structures, vegetation, topography, and the overall design of the Project. All plans and specifications submitted to the DRC shall be drawn to scale and include such detail necessary for the DRC to make an informed review of such plans and specifications. The DRC may reject any plans and specifications it deems to be insufficient, in its sole and absolute discretion. The DRC shall consider the quality of workmanship, type of materials, and harmony of exterior design with other Dwelling Units located in the Project.

3.5 Conditions of Approval. If the DRC fails to provide its final approval or disapproval of the submitted plans and specifications within forty-five (45) days after receipt, such plans

and specifications shall be deemed approved. Furthermore, unless otherwise allowed in writing by the DRC, an Owner shall not apply for building permit for any Improvements from City of Colorado Springs, Colorado or other governmental authority having jurisdiction over the Project until the DRC approval for such Improvements has been obtained or deemed approved. Approval by the DRC shall be in writing or indicated by endorsement on the plans and specifications submitted for approval. The issuance of a building permit by the City of Colorado Springs or other governmental authority having jurisdiction over the Project, shall not prevent or prohibit the DRC or an Owner from enforcing the terms and provisions of this Declaration. The approval by the DRC of any plans and specifications shall not be deemed a waiver of any right to withhold approval of any similar plans and specifications, or other matters subsequently or additionally submitted for approval by the same Owner or by another Owner. Furthermore, any approval granted shall not be considered a permit to build under applicable governmental regulations. Compliance with the Project design review process is not a substitute for compliance with City of Colorado Springs and other governmental building, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction of Improvements. Furthermore, DRC approval does not approve or guarantee engineering design or compliance with applicable laws and governmental ordinances or regulations (such as zoning, building, health and fire ordinances and codes), and does not reflect any representation by the DRC as to such matters. The Owner is solely responsible for all such compliance. By approving plans and specifications, neither the DRC, the Association, their respective members, nor the Declarant assumes any liability or responsibility for engineering design or compliance with applicable laws and governmental ordinances or regulations. Notwithstanding anything to the contrary above, if an Owner fails to complete its change or Improvement as approved by the DRC within twelve (12) months of approval (unless otherwise specifically provided in writing), the DRC approval shall be deemed withdrawn, and the Owner must resubmit an application to the DRC.

3.6 Notice of Noncompliance. If, as a result of the DRC's inspection of the Improvement, the DRC determines that the Improvement has been performed without obtaining the DRC's approval, or was not performed in substantial compliance with the approval that was granted, the DRC shall notify the applicant in writing of the noncompliance within thirty (30) days of inspection. The notice of noncompliance must specify the details of the noncompliance. Enforcement of such notice of noncompliance shall include the powers and remedies described in Section 3.13 below.

3.7 Discretion and Variances. The DRC shall exercise their reasonable judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Lot, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Guidelines and this Declaration. The DRC, in its sole discretion, based on concerns for good planning and design, the aesthetic, architectural and environmental interests of the Project, or other factors as necessary or desirable to fulfill the intent of the Guidelines and this Declaration, may grant variances from compliance with this Declaration and the Guidelines. Such variances must be in writing and shall become effective when signed by an authorized representative of the DRC. If any such variance is granted, no violation of the provisions of this Declaration or the Guidelines shall be deemed to have occurred with respect to the matter for which the variance is granted. However, the granting of a variance shall not operate to waive any provisions of this Declaration or the Guidelines for any purpose except as to the particular Lot and the particular provision of this Declaration or Guidelines covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations.

3.8 Changes to Approved Plans. Any material changes or alterations whatsoever to plans previously approved by the DRC must be reviewed and approved in accordance with the approval procedures set forth in this Article 3 by the DRC.

3.9 Driveway Expansions. No expansions of driveways for additional parking on a Lot shall be allowed.

3.10 Binding Effect. The actions of the DRC in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

3.11 Expenses and Fees. Except as provided in the next sentence, all expenses of the DRC shall be paid by the Association. The DRC shall have the right to charge fees and deposits for each application submitted to it for review, in an amount which may be established by the DRC, respectively, from time to time, and such fees shall be collected by the DRC. The fee collected by the DRC shall be remitted to the Association to help defray the expenses of the DRC's operation. The Association or Association's manager shall provide the DRC with staff for the

recording of committee meeting minutes and assistance with other administrative needs, at the Association's cost and expense as it deems reasonably necessary.

3.12 Limitation of Liability. Neither the DRC, the Board, the Association, or any individual member shall be liable to any person for any official act of the DRC, the Board or the Association in connection with submitted plans and specifications, except to the extent the DRC, the Board, the Association, or any individual member is adjudged to be liable for bad faith or willful misconduct in the performance the duties of the DRC. The DRC, the Association Board, and their members shall not be responsible or liable to any Owner or contractor with respect to any loss, liability, claim or expense which may arise by reason of plan approval or disapproval, or the construction of Improvements whether or not pursuant to any approved plans. Neither the Association, the DRC nor any agent thereof, nor the Declarant, nor any of its officers, directors, managers, members, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved, nor for any structural or other defects in any work done according to such plans and specifications. In all events the DRC shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the DRC's decision. The Association, however, shall not be obligated to indemnify each member of the DRC to the extent any such member of the DRC is adjudged to be liable for bad faith or willful misconduct in the performance of his or her duty as a member of the DRC, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

3.13 Enforcement.

3.13.1 Inspection. Any member or authorized consultant of the DRC or any authorized officer, director, employee or agent of the Association may enter upon the exterior portions of any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements constructed or under construction on the Lot, and to determine whether the Improvements have been or are being built in compliance with the Guidelines, this Declaration, and the plans and specifications approved by the DRC and/or the Association.

3.13.2        Construction and Certificate of Compliance. All Improvements constructed upon a Lot shall be constructed in strict accordance with the plans and specifications approved by the DRC. Upon written request of any Owner or his/her agent, or a prospective grantee, and upon payment of a reasonable fee established from time to time by the DRC, the DRC shall issue a certificate setting forth generally whether, to the best knowledge of the DRC, the Improvements on a particular Lot are in compliance with the terms and conditions of the Guidelines and this Declaration.

3.13.3        Deemed Nuisances. Every violation of this Declaration and the Guidelines is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against the violating Owner shall be applicable. Without limiting the generality of the foregoing, these remedies include the following:

(a)        Fines for Violations. The DRC may levy reasonable fines for such violations, after providing notice and an opportunity for hearing.

(b)        Removal of Nonconforming Improvements. Subject to applicable statutory limitations of action, the DRC shall have the right to obtain a court order from a Colorado court of competent jurisdiction to remove any Improvement constructed, reconstructed, refinished, altered or maintained upon a Lot in violation of this Declaration or the Guidelines.

(c)        Correction of Noncompliance. If the DRC provides notice to the applicant of noncompliance, the Person responsible for the noncompliance shall remedy or remove (and return the property or structure to its original condition) the same on or before forty-five (45) days following delivery of the notice of noncompliance. If such Person fails to comply within such a remedy period, the DRC may, at its discretion, record a notice of noncompliance against the Lot on which the noncompliance exists, may remove the noncomplying Improvement or may otherwise remedy the noncompliance. The DRC shall have a lien against each such Lot to secure payment of any remedial work required to correct the noncompliance or the expenses incurred in enforcing the Association Documents, plus interest and/or any late charges as provided in this section, plus all costs and expenses of collecting the unpaid amounts or enforcing the Association Documents, including reasonable attorneys' fees. The lien may be foreclosed in any manner for foreclosure of mortgages in the State of Colorado.



3.14 Access Easement. Each Lot is subject to an easement in favor of the Association and the DRC, including its agents and representatives, for performing any of the actions contemplated by this Article, including without limitation Section 3.13 hereof. All persons performing such work shall use their best efforts to minimize interference with the Owners' use and enjoyment of the Lot when performing such work.

3.15 Exemption for Declarant. Notwithstanding anything in this Declaration to the contrary, neither Declarant nor any of the Declarant's activities shall in any way be subject to the control of, or under the jurisdiction of, the Association or the DRC pursuant to the provisions of this Article 3 (including any Design Guidelines, Rules and Regulations, or landscape requirements), nor shall the Declarant be required to seek the approval or consent of the Association, the Board or the DRC for any construction or other work to be performed by or on behalf of the Declarant in the Project.

3.16 Failure to Enforce. If for any event the DRC fails or refuses to fulfill its duties and obligations pursuant to this Article 3, the Association may, upon written notice to the DRC, assume the rights, duties and obligations of the DRC under this Article 3.

#### ARTICLE 4

##### COVENANT ENFORCEMENT COMMITTEE

4.1 Committee. There is hereby established a Covenant Enforcement Committee (the "CEC"), whose members shall be appointed by the Declarant during the Period of Declarant Control and by the Board after the expiration of the Period of Declarant Control, which CEC shall be responsible for the ministerial administration and enforcement of the Rules and Regulations and the use restrictions imposed by Article 5 of this Declaration (collectively the "Restrictions"). The CEC shall have the right to (i) accept complaints for violations of the Restrictions; (ii) submit complaints to the Association regarding violations of the Restrictions; (iii) inspect the Project for violations of the Restrictions; (iv) issue various notices to Owners regarding the Restrictions; and (v) provide all ministerial administration and enforcement of the Restrictions as permitted by the Association and this Declaration.

4.2 CEC Membership and Organization. The CEC shall be composed of not less than one (1) nor more than five (5) members. All members of the CEC shall be appointed, removed

and replaced by the Declarant during the Period of Declarant Control and thereafter by the Board of the Association, in its sole discretion.

4.3 CEC Purpose and General Authority. The CEC shall review all complaints and notifications provided by the Declarant, an Owner, or representative of the Association regarding any alleged violation of the Restrictions contained in this Declaration. The CEC shall also have the right to make an investigation on its own regarding potential violations.

4.4 CEC Authority. The CEC is hereby granted the authority to make a final determination upon whether an Owner has violated a Restriction. Upon review of any and all complaints and notifications, the CEC may issue to an Owner a notice to correct the violation ("Notice to Correct") requiring the applicable Owner to bring his/her Lot into compliance with the Restrictions. Any and all complaints as to the violation of the Restrictions shall be made, if reasonably practical, to the CEC.

4.5 Enforcement.

4.5.1 Inspection. Any member or authorized consultant of the CEC, or any authorized officer, director, employee or agent of the Association may enter up on any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect the property alleged to be in violation of the Restrictions. The interior of a Dwelling Unit shall not be subject to the access easement granted by this Section.

4.5.2 Notice to Correct. If the CEC determines that the property is in violation of the Restrictions, the CEC shall issue a Notice to Correct to the Owner of the applicable Lot. The Notice to Correct shall contain a specific description of the violation of the Restrictions and a time period during which the Owner shall have to correct the violation.

4.5.3 Deemed Nuisances. Every violation of this Declaration and the Restrictions is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against the violating Owner shall be applicable. Without limiting the generality of the foregoing, these remedies include the following:

(a) Fines for Violations. The CEC may levy reasonable fines for such

violations after providing notice and an opportunity for hearing.

(b) Removal of Violation. The Board shall have the right to obtain a court order from a Colorado court of competent jurisdiction to remove or correct any violation of the Restrictions, which might include any Improvement to the Property or an injunction prohibiting a restricted use of the Property.

(c) Correction of Noncompliance. If the CEC provides Notice to Correct, the Owner responsible for the noncompliance shall remedy and remove the violation on or before the time period stated in the Notice to Correct. If such Person fails to comply with such a remedy, the CEC may, at its discretion, record a notice of noncompliance against the Lot on which the violation exists, may remove a violating Improvement, or may otherwise remedy the violation. The Association shall have a lien against each such Lot to secure payment of any remedial work required to correct the violation or any expenses incurred in enforcing the Restrictions, plus interest and/or any late charges as provided in this section, plus all costs and expenses of collecting the unpaid amounts or enforcing the Restrictions, including reasonable attorneys' fees. The lien may be foreclosed in any manner for foreclosure of mortgages in the State of Colorado.

4.5.4 Access Easement. Each Lot is subject to an easement in favor of the Association, including its agents and representatives and the CEC for the performance of any actions contemplated by this Article, including, without limitation, Section 4.5. All Persons performing such work shall use their best efforts to minimize interference with the Owner's use and enjoyment of the Lot when performing such work.

4.6 Failure to Enforce. If the CEC fails or refuses to fulfill its duties and obligations pursuant to this Article 4, the Board may, upon written notice to the CEC, assume the rights, duties and obligations of the CEC under this Article 4.

