

**THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**OF**  
**GATEWAY PARK PAIRED HOMES**

---

Copyright 2015  
Craig N. Blockwick  
Blockwick Eisenstein Krahenbuhl, LLC

GUARDIAN TITLE  
FILE # 6215-34252

↓  
GUARDIAN TITLE AGENCY

1355 S COLORADO BLVD #C306  
DENVER, CO 80222

**THE**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**OF**  
**GATEWAY PARK PAIRED HOMES**

---

**PREAMBLE**

THIS DECLARATION is made on the date hereinafter set forth, by Sunriver Development Company, LLC, a Colorado limited liability company ("Declarant").

WHEREAS, Declarant is the owner of certain real property situate in Larimer County, Colorado, as more particularly described on the attached Exhibits A and B; and

WHEREAS, the Declarant intends to create a residential community on said real property together with other improvements thereon; and

WHEREAS, Declarant will convey said real property, subject to the protective covenants, conditions, and restrictions as hereinafter set forth.

NOW THEREFORE, Declarant hereby submits the real property described in said Exhibit A together with all rights, and appurtenances thereto and improvements thereon to the provisions of the Colorado Common Interest Ownership Act, as it may be amended from time to time. In the event the said Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

Declarant hereby declares that all of the said real property described in said Exhibit A shall be held and conveyed subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be for the protection of the value of the said real property, and for the benefit of any persons having any right, title or interest in the said real property. Said covenants, conditions, and restrictions shall be deemed to run with the land and shall be binding on and a burden and a benefit to any persons acquiring such interest, their grantees, heirs, legal representatives, successors, and assigns.

ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 ACT means the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, et seq., as it may be amended from time to time.

1.2 AGENCIES means and collectively refers to the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD/FHA), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

1.3 ALLOCATED INTERESTS means the Assessment Liability and the Votes in the Association which are allocated to each of the Lots in the Planned Community. The formulas used to establish the Allocated Interests are as follows:

(a) Common Expense Assessment Liability. The Common Expense Assessment is levied against all Lots on the basis of a fraction, the numerator of which is one and the denominator of which is the total number of Lots then within the Planned Community.

In the event that the Declarant exercises its right to enlarge this Planned Community in Phases by submitting to the Planned Community additional real property in accordance with ARTICLE ELEVEN hereof, the Common Expense Assessment Liability set forth above will be reallocated by the Declarant in accordance with the above.

(b) Votes. Each Owner in the Planned Community is entitled to the number of votes calculated in accordance with Paragraph 3.6 hereof.

1.4 ARTICLES means the Articles of Incorporation of the Association.

1.5 ASSESSMENTS means the (a) Common Expense Assessments, (b) Special Assessments, (c) Individual Assessments, and (d) Fines levied pursuant to this Declaration.

1.6 ASSESSMENT LIEN means the statutory lien on a Lot for any Assessment levied against that Lot together with all Costs of Enforcement as herein defined. All Costs of Enforcement are enforceable as Assessments.

If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

1.7 ASSOCIATION means the GATEWAY PARK PAIRED HOMES ASSOCIATION, a Colorado Corporation, not for profit, its successors and assigns. The Articles of Incorporation and Bylaws, along with this Declaration, shall govern the administration of the Planned Community, the Members of which shall be all of the Owners of the Dwelling Units within the Planned Community.

1.8 BOARD OF DIRECTORS or BOARD means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as therein provided. The Board of Directors is the governing body of the Association and shall act on behalf of the Association.

The term Board of Directors as used herein is synonymous with the term Executive Board as the latter term is used in the Act.

1.9 BUDGET means the annual budget of the Association prepared and adopted in accordance with Paragraph 3.10 hereof.

1.10 BUILDING means the totality of attached improvements constituting the Dwelling Units on contiguous Lots.

1.11 BYLAWS means the Bylaws which are adopted by the Board of Directors for the regulation and management of the Association.

1.12 CITY means the City of Berthoud, Colorado.

1.13 COMMON EXPENSE ASSESSMENTS means the funds required to be paid by each Owner in payment of such Owner's Common Expense Liability as more fully defined in Paragraph 4.2 hereof.

1.14 COMMON EXPENSE ASSESSMENT LIABILITY means the liability for the Common Expense Assessments allocated to each Lot which is determined in accordance with that Lot's Allocated Interests as set forth in Paragraph 1.3 hereof.

1.15 COMMON AREAS means TRACT A AND TRACT B, GATEWAY PARK FIRST FILING PHASE 2 REPLAT B, and also includes all streetscape within the City Right of Way that is required to be maintained by Owners within the Project (the Streetscape). The Streetscape shall be managed and maintained by the Association as a common expense.

1.16 COMMON EXPENSES means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserves.

1.17 COSTS OF ENFORCEMENT means all fees, late charges, interest, expenses, including receiver's fees, and reasonable attorneys' fees and costs incurred by the Association (a) in connection with the collection of the Assessments and Fines, or (b) in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

1.18 COUNTY means Larimer County, Colorado.

1.19 DECLARANT means the Sunriver Development Company, LLC, a Colorado limited liability company, its successors and assigns. A Person shall be deemed a “successor and assign” of Declarant only if specifically designated in a duly recorded instrument as a successor or assign of the Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of the Declarant under this Declaration which are specifically designated in the written instrument.

1.20 DECLARANT RIGHTS means the development, special declarant and other rights granted to or reserved by Declarant for the benefit of Declarant as set forth in this Declaration and the Act.

1.21 DECLARATION means this Declaration, the Plat and any supplements and amendments thereto recorded in the Office of the County Clerk and Recorder.

1.22 DESIGN REVIEW COMMITTEE means the Committee formed pursuant to ARTICLE FIVE hereof to review and approve or disapprove plans for Improvements as defined herein as more fully provided for by this Declaration (the “Committee”).

1.23 DESIGN REVIEW GUIDELINES means the DESIGN REVIEW GUIDELINES FOR THE Gateway Park Paired Homes as established, amended and supplemented. These guidelines may be adopted by the Committee to implement and interpret the Design Review/Architectural Approval provisions of ARTICLE FIVE of this Declaration. These guidelines may contain, among other things, guidelines that will clarify the design, materials, heights, size of structures and the maximum and minimum setbacks that will be considered in Design Approval.

1.24 DWELLING UNIT OR UNIT means the residence constructed on each Lot within the Planned Community and any replacement thereof. Dwelling Unit shall include the Lot upon which such Residence is constructed.

1.25 ELIGIBLE MORTGAGEE means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Lot encumbered by its First Security Interest, requesting that the Association notify it on any proposed action requiring the consent of the specified percentage of Eligible Mortgagees.

1.26 FINES means those fines described in Paragraph 4.4(c) hereof.

1.27 FIRST MORTGAGEE means any Person which owns, holds, insures or is a guarantor of a Security Interest, which is a First Security Interest encumbering a Lot within the Planned Community. A First Mortgagee shall also include the holder of executory land sales contracts wherein the Administrator of Veterans Affairs (Veterans Administration) is the Seller, whether such contract is recorded or not.

1.28 FIRST SECURITY INTEREST means a Security Interest that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.29 GUEST means (a) any person who resides with an Owner within the Planned Community; (b) a guest, agent or invitee of an Owner; (c) an occupant or tenant of a Dwelling Unit within the Planned Community, and any members of his or her household, invitee or cohabitant of any such person; or (d) a contract purchaser.

1.30 IMPROVEMENTS means:

(a) all exterior improvements, structures, fixtures, facilities and any appurtenances thereto or components thereof of every type or kind;

(b) the demolition or destruction, by voluntary action, of any building, structure or other Improvement;

(c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern;

(d) all landscaping and exterior features, including any exterior vegetation, courtyard vegetation, exterior features and structures of any kind, signs, and decorative items to the extent the same may be visible from other Lots or exterior areas; and

(e) any change to any previous Improvement, including any change of exterior appearance, finish material, color or texture, and any change to landscaping.

1.31 LOT means each platted lot shown upon the Plat of the Planned Community which is subject to this Declaration, together with all appurtenances and improvements now or hereafter located thereon. Lot shall include any Dwelling Unit constructed thereon as the term Dwelling Unit is herein defined and the Party Wall of such Dwelling Unit to the boundary of such Unit.

The term Lot as used herein is synonymous with the term Unit as the latter term is used in the Act.

1.32 LOTS THAT MAY BE CREATED means 14 Lots.

1.33 MANAGING AGENT means the person or entity who the Board of Directors may engage to administer and manage the affairs of the Association.

1.34 MASTER ASSOCIATION means the Gateway Park Master Association as organized under The Declaration of Covenants, Conditions, Restrictions and Easements for Gateway Park Master Association recorded May 18, 2004 at Reception No. 2004-0047516 (the "MASTER DECLARATION").

1.35 NOTICE AND HEARING means a written notice and an opportunity for a hearing before the Board of Directors in the manner provided in the Bylaws.

1.36 OWNER means the owner of record of the fee simple title to any Lot which is subject to this Declaration. Any reference to a MEMBER is a reference to an Owner.

1.37 PARTY WALL means each wall which is built as a part of the original improvements on a Lot within the Planned Community and constructed on the Lot line between adjoining Lots. Such wall shall be shared, owned, used and maintained in common as more fully described in Paragraph 6.24 hereof.

1.38 PERIOD OF DECLARANT CONTROL means that period of time as defined in Paragraph 3.7 hereof.

1.39 PERSON means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

1.40 PHASE means each phase of development of the Planned Community as determined from time to time by Declarant.

1.41 PLANNED COMMUNITY means such real property and the improvements located thereon as more fully described on Exhibits A and B attached hereto. The name of the Planned Community is Gateway Park Paired Homes.

1.42 PLAT means the final plat of the Planned Community recorded in the Office of the Larimer County Clerk and Recorder.

1.43 PROJECT DOCUMENTS means this Declaration, the Plat, the Articles of Incorporation and Bylaws of the Association, and the Rules and Regulations, if any, as they may be amended from time to time.

1.44 RULES means the Rules and Regulations adopted by the Board of Directors for the regulation and management of the Planned Community as amended from time to time.

1.45 SECURITY INTEREST means an interest in real estate or personal property created by contract which secures payment of an obligation. The term includes a lien created by a deed of trust, contract for deed, land sales contract, and UCC-1.

1.46 SPECIAL ASSESSMENTS means those Assessments defined in Paragraph 4.4(d) hereof.

1.47 SUPPLEMENTAL DECLARATION means a written instrument containing covenants, conditions, and restrictions, which is recorded, annexing in accordance with ARTICLE ELEVEN hereof, a portion of the real property described on Exhibit B hereof to the Planned Community.

1.48 TURNOVER DATE means the date the Period of Declarant Control terminates as more fully set forth in Paragraph 3.7 hereof.

1.49 VA AND/OR FHA APPROVAL means that if the Planned Community has been or may be approved by the Veterans Administration and/or the Federal Housing Administration so that such

agencies will insure or guarantee loans made upon the Dwelling Units within the Planned Community.

In the event additional real property is made subject to this Declaration in the manner provided for in ARTICLE ELEVEN hereof, certain terms defined above shall be expanded to encompass said property from the date such additional real property is made subject to this Declaration.

## ARTICLE TWO: SCOPE OF THE DECLARATION

2.1 Property Subject to this Declaration. Declarant, as the Owner of fee simple title to the Planned Community, expressly intends to and, by recording this Declaration, does hereby subject the Planned Community to the provisions of this Declaration.

2.2 Conveyances Subject to this Declaration. All covenants, conditions, and restrictions which are granted or created by this Declaration shall be deemed to be covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having at any time any interest in the Planned Community, their respective heirs, successors, legal representatives, or assigns.

Any instrument recorded subsequent to this Declaration and purporting to establish and affect any interest in the Planned Community shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.3 Owner's Rights Subject to this Declaration. Each Owner shall own his or her Lot in fee simple and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

2.4 Number of Lots. The number of Lots within the First Phase of the Planned Community is as set forth in Exhibit A. The Declarant reserves the right but not the obligation to create additional Lots by the expansion of the Planned Community in accordance with ARTICLE ELEVEN hereof.

2.5 Identification of Lots. The identification number of each Lot is shown on the Plat of the Planned Community.

2.6 Lot Boundaries. The boundaries of each Lot are located as shown on the Plat of the Planned Community.

## ARTICLE THREE: THE ASSOCIATION

3.1 Name. The name of the Association is THE GATEWAY PARK PAIRED HOMES ASSOCIATION.

3.2 Purposes and Powers. The Association, through its Board of Directors, shall provide for (i) the joint maintenance, irrigation, cleaning, painting and repair of the Common Areas; (ii) such routine day to day exterior maintenance and landscaping as the Association determines, in its



discretion and without any obligation to undertake any such services, is in the best interest of the Owners; (iii) trash or other common services for the Project. The Association does not have the obligation to maintain, repair or replace any interior or exterior building structures or systems, including roofs, walls, windows, structural systems, water and sewer, utility or other building systems, which shall be the responsibility of the Owners of each Lot, provided: (i) the Association may assist the owners in providing routine cleaning, maintenance and landscaping as provided in subparagraph (ii) above and (ii) the Owners within each Building may, by unanimous agreement, utilize the Association to undertake major repair or replacement of the roofing systems and related components as provided herein. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. The Board of Directors shall have all the power necessary or desirable to effectuate such purposes as provided herein.

3.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

3.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

3.5 Membership. There shall be one class of membership. Members of the Association shall be every record owner of a Lot subject to this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds interest in any Lot, all such persons shall be Members.

The Membership of the Association at all times shall consist exclusively of all Lot Owners or, following termination of the Planned Community, of all former Lot Owners entitled to distributions of the proceeds under § 38-33.3-218 of the Act, or their heirs, personal representatives, successors or assigns.

3.6 Voting Rights. The Association shall have one class of voting membership. Owners shall be entitled to one vote for each Lot owned within the Planned Community. In voting on Special Assessments pursuant to Section 4.4(d), Owners shall be entitled to one vote for each Lot, but voting for each Building shall be separate and independent.

The vote for such Lot, the ownership of which is held by more than one Owner, may be exercised by any one of them unless an objection or protest by any other holder of an interest of the Lot is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised as the persons holding such interest shall determine between themselves. Should the joint owners of a Lot be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost.

3.7 Period of Declarant Control. Subject to provisions of Paragraph 3.8 hereof, there is a "Period of Declarant Control" during which Period the Declarant may appoint and remove any officer of the Association or any member of the Board of Directors. The Period of Declarant Control is a length of time commencing with the recording of this Declaration and terminating ten years thereafter; provided, however, that the Period of Declarant Control shall terminate no later than (a) 60 days after conveyance of 75% of the Lots That May Be Created to Owners other than the Declarant; or (b) two years after the last conveyance of a Lot by the Declarant in the ordinary course of business; or (c) two years after any right to add new Lots to the Declaration was last exercised.