## ARTICLE 5

### USE RESTRICTIONS

5.1 General Restrictions. The Lots shall be used only for the purposes set forth in this

Declaration, as permitted by the applicable laws, regulations and ordinances, and as set forth in this Declaration or other specific recorded covenants affecting all or any part of the Project.

5.2 Association Enforcement of Use Restrictions. Notwithstanding the Association's right to enforce the Association Documents, the CEC is also granted the authority to enforce the Restrictions set forth in this Declaration for all Property within the Project.

5.3 Association Enforcement. Notwithstanding anything to the contrary herein, the Association is granted authority to enforce the use restrictions set forth in this Article. After review of any complaint, the CEC or the Association, as applicable, shall determine whether a violation of the use restrictions has occurred and citing Project or neighborhood specific concerns or issues, where applicable.

5.4 Residential Use of Lots. Subject to the provisions of this Declaration, each Lot may be used only for Residential Use. No business or commercial building may be erected on any Lot, and no business or commercial enterprise or other non-residential use may be conducted on any part of a Lot, except as otherwise provided in this Declaration.

5.5 Home Occupations. The conduct of a home occupation within a Dwelling Unit on a Lot shall be considered accessory to the Residential Use and shall not be deemed a violation of this Declaration, provided that the following requirements are met:

5.5.1 Such home occupation shall be conducted only within the interior of the Dwelling Unit and shall not occupy more than twenty-five percent (25%) of the floor area within the Dwelling Unit.

5.5.2 The home occupation shall be conducted only by residents of the Dwelling Unit and no non-residents shall be employed to work at the Dwelling Unit in connection with the home occupation carried on in the Dwelling Unit.

5.5.3 No retail sales shall be conducted upon a Lot which permits or requires any customers or clients to visit the Dwelling Unit.

5.5.4 Only those home occupations which do not require visits from customers

or parking at or near the Dwelling Unit in connection with such occupation shall be allowed.

5.5.5 There shall be no evidence of a home occupation visible from the outside of the Dwelling Unit.

5.5.6 The conduct of such home occupation must be permitted under the zoning ordinances of the City of Colorado Springs, Colorado.

5.5.7 No excessive commercial deliveries (e.g. more than two (2) deliveries per day, more than ten (10) cumulative deliveries per week, or deliveries in excess of one hundred pounds (100lbs.)) for such home occupation shall be allowed other than mail service deliveries.

5.5.8 A child daycare facility within a Dwelling Unit on a Lot does not comply with the above requirements but may nevertheless be allowed in limited circumstances if a variance for such use is considered advisable by the Association (as determined in its sole discretion), and if such variance is granted in writing by the Association.

5.6 Nuisance and Waste. No noxious or offensive activity shall be permitted in or on any Lot or otherwise within the Project nor shall anything be done therein which is a nuisance to any Owner. No waste shall be committed on any Lot or any other part of the Project.

5.7 Restriction on Further Subdivision. No Lot upon which a Dwelling Unit has been constructed shall be further subdivided or separated into smaller Lots by any Owner, and no portion consisting of less than all of any such Lot, nor any easement or other interest in rem, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.

5.8 Appearance. Each Lot shall be kept in a clean, safe, and attractive condition. In particular, porches, patios and balconies shall not be used for any purpose which creates an unsightly appearance, as determined by the Association.

5.9 Unsightly Articles. No unsightly article shall be permitted to remain on any Lot or any other portion of the Project if it is visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, service areas, storage areas,

compost piles shall be appropriately screened from view. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any property except within an enclosed structure or appropriately screened from view.

5.10 Antennas/Satellite Dishes/Generators/Playground Structures. The Board may adopt reasonable, non-discriminatory rules and regulations, consistent with applicable state or federal laws and regulations, regarding the installation of satellite dishes, exterior aerials, and antennas of any kind. Except for any which may, at the Declarant's option, be erected, no playground structure shall be erected or maintained on the Project without the prior written approval of the DRC, except as may be expressly allowed pursuant to the Guidelines or other rules and regulations as promulgated by the Board. No wind-powered electrical generators shall be permitted, except in accordance with applicable Colorado law.

5.11 Improvements and Alterations. There shall be no construction, excavation or alteration which materially alters the exterior appearance of any Improvement, or removal of any Improvement, without the prior approval of the DRC.

5.12 [RESERVED]

5.13 Fencing. The Association, the Declarant (or a Builder, with Declarant's consent) may construct certain entryways, fences, fence pillars or walls on or within the Project. No Owner shall construct, modify, replace, paint or obstruct any such entryways, fence, fence pillars or walls without the prior written approval of the DRC. Material for the containment of any pets permitted by these Restrictions may be added to perimeter fencing, subject to prior approval by the DRC.

5.14 Restrictions on Signs. Except as expressly permitted by applicable law, no signs shall be displayed to the public view on any Lot without the prior written approval of the Association, with the following exceptions: (i) the Declarant may erect and maintain a sign or signs in connection with the construction, development, operation, promotion and sale of the Lots; (ii) a name plate of the occupant and a street number; (iii) a "For Sale," "Open House" or "For Rent" sign of customary dimensions, not exceeding 3' x 4' in size; (iv) two (2) security system signs no larger than one hundred (100) square inches each; and (iv) and "political signs" as

defined in the Act which are displayed on an Owner's Lot. Notwithstanding anything herein contained to the contrary, any and all signs, if allowed, shall comply with all sign standards of the applicable governmental authorities which may be applicable to the Project, as well as the Rules and Regulations.

5.15 Conditions for Design Control. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which materially alters the exterior of any Lot or Improvements located thereon from its natural or improved state existing on the date such property was first subject to this Declaration shall be made or done without compliance with the procedures set forth in Article 3 of this Declaration.

5.16 Trampolines/Basketball Goals/Hoops/Etc. No trampolines or trampoline fences, basketball goals, hoops, backboards, nets or similar sport or playground equipment shall be installed without the prior written approval of the DRC or unless permitted by the Guidelines. No above ground swimming pools are allowed in the Project.

5.17 Exemption for Builders. The Declarant may exempt Builders from such restrictions of this Declaration for activities which the Declarant deems to be incidental and necessary to the Builder's development activities, in the Declarant's sole and absolute discretion.

5.18 Assignment by Declarant/Transfer of Rights. Notwithstanding any other provision of this Declaration to the contrary, Declarant may delegate, transfer or assign in whole or in part any of its privileges, exemptions, rights and duties under this Declaration to any other party and may permit the participation in whole or in part by any other party in any of its privileges, exemptions rights and duties hereunder. Without in any way limiting the generality of the preceding sentence, the Declarant may in its sole discretion exempt from the control and jurisdiction of the Association or the DRC any Builder, or any assignee and successor in interest of all or substantially all of Declarant's interests, rights, and responsibilities in and to the Property.

5.19 Storage and Parking. Except as expressly permitted by Section 38-33.3-106.5(d) of the Act regarding the parking of emergency vehicles, no boat, camper (on or off supporting vehicles), trailer, tractor, truck, towed trailer unit, snowmobile, disabled, junked, or abandoned vehicle, motor home, mobile home, camper, recreational vehicle, or any other vehicle, the primary purpose of which is recreational, sporting, or commercial use (excluding passenger cars,

pickup trucks and vans that are rated at 1 ton capacity or less), shall be parked or stored in, on, or about any Lot or street within the Project for more than twenty-four (24) hours in any calendar week, except wholly within the garage of each Lot, and except for construction vehicles during periods of construction on any property within the Project so long as they are not stored within the Project and are not parked within the Project Area except temporarily as may be required for purposes of construction. Moving any of the described items a short distance within the Project during the twenty-four (24) hour period shall be considered an attempt to circumvent this restriction, and the item moved shall still be considered in violation of this restriction. For purposes of this provision, any disassembled or partially disassembled car, truck, motorcycle, or other vehicle or any car, truck, motorcycle, or other vehicle which has not been moved under its own power for more than seven days shall be considered an inoperable vehicle subject to this provision, and the twenty-four (24) hour period referenced above shall commence at the end of the seventh day. Parking of any motor vehicles and any of the vehicles and types of equipment listed above on private streets or parking areas or public streets within the Project may be regulated or restricted by the Association (in compliance with the Act), the City, or any other governmental body with jurisdiction over the Project.

5.20 Repair Work. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers, or boats, may be performed on any Lot unless it is done within a fully enclosed garage or other building which screens the sight and sound of the activity from the street and from adjoining Lots, nor shall any such activity be performed upon a street adjacent to a Lot. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motorcycle together with those activities normally incident and necessary to such washing and polishing.

5.21 Pets. No animals, including, but not limited to, livestock, poultry, or reptiles shall be raised, bred, or kept within the Property except as hereinafter provided. A reasonable number of cats, dogs or other common household pets may be kept on a Lot, provided that (i) they are not kept, bred, or maintained for any commercial purposes; (ii) in the Association's opinion, they do not make objectionable noises or otherwise constitute an unreasonable nuisance to other Owners; (iii) they are kept within an enclosed yard on a Lot occupied by the owner of such pets or on a leash being held by a person capable of controlling the animal; (iv) the owner of the property disposes of all pet waste; and (v) they are not in violation of any other provision of this Declaration or governmental laws and ordinances. A "reasonable number" as used in this section



shall mean not more than two dogs and two cats (for a total of four pets) per Lot, provided, however, that the Association may, from time to time, determine that a reasonable number in any instance may be less than the above number. The Association shall have the right to prohibit any animal which, in the sole opinion of the Association, is not being kept in accordance with the restrictions herein. The Association may adopt and enforce additional Rules and Regulations governing the subject of pets within the Project.

5.22 Hazardous Activities/Fires. No activities shall be conducted within the Project which are unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged and no open fires shall be lighted or permitted within the Project except in a contained barbecue, outdoor fireplace, fire pit or chiminea which is attended. Trash, leaves, and other similar materials shall not be burned within the Project.

5.23 Annoying Light, Sound or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or unreasonable.

5.24 Trash Disposal. No trash, garbage, refuse, rubbish, or cuttings shall be deposited on any street, or on any Lot unless placed in a container suitably located, solely for the purpose of garbage pickup. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition. The Association may contract for trash collection by one or more trash collection companies based upon competitive bids. In order to minimize unsightliness, the Association shall have the right to restrict the placement of trash receptacles outside for collection on any day other than the actual day for trash collection.

5.25 Storage Tanks. No tanks for the storage of gas, fuel, oil, or other materials shall be erected, placed, or permitted above or below the surface of any Lot (other than reasonably sized propane tanks intended for use with gas grills).

5.26 Damage or Destruction. In the event any Dwelling Unit or other structure constructed on a Lot is damaged, either in whole or in part, by fire or other casualty, said Dwelling Unit or other structure shall be promptly rebuilt, repaired or remodeled to comply with this Declaration. In the alternative, if a damaged Dwelling Unit or other structure is not to be rebuilt,

repaired or remodeled, all remaining portions of the damaged Dwelling Unit or structure, including the foundation and all debris, shall be promptly removed from the Lot, and the Lot shall be restored to its natural condition existing prior to the construction of the Dwelling Unit or other structure.

5.27 Temporary Structures. No camper, tent, trailer, motor home, mobile home or other temporary structure shall be used as a Dwelling Unit or other living quarters within the Project.

5.28 No Storage of Explosives, Gasoline, and Similar Substances. No Lot shall be used for storage of explosives, gasoline, or other volatile or incendiary materials or devices. Gasoline or fuel for an owner of a lawn mower, snow blower, and the like may be maintained on an incidental basis on a Lot if the amount so kept does not exceed five gallons and is kept in UL approved containers. An Owner shall store gasoline or other volatile or incendiary materials or devices only in a manner that is in strict accordance with all applicable laws.

5.29 Restrictions on Sewage Disposal Systems. No cesspool, septic tank or other sewage disposal system shall be installed within the Project without the prior written consent of applicable governmental authorities, the DRC or the Association, except a central sewage disposal system installed and maintained by a water and sanitation district or other sanitation agency providing sewage disposal services to a significant portion of the Project area. Any sewage disposal system installed for property within the Project shall be subject to all applicable laws and the Rules and Regulations and rules of the Association.

5.30 Leases. The Owner shall have the right to lease such Owner's Dwelling Unit, subject to the following conditions:

5.30.1 All leases shall be in writing and shall be for a term of not less than six (6) months.

5.30.2 The lease and the tenant occupying the Dwelling Unit shall be specifically subject to this Declaration. Any failure of a tenant to comply with such documents shall be a default under the lease.

5.30.3 The Owner and the tenant shall be jointly and severally liable for any

violation of this Declaration committed by the Owner's tenant, without prejudice to the Owner's right to collect any sums paid by the Owner on behalf of the tenant.