In the event that the process of entitlement for the Declarant to obtain Building Permits is placed on "hold" (e.g., moratorium, anti-growth legislation, etc.) for reasons beyond the control of Declarant, the time limitations set forth herein shall be extended until the impediment to entitlement is removed.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

3.8 Election by Owners. The Board of Directors shall consist initially of one Director appointed by the Declarant. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units That May Be Created to Owners other than the Declarant, the Board of Directors shall be increased to three members and at least one (1) member of the Board of Directors must be elected by Owners other than the Declarant and the same right shall continue until the termination of the Period of Declarant Control. Any director(s) to be appointed by Declarant may be so appointed by Declarant without formal notice or other formal designation or procedure, and may be changed from time to time in the discretion of the Declarant. Not later than the termination of the Period of Declarant Control as set forth in Paragraph 4.7 hereof, the Owners shall elect a Board of Directors consisting of three (3) members, at least a majority of whom shall be Owners other than the Declarant. The Board shall elect the officers. The Owners elected to the Board shall take office on election.

3.9 Delivery of Documents by Declarant. Within 60 days after the Owners other than the Declarant elect a majority of the members of the Board of Directors as set forth in Paragraph 3.8, the Declarant shall deliver without expense to the Board all property of the Owners and of the Association relating to the Planned Community held by or controlled by the Declarant, including, without limitation, the following items:

(a) The original or a certified copy of the recorded Declaration, with all amendments and supplements thereto, the Association's Articles of Incorporation, together with a current Certificate of Good Standing issued by the Colorado Secretary of State, Bylaws, minute books, other books and records, including all income tax returns filed, and any Rules and Regulations which may have been promulgated;

(b) An accounting for Association funds and audited financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends in accordance with § 38-33.3-303(9)(b) of the Act;

- (c) The Association funds or control thereof;
- (d) All of the Declarant's personal property that has been represented by the Declarant to be the property of the Association and has been used exclusively in the operation and enjoyment of the Association;
- (e) a copy (for the nonexclusive use of the Association) of any Plans and Specifications used in the construction of Improvements to Common Elements in the Planned Community;
- (f) All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;
- (g) Copies in Declarant's possession of (i) any certificates of occupancy issued with respect to any Improvements and any other permits in Declarant's possession issued by governmental bodies applicable to the Planned Community and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;
- (h) Written warranties of the contractors, subcontractors, suppliers and manufacturers that are assignable and still effective (to the extent not already assigned);
- (i) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;
- (j) Employment contracts in which the Association is a contracting party; and
- (k) Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

### 3.10 Budget:

(a) Annual Budget. In accordance with § 38-33.3-303 of the Act, the Board of Directors shall cause to be prepared, at least 60 days prior to the commencement of each calendar year, a Budget for such calendar year. Within 30 days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than 14 days nor more than 60 days after delivery of the summary.

Unless at that meeting Owners to which at least 67% of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified whether or not a quorum is present. In the event the Budget is rejected, the Budget last ratified by the Owners must be

continued until such time as the Owners ratify a subsequent budget adopted by the Board of Directors.

(b) Amended Budget. If the Board of Directors deems it necessary or advisable to amend a Budget that has been ratified by the Owners pursuant to Paragraph 3.10(a) above, the Board may adopt a proposed amendment to the Budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than 14 days, nor more than 60 days, after the delivery of the summary of the proposed amendment.

Unless at that meeting Owners to which at least 67% of the votes in the Association are allocated reject the amended Budget, the amended Budget shall be deemed ratified whether or not a quorum is present.

3.11 Association Agreements. Any agreement for professional management of the Planned Community or any contract providing for services of the Declarant may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon 30 days written notice.

3.12 Indemnification. Each Officer, Director and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been an Officer, Director or committee member of the Association, or any settlements thereof, whether or not he or she is an Officer, Director or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law.

3.13 Certain Rights and Obligations of the Association:

(a) Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an Attorney-in-Fact to deal with the Planned Community upon its damage, destruction, condemnation and/or obsolescence.

The Board of Directors is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the Lots so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Planned Community upon its destruction, condemnation or obsolescence as hereinafter provided.

The acceptance by any person of any interest in any Lot shall constitute an appointment of the Board of Directors as attorney-in-fact as provided above and hereinafter. The Board of Directors shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Planned Community and to perform all of the duties required of it.

(b) Contracts, Easements and Other Agreements. Subject to Paragraph 3.11 above, the Board of Directors shall have the right to enter into, grant, perform, enforce, cancel and vacate contracts, easements, licenses, leases, agreements, and/or rights-of-way, for the use by Owners, their Guests, and other persons, concerning the duties of the Association hereunder.

Any of such contracts, licenses, leases, agreements, easements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board of Directors, without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees.

(c) Other Association Functions. The Association may undertake any activity, function or service reasonably necessary to carry out the powers and responsibilities set forth herein.

(d) Implied Rights. The Board of Directors shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

3.14 Certain Rights and Obligations of the Declarant. So long as there are unsold Lots within the Planned Community owned by the Declarant, the Declarant shall enjoy the same rights and assumes the same duties as they relate to each individual unsold Lot.

3.15 Responsible Governance Policies. The Association shall establish responsible governance policies pursuant to Article 209.5 of the Act.

#### ARTICLE FOUR: ASSESSMENTS

4.1 Obligation. Each Owner, including Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants, agrees and shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, (c) Fines, (d) Individual Assessments, and (e) Costs of Enforcement, which shall be a continuing lien upon the Lot against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Lot shall be jointly and personally liable to the Association for the payment of all Assessments and Costs of Enforcement attributable to their Lot.

The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

The omission or failure of the Board of Directors to levy Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

No Owner may waive or otherwise escape liability for the Common Expense Assessment provided for herein by the non-use or the abandonment of his or her Lot.

4.2 Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of (a) providing for the administration and management of the Planned Community as provided herein, (b) providing for exterior maintenance and landscaping as set forth herein, (c) providing for insurance as set forth herein; (d) performing any other right, duty or responsibility set forth herein and (e) satisfying any other purpose reasonable, necessary or incidental to such purposes and taking any action reasonably incidental thereto.

The Association may establish a reserve fund as part of assessments. However, there are no common elements or common areas that may require repair or replacement and, accordingly, the Association may elect not to establish any reserve fund. During the Period of Declarant Control, assessments may not be used for the purposes of constructing capital improvements.

4.3 Date of Commencement of the Assessments. The Common Expense Assessment shall commence as to all Lots included in the Planned Community no later than 60 days after the first Lot is conveyed to an Owner other than the Declarant. Until the commencement of the collection of the Common Expense Assessment, the Declarant shall pay all of the expenses incurred and paid for by the Association. During the Period of Declarant Control, to the extent the assessments are inadequate to pay the expenses of the Association the Declarant shall pay for any such shortfall.

4.4 Levy of Assessments and Fines:

(a) Common Expense Assessments. Common Expense Assessments shall be levied on all Lots based upon a Budget of the Association's requirements. The Common Expense Assessment shall be allocated among the Lots in accordance with that Lot's Common Expense Assessment Liability as set forth in Paragraph 1.3(a) hereof.

To the extent that any Common Expenses or a portion thereof benefit fewer than all of the Unit Owners, such expenses may be assessed exclusively against the Lots benefitted as provided in C.R.S. § 38-33.3-315(3)(b) of the Act.

(b) Individual Assessments. The Board of Directors shall have the right to individually levy upon any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges levied under Paragraphs 5.16, 6.13, 6.14, 6.15, 6.22, 6.23, 8.3, 8.6, 10.1, 10.2, 10.3 and 10.4 hereof.

No Individual Assessment shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association. Individual Assessments shall be collected as part of the Costs of Enforcement.

Individual Assessments may be levied at any time as required and are exempt from any voting requirements by the membership required by other assessments called for under the Declaration.

(c) Fines. The Board of Directors of the Association shall have the right to levy a Fine against an Owner or Owners for each violation of the Project Documents. No such Fine shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association.

Fines may be levied in a reasonable amount as determined from time to time by the Board of Directors in its discretion and uniformly applied. Fines shall be collected as part of the Costs of Enforcement. Fines may be levied at any time as required and are exempt from any voting requirements by the membership required for other assessments called for under the Declaration.

(d) Special Assessments.

- (i) Notwithstanding the limited purposes of the Association, the Association may contract for, perform and carry out special construction or improvement projects for the collective benefit of the Lots in a Building as follows. Any such project may be undertaken only upon the written consent and agreement of all of the Lots in a Building, which consent and agreement may establish terms under which the project is to be contracted for, carried out and assessed. Upon such consent, the Association may undertake the agreed project, which may include any major repair and replacement of siding, roofing, other building features, structural components, or building systems, including water, utilities and sewer, and pay for such expenses through a special assessment. In such case, a special assessment shall be established and levied against the Lots in such Building on a pro-rata basis in accordance with Section 1.3, provided that the agreement of the Owners to undertake such project may provide for a modified assessment basis to reflect differences in costs or benefits as related to the separate Units in the Building. All such projects shall be separately established, agreed to and assessed on a separate and independent basis for each Building. Where a project is carried out for a particular Building, the Lots and Owners in the other Building shall have no liability for the costs or assessments related thereto. Any such undertaking and assessment shall not expand the duties or obligations of the Association except to the extent of the specific task set forth in such consent. In particular, the undertaking of any such project by the Association shall not render the Association responsible for defects or omissions in such project or for the future maintenance or repair thereof, except as provided in Section 3.2(i).
- (ii) In addition to the foregoing and other Assessments authorized herein, the Board of Directors, subject to the requirements set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense or for the funding of any operating deficit incurred by the Association provided that any such Assessment shall have the approval of Owners to whom at least 67% of the votes in the Association are

allocated, who are voting in person or by proxy at a meeting duly called  
for this purpose.



Any such Special Assessment shall be levied against each Lot in accordance with that Lot's Common Expense Liability determined in accordance with Paragraph 1.3 hereof. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Owners not less than 14 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies to whom at least 60% of the votes in the Association are allocated shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

4.5 Due Date. Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

All other Assessments shall be levied on an annual basis and shall be due and payable in installments, in advance, in such frequency as the Board of Directors determines in its discretion from time to time, provided that the initial assessments shall be adjusted to reflect the time remaining in the first Association's fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a prorated share.

Special Assessments shall be due and payable as established by the Board of Directors but may be payable on an installment basis as determined by the Board.

Written notice of all Assessments shall be sent to each Owner subject thereto specifying the type of Assessment, the amount and the date such Assessment is due.

Mortgagees are not required to collect assessments.

4.6 Remedies for Nonpayment of Assessments. If any Assessment (to include Costs of Enforcement) is not fully paid within 15 days after the same becomes due and payable, then interest shall accrue at the default rate set by the Board of Directors on any amount of the Assessment in default accruing from the due date until date of payment, and the Board may assess a Late Fee in an amount as determined in the Board's discretion. In addition, the Board may:

(a) accelerate and declare immediately due and payable all unpaid installments of the Assessment payable for the balance of the fiscal year during which such default occurred;

(b) bring an action at law against any Owner personally obligated to pay the Assessment and obtain a judgment for the amounts due; and

(c) proceed to foreclose its lien against the Unit pursuant to the power of sale granted to the Association by this Declaration in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

An action at law or in equity by the Association against an Owner to recover a judgment for unpaid Assessments may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments.

Failure to pay assessments does not constitute a default under an insured mortgage.

4.7 The Assessment Lien. The Association is hereby granted an Assessment Lien against each Lot for any Assessment levied by the Board of Directors and for Costs of Enforcement levied against such Lot Owners when the Lot Owner fails to pay as required by the Declaration. All Costs of Enforcement incurred pursuant to this Declaration are enforceable as Assessments. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

The Association's lien on a Lot for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) liens and encumbrances recorded prior to the recording of this Declaration;
- (b) real property ad valorem taxes and special assessment liens duly imposed by Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and
- (c) the lien of any loan evidenced by a first mortgage of record (including deed of trust) and any executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not, except to the extent the Act grants priority for Assessments to the Association.

The Act does not affect the priority of mechanics' or materialmen's liens.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Article is required. However, the Board of Directors may prepare, and record in the Office of the County Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the cost thereof shall be considered a Cost of Enforcement.

Sale or transfer of any Lot shall not affect the lien for said Assessments except that sale or transfer of any Lot pursuant to foreclosure by any First Mortgagee, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Assessment Lien only to the extent provided by Colorado law. No such sale, deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot Owner from continuing liability for any Assessment thereafter becoming due, nor from the lien thereof.

Any First Mortgagee who acquires title to a Lot by virtue of foreclosing a first deed of trust or mortgage or by virtue of a deed in lieu of foreclosure will take the Lot free of any claims for unpaid Assessments and Costs of Enforcement against that Lot which have accrued prior to the time such First Mortgagee acquires title to the Lot, except to the extent the Act grants lien priority for Assessments of the Association.

In any action by an Association to collect Assessments and Costs of Enforcement or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Expense Assessments and Costs of Enforcement. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage.

The Assessment Lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot; provided, however, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust or mortgage. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor of rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

The Association's lien on a Lot for Assessments and Costs of Enforcement 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 a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

4.8 Assignment of Assessments. The Board of Directors shall have the unrestricted right to assign its right to receive Common Expense Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment is approved in writing by Owners to which at least 67% of the votes in the Association are allocated, including 67% of the votes allocated to Lots not owned by the Declarant.

4.9 Surplus Funds. Any surplus funds of the Association remaining at the close of the Association's fiscal year after payment of the Common Expenses and funding the Reserve Fund shall be retained by the Association as unallocated reserves and need not be credited to the Owners to reduce their future Common Expense Assessment Liability.

4.10 Working Capital Fund. At the closing of the initial sale, and each subsequent resale, of a Lot to an Owner other than the Declarant a non-refundable contribution shall be made by such Owner or subsequent Owner to the Working Capital Fund of the Association in an amount equal to two months' Common Expense Assessment then in effect.

Said contribution shall be collected and transferred to the Association at the time of closing of the sale of each Lot and shall be held by the Association for the use and benefit of the

Association including meeting unforeseen expenditures or to purchase additional equipment or services.

Such contribution to the Working Capital Fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the later sale or transfer of his or her Lot, an Owner shall NOT BE ENTITLED to a credit from the Association for the aforesaid contribution.

The Declarant is prohibited from using the Working Capital Fund to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficits during the Declarant Control Period.

4.11 Certificate of Assessment Status. The Association shall furnish to an Owner or such Owner's First Mortgagee upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's Registered Agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot.

The statement shall be furnished within 14 business days after receipt of the request and is binding upon the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or First Mortgagee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Lot for unpaid Assessments which were due as of the date of the request (see Paragraph 10.2 of the Bylaws).

4.12 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. The Declarant is exempt from the provisions of this Paragraph 4.12.

4.13 Collection of the Master Association Common Expense Assessments. For the sake of convenience, the Board may collect from the Owners the Common Expense Assessment due the Master Association and remit the sums collected to the Master Association.

4.14 Reserves for Future Construction. The Association may, with the written consent of all Owners, include in the Assessments for a defined period an amount to be intended as a reserve for the future construction, repair, or replacement of Buildings, and component thereof, or other Improvements. Such written consent shall determine the nature, purpose and use of such reserve fund.

#### ARTICLE FIVE: ARCHITECTURAL APPROVAL/DESIGN REVIEW

Each Improvement as defined in Paragraph 1.30 hereof must be constructed in accordance with any "Design Guidelines," if available, and approved in accordance with this ARTICLE FIVE.

The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Committee if such strict application would

be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

The requirements of Article Five shall not apply to first built Improvements constructed by Declarant or Improvements or modifications to Improvements on Lots owned by the Declarant.