5.31 Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Common Elements and the use of any other property within the Project, including Lots ("Rules and Regulations"). Such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Such Rules and Regulations may address matters not appearing in this Declaration as well as matters appearing in this Declaration, provided that the Rules and Regulations shall not contradict the provisions of this Declaration. Copies of the currently effective Rules and Regulations shall be made available to each Owner upon request and payment of the reasonable expense of copying the same. Each Owner shall comply with such Rules and Regulations and shall see that Persons claiming through such Owner comply with such Rules and Regulations. The Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of a conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

5.32 Easement Areas. By taking title to any Lot in the Project, each Owner acknowledges that certain portions of the Project are subject to easement rights to governmental, quasi-governmental and other parties. Notwithstanding any other provision hereof, no Owner shall be allowed to use any portion of the Project or place any trees, structures, fences, or other improvements on any portion of the Property that would violate any use restrictions contained in any easement or other documents creating easement rights.

5.33 Exemption for the Declarant. Notwithstanding anything in this Declaration to the contrary, neither the Declarant, nor any of Declarant's activities shall in any way be subject to the control of, or under the jurisdiction of, the Association or the DRC pursuant to this Declaration. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of the Declarant to: (i) excavate and grade; (ii) construct and alter drainage patterns and facilities; (iii) construct any and all types of Improvements; (iv) locate,

relocate and maintain model homes and construction, sales and leasing offices and similar facilities in locations well suited for such uses as determined by the Declarant from time to time; and (v) post signs incidental to construction, sales and leasing, on the Common Elements and/or Lots owned by the Declarant. Notwithstanding anything to the contrary contained in the foregoing, no such activities shall be carried on in such a way as to create a health hazard or unreasonably interfere with the use and enjoyment by any Owner or the Owner's family of the Owner's Lot. When the Declarant ceases to be an Owner, the Declarant will cease to have any rights with regard to any real estate used as a sales office, management office, or model home.

5.34 Covenants Run with Land. All covenants, conditions, and restrictions contained herein are intended to and shall run with the land, and Declarant hereby agrees, for itself and its successors and assigns, that such covenants, individually and collectively, touch and concern the land and shall be binding, fully and in all respects, upon Declarant's successors in title to the land, regardless of how succession of title may be accomplished.

## ARTICLE 6 MAINTENANCE

6.1 Association's Maintenance Obligations. The Association shall maintain, repair and replace the following: (i) all Common Elements and Improvements located thereon; (ii) those items and Improvements of the Townhome Lots as set forth on the Townhome Maintenance and Insurance Chart set forth as Exhibit D that are identified thereon as the Association's maintenance responsibility; (iii) any easements, drainage structure or facilities, public Improvements or publicly dedicated property that a local governmental entity has required to be maintained as a condition of development of the Project or any part thereof; and (iv) landscape improvements on the Common Elements and the Townhome Lots and any improvements installed pursuant to any landscape easements, drainage easements or access easements granted by the City to benefit the Project and assigned to the Association. The Association's maintenance responsibility includes maintenance, repair and replacement of the item. The Association shall be responsible for the maintenance, repair and replacement of the property and Improvements identified in the preceding sentence, unless: (i) the property or Improvement has been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair and replacement; or (ii) the maintenance, repair or replacement has been authorized by law to be performed and has been accepted by a special district or other municipal or quasi-

municipal entity.

6.1.1 Townhome Lots. This Section 6.1.1 applies to the Townhome Lots only. Following completion of the original construction of the Dwelling Units on the Townhome Lots, the Association shall provide for the maintenance, repair and replacement of the following portions of the Townhome Lots and residences constructed thereon: (i) those items and components of the Lots and residences listed on the Townhome Maintenance and Insurance Chart set forth as Exhibit D that are identified thereon as the Association's maintenance responsibility; and (ii) common sidewalks that are constructed on the Townhome Lots and located along and adjacent to or connecting the Common Elements, and (iii) landscaping as described below. The Association's obligation to maintain, repair and replace landscaping on a Townhome Lot shall include tending, mowing and watering of grass, weed control and pruning of shrubs and trees, and shall be performed in a manner and at such times it deems necessary from time to time. The Association shall have no responsibility for maintenance, repair and/or replacement of any landscaping or other landscape Improvements on a Townhome Lot which were installed by an Owner other than Declarant or by the Association or landscape enclosed by a fence or other enclosure, if any. Owner installed landscape improvements shall be limited to landscape improvements which are permitted by the DRC in accordance with the Guidelines or the Rules and Regulations. Except for the maintenance obligations of the Association as set forth in this Article, the maintenance, repair and replacement of each Townhome Lot, including but not limited to the following items, shall be the obligation and responsibility of the Owner of such Lot: those items and components of the Townhome Lots and residences listed on the Townhome Maintenance and Insurance Chart set forth as Exhibit D that are identified thereon as the Owner's maintenance responsibility and any other interior or exterior item not otherwise listed on Exhibit D.

6.1.2 Intentionally Omitted.

6.2 Landscape Maintenance Responsibilities. The Association shall have the sole right to determine the times, frequency and extent of performing its landscaping maintenance, repair and/or replacement work, including without limitation watering and mowing, and Owners shall not have any right to change the timing or manner of such maintenance, repair and/or replacement. Notwithstanding any limitation in this Declaration, the Association may, in its sole discretion, elect not to replace certain landscape materials or elect to replace certain landscape

materials with different types or kinds of landscape materials if the Board determines that the appearance of the Project will not be adversely and materially affected. The Association shall own and maintain the irrigation system for the Common Elements and Townhome Lots and shall be responsible for payment of the water bills and costs associated with the maintenance and repair and replacement of such irrigation system which costs shall be common expenses.

6.3 Service Lines. The Owner of a Lot is responsible for the maintenance, repair and replacement of any water service line and any sanitary sewer service line that provides water or sewer service solely and exclusively to the Owner's Lot whether or not the water or sewer service line is located in part within a Common Element.

6.4 Maintenance Easement. The Association and each Owner, and their agents and contractors, are hereby granted an easement as necessarily required for the purpose of maintenance and repair of the Owner's Lot on, over, across, under and through any adjacent Lot upon reasonable notice to the Owner thereof. Any damage occurring to such adjacent Lot or the Improvements thereon in performing such repairs or maintenance shall be the responsibility of the party performing or authorizing such repairs or maintenance.

6.5 Maintenance Schedule. Commencing upon the termination of the Period of Declarant Control, the Board shall develop and observe a regular, periodic maintenance schedule with respect to its obligation to maintain the Common Elements and other Improvements it is obligated to maintain, and shall no less than annually make available to the Members a report summarizing the regular maintenance conducted in the previous year or such other period since the last report was submitted to the Members. Upon request, the Declarant shall be entitled to receive a copy of the annual maintenance report.

6.6 Waiver. The Owners, by acceptance of title to their respective Lots, waive any and all claims for damages, repair or other claims relating or arising from the Association's landscape maintenance obligations or failure to perform its landscape maintenance obligations.

6.7 Pet Control and Waste. Each Owner shall be responsible for causing her/her Lot to be free of pet waste at all times. All pet waste must be disposed of as soon as reasonably practical on a consistent basis in a safe and sanitary manner. If an Owner fails to consistently cause his/her Lot to be free of pet waste, the Association may assess fines and penalties on a

daily basis against such Owner until the Owner consistently maintains his/her Lot free of pet waste.

6.8 Assessment of Fines. If any Owner or occupant fails to keep the landscaped areas of the Owner's Lot and the sidewalks, driveways and front walkways clear and reasonably debris-free, the Association may, at its sole discretion, provide notice to such Owner regarding such Owner's breach of this Declaration and assess fines against each such Lot, on a daily basis, until the applicable Owner corrects this breach whereby the Association may perform its maintenance duties under this Article.

6.9 Perimeter Fencing. Each Lot may contain within its Lot boundaries perimeter fencing installed by the Association or the Declarant. Such perimeter fence shall be owned by the Owner of each respective Lot. The Association shall have no obligation to repair or replace any such perimeter fence; however, the Association may elect to perform such repair or replacement work, the cost of which shall be charged against the Owner of the Lot requiring such repair or replacement work. Unless the Association elects to perform such repair or replacement work, each Owner shall maintain the perimeter fencing on the Owner's Lot in good condition and repair. The Owners, by acceptance of title to their respective Lots, waive any and all claims for damages, repair or other claims relating or stemming from the Association's maintenance or failure to maintain the perimeter fence upon their Lots. The Owners, by acceptance of title to their respective Lots, acknowledge that the Association, or its successors, is hereby granted an easement for entry upon each Lot to install and maintain such perimeter fencing as they deem necessary.

6.10 Contracts with Third Parties. The Association may negotiate and contract with third parties to perform required maintenance and management services for said landscaping, irrigation system and snow removal services to be provided by the Association for the consideration and upon terms to be determined by the Association. The easements granted to the Association expressly extend to its third-party contractors, whereby such contractors shall have the right to enter upon each Lot and perform the maintenance obligations set forth in this Article on behalf of the Association or its successors.

6.11 Areas Not Maintained by the Association. The Association is not obligated to and hereby disclaims any duty or obligation to maintain any area of the Project not specifically

assumed in this Article 6.

## ARTICLE 7 ASSOCIATION

### 7.1 General.

7.1.1 Organization. The Association shall be organized no later than the date that the first Lot is conveyed to a purchaser other than Declarant. The Association shall be a non-profit Colorado corporation created for the purposes, charged with the duties, and invested with the powers prescribed by law, the Act, and set forth in the Articles, Bylaws and this Declaration. Neither the Articles, Bylaws or any Rules and Regulations promulgated by the Board shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In case of conflict between this Declaration and the Articles, Bylaws and/or Rules and Regulations, this Declaration shall control.

7.1.2 Board of Directors. Pursuant to C.R.S. § 38-33.3-303(5)(c)(I), the Declarant reserves the right to appoint the initial members of the Board of Directors and the officers of the Association and may continue to appoint the members of the Board of Directors and the officers of the Association during the Period of Declarant Control.

(a) Election of Part of Board of Directors During Period of Declarant Control. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots That May Be Included to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots That May Be Included to Owners other than Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by Owners other than the Declarant.

(b) Authority of Declarant During Period of Declarant Control. Except as otherwise provided in this Article, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and directors and may remove all officers and directors of the Board of Directors appointed by it.



(c) Termination of Period of Declarant Control. Not later than the termination of the Period of Declarant Control, the Owners shall elect a Board of Directors (with the exact number of members of the Board of Directors to be set forth in the Bylaws of the Association), at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers. Such Board of Directors members and officers shall take office upon election.

7.2 Duties and Powers of the Association. Subject to and in accordance with this Declaration, the Association shall have all of the rights and powers conferred upon it by law, the Act, this Declaration, the Articles and the Bylaws. Without limiting the generality of the foregoing, the Association shall have the following powers and shall perform each of the following duties for the benefit of the Members of the Association:

7.2.1 Budget. The power to adopt and amend budgets for revenue, expenditures and reserved, and to collect assessments from the Owners of Lots within the Project.

7.2.2 Assessments. To determine, levy and collect Assessments pursuant to this Declaration.

7.2.3 Covenant Enforcement. To provide enforcement of the Governing Documents.

7.2.4 Design Review. To provide design review and approval as set forth in Article 3 of this Declaration.

7.2.5 Insurance. To obtain and maintain in effect policies of insurance adequate in kind and amount to comply with C.R.S. § 38-33.3-313.

7.2.6 Management Company. To retain the services of a professional management company to manage some or all of its respective affairs or obligations, provided that (i) such company shall be licensed to do business in the State of Colorado, to the extent

required by law; (ii) the term of any contract for such services shall not exceed one (1) year and shall be terminable on thirty (30) days' written notice, with or without cause and without the payment of a termination fee; and (iii) each and every management contract made between the Association and a manager or managing agent during the Period of Declarant Control shall terminate absolutely and, in any event, no later than thirty (30) days after the expiration of the Period of Declarant Control; Commencing upon the termination of the Period of Declarant Control and continuing thereafter for a period of not less than three years, the Association shall be managed by professional management and shall not be self-managed.

**7.2.7 Power to Engage Employees, Agents and Consultants.** The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

**7.3 Membership and Voting.**

**7.3.1 Generally.** Every owner of a Lot shall automatically be a Member of the Association and shall remain a Member for so long as that Person continues to be an Owner. The Association shall have only one (1) class of Members and each Member shall be entitled to one (1) vote for each Lot owned by such Member. Except as expressly provided otherwise in this Declaration, the total number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association. Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable.