5.1 Committee Approval of Improvements Required. The approval by the Design Review Committee (the "Committee") shall be required prior to the commencement of the construction, removal, or modification of Improvements on any portion of the Planned Community, except original first built Improvements constructed by Declarant or Improvements on Lots owned by the Declarant. This approval of the Committee is in addition to the review and approval by the City.

Any Improvement may also be subject to review and approval by the Master Association or under the Master Declaration prior to the commencement of the construction of Improvements as defined in Paragraph 1.30 hereof on any portion of the Planned Community as provided in the Master Declaration.

The jurisdiction for the approval over modifications, additions or alterations to an Improvement may be delegated to the Directors or the Modification Review Committee by the Declarant in accordance with Paragraph 5.5 hereof.

Any basements that are finished by an Owner shall comply with standard building procedures for walls in basements so as not to endanger the structure of the building should the floors rise due to expansive soils.

A purchase of any Lot within the Planned Community does not grant any implied guarantee of approval of the improvement to be located thereon by the Committee.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee.

5.2 Membership of the Committee. The Committee shall consist of up to three members, the number and the members of which shall be determined by the Declarant in its sole discretion. The Declarant shall have the continuing right to appoint and reappoint the members of the Committee, which right shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event shall terminate without further act or deed upon the completion of the construction of the last Dwelling Unit within the Planned Community. Thereafter, the Committee shall consist of three members, and the Board of Directors shall have the right to appoint the members of the Committee. Members of the Committee may, but shall not necessarily, be Members of the Association.

Members of the Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation or removal by Declarant. Members of the Committee appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

5.3 Address of the Committee. The address of the Committee shall be the then current address of the Association.

5.4 Submission of Plans/Design Review Fee. Prior to commencement of work to accomplish any proposed Improvement, the Person proposing to make such Improvement ("Applicant") shall submit to the Committee, at its office, such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Committee shall request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement.

The Committee may, in its Design Review Guidelines or rules, provide for the payment of a fee to accompany each request for approval of any proposed Improvement. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvements or that the fee shall be determined in any other reasonable manner, such as the estimated cost of the proposed Improvement. Said fee may be used to compensate consultants as the Committee deems necessary to assist the Committee in the performance of its duties. Members of the Committee may be reimbursed for services rendered and for out-of-pocket expenses.

The Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement. Until receipt by the Committee of all required materials in connection with the proposed Improvement, the Committee may postpone review of any materials submitted for approval by a particular Applicant.

No Improvement of any kind shall be erected, altered, placed, or maintained within the Planned Community unless and until the final plans, elevations, and specifications therefore have received written approval by the Committee as herein provided.

5.5 Delegation/Waiver. The Committee may at its discretion delegate to the Board of Directors or the Modification Review Committee any of its powers granted to it by this Article by written notice indicating what powers and authority are granted to the Board or the Modification Review Committee. Such delegation shall be effective from the date such notice is given. If no Committee is appointed, the Board of Directors shall serve as the Committee, and all references herein to the Committee shall mean to the Board of Directors.

The approval or consent of the Committee, any representative thereof, or the Board of Directors or Modification Review Committee, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee, any representative thereof, or the Board of Directors or Modification Review Committee, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

The Committee may waive or grant reasonable variances or adjustments to any provision of this ARTICLE FIVE in the event there is a practical difficulty or unnecessary hardship.

5.6 Criteria for Approval. The question of reasonableness and good faith is the standard applicable in reviewing plans for approval by the Committee. The Committee shall have the right to disapprove any proposed Improvement which (a) is not in accordance with the Design

Guidelines, or (b) is not suitable or desirable in the Committee's opinion for aesthetic or other reasons.

In passing upon the Improvement the Committee shall have the right to take into consideration the suitability of the proposed Improvement and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the Improvement as planned on the outlook from the adjacent or neighboring Lots, and if it is in accordance with all of the provisions of this Declaration.

The Committee may disapprove the proposed Improvement if the plans and specifications submitted are incomplete, or in the event the Committee deems the materials submitted be contrary to the spirit or intent of the Declaration. The Committee may condition its approval of any proposed Improvement upon the making of such changes thereon as the Committee may deem appropriate.

5.7 Decision of the Committee. The decision of the Committee shall be made within 30 days after receipt by the Committee of all materials required by the Committee unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed Improvement, the reasons therefore shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee.

A majority vote of the Committee shall constitute the action of the Committee.

The Committee shall report in writing to the Board of Directors all final actions of the Committee if requested by the Board of Directors.

The Committee shall not be required to keep the materials submitted beyond one year from date of approval.

5.8 Appeal to the Board of Directors. If the Committee disapproves or imposes conditions on the approval of a proposed Improvement, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board of Directors and the Committee within 10 days after notice of such disapproval or conditional approval is given to the Applicant.

If the Committee approves a proposed Improvement, any Impacted Owner created by the Committee's decision may appeal the approval to the Board of Directors by giving written notice of such appeal to the Board of Directors, the Committee and the Applicant within 10 days after such approval.

The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such hearing in writing to the Applicant, the Impacted Owner and the Committee. The Board shall decide with reasonable promptness, whether or not the proposed Improvement's approval shall be upheld. The decision of the Board of Directors shall be final and binding on the parties concerned.

5.9 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Committee within 30 days after the date of receipt by the Committee of all necessary materials as determined by the Committee.

5.10 Prosecution of Work After Approval. After approval of any proposed Improvement, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement, any materials submitted to the Committee in connection with the proposed Improvement and any conditions imposed by the Committee. Failure to complete any proposed Improvement within twelve months from the date of the commencement of construction shall constitute noncompliance with this Article.

5.11 Notice of Completion. Upon completion of the Improvement, the Applicant shall give written Notice of Completion to the Committee. Until the date of receipt of a Notice of Completion, the Committee shall not be deemed to have notice of completion of any Improvement.

5.12 Inspection of Work. The Committee or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion; provided that the right of inspection shall terminate 30 days after the Committee receives a Notice of Completion from the Applicant.

5.13 Notice of Noncompliance. If, as a result of inspections or otherwise, the Committee finds that any Improvement has been done without obtaining the approval of the Committee, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Committee, or was not completed within twelve months from the date of the commencement of construction, the Committee shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event within 30 days after the Committee has inspected the Improvement, but in no event no later than 30 days after the Committee's receipt of such Applicant's Notice of Completion. The Notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

5.14 Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the Committee fails to notify the Applicant of any noncompliance within 30 days after receipt by the Committee of written Notice of Completion from the Applicant, the Improvement shall be deemed to be in compliance if the Improvement was, in fact, completed as of the date of Notice of Completion.

5.15 Appeal to the Board of Directors of Finding of Noncompliance. If the Committee gives any Notice of Noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Committee within 10 days after receipt by the Applicant of the Notice of Noncompliance.

If, after a Notice of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Committee shall request a finding of noncompliance by the Board of Directors by giving written notice of such request to the Board of Directors and the



Applicant within 30 days after delivery to the Applicant of a Notice of Noncompliance. In either event, the Board of Directors after Notice and Hearing shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof.

5.16 Correction of Noncompliance. If the Board of Directors determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than 30 days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board's ruling within such period, the Board may, at its option, record a "Notice of Noncompliance" against the Lot on which the noncompliance exists, or may remove the non-complying Improvement or may otherwise remedy the noncompliance.

The Board may levy an Individual Assessment in accordance with Paragraph 4.4(b) hereof against the Owner of such Lot for such costs and expenses incurred. The right of the Board of Directors to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Board of Directors may have at law, in equity, or under this Declaration.

5.17 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder.

5.18 No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors. Specifically, the approval by the Committee of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement or similar proposals, plans, specifications or other materials submitted with respect to any other Improvement.