**7.3.2 Voting Rights.** Each Lot shall be allocated a number of votes for the purpose of matters relating to the General Common Elements or the Project as a whole equal to its General Common Allocation. In addition, each Townhome Lot shall be allocated the number of votes for the purpose of matters relating to the Limited Common Elements allocated to the Townhome Lots and the Association's maintenance of the Townhome Lots as provided herein equal to a fraction, the numerator of which is one (1) and the denominator of which is the total number of Townhome Lots within the Project from time to time (the "Townhome Allocated Interest"). All members of the Association shall be entitled to vote on all matters affecting the Project which are required by this Declaration or the Act to be submitted to the vote of the

Owners; provided, however, certain issues relating to the operation and maintenance of the Project affect only the valid interest of the Townhome Lots and the Association in its capacity as a unit owner's association for the Townhome Lot portion of the Project, such as the exterior building maintenance and repair of the Dwelling Units located on the Townhome Lots. Therefore, the following matters shall be voted solely by the Owners of the Townhome Lots, and the common expenses associated with such matters shall be allocated exclusively to the Townhome Lots:

(a) The Owners of the Townhome Lots shall have the sole right to vote on matters pertaining to any Limited Common Elements allocated to the Townhome Lots.

(b) The Owners of the Townhome Lots shall have the sole right to vote on matters pertaining to the exterior maintenance and repair of the Dwelling Units constructed on the Townhome Lots.

(c) The Owners of the Townhome Lots shall have the sole right to vote on the Townhome Budget.

The Board of Directors, the officers of the Association and the Association shall have the duty to represent the interest of the Owners of the Townhome Lots in a fair and just manner on all matters that may affect either or both portions of the common interest community. In upholding their duties, the Board, the officers and the Association shall be held in their decisions to the standards of good faith and reasonableness with respect to such matters, taking into account the effect, if any, of the matter on the Project as a whole.

**7.3.3 Multiple Owners.** When an Owner consists of more than one Person, while each such Person shall be a Member of the Association, only one of such co-owners shall be entitled to exercise the single vote to which the Lot is entitled. Fractional votes shall not be allowed. If only one of the co-owners of a Lot is present at a meeting of the Association, that co-owner shall be entitled to cast the single vote allocated to that Lot. If more than one of the co-owners of a Lot are present, the single vote allocated to that Lot may be cast only in accordance with the agreement of a majority of the co-owners of such Lot. If any one of the co-owners of a Lot casts a vote allocated to that Lot without the protests being made promptly (i.e., before the end of the meeting of the Association at which such vote was cast) by any of the co-owners of the Lot to the person presiding over such meeting, then it shall be conclusively presumed that

the vote was cast in accordance with the agreement of a majority of the co-owners of such Lot. No change in the membership of a Member shall be effective for voting purposes until the Board receives written notice of the change together with satisfactory evidence of the change.

7.3.4 Proxies. Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. If a Lot is owned by more than one Person, each such co-owner of the Lot may vote or register protest to the casting of votes by the other co-owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section 7.3.3 except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven (11) months after its date, unless it provides otherwise.

7.3.5 Association Owned Lots. No votes allocated to a Lot owned by the Association may be cast.

#### 7.4 Board of Directors.

7.4.1 General. The affairs of the Association shall be governed by a Board of Directors (sometimes referred to as the Board) which may, by resolution, delegate any portion of its authority to an executive committee or an officer, executive manager or director for the Association. The qualifications and number of directors, the term of office of directors, the manner in which directors shall be elected and the manner in which directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws.

7.4.2 Extent of Power. Subject to any limitations set forth in the Association Documents, the Board shall have all powers for the conduct of the affairs of the Association which are enabled by law, this Declaration, the Articles and its Bylaws which are not specifically reserved to Members or the Declarant by said documents. The Board shall exercise its powers (and such powers shall be limited) in accordance with this Declaration, the Articles and the Bylaws.

7.5 Officers. The Board will select the officers of the Association, which officers may also serve as members of the Board.

7.6 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners' membership in the Association may be supplemented by provisions of the Articles and Bylaws of the Association. Such Articles and Bylaws may include any reasonable provisions with respect to corporate matters, including provisions with respect to notices, record dates and quorums for meetings of directors and Owners, but no such provisions may be inconsistent with any provision of this Declaration.

7.7 Meetings. The meetings of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board or by Owners having twenty percent (20%) of the votes in the Association. Not less than ten (10) nor more than fifty (50) days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to this Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board.

7.8 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the Board, nor any other committees of the Association or any member thereof, nor any officers, directors, partners, or employees of the Declarant or of the Association, shall be liable to any Owner or to the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, inaction, omission, error, negligence, or the like made in good faith and which Declarant, the Board, or such committees or officers reasonably believed to be within the scope of their respective duties, subject to C.R.S. § 38-33.3-303(2).

7.9 Indemnification. To the fullest extent permitted by law, Declarant and every director, officer, committee member, partner and shareholder of the Declarant and the Association (to the extent a claim may be brought by reason of Declarant's appointment, removal, or control over members of the Board or its control over the Association or any committee thereof) shall be and is hereby indemnified by the Association. Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, or at the request of, the Association may, in the discretion of the Board, be indemnified by the Association. Any such indemnification shall be limited to all expenses and liabilities (including, without limitation, all attorneys' fees and

court costs) reasonably incurred by or imposed upon such person in connection with any proceeding to which such person may be a party or in which such person may become involved, by reason of being or having served in such capacity on behalf of the Association (or in the case of such Declarant by reason of having appointed, removed, controlled or failed to control members of the Board, or controlled or failed to control the Association), or incurred in any settlement thereof, whether or not such person is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

7.10 Non-Liability for Certain Changes and Amendments. Neither the Declarant, the Association, nor their successors or assigns shall be liable to, or subject to injunction by, any Member or Owner or to one another in the event that any change in zoning of the Property is sought or obtained, or in the event that any subdivision map or plat amendment or change in density shall be sought and obtained.

7.11 Association Books and Records. The Association shall make available to Owners, First Mortgagees, and insurers or guarantors of any such First Mortgage, current copies of this Declaration, the Articles, Bylaws, Rules and Regulations, books, records, and financial statements of the Association, as required by the Act. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

7.12 Surplus Funds. Any surplus funds of the Association remaining after payment of, or provision for, common expenses, costs, obligations and any prepayment of or provision for reserves shall not be credited to the Owners but shall, instead, be added to any reserve accounts maintained by the Association.

7.13 Authenticated Electronic Representation. To the extent not prohibited by applicable law, the Association may use technology or electronic representation in completing its duties and responsibilities. In this regard, any reference in any of such documents to action, attendance, representation, notice, quorum, voting or acknowledgement, as well as any and all other matters, may be conducted by authenticated electronic activity and, to the extent not prohibited by applicable law, the provisions of all of such documents shall be deemed to include provisions which permit such authenticated electronic activity.

## ARTICLE 8

## Insurance.

8.1 Insurance. The Association shall maintain insurance as required by the Act and other applicable law, including the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as common expenses. In addition, the Association may maintain such insurance on such other property as the Board of Directors may determine in its discretion from time to time, or as may be hereinafter required. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any governmental agencies with respect to their insurance, guaranty, or purchase of Security Interests.

8.1.1 Property insurance on the Common Elements, the Townhome Lots and residential Dwelling Units constructed upon the Townhome Lots for broad form covered causes of loss including physical damage, fire, vandalism, terrorism, malicious mischief, earthquake, demolition and replacement cost, sprinkler leakage (if applicable), and inflation guard endorsement ("Hazard Insurance")(but not including the finished interior surfaces of the walls, floors and ceilings of the Dwelling Units constructed upon the Townhome Lots, furniture, wall trimmings, equipment, fixtures, and personal property supplied or installed by Owners within Dwellings constructed upon the Townhome Lots); except that the total amount of insurance must not be less than the full insurable replacement cost of all the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, foundations, excavations, and other matters normally excluded from property policies. Payment of the deductible or payment of any loss falling within the deductible portion of a policy will be made by the Association. Funds to cover the deductible amounts or any losses within the deductible portion of a policy will be common expenses. The Hazard Insurance will name each Owner as an additional insured.

8.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements and the performance of its maintenance obligations, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Board of Directors, the Association, any managing agent, and their respective employees, agents and all Persons acting

as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Board of Directors. The Owners shall also be included as additional insureds for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

8.1.3 A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Project and/or any Owner who disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Lots, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subsection (c).

8.1.4 If any Common Elements are located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of:

(a) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(b) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

8.1.5 In addition, the Association may obtain insurance against such other risks



of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

**8.2      General Provisions of Insurance Policies.** All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each holder of a Security Interest. Unless otherwise provided by statute, and to the extent available, the policy will include a provision that the insurer may not cancel or refuse to renew the policy until thirty (30) days' after notice of the proposed cancellation or nonrenewal have been mailed to the Association and each Lot Owner and each holder of a Security Interest Holder to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest holders, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

**8.3      Deductibles.** The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.

**8.3.1** To the extent the Association settles claims for damages to real property, it shall have the authority but not the obligation to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any one (1) Lot is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

**8.3.2** Any determination by the Association that a loss either in the form of a deductible to be paid by the Association or an uninsured loss resulted from the act or negligence

of an Owner, his tenants, family members, guests or invitees, may be made only after notice and hearing to the Owner in question. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

**8.4      Payment of Insurance Proceeds.** Any loss covered by an insurance policy described in Section 1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Security Interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and holder of a Security Interest are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the common interest community is terminated.

**8.5      Association Insurance as Primary Coverage.** If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

**8.6      Acceptable Insurance Companies.** Each insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

8.7 Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on the finished interior surfaces of the walls, floors and ceilings of the Dwellings, on furnishings, wall trimmings, equipment, fixtures, and other items of personal property belonging to an Owner, and public liability insurance coverage on each Lot (typically known as HO-6 insurance), is the responsibility of the Owner of such Lot and shall be obtained and maintained by such Owner.

8.8 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board of Directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance. Any Security Interest Holder shall be furnished with a copy of such appraisal upon request.

8.9 Notice of Cancellation. If the insurance described in Sections 8.1.1 and 8.1.2 of this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States Mail, to all Owners. If the insurance described in Sections 8.1.1 and 8.1.2 of this Article is not reasonably available, the Association may carry any other insurance it considers appropriate.

## ARTICLE 9 ASSESSMENTS

9.1 Creation of the Lien and Personal Obligation for Assessments. The Association shall have the power to levy assessments against the Lots. Each Owner of a Lot that is included in or hereafter annexed into the Project, whether or not it has been expressed in a deed to the Lot, covenants and agrees and shall be personally obligated to pay to the Association: assessments or charges, special assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such assessments and other amounts to be established and collected as hereinafter provided. The assessments and other

charges, fees and fines, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Lot during their ownership of such Lot. Each assessment, charge, fee, and all other amounts under this Declaration, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment became due. In addition to the assessments, charges and fees, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his/her Lot, as well as all charges for separately metered utilities servicing the Owner's Lot. The personal obligation for delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on a Lot for assessments and other amounts shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said lien.

9.2 Purpose of Assessments. The General Assessments and Supplemental Assessments levied by the Association shall be used to pay the common expenses, and for maintenance, repair and replacement of the Common Elements, as provided in this Declaration, to perform the Association's maintenance obligations as provided in this Declaration, to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law, including without limitation, maintenance, operation, repair and replacement of drainage facilities, publicly dedicated property and easements; provided, however, that such General Assessments and Supplemental Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital Improvements. The General Assessments shall include an amount for reserves for the maintenance, repair and replacement of those items that must be maintained, repaired or

replaced on a periodic basis (including without limitation any drainage facilities owned or maintained by the Association), and for the payment of insurance deductibles.

9.3 Apportionment of General and Supplemental Assessments. The General Assessment for any fiscal year of the Association and Special Assessments shall be assessed to each Lot and each Lot's common expense liability shall be as follows:

9.3.1 The General Assessment for each Townhome Lot shall be in an amount equal to (i) the General Common Allocation of such Lot multiplied by the Community Budget (as defined in Section 9.6); plus (ii) the Townhome Allocated Interest (as defined in Article II, Section 4) multiplied by the Townhome Budget (as defined in Section 9.6).

9.3.2 Intentionally Omitted.

9.3.3 The following common expenses shall be included as part of the Townhome Budget and allocated exclusively to the Townhome Lots: (i) the maintenance, repair, or replacement of any Limited Common Elements allocated to the Townhome Lots; (ii) exterior maintenance, repair or replacement of the Dwelling Units located on the Townhome Lots; (iii) reserves for the exterior maintenance, repair or replacement of the Dwelling Units located on the Townhome Lots; (v) any commonly metered domestic water and sewer service, and electric or other utility providing service exclusively to the Townhome Lots; (v) Hazard Insurance on the residential Dwelling Units constructed upon the Townhome Lots as provided in Section 8.1.1.

9.3.4 The following Common Expenses shall be included as part of the Community Budget: (i) the maintenance, repair and replacement of the exterior landscape improvements and landscape irrigation systems on the Common Elements and Townhome Lots, and grounds upkeep on the Common Elements; (ii) charges for landscape irrigation water; (iii) reserves for the Common Elements and landscape improvements; (iv) snow removal from the Common Element walkways, drives and private roadways; (v) administration and management of the Association, including management, accounting and audit services; (vi) maintenance, repair and replacement of Common Element lighting; (vii) trash service if provided by the Association (vii) property insurance on the Common Elements, (viii) Commercial general liability insurance, and comprehensive fidelity coverage or fidelity bonds as provided in Sections 8.1.1, 8.1.2 and 8.1.3 respectively.

9.3.5 Notwithstanding the foregoing, however, the amount of the General Assessments and Supplemental Assessments against the Unbuilt Lots shall be set at a lower rate than the rate of annual Association assessments and special Association assessments against other Lots, because the Unbuilt Lots receive and benefit from fewer services funded by such Association assessments than do the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) states that, to the extent required by the Declaration, "Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited." Based on the two preceding sentences, the Unbuilt Lots shall pay General and Supplemental Assessments at the rate of twenty-five percent (25%) of any General and Supplemental Assessments charged to Lots that are not Unbuilt Lots.

9.3.6 If any common expense or portion thereof benefits fewer than all of the Lots, or if any common expense disproportionately benefits any Owner or group of Owners, then the Board may, by a majority of the voting Directors, assess the common expense or portion thereof exclusively against the Lots benefited or adjust the assessment for such common expense in such proportion and may be equitable and appropriate. Unless a common expense is allocated to the Townhome Budget or to the Community Budget by the provisions of this Declaration, or otherwise allocated to the benefited Lots or adjusted by the Board, then the common expenses shall be included as part of the Community Budget and allocated to all Lots, provided, however, the Board may allocate costs for consumption of common utilities (such as heating, cooling, trash removal, water and sewer charges) among the users thereof in the event of disproportionate consumption of any such common utility by an Owner or group of Owners, and the Board may allocate such costs based upon any reasonable method of determining relative usage of such utilities, including without limitation, by engineering analysis. At the election of the Board, the cost of utility services for the General Common Elements or any Limited Common Elements which are common expenses, including but not limited to gas and electric services, and which are billed to the Association by any utility service provider, may, in turn, be allocated and billed each month (or other periodic basis) by the Association to all Lots as a separately billed utility assessment. The utility assessment shall be allocated to each Lot based upon the General Common Allocation or upon any other reasonable method. Each Lot Owner shall be obligated to pay to the Association the utility assessment billed to the Owner's Lot.

9.4 Subordination of the Lien to Mortgages. The lien of the assessments provided for

herein shall be subordinate to the lien of any First Mortgage, except to the extent provided in § 316 of the Act, C.R.S. § 38-33.3-316. Sale or transfer of any Lot shall not affect the liens for said charges except that sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, including a deed in lieu of foreclosure or cancellation or forfeiture of an executory land sales contract shall extinguish the lien of such charges as to payments which became due prior to such sale, transfer, cancellation or forfeiture of executory land sales contract. No sale, transfer, cancellation or forfeiture of executory land sales contract shall relieve such Lot from liability for any such charges thereafter becoming due or from the lien thereof; provided, however, that in the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrue prior to the acquisition of title to the Lot in question by such First Mortgagee.

9.5      General Assessment. The first General Assessment provided for herein against any given Lot shall commence on the first day of the month following the transfer of the first Lot to an Owner other than the Declarant or a Builder. The General Assessment of the Association shall be based on a budget adopted by the Association as provided in this Declaration. A budget shall be so adopted by the Association no less frequently than annually. In the event the Board fails to fix an Assessment for any fiscal year, then each Assessment established for the prior year shall automatically be continued until such time as the Board acts.

9.6      Budget and Budget Process.

9.6.1 The Board of Directors shall prepare and adopt a budget for the Association no less frequently than annually. The budget shall consist of two parts: (i) a proposed budget pertaining to the matters identified in Section 9.3.3 of this Declaration to be voted on by the Owners of the Townhome Lots (the "Townhome Budget"); and (ii) the remainder of the budget pertaining to the matters identified in Section 9.3.4 of this Declaration and other Common Expenses to be voted on by the Owners of all Lots (the "Community Budget"). Within thirty (30) days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than ten (10) days nor more than fifty (50) days after mailing or other delivery of the summary. The proposed Community Budget does not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by the

Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, whether or not a quorum is present; and the proposed Townhome Budget does not require approval from the Owners of the Townhome Lots and will be deemed approved by the Owners of the Townhome Lots in the absence of a veto at the noticed meeting by the Owners of the Townhome Lots who hold at least sixty-seven percent (67%) of the votes in the Association that are allocated to the Townhome Lots, whether or not a quorum is present. In the event that a proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the applicable Owners must be continued until a subsequent budget proposed by the Board of Directors is not vetoed by the applicable Owners.

9.6.2 To determine the amount required to be raised by General Assessments for any fiscal year, the Board shall prepare and adopt an annual budget for such fiscal year showing, in reasonable detail, the various matters proposed to be covered by both the Community Budget and the Townhome Budget, the estimated costs and expenses which will be payable, and the estimated income and the funds which will be available in that fiscal year, and the estimated total amount of money required to be raised by the General Assessment to cover such costs and expenses and to provide reasonable reserves. The Board shall furnish a copy of such Budget to any Owner upon request, and upon request to any First Mortgagee. Based on such Budget, the Board shall determine the amount of the General Assessment for such fiscal period. The total amount of money required to be raised by the General Assessment for such fiscal year shall be the amount as determined by the Board necessary to satisfy the costs and expenses of fulfilling such functions and obligations of the Association in the coming fiscal year, including the payment of debts from prior fiscal years, providing reasonable reserves, and providing a reasonable carry-over reserve for the following fiscal year.

9.7 Supplemental Assessments. In the event that the Board shall determine, at any time or from time to time, that the amount of the General Assessment is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more Supplemental Assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each Supplemental Assessment, the Board of the Association shall revise the annual budget for such fiscal year provided in Section 9.6, or prepare a new budget, a copy of which shall be furnished to any Owner, or on request, to any Mortgagee. Based on such revised or new Budget, the Board may make a Supplemental Assessment for such fiscal year against each Lot, the amount of which shall be



determined by the Board as provided in Section 9.6. If a Supplemental Assessment is proposed for the purpose of defraying the cost of any construction, reconstruction, repair or replacement of the Limited Common Elements allocated to the Townhome Lots or for the purpose of the exterior maintenance, repair or replacement of the Townhome Lots or Dwelling Unit constructed thereon, then the Board of Directors may levy a Supplemental Assessment exclusively against the Townhome Lots. Within thirty (30) days after adoption of any proposed Supplemental Assessment, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Supplemental Assessment to all the Owners to be subject to the Supplemental Assessment and shall set a date for a meeting of such Owners to consider the Supplemental Assessment not less than ten (10) days nor more than fifty (50) days after mailing or other delivery of the summary. The Supplemental Assessment proposed by the Board does not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by Owners of Lots voting in person or by proxy to which at least sixty-seven percent (67%) of the votes held by the Owners subject to the Supplemental Assessment are allocated, whether or not a quorum is present.

**9.8      Reimbursement Assessments.** The Association may, subject to the provisions hereof, levy an Assessment against any Owner if (a) the willful or negligent failure of the Owner or Related User of the Owner to comply with this Declaration, the Articles, the Bylaws, Rules and Regulations or Guidelines have resulted in the expenditure of funds to cause compliance, or (b) if an Owner or a Related User of the Owner shall fail to pay any fines or penalties established in the Rules and Regulations for breach of or failure to comply with this Declaration or such Rules and Regulations. Such Assessments shall be known as Reimbursement Assessments. The amount of the Reimbursement Assessments shall be due and payable to the Association, thirty (30) days after notice to the Owner of the decision of the Association that the Reimbursement Assessment is owing.

**9.9      Force Majeure Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, as necessary, in whole or part, the cost of budget overruns for current or prior years due to force majeure and emergency events, which shall include, but not be limited to, weather, war, accidents, emergency, fire, casualty, acts of aggression, inspection delays, vandalism, strikes, material shortages, labor shortages, lack of supplies or contractors available at reasonable prices, or acts of God, or other such events outside the reasonably foreseeable

expectations or control of the Association. Said special assessment may be levied upon the vote of the Board of the Association. Within thirty (30) days after adoption of any proposed Special assessment, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the special assessment to all the Owners to be subject to the special assessment and shall set a date for a meeting of such Owners to consider the special assessment not less than ten (10) days nor more than fifty (50) days after mailing or other delivery of the summary. The special assessment proposed by the Board does not require approval from the Owners and will be deemed approved by the Owners in the absence of a veto at the noticed meeting by Owners of Lots voting in person or by proxy to which at least sixty-seven percent (67%) of the votes held by the Owners subject to the special assessment are allocated, whether or not a quorum is present. Such special assessments shall be payable in one or more installments as determined by the Association.

9.10 Time for Payments. The General Assessment for each Lot shall be payable in twelve (12) monthly installments, each due on the first day of each month; provided, however, the Board may elect on a year-to-year basis to have such assessment payable in other periodic payments as they determine. Any payment not received by the tenth (10th) day of the month for the month such payment is due shall be a delinquent payment. Supplemental Assessments shall be payable as provided in the resolutions authorizing the same. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due. All installments of General, Supplemental and Force Majeure Assessments shall be due and payable without notice or demand, and all Assessments shall be paid without any setoff or diminution of any kind. Any Assessment or installment thereof or other amount payable pursuant to this Section 9.10 or under the Articles or Bylaws which is not paid when due shall bear interest from the date it becomes delinquent until paid at the rate of twenty-one percent (21%) per annum or at such other lesser rate as may be determined by the Board from time to time from the date due until paid in full. In addition to the interest noted above, a late charge equal to the greater of Twenty-Five and No/100 Dollars (\$25.00) or ten percent (10%) of any installment then due shall be charged for each installment not paid within ten (10) days after its due date. All payments on account shall be first applied to interest and late charges and then to the Assessment payment due or as otherwise set forth in a specific collection policy adopted by the Association.

9.11 Lien for Assessments and Other Amounts. The Association has a statutory lien in accordance with the Act against each Lot and any Improvements thereon to secure payment of

any Assessment and other amounts due and owing to the Association with respect to that Lot plus interest and/or any late charges, plus all costs and expenses of collecting the unpaid amount, including reasonable attorneys' fees. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration or the Act are enforceable as assessments under this Article. Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. The priority of the lien is governed by the Act. The lien may be foreclosed in any manner for foreclosure of mortgages in the State of Colorado or as otherwise allowed by law. The obligations being part of the purchase price of each Lot, such lien shall be superior and paramount to any homestead or other exemption provided by law, and each Owner hereby specifically waives his or her homestead exemption, but only with respect to such lien for Association Assessments.

9.12 Estoppel Certificate. Upon payment of a reasonable fee and upon written request of any Owner, or First Mortgagee, or any person with any right, title or interest in a Lot or intending to acquire any right, title, or interest in a Lot, the Association shall furnish a written statement setting forth the amount of any Assessments, if any, due or accrued and then unpaid with respect to such Lot and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Lot, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association, for all purposes, that no greater or other amounts were then due or accrued and unpaid.

9.13 No Abatement. No diminution or abatement of Assessments shall be allowed or claimed for any reason.

9.14 Effect of Nonpayment of Assessments; Remedies of Association. Any Assessment (whether General, Supplemental, Force Majeure or Reimbursement) installment not paid within ten (10) days after the due date shall be delinquent. Thereupon, the Association is authorized to give notice of such delinquency and may (a) declare the entire balance of such Assessment due and payable in full; (b) charge interest and late fees from the due date at the percentage rate specified in Section 9.10 hereof; (c) give notice, to the Owner that in the event payment with accrued interest is not paid within thirty (30) days from the date of such notice, then the express contractual lien provided for herein may be foreclosed; or (d) upon giving notice to the Owner, suspend the right of such Owner to vote until the Assessment and accrued interest are paid in full.