5.19 Record of Actions. The Committee shall report in writing to the Board of Directors all final actions of the Committee. The Committee shall not be required to keep the materials submitted beyond one year from date of approval.

5.20 Estoppel Certificates. The Board of Directors shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement or with respect to whether any Improvement was made in compliance herewith. Any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

5.21 Architectural Standards/Design Guidelines. The Committee may promulgate rules and regulations to interpret and implement the provisions of this Article. These rules and regulations shall be known as the "Design Review Guidelines" and shall contain, among other things, guidelines which will clarify the types of designs and materials that will be considered in design approval. The Applicant shall be responsible to apply for all permits and approvals required by the City or the Master Association. The Committee may review and revise the said Design Review Guidelines in its sole discretion so long as said guidelines are not discriminating or are unfairly applied.

5.23 No Liability for Committee Action. There shall be no liability imposed on the Committee, any member of said Committee or Modification Review Committee, any authorized representative of said Committee, the Association, any member of the Board of Directors or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee, if such party acted in good faith and without malice.

In reviewing any matter, the Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement be deemed approval of such matters.

#### ARTICLE SIX: LAND USE AND OTHER RESTRICTIONS

The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board of Directors if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

6.1 Limitations and Restrictions. All Lots shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions for Declarant as set forth in this Declaration. This Article Six shall not apply to the Declarant to the extent Declarant may be performing construction within the Planned Community, including any of the Property identified in Exhibit B.

6.2 Use and Occupancy of the Dwelling Units. Each Owner shall be entitled to the exclusive ownership and possession of his or her Lot. Subject to the Declarant Rights of the Declarant reserved or described herein and the exemptions for the Declarant set forth in Paragraph 6.25 hereof, no Lot within the Planned Community shall be used for any purpose other than single-family residential purposes as generally defined, provided however, Owners may conduct business activities within their Dwelling Units provided that all of the following conditions are satisfied:

(a) the business conducted is clearly secondary to the residential use of the Dwelling Unit and is conducted entirely within the Dwelling Unit;

(b) the existence or operation of the business is not reasonably detectable from outside of the Dwelling Unit by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

(c) the business does not result in an undue volume of traffic or parking within the Planned Community, which determination shall be made by the Board of Directors in its sole discretion from time to time;

(d) the business conforms to all zoning requirements and is lawful in nature; and

(e) the business conforms to any rules and regulations that may be imposed by the Board of Directors from time to time on a uniform basis.

Uses described as "day care" or "child care" facilities (licensed or unlicensed) are expressly prohibited except with the prior written permission of the Board of Directors.

6.4 Temporary Structures. No temporary house trailer, garage or outbuilding shall be placed or erected upon part of the Planned Community except with the prior written approval of the Committee obtained in each instance. No Dwelling Unit located upon the Planned Community shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans nor shall any Dwelling Unit when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth.

6.5 Nuisances. No noxious or offensive activity shall be carried on upon the Planned Community or any part thereof, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or which is or may cause an unreasonable embarrassment, disturbance or annoyance to others, or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

6.6 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Planned Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Planned Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Planned Community except with the prior written approval of the Committee.

6.7 Unsafe, Unsightly, or Unhealthy Activities. No activity shall be conducted by anyone on any part of the Community that is or might be unsafe, unsightly, unhealthy, or hazardous to any other person. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in the Lots; and nothing shall be placed on or in windows or doors of Dwelling Units, that would or might create unsightly appearance. Decks, porches, balconies, and yards shall not be used for storage, shall be maintained in a clean and orderly condition, and shall not be utilized in any manner that is unreasonable or disruptive as determined by the Board of Directors in its discretion. No laundry or other articles may be hung in or on or from yards, decks, or patios or any other visible portions of the Lots or Dwelling Units. All rubbish, trash, or garbage shall be regularly removed from the Community and shall not be allowed to accumulate thereon. The Board shall have the discretion to determine when any activity violates the requirements of this paragraph and to take appropriate steps as determined by the Board to enforce the terms hereof or to remedy any such violation.

6.9 Utilities and Exterior Equipment. Except as provided for in Paragraph 7.1, all electric, television, radio and telephone line installations and connections from the Owner's property line

to the Dwelling Unit shall be placed underground and must have the prior approval of the Committee. No exterior equipment or fixtures, including, but not limited to, the following shall be permitted without the written consent of the Board of Directors: air conditioning units, swamp coolers, or other ventilating equipment; and any type or kind of wiring, ducts, or pipes (exclusive of a reasonable amount of holiday lighting). All solar collector installations must be approved by the Committee prior to installation subject to CRS 38-30-168.

6.10 Restrictions on Signs and Advertising Devices. No sign, flag or other display may be placed on the Lots or Dwelling Units or on or in any window, door, balcony or other visible area without the consent of the Board, subject to section 106.5 of the Act and other applicable law. The Board may include in the Rules or Responsible Governance Standards appropriate restrictions consistent with applicable law. Notwithstanding the foregoing, reasonable signs and advertising used by the Declarant in connection with development of or construction on the Lot shall be permissible.

6.7 Prohibition of Certain Activities. Nothing shall be done or kept in any lot or Dwelling Unit that would result in the cancellation of the insurance on the Community or increase the rate of the insurance on the Community over what the Association, but for such activity, would pay, without the prior written consent of the Board of Directors.

Nothing shall be done or kept in any Lot or Dwelling Unit that would be in violation of any governmental law.

No sound or vibration shall be emitted on any part of the Community that is unreasonably loud or annoying. No light shall be emitted from any portion of the Community that is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community that would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells, or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Board of Directors.

No firearms shall be discharged upon any portion of the Community and no fires shall be lighted or permitted on any portion of the Community, except in a contained barbeque unit.

No Owner shall undertake any work in his or her Unit that would jeopardize or interfere with the soundness, safety or operation of such Unit or any other Unit without the prior written approval of the Board of Directors, which approval may be withheld for any reason, and then only after obtaining any necessary governmental permits and otherwise complying with all applicable governmental laws, regulations, codes and ordinances.

6.13 Household Pets. No animals, birds, poultry, reptiles or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of the Planned Community; except that dogs, cats or other customary household animals may be kept thereon if they are not raised, bred or maintained for any commercial purpose, and are not kept in such number or in such manner as to

create a nuisance or inconvenience to any resident of the Planned Community. There shall not be more than two dogs on any Lot.

The Board of Directors shall have the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Paragraph. The Board of Directors shall take such action or actions as it deems reasonably necessary to correct the violation to include after Notice and Hearing, directing permanent removal of the pet or pets from the Planned Community. The Board of directors may adopt rules incidental to the management of pets, including further regulation of the size and numbers of animals.

Household pets shall not be allowed to run at large within the Planned Community, but shall at all times be under the control of such pet's Owner and such pets shall not be allowed to litter exterior areas of the Planned Community or streets, walkways, alleys or other areas adjacent thereto.

Each Owner is responsible for cleaning up his or her pet's waste from any Lot or other part of the Planned Community.

No dog runs or animal pens of any kind shall be permitted on any Lot except with the prior written approval of the Committee.

Reimbursement for damages caused by such pets and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from the Planned Community or incurred by the Association in cleanup after such pets may be levied after Notice and Hearing against such pet's Owner as an Individual Assessment in accordance with Paragraph 4.4(b) hereof.

**6.14 Vehicular Parking, Storage and Maintenance.** All vehicles shall be parked in the attached garages or parking spaces within each Lot. There shall be no parking or storage of any kind in the Outlots or Driveway. No house trailer, camping trailer, horse trailer, camper, camper shell, boat trailer, hauling or other trailer, ATV, snow machine, boat or boat accessories, truck with a rated load capacity of more than two (2) tons, recreational vehicle or equipment, motor home, mobile home, or other similar vehicle or equipment may be parked or stored in the Planned Community or anywhere on the public streets or alleys adjacent to the Planned Community unless they are being actively loaded or unloaded and only as approved by the Board of Directors. This applies to vehicles referred to above even if they are licensed by the State of Colorado or any other jurisdiction as "passenger vehicles."