## ARTICLE 10

### EASEMENTS

10.1 Association Easement. Easements to perform its maintenance and enforcement duties and as necessary to exercise its powers pursuant to this Declaration are hereby granted by Declarant to the Association, its officers, agents, employees and assigns, upon, across, over, in and under the Project together with the right to make such use of the Project as may be necessary and appropriate in carrying out such maintenance and enforcement duties. All conveyances of Lots hereafter made, whether by Declarant or other Person, shall be construed to grant and reserve the easements contained in this Declaration, whether or not specific reference to such easements or to the Declaration appears in the instrument of such conveyance.

10.2 Easement for Encroachments. To the extent that any Lot or Common Element encroaches on any other Lot or Common Element, a valid easement for the encroachment exists; to the extent any utility service extension line providing service to an individual Lot encroaches on any other Lot or Common Element, a valid easement for the encroachment exists.

10.3 Easements for Drainage and Utilities. Easements and right-of-way for the installation and maintenance of utilities, drainage facilities, public or private improvements and access thereto are reserved as shown on the recorded plats affecting the Lots and any amendments to such plats or as established by any other instrument of record. Declarant creates and reserves to itself until the expiration of the period of Special Declarant Rights, and thereafter to the Association, a blanket non-exclusive easement upon, over and across the Common Elements for the construction, operation, maintenance, repair and replacement of utilities, drainage and facilities therefor and other appurtenances thereto.

10.4 Sidewalks. Sidewalks may be constructed throughout the Community along and adjacent to or connecting the Common Elements, and streets within the Community for the purpose of access in and through the Project. To the extent sidewalks are constructed upon any Lot along and adjacent to or connecting the Common Elements and the streets, there is hereby established a right of access, ingress and egress in and through the Project over and across that portion of the Lot adjacent to the Common Elements including any common access drive which is occupied and used for the sidewalk as such sidewalk is initially constructed by the Declarant,

together with the right to inspect, maintain, repair, and replace such sidewalks. The Association shall provide for the maintenance of such sidewalks as set forth elsewhere in this Declaration.

10.5 Mail Kiosk Easement. A nonexclusive blanket easement is hereby granted to the Association, their officers, agents, employees and assigns, for mail kiosks to be installed upon the Property. The Association shall install such mail kiosks on a to-be-determined Lot or Lots for use by all Owners within the applicable portion of the Project. Such mail kiosk(s) shall be installed by the Declarant or the Association prior to the conveyance of such Lot to any Owner, and such Owner shall take title to his/her Lot subject to the easement for the mail kiosk(s) as built. The Association shall be responsible for the ongoing maintenance of the mail kiosk and the mail kiosk easement area.

10.6 Owner Mail Kiosk Easement. Each Owner is hereby granted a nonexclusive easement for access to the applicable mail kiosk to which the mail for such Owner shall be delivered. The mail kiosk and the mail kiosk easement area shall be maintained by the Association, not any Owner.

10.7 Party Walls.

Party Wall means the foundation wall, the footing under such foundation wall, the structural wall and the shaft liner fire wall supported by the foundation and a roof sheathing or parapet, if existing, capping such fire wall which are part of the original construction of the Dwelling Units located on the Townhome Lots and are located and constructed on or adjacent to the common Townhome Lot boundary line which separates two adjoining Dwelling Units, and which constitutes a common wall between adjoining Dwelling Units, as such Party Wall may be repaired or reconstructed. A Party Wall physically joins the adjoining Dwelling Units on each side of the Party Wall. Without limiting the generality of the foregoing, "Party Wall" includes any two walls which meet the foregoing definition, even if such walls are separated by a de-minimus amount of air space. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls shall apply to Party Walls within the Project. No Owner shall materially alter or change a Party Wall, it being the intention of the Declarant that the Party Wall shall at all times remain in the same position as when constructed. The cost of maintaining a Party Wall and any necessary costs of repairing or rebuilding a Party Wall shall be the joint and equal obligation of the Owners of the Dwelling Units on each side of such Party Wall. Should a Party Wall be damaged or caused to be exposed to the elements as a result of the negligent acts

or omissions of an Owner, the Party Wall shall be repaired or rebuilt at that Owner's expense. If the responsible Owner neglects or refuses to pay all of such costs in a timely and prompt manner, the Owner of the adjacent Dwelling Unit sharing the Party Wall who incurs costs for such maintenance, repair, restoration or reconstruction of the Party Wall shall be entitled to bring suit to recover such costs and the reasonable costs of collection including reasonable attorney's fees, and pursue any other rights or remedies at law or in equity. In the event that a Party Wall or any portion thereof must be rebuilt, it shall be erected in the same location and dimensions and of substantially similar material to the Party Wall as originally constructed. Each Owner shall have the sole responsibility of maintaining the finished surface of a Party Wall within that Owner's Dwelling Unit. Mutual reciprocal easements and rights of access are hereby granted to each Owner of a Townhome Lot in which a Party Wall is located as it presently exists or exists in the future, as it encroaches onto the other adjacent Townhome Lot and for the purpose of making necessary repairs to the Party Wall. Each Owner of a Townhome Lot in which a Party Wall is located shall have the right to enter the Party Wall to maintain any utility installations located therein, so long as such Owner restores the Party Wall to its original condition.

## ARTICLE 11

### PROPERTY RIGHTS IN THE COMMON ELEMENTS

11.1 Owners' Easements. Subject to Sections 11.2 and 11.3 of this Article, every Owner and the Association have a non-exclusive right and perpetual easement for the purpose of pedestrian and vehicular access to their Lots and the Common Elements, and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

11.2 Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

11.2.1 The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration; and

11.2.2 The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and to mortgage said property

as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest unless such is approved by Members casting at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by the Declarant or a Builder; and

11.2.3 The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

11.2.4 The right of the Association to promulgate, amend, repeal, re-enact and publish rules and regulations with which each Member shall strictly comply, including, but not limited to, the right of the Association to regulate and/or restrict vehicular parking and Improvements; and

11.2.5 The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot or any other amount due from such Member to the Association remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Bylaws of the Association or the Association rules and regulations; and

11.2.6 The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved by the Members entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by the Declarant or a Builder, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Project shall not be deemed a transfer within the meaning of this subsection; and

11.2.7 The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other persons, their family

members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

11.2.8 The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

11.3 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Elements to the members of such Owner's family, his tenants, or contract purchasers who reside on his Lot.

11.4 Limited Common Elements. Subject to the terms and provisions of this Declaration, every Owner or group of Owners shall have the right to use and enjoy the Limited Common Elements appurtenant to his or their Lot, and such right shall be exclusive except as to those other Owners with a right to use such Limited Common Elements.

11.5 Conveyance or Encumbrance of Common Elements. Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only in accordance with the Act and this Declaration if Owners entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by a Declarant, agree to that action.

11.6 Payment of Taxes or Insurance by Security Interest Holders. Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

## ARTICLE 12

### RESERVED RIGHTS

12.1 Special Declarant Rights. The Declarant reserves the following Special Declarant Rights:



12.1.1 Completion of Improvements. The right to construct and complete improvements within the Project.

12.1.2 Reserved Rights. The right to exercise any right reserved by Declarant in this Declaration as such rights relate to real property owned by the Declarant, or any other rights reserved by Declarant in this Declaration.

12.1.3 Sales, Management and Marketing. The right within the Project to maintain sales offices, construction offices, management offices, model homes, and signs, flags and other on-site marketing and sales promotion materials advertising the Project. The Declarant shall have the right to determine the number of model homes and the size and location of any sales offices, management office, and model homes. The Declarant shall also have the right to relocate any sales offices, management offices, and model homes from time to time at its discretion. After the Declarant ceases to be the Owner of a Lot, the Declarant shall have the right to remove any sales offices and management offices. No structure used by Declarant for a sales office, construction office, management office or model home shall be deemed a Common Element.

12.1.4 Construction and Access Easements. The right to use easements through the Project for the purpose of making improvements and to provide access within the Project.

12.1.5 Merger. The right to merge or consolidate the Project with another common interest community of the same form of ownership.

12.1.6 Period of Declarant Control. The right to appoint or remove any officer of the Association or any Board of Directors member during the Period of Declarant Control as provided in this Declaration.

12.1.7 Alteration of Common Elements. The right to alter the fencing, landscaping or storage within the Project.

12.1.8 Alteration of Lots. The right to alter any condition (including size and

location of structures) on any Lot owned by Declarant, whether with respect to sales and marketing efforts or otherwise.

**12.2 Additional Reserved Rights.** In addition to the Special Declarant Rights set forth above, Declarant reserves the following additional Special Declarant Rights ("Additional Reserved Rights"):

**12.2.1 Amendment of Declaration.** The right to amend the Declaration in connection with the exercise of any Development Rights or in connection with the qualification or continued qualification for FHA or VA loan guarantees, and for compliance with FNMA, GNMA, FHLMC (collectively "Mortgage Agencies") requirements or any other available financing programs. Declarant shall also have the right to amend this Declaration to comply with the requirements of the Act in the event any provision contained in this Declaration does not comply with the Act.

**12.2.2 Amendment of Plat/Re-plats.** The right to supplement the Plat in connection with the exercise of any Development Rights, the right: (i) to re-plat all or any portions of the Property owned by Declarant; (ii) the right to create additional Lots up to the number of Lots That May Be Included; (iii) the right to subdivide or combine Lots which it owns or convert Lots which it owns into Common Elements; (iv) the right to allocate General Common Elements or portions thereof as Limited Common Elements; and (iv) the right to reconfigure the boundaries of the Common Elements.

**12.2.3 Dedications.** The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of the Owners.

**12.2.4 Use Agreements.** The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of Common Elements, for the benefit of the Owners.

12.2.5 Irrigation Water. The right to use non-potable water for the following purposes: (i) dust control in connection with constructing and completing improvements within the Project; and (ii) initial establishment of grass on Lots (as a temporary dust and erosion control measure before such Lots are initially sold by Declarant).

12.2.6 Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration.

12.2.7 Declarant's Use. No trailer, model home, or construction, sales or leasing office located on a Lot owned by the Declarant or on a Common Element shall be deemed owned by the Association or any Owner (other than the Declarant). Nothing contained in this Declaration shall limit the right of the Declarant or to require the Declarant to obtain approvals (a) to excavate, cut, fill or grade any property owned by the Declarant or to construct, alter, demolish or replace any improvements on any property owned by the Declarant, or (b) to use any structure on any property owned by the Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Project, or (c) to require the Declarant to seek or obtain the approval of the Association or other Owners for any such activity or improvements to Property by the Declarant on any Property owned by the Declarant.

12.3 Exercise of Rights. The Declarant may exercise any Special Declarant Right with respect to all or a portion of its respective property at different times in whatever order the Declarant, in its sole discretion, may determine. If any such right is exercised as to one portion of the Property, such right need not be exercised as to any remaining portion of the Property.

12.4 Reciprocal Easements. If all or part of the Property is not submitted to this Declaration, or if Property is withdrawn from the Project (the "Withdrawn Property"), then: (i) the Owner(s) of the Property and/or Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance, and emergencies over and across the Project; and (ii) the Lot Owner(s) in the Project shall have whatever easements are necessary, if any, for access, utility service, repair, maintenance, and emergencies over and across the Property and Withdrawn Property. Declarant shall prepare and Record whatever documents are necessary to evidence such easements. Such Recorded easement(s) shall specify that the Owners of the Property and the Withdrawn Property and the

Owners in the Project shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Article shall conclusively determine the existence, location, and extent of the reciprocal easements that are necessary or desirable as contemplated by this Article.

12.5 Transfer of Declarant Rights. Any Special Declarant Right, Additional Reserved Right or withdrawal right created or reserved under this Declaration for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE 13

### AMENDMENT OF DECLARATION

#### 13.1 General Procedure.

13.1.1 Each and every provision of this Declaration shall run with and bind the land perpetually from the date this Declaration is Recorded. Except as otherwise provided in this Declaration, this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests; provided, however, prior to the automatic termination of the Special Declarant Rights as provided in Section 1.40 hereof (Special Declarant Rights), no amendment of this Declaration shall be effective without the prior, written approval of the Declarant. Any termination of this Declaration and the planned community created hereby must comply with C.R.S. § 38-33.3-218.