No wrecked, abandoned, inoperable, or unlicensed vehicles of any kind shall be stored or parked within the Community (except within an enclosed garage) except in emergencies or in the alley way or public street adjacent to the Planned Community. Any "wrecked vehicle" shall be as determined by the Board of Directors in its sole discretion. Any "abandoned or inoperable vehicle" shall be defined as any of the vehicles listed above or any other kind of

passenger vehicle that has not been driven under its own propulsion for a period of one week or longer, or that does not have installed within it an operable propulsion system.

The Board of Directors shall have the right to remove a vehicle in violation of this Paragraph, the expenses of which shall be levied against the Owner of the vehicle by an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

Emergency vehicles may be parked and stored in accordance with Section 106.5 of the Act. No vehicle maintenance shall be allowed within the Planned Community. Car washing is not considered vehicle maintenance.

6.15 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any other Lot or to person or property within any other Lot, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorney's fees, if necessary, may be collected by the Board of Directors after Notice and Hearing, from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 4.4(b) hereof. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation shall be made by the Board of Directors and shall be final.

6.16 Exterior Equipment Prohibition. No exterior equipment or fixtures, including, but not limited to, the following shall be permitted without the written consent of the Board of Directors: air conditioning units, swamp coolers, or other ventilating equipment; and any type or kind of wiring, ducts, or pipes, excluding holiday wiring. With respect to an installation of solar or similar devices the foregoing authority shall be exercised subject to the requirements of CRS 38-30-168.

6.17 Antennas and Satellite Dishes. No conventional television antennas of any kind or satellite dishes, antennas, and similar devices for the transmission or reception of television, radio, satellite, or other signals of any kind shall be permitted or may be installed on the exterior of any Unit in the Community except as have been expressly approved and authorized by the Board of Directors. To the extent that the installation of any of these devices is governed by and/or subject to the Telecommunications Act of 1996 and the rules and regulations promulgated by the Federal Communications Commission (FCC) then the Board of Directors shall comply with and adhere to all applicable FCC requirements.

6.18 Lease of a Dwelling Unit. With the exception of a First Mortgagee who has acquired title to a Dwelling Unit by virtue of foreclosing a first mortgage or by virtue of a deed in lieu of foreclosure, an Owner shall have the right to lease his or her Dwelling Unit upon such terms and conditions as the Owner may deem advisable, subject to the following:

(a) Any such lease or rental agreement must be to in compliance with applicable local, state and federal laws, including to those incidental to lending requirements of the Agencies;

(b) no Owner may lease or rent (i) less than his or her entire Unit (except in cases where the Owner actually resides in his or her Unit and leases it to a roommate); (ii) for transient or hotel purposes or for a term less than thirty days; or (iii) for a term of more than six (6) months in duration; the Board in its discretion may allow a longer lease in special circumstances or to avoid economic hardship;

(c) such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of this Declaration, or the Articles, Bylaws or the Rules of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them, including, but not be limited to, eviction of the lessee from the Unit; and

(d) Such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them with remedies to include, but not be limited to, eviction of the lessee from the Dwelling Unit; and

(e) The Board of Directors shall be entitled to a copy of any lease or rental agreement upon its request.

6.19 Exterior Improvements. No mailboxes, porch and area lighting, property identification, landscaping or other exterior improvements shall be constructed, installed, erected or maintained on any Lot unless approved by the Committee and except as were installed or permitted to be installed by the Declarant in its construction of Dwelling Units on the Lots.

6.21 Window Coverings. Window coverings on all exterior windows of a Dwelling Unit must be installed by the Owner of the Unit (at the Owner's cost) within 60 days following the conveyance of title to the Unit to the Owner thereof (whether by Declarant or a subsequent Owner). Such window coverings, as seen from outside, must be a neutral color that blends with the exterior color of the Dwelling Unit and the building of which it is a part (i.e., white, off-white, light beige or wood tones). Tinting of exterior windows shall be subject to the prior approval of the Committee pursuant to the provisions of ARTICLE FIVE hereof. No reflective glazing, silver foil or other similar sun screening material shall be allowed on any exterior windows of a Unit.

6.22 Rules. Every Owner and his or her Guests shall adhere strictly to the Rules as promulgated by the Board of Directors, as amended from time to time.

6.23 Waiver of Summary Abatement. The Declarant and the Association waives the right to use summary abatement or similar means to enforce the restrictions herein contained. Judicial proceedings must be instituted before any items of construction can be altered or demolished.

6.24 Party Walls. The Owner shall possess, in fee simple, that portion of the Party Wall, as defined herein, lying within his or her Lot. Notwithstanding the foregoing, the adjacent Owners who jointly

own a Party Wall shall have joint responsibility for the maintenance and repair of such Party Wall. Such Owners of a Party Wall are granted a mutual reciprocal easement for repair or replacement of said Party Wall. The maintenance, repair and replacement of such Party Wall shall be conducted by mutual agreement of such Owners, provided that in the event of dispute or disagreement, the Board of Directors may resolve such dispute or disagreement, and the decision of the Board of Directors shall be binding and shall be enforceable as provided herein. In the event the Board of Directors determines that repair, replacement or other maintenance is required with respect to any Party Wall, the Board of Directors may, after Notice and Hearing, carry out any required repair, maintenance or replacement and may allocated and assess the costs thereof as an Individual Assessment against the subject Owners and Lots in such amounts and allocations as may be determined by the Board of Directors. No Owner shall take any act that materially modifies a Party Wall or diminishes the structural integrity thereof. Each Owner shall be responsible for any damage to the Party Wall caused by such Owner.

In the event that any portion of any structure as originally constructed, including any Party Wall, shall extent onto or protrude over an adjoining Lot, such structure shall not be deemed to be an encroachment upon the adjoining Lot and an easement shall be deemed to exist for such improvement, including the maintenance, repair and replacement provided the same is in its original location and substantially unchanged. The foregoing shall also apply to any replacements of any Party Wall or other improvement if the same are constructed substantially in conformity with the original Party Wall.

6.25 Exemptions for the Declarant. Declarant shall be exempt from the restrictions of this ARTICLE SIX to the extent of its construction, marketing, development and sale with respect to Lots within the Planned Community or lots owned by Declarant.

6.26 Waiver. The strict application of the foregoing limitations and restrictions in any specific case may be modified or waived in whole or in part by the Board of Directors if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

6.27 Enforcement. The Association, acting through its Board of Directors, shall have the power to enforce all of the above restrictive covenants and obligations.

6.28. Smoking. There shall be no smoking outdoors within twenty five feet of any building.

6.29 Sound Transmission Issues. The Board may regulate and control the type, loudness, manner of fixation, insulation and other aspects of sound generating equipment, including stereos, televisions and other devices to control the extent of sound transmission. No Owner shall engage in any activity or perform any act, including alterations to the interior of its Dwelling Unit, which unreasonably transmits sound to adjacent Lots or results in the unreasonable transmission of sound to other Lots. The Board may reasonably regulate wall, floors and floor coverings, including changes or replacements thereof, to the extent that the same may affect the transmission of sound to other Lots, including sound transmission through the Party Wall.

ARTICLE SEVEN: EASEMENTS



7.1 Utility Easements. Each Owner shall be deemed to have an easement across other Lots for originally installed utilities and water and sewer service and the repair and replacement thereof.

7.2 Easements for the Board of Directors. Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) to perform its obligations pursuant to this Declaration.

7.3 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Planned Community, to enter upon any part of the Planned Community in the performance of their duties.