13.1.2 Every amendment to the Declaration must be recorded in the Records and is effective only upon Recording. Amendments to the Declaration required by this Article to be Recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

13.2 Technical Amendment. To the extent allowed by the Act, Declarant hereby reserves and is granted the right and power to make and Record amendments to the this Declaration, the

Articles of Incorporation, the Bylaws and other governing documents of the Association without the approval or consent of any Owner, First Mortgagee, or any other person or entity for the purpose of making non-material changes (such as for correction of technical, typographical, or clerical errors), or for clarification of a term or provision hereof. Declarant hereby reserves and is granted the right and power to make and Record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, amendments to this Declaration, the Articles of Incorporation, the Bylaws and other governing documents of the Association to conform the terms and provisions of any of them to revisions in the Act. Such right of amendment shall terminate upon automatic termination of the Special Declarant Rights.

13.3 Special Amendment. To the extent allowed by the Act, Declarant hereby reserves and is granted the right and power to make and Record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, special amendments to the Declaration, the Articles of Incorporation, the Bylaws and other governing documents of the Association in order to comply with any requirements of any of the Mortgage Agencies or to induce any of the Mortgage Agencies to make, purchase, sell, insure, or guarantee one or more First Mortgages. Such right of special amendment shall terminate upon automatic termination of the Special Declarant Rights. Declarant hereby reserves the right to amend this Declaration pursuant to Sections 38-33.3-205(4) and (5), 38-33.3-208(3), 38-33.3-209(6), 38-33.3-210 or 38-33.3-222 of the Act or as otherwise allowed under the Act without the prior consent of any party. Further, Declarant hereby reserves and is granted the right and power to make and Record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, amendments to the Declaration, the Articles of Incorporation, the Bylaws and other governing documents of the Association at any time before the closing of the sale and conveyance of the first Lot to a third party other than a Declarant.

13.4 Certification. Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, Recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration or as permitted by the Act, may be signed by the Declarant and shall require no other signatory.

### **13.5     Additional Provisions Regarding Amendments.**

13.5.1 No amendment shall operate or be effective to remove, revoke, limit, condition, or modify any right or privilege of the Declarant under this Declaration, including without limitation this Section 13.5.1, Section 13.5.2, Section and 13.5.3, which provisions are not merely covenants but are contractual in nature and may not be unilaterally amended by the Owners to affect or alter the contractual agreement without the written consent of the Declarant or the assignee of such right or privilege. Each Amendment to this Declaration enacted by the vote or agreement of Owners of Lots shall be applicable only to disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred after the date of Recording of such amendment in the county, and no such amendment shall be applied retroactively (i) to any disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred before the date of Recording of such amendment in the county, or (ii) to impair the rights or obligations of any Person, including Declarant, as originally set forth in this Declaration. Notwithstanding anything to the contrary herein, this Section 13.5.1 may not be amended, nullified or modified without the written consent of the Declarant.

13.5.2 Any indemnification or right of indemnification of directors and officers of the Association as provided by any of the Association Documents shall continue as to a person who has ceased to be a director or officer of the Association and shall inure to the benefit of the director's or officer's estate, heirs, personal representatives, executors and administrators.

13.5.3 Any repeal or modification of any provision of the Association Documents permitting or requiring indemnification of director's and officer's shall be prospective only, and shall not adversely affect any limitation on the personal liability of a current or former director or officer of the Association for acts or omissions prior to such repeal or modification; any such repeal or modification shall not be effective as against a current or former director or officer of the Association for acts or omissions prior to such repeal or modification without such director's or officer's written consent.

## **ARTICLE 14**

### **MISCELLANEOUS**

14.1 Generally.

14.1.1 Registration of Address; Notices. Each Owner and each First Mortgagee shall register its mailing address with the Association. Except as expressly required otherwise by this Declaration, annual statements and all other notices or demands intended to be served upon an Owner or upon a First Mortgagee shall be sent by first class mail, postage prepaid, addressed in the name of such Person at such registered mailing address, or provided by other means as permitted or required by the Act. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot and if a First Mortgagee fails to register its address then such First mortgagee shall not be entitled to notice from the Association. Such address may be changed from time to time by notice given by such Person to the Association. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the office of the Association at such address as identified by the Association in writing to the Owners.

14.1.2 Severability. In the event that any portion of this Declaration shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

14.1.3 Governing Law. This Declaration shall be governed by, and construed under, the laws of the State of Colorado in existence as of the date of Recording of this Declaration in the Records.

14.2 Exhibits. All exhibits attached hereto are incorporated herein by this reference.

14.3 Colorado Common Interest Ownership Act. This Declaration is subject to all mandatory requirements of the Act. In the event of any conflict between any term or provision of this Declaration and any mandatory provision of the Act, the mandatory provisions of the Act shall control in all instances. In the event of any conflict between any term or provision of this Declaration and any permissive or non-mandatory provision of the Act, the provisions of this

Declaration shall control in all instances.

14.4 Recording Data of Easements and Licenses. The Recording data for Recorded easements and licenses appurtenant to, or included in, the Project or to which any portion of the Project is or may become subject by virtue of a reservation in this Declaration is set forth in Exhibit C, attached hereto and incorporated herein by this reference.

14.5 Enforcement. In addition to any other express remedies set forth in this Declaration, and subject to the provisions of this Section set forth below, enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or Rules and Regulations of the Association, as supplemented and amended, may be by any proceeding at law or in equity against any Person(s) (including, without limitation, the Association) violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and in accordance with the procedures set forth in this Declaration and/or the Bylaws and policies of the Association, the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. In addition, the Association, through the Board, may exercise self-help to cure violations and may suspend any services it provides to any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. Except as provided below in regard to the mediation and arbitration under Section 14.6, in any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

14.5.1 Subject to any limitations on the power and authority of the Association as set forth in this Declaration, the Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). The Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, as to which the Association is a



proper party in interest, and any exercise of such power shall be subject to any limitations set forth in this Declaration and subject to full compliance with the following provisions:

(a) Any Proceeding commenced by the Association: (a) for the imposition and collection of Assessments or other charges levied under Article 9 (Assessments), including actions to foreclose assessment liens; (b) involving challenges to ad valorem taxation; (c) to obtain a temporary restraining order (or equivalent emergency relief) and such other relief as may be necessary in order to enforce the provisions of Article 5 (Use Restrictions) or Article 3 (Design Review Committee); (d) for counterclaims brought by the Association in proceedings instituted against it; (e) either on its own behalf or as a representative of one or more Owners, where the total amount in controversy is within the jurisdictional limit of and pursued in small claims court; (f) solely for declaratory relief which seeks a determination as to the applicability, clarification or interpretation of any provisions of the Association Documents; (g) relating to the enforcement or discharge of any mechanic's lien; (h) or by an Owner to enforce the terms and conditions of this Declaration with respect to the Association, an Owner, the Common Elements or a Lot; and (i) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of business; shall be referred to herein as an "Operational Proceeding." The Board from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization.

(b) Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies." To protect the Association and the Owners from being subjected to potentially costly and prolonged claims without full disclosure, analysis and consent; to protect the Board and individual members of the Board or its appointed officers and agents from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board:

(i) The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event

that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Five Thousand Dollars (\$5,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Members for such additional amount for mediation before proceeding to either arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures.

(ii) The Board shall investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy.

(iii) No Non-Operational Controversy may be pursued or prosecuted by the Association, acting either on its own behalf or as a representative of one or more Owners, until and unless such action is specifically authorized, on a case by case basis, by Owners holding at least two-thirds of the votes entitled to be cast within the Association voting in person or by proxy at a meeting duly called for this purpose, or voting pursuant to written ballot. To obtain such vote, the Association shall hold a meeting of Members no sooner than ten days after the date Association has mailed or given written notice to all Owners calling a meeting of the Owners and setting forth the potential Non-Operational Controversy. Such written statement, or if the vote is to by written ballot then such written ballot, must include at least the following information: (i) a statement of the claim and the opposing party's response thereto, if any, including any settlement offer; (ii) a good-faith estimate of the time and costs of pursuing such claim; (iii) a statement advising Members that the cost and fees of prosecuting any claim may increase the amount of assessments payable by the Owners to the Association; (iv) the potential impact of the claim on the marketability of the Owners' property; (v) a statement advising the Owners of any duty to disclose the claim to prospective purchasers of their property; and (vi) any information required by Section 38-33.3-305.3 of the Act, if applicable. If not more than two-thirds of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and, if applicable, levying any proposed special assessment to fund the cost and fees of prosecuting any such Non-Operational Controversy, then the claim shall not be pursued

further, but if more than two-thirds of the total voting power of the Association affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying any applicable special assessment on the Owners, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. The Association may not proceed with arbitration or litigation of such a Non-Operational Controversy claim without compliance with this subsection.

(c) In addition to the provisions and requirements of this Section, Non-Operational Controversies between or among the Association, an Owner and/or the Declarant or any combination thereof shall be subject to the dispute resolution procedures set forth in Section 14.6.

(d) In no event shall any Association working capital fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy).

(e) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 14.5, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 14.5, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the Association or of the person(s) undertaking such act) as to the Association; and (iii) this Section 14.5 may not be amended or deleted at any time without the express prior written approval of Owners representing not less than sixty-seven percent (67%) of the total voting power of Association and, if such amendment or deletion is to occur before the expiration of the Special Declarant Rights, the consent of Declarant, and any purported amendment or deletion of this Section 14.5, or any portion hereof, without such express prior approval shall be void.

#### **14.6     Mandatory Binding Arbitration.**

14.6.1 Except as otherwise agreed to in writing between any Bound Parties (as defined in Section 14.6.2), including without limitation any purchase and sale agreement or similar document (each a "Superseding Agreement"), to the fullest extent permitted by law, all

Non-Operational Controversies (as defined in Section 14.5) by an Owner or the Association against (i) Declarant (or any affiliate, agent, employee, executing officer, manager, or owner of thereof), (ii) a Contractor (including general contractors, subcontractors, engaged for the construction of the initial Improvements on the Lots or Common Elements), or (iii) a Design Consultant (including architects, engineers and similar design professionals engaged to assist in the design of the initial Improvements on the Lots or Common Elements) (individually, an Applicable Party”), or between or among an Owner, the Association and one or more Applicable Party (or any affiliate, agent, employee, executing officer, manager, or owner of the same) which any of them may have arising from or in any way related to the sale, design or construction of a Lot or Lots and the Improvements thereon, or the Common Elements (a "Dispute") shall be submitted to final and binding arbitration. Except as provided in Section 14.6.7 below, binding arbitration shall be the sole remedy for resolving Disputes between the Declarant, any Owner and/or the Association, or any of them. Disputes subject to binding arbitration include but are not limited to: (1) Any disagreement, claim or action that a condition of the Lot, the Improvements thereon or of the Common Elements is a construction defect; (2) Any alleged breach of a Limited Warranty; (3) Any alleged violations of consumer protection, unfair trade practice, or other statutes; (4) Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law; (5) Any dispute as to the payment or reimbursement of the arbitration filing fee; (6) Any other claim arising out of or relating to the sale, design, or construction of the Lot and the Improvements thereon, or the Common Elements, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability.

**14.6.2 Dispute Resolution by and between Bound Parties.** The Declarant, the Association (including their officers, directors and committee members), and all Owners (a "Bound Party") agree to encourage the amicable resolution of Disputes (as defined in Section 14.6.1) without the emotional and financial costs of litigation. Accordingly, each Bound Party hereby covenants and agrees to submit all Disputes between or among them to the following dispute resolution procedures prior to submitting the Dispute to binding arbitration in lieu of litigation. No Dispute may be initiated after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitation or statute of repose. Notwithstanding the provisions of this Article, except as may be permitted by applicable law, nothing in this Article shall be interpreted to supersede the provisions of the Colorado Construction Defect Action Reform Act, C.R.S. 13-20-801 et seq. ("CDARA"), and any

claim or action governed by the provisions of CDARA shall be subject to the procedures set forth in CDARA and shall not be subject to the dispute resolution procedures set forth in paragraphs (a) through (c) of this Section 14.6.2 or the provisions of Section 14.6.4, or Section 14.6.6 of this Article to the extent of any conflict with CDARA or the Act.

(a) Any Bound Party having a Dispute ("Claimant") against any other Bound Party ("Respondent"), shall notify each Respondent in writing of the Dispute (the "Notice"), stating plainly and concisely (i) the nature of the Dispute, including the date, time, location, persons involved, and Respondent's role in the Dispute; (ii) the basis of the Dispute (e.g. the provisions of this Declaration, the Bylaws, the Articles, rules or regulations or other authority out of which the claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Dispute; and (iv) that Claimant wishes to resolve the Dispute by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Dispute.

(b) Each Claimant and Respondent (the "Parties") may meet and confer for the purpose of resolving the Dispute by good faith negotiation.

(c) If the Parties do not otherwise resolve the Dispute, the Claimant shall be entitled to initiate final binding arbitration by submitting the Dispute to arbitration. Non-Operational Controversies, except for claims arising under a Limited Warranty, brought by the Association shall require Owner approval in accordance with Section 14.5.1 prior to initiating arbitration.

14.6.3 In the absence of an agreement otherwise between the applicable Bound Parties, all Claims subject to arbitration shall be conducted in accordance with and shall be specifically enforceable under the Colorado Uniform Arbitration Act C.R.S. § 13-22-201, et seq., as then in effect (the "CUAA") and be decided by a single private party arbitrator. If the parties are unable to agree upon an arbitrator within thirty (30) days from the date of the demand for arbitration, then the arbitrator shall be chosen in accordance with the rules governing the selection of an arbitrator under the CUAA. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

14.6.4 The Bound Parties agree to pay a pro rata share (based on the number of Parties) of the costs and expense of the Board appointed representative, the mediator, and the arbitrator. The payment shall be made to the person or persons responsible for collecting such costs and expenses on behalf of the negotiator, mediator, and arbitrator prior to the applicable alternative dispute resolution process. Each Bound Party shall bear its own costs (including expert costs), expenses and attorneys' fees incurred in the arbitration.

14.6.5 If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other Dispute, and the court shall, upon motion of any party to the proceeding, direct that such Dispute be arbitrated in accordance therewith and shall award reasonable costs and attorney's fees to a party that successfully moves to have the Dispute resolved by arbitration.

14.6.6 If the Bound Parties resolve any Dispute through negotiation or mediation, and any Bound Party thereafter fails to abide by the terms of such agreement, or if any Bound Party fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without need to comply with the provisions of this Article. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including without limitation, attorney's fees and costs.

14.6.7 Notwithstanding any of the terms or provision of this Declaration to the contrary, the Declarant may, in its sole discretion, elect to resolve any Dispute involving Declarant as a plaintiff or defendant by court proceeding instead of through arbitration. If the Declarant elects to resolve any such Dispute by court proceeding, Declarant may file and commence a proceeding in a court, or upon initiation of arbitration by another Bound Party and motion of the Declarant, the arbitrator shall direct that such Dispute be litigated in a court of law, in which event the Court shall not grant any motion requesting that the Dispute be arbitrated over the objection of Declarant.

14.6.8 JURY WAIVER. AS TO ALL NON-OPERATIONAL CONTROVERSIES, THE OWNERS, ASSOCIATION AND DECLARANT WAIVE ANY RIGHTS TO JURY TRIAL FOR

SUCH DISPUTES EVEN IF THE ABOVE DESCRIBED ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AND PROVISIONS ARE OTHERWISE FOUND UNENFORCEABLE. BY DELIVERY AND ACCEPTANCE OF A DEED TO A LOT, EACH OWNER AND DECLARANT MAKE THIS WAIVER KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, AND ACKNOWLEDGE THAT NO ONE HAS MADE ANY REPRESENTATION OF FACT TO INDUCE THEM TO MAKE THIS WAIVER OR IN ANY MANNER OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT AND SUCH PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE HAD THE OPPORTUNITY TO BE ADVISED BY INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH THIS DECLARATION AND IN MAKING THIS WAIVER. EACH OWNER, ASSOCIATION AND THE DECLARANT ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THIS JURY WAIVER, AND INTEND THIS JURY WAIVER BE READ AS BROADLY AS POSSIBLE AND EXTEND TO ALL NON-OPERATIONAL CONTROVERSIES.

14.6.10 The rights, terms and provision of this Section 14.6 are enforceable by Declarant, and shall not be amended, modified or repealed without the prior written consent of Declarant. Further, this Section 14.6 and the rights, terms and provisions contained herein constitute a servitude in gross for the benefit of Declarant and its officers, directors, affiliates, agents, employees, contractors and consultants, shall inure to the benefit of the foregoing, and all of the foregoing are third party beneficiaries thereof, regardless of ownership of any portion of the Community.

14.7 Liability of Directors or Officers for Failure to Maintain an Action. No officer or director of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion such cause of action if the following criteria are satisfied:

- 14.7.1. the officer or director was acting within the scope of his duties;
- 14.7.2 the officer or director was acting in good faith; and
- 14.7.3 the act or omission was not willful, wanton or grossly negligent.

14.8 Utilization of Funds Resulting from the Cause of Action. In the event the Association receives funds as the result of any settlement, arbitration or judgment based upon a cause of

action, after payment of fees and costs incurred in connection with prosecution of such action, the Association shall:

14.8.1 deposit the proceeds in a special, interest-bearing account and

14.8.2 utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the claim of defect or for purposes of remedying any other claim for any other alleged matter.

14.9 Limitation on Corporate Power. Notwithstanding anything to the contrary in this Declaration, the Association may not sue anyone or arbitrate claims on behalf of two or more Owners (whether in a representative capacity or by taking an assignment of claims) with respect to any Disputes, claims or issues on individual Dwelling Units, including without limitation, construction and warranty claims. Neither this Section 14.9 or Section 14.8 may not be amended, nullified or modified without the written consent of the Declarant as required by Section 13.1.1.



IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day and year first above written.

Declarant:

HEIDI, LLC,  
a Colorado limited liability company

By Jeff Mark

Name: Jeff Mark

Title: Authorized Agent

STATE OF COLORADO

)

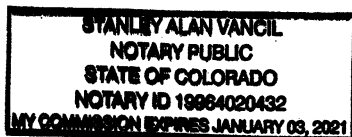
) ss.

County of El Paso

The foregoing instrument was acknowledged before me this 20 day of October, 2020, by Jeff Mark as Authorized Agent of HEIDI, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 1-3-21.



Stanley Alan Vancil

Notary Public

CONSENT AND AFFIDAVIT OF OWNERSHIP & INCLUSION

Heidi, LLC ("Heidi"), affirms ownership of Tracts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q & R, Carriage Meadow South at Lorson Ranch Filing No. 2, City of Colorado Springs, County of El Paso State of Colorado, and by its authorized signature below agree that said Tracts shall be subject to all of the terms, conditions, restrictions and provisions of this Declaration of Covenants, Conditions and Restrictions for Carriage Meadow South at Lorson Ranch Filing No. 2 and hereby consents to the inclusion of said Tracts in this Declaration. Heidi further agrees to convey such tracts to the Association not later than completion of the landscape and other improvements on such Tracts.

Heidi:

Heidi, LLC,  
a Colorado limited liability company

By: \_\_\_\_\_

Name: Jeff Mark

Title: Authorized Signing Agent

STATE OF COLORADO )

) ss.

County of El Paso )

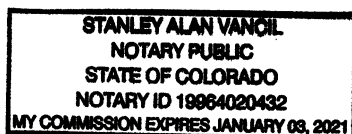
The foregoing Consent was acknowledged before me this 20 day of October, 2020, by Jeff Mark as Authorized Signing Agent of Heidi, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 1-3-21

(SEAL)

\_\_\_\_\_  
Notary Public



**Exhibit A**

**Declaration of Covenants, Conditions and Restrictions for**

**Carriage Meadow South at Lorson Ranch Filing No. 2**

**LEGAL DESCRIPTION OF THE PROPERTY**

**Lots 1 through 49**

**Carriage Meadow South at Lorson Ranch Filing No. 2,**

**City of Colorado Springs, County of El Paso, State of Colorado.**

**Exhibit B**

**Declaration of Covenants, Conditions and Restrictions for  
Carriage Meadow South at Lorson Ranch Filing No. 2**

**COMMON ELEMENTS**

**Tracts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q & R  
Carriage Meadow South at Lorson Ranch Filing No. 2,  
City of Colorado Springs, County of El Paso, State of Colorado.**

**Exhibit C**

**Declaration of Covenants, Conditions and Restrictions for  
Carriage Meadow South at Lorson Ranch Filing No. 2**

**(Certain Title Matters)**

Exhibit D

Declaration of Covenants, Conditions and Restrictions for  
Carriage Meadow South at Lorson Ranch Filing No. 2

**Townhome Maintenance and Insurance Chart**

**NOTE: This chart shows whether Owners or the Association are responsible for the maintenance, repair, replacement and insurance of various items**

A = Association

O = Owner

Unit means one (1) single family Dwelling Unit on a Townhome Lot

	MAINTENANCE	INSURANCE
<b>TOWNHOME BUILDING EXTERIOR</b>		
Building-structure, including foundations, columns, girders, beams and supports	A	A
Siding, including painting, repairing and replacing	A	A
Brick, trim and other exterior surfaces and improvements	A	A
Roof shingles and roof underlay	A	A
Gutters and downspouts - repairing and replacing	A	A
Patios, balconies, decks, porches- general cleaning	O	N/A
Patios, balconies, decks, porches - repair	A	A

	<b>MAINTENANCE</b>	<b>INSURANCE</b>
Storm/screen doors or any other improvements installed by Owners to exterior of Units	O	O
Windows, frames, panes, and caulking around windows in connection with window replacement and repair	O	A
Glass surfaces, cleaning, maintaining and repair	O	A
Exterior door of a Unit, including peep holes, doorknobs and lock mechanisms	O	A
Patio/balcony sliding doors - frame	A	A
Unit patio/balcony sliding doors - glass	O	A
Garage doors – Painting and Staining	A	N/A
Garages doors – maintain, repair and replace	O	A
Landings outside Unit doors	O	A
Light fixtures outside Units—maintain, repair, replace, including bulb replacement	O	A
<b>TOWNHOME UTILITIES</b>		
Utilities and lines installed within individual Units including furnaces, heating, plumbing, lighting, telephone, garbage disposal, hot water equipment and appurtenances, which service only that Unit.	O	A

	MAINTENANCE	INSURANCE
Utilities and lines installed within or running through Common Elements, which service more than one Unit.	A	A
Utilities and lines installed outside individual Units, including furnaces, heating, plumbing, hot water equipment and appurtenances, but serving a single Unit.	O	A
Air conditioners serving a single Unit	O	A
Ducts and electrical wiring located within or outside a Unit and servicing only that Unit	O	A
Water supply service lines serving a single Unit from and including the curb stop shut off box	O	A
Water mains serving more than one Unit	A	A
Sewer service lines that serve a single Unit	O	A
Sewer mains that serve more than one Unit	A	A
Utility sub-meters, if any, measuring usage for a single Unit	A	A
<b>TOWNHOME UNIT INTERIORS</b>		
Circuit boxes inside a Unit servicing exclusively that Unit.	O	A
Furnishings	O	O
Window coverings	O	O



	MAINTENANCE	INSURANCE
Permanent fixtures including but not limited to ceiling fans, hand rails, cabinets and counter tops	O	O
Appliances including oven, range, refrigerator and disposal	O	O
Interior perimeter walls—finished surfaces	O	O
Interior perimeter walls—non-finished surfaces	O	A
Interior non-perimeter walls, ceilings and floors (finished surfaces)	O	O
Upper most perimeter ceilings of Units—finished surfaces	O	O
Upper most perimeter ceilings of Units—unfinished surfaces	O	A
Floor coverings including carpet, tile, vinyl and hardwood	O	O
Subflooring	O	A
<b>TOWNHOME LOT GROUNDS</b>		
Townhome Lots - Grass, trees, shrubbery, flowers and other living landscaping, including irrigation systems.	A	A

	MAINTENANCE	INSURANCE
Landscaping or other landscape Improvements on a Townhome Lot which were installed by an Owner other than Declarant or by the Association, and landscape enclosed by a fence or other enclosure, if any	O	A
Entry sidewalks on a Lot serving a unit	O	A
<b>OTHER</b>		
Any improvement or installation installed by Owner, including satellite dishes, and not otherwise listed	O	O
Any Limited Common Element allocated to a Townhome Lot	A	A

#### NOTES

A. IF MAINTENANCE OR REPAIR IS REQUIRED TO ANY COMPONENT NORMALLY MAINTAINED BY THE ASSOCIATION, WHICH RESULTS FROM THE NEGLIGENCE OR INTENTIONAL ACT OF AN OWNER, SUCH OWNER SHALL BE RESPONSIBLE FOR THE COST OF THE MAINTENANCE.

B. IF MAINTENANCE OR REPAIR IS REQUIRED FOR ANY OWNER MAINTAINED COMPONENT, WHICH IS CAUSED BY ASSOCIATION NEGLIGENCE, THE ASSOCIATION SHALL BE RESPONSIBLE FOR THE COST OF SUCH MAINTENANCE OR REPAIR.