7.4 Recording Data Regarding Easements. Pursuant to § 38-33.3-205(m) of the Act, the recording data for recorded easements and licenses appurtenant thereto, or included in the Planned Community or to which any portion of the Planned Community is or may become subject to are identified on the attached Exhibit C.

7.5 Easements for Encroachments. If any part of a Dwelling Unit as originally constructed by the Declarant including, without limitation, patio, patio fences and window wells encroaches or shall hereafter encroach upon any Lot or Dwelling Unit, the Owner of that Dwelling Unit shall and does have an easement for the existence of such encroachment and for the maintenance of same.

Such easements shall extend for whatever period of time the encroachment shall exist. Such encroachments shall not be considered to be encumbrances either upon the Lot or Dwelling Unit. Encroachments referred to herein include unintentional encroachments made by error in original construction of the Dwelling Unit, by the settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Dwelling Units.

7.6 Zero Lot Line Easements. It is anticipated that there will be a Party Wall constructed on or near the boundary of each with each Dwelling Unit affixed to such party wall. For purposes of initial construction on any Lot, Declarant shall have an easement across all Lots for the purpose of such construction. After initial construction, Declarant and each Owner of the Lots containing such Party Wall shall have a reasonable easement on, over and across each adjacent Lot to the extent necessary for the reasonable maintenance, repair and replacement of the Dwelling Unit on such Lot and the Party Wall. To the extent any Owner causes loss or damage to an adjacent Lot or Dwelling Unit through the use of such easement, such Owner shall be responsible for all loss and damage. The amount of any such loss or damage shall be determined by the Board of Directors after Notice and Hearing, and may be assessed as an Individual Assessment against the Owner causing such damage and such Owner's Lot. Any Owner anticipating use of the easement granted herein, shall, except in emergency circumstances, provide reasonable advance written notice to both the affected Owner and the Board of Directors. Each such Owner shall reasonably minimize any intrusion into adjacent property and shall take reasonable precautions to prevent or minimize damage.

7.7 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Lots owned by such Owner. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

#### ARTICLE EIGHT: INSURANCE

8.1 Association Insurance. The Association shall maintain the following types of insurance coverage on the Common Elements to the extent reasonably available and at a reasonable cost:

(a) Property Insurance. The Association shall obtain and maintain comprehensive, "special form/open peril" form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, and cost of demolition insuring all the insurable improvements located on the Lots including one hundred percent (100%) of the current replacement cost of all insurable improvements in the Dwelling Units and/or Buildings and personal property owned by the Association less applicable deductibles at the time the insurance is purchased and at each renewal date. The property insurance policy shall also contain the following endorsements or their equivalent, if applicable and if available at a reasonable cost: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Cost of Demolition Endorsement, Increased Cost of Construction Endorsement) Agreed Amount Endorsement, and Inflation Guard Endorsement.

**NOTWITHSTANDING THE FOREGOING, THE ASSOCIATION MAY ELECT, ON TWELVE MONTHS WRITTEN NOTICE, TO REQUIRE ALL OWNERS TO PROVIDE SUCH PROPERTY INSURANCE WITH RESPECT TO THE OWNERS' RESPECTIVE LOTS AND ALL IMPROVEMENTS THEREON, IN WHICH CASE SUCH INSURANCE SHALL BE PROVIDED SEPARATELY BY EACH OWNER, INCLUDING PERCENT (100%) OF THE CURRENT REPLACEMENT COST OF ALL INSURABLE IMPROVEMENTS IN THE DWELLING UNITS AND/OR BUILDINGS.**

Such insurance need not cover the Owner's personal property, furniture, furnishings, equipment, and related items, located within a Dwelling Unit or any and all improvements made to interior finished surfaces of the perimeter walls, floors and ceilings of a Dwelling Unit, all of which items are to be covered and insured by the Owner's insurance.

The Board of Directors shall, consistent with good business practices and at reasonable intervals, obtain a written appraisal for insurance purposes, showing that the insurance represents one hundred percent (100%) of the current replacement cost for all insurable improvements located on the Common Elements that are not part of the Units, together with any personal property owned by the Association.

(b) Comprehensive General Liability Insurance. The Association shall obtain and

maintain comprehensive general liability insurance against claims and liabilities arising in connection with the activities of the Association as provided herein (including eviction, libel, slander, false arrest and invasion of privacy) insuring the Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting on their behalf.

The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the activities of the Association as provided herein. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Board member, as applicable. The insurance shall cover claims of one or more insured parties against other insured parties and shall include coverage for, without limitation, the legal liability of the insureds for property damage, bodily injuries and deaths of persons that result from the activities of the Association as provided herein and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

**THE OWNERS SHALL OTHERWISE BE RESPONSIBILITY FOR ANY DESIRED LIABILITY INSURANCE RELATED TO THEIR RESPECTIVE LOTS AND THE IMPROVEMENTS THEREON.**

(c) Fidelity Insurance. The Association shall obtain and maintain, to the extent reasonably available, comprehensive fidelity insurance coverage or fidelity bonds for Owners and the Association, including officers or employees who handle or are responsible for funds held or administered by the Association. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

The fidelity insurance policy should cover the maximum funds (including Reserve Funds) that will be in the custody of the Association or its management agent at any time while the policy is in force; provided however, in any event the aggregate amount of such insurance shall be not less than three (3) months aggregate Assessments on all Units, plus Reserve Funds. The Association may carry fidelity insurance in amounts greater than required above.

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 bond that fully complies with the provisions of this subsection.

(d) Worker's Compensation Insurance. If the Association has employees, the Association shall obtain and maintain worker's compensation or similar insurance with respect to its employees in the amount and form as may now or hereafter be required by law.

(e) Special Flood Hazard Insurance. If the area where the Condominium Community is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance that covers the Common Elements shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in

an amount of one hundred percent (100%) of the current replacement cost of the improvements on the Common Elements. If the Condominium Community at the time of the recording of this Declaration is not identified as a Special Flood Hazard Area but becomes reclassified at a later date as such, the Board of Directors shall obtain flood insurance that covers the Common Elements in accordance with the above. Conversely, flood insurance may be discontinued if the Condominium Community is reclassified out of the Special Flood Hazard Area.

(f) Officer and Director Liability Insurance. The Association shall obtain and maintain directors and officers liability insurance for errors and omissions on all directors and officers including non-monetary and monetary claims coverage to be written in an amount that the Board of Directors deems adequate.

(g) Other Insurance. The Association may obtain and maintain any other insurance that the Board of Directors considers appropriate and prudent to protect the Association, the Owners and the Common Elements.

8.2 Insurance Policy Provisions. All policies carried by the Association shall, to the extent reasonably available at a reasonable cost, comply with the requirements of this paragraph 7.2.

Insurance 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 naming each Owner as an insured person under the policies with respect to liability arising out of any Owner's membership in the Association or their ownership, existence, use or management of the Common Elements.

The Association shall make available for review 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 a Security Interest holder, upon request. The policies shall also contain waivers of subrogation against the Declarant, the Association, the Board, the Managing Agent or the Owners and members of their households, their respective agents, employees and Guests.

All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where the Owner is not under the control of the Association. All policies must provide that no assessment may be made against a First Mortgagee, its successors or assigns and that any assessment made against others shall not become a lien on a Unit superior to the lien of a First Mortgagee.

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best's rating of "B+" or better if reasonably available, or, if not reasonably available, the most nearly equivalent rating.

All insurance policies shall contain a standard mortgagee clause or equivalent endorsement (without contribution) naming the First Mortgagee(s) and their successors and assigns as additional insureds in the policy (but only to the extent a First Mortgagee has a Security Interest in any of the Common Elements insured by the Association).

All policies shall not be canceled, invalidated or suspended due to the conduct of any Owner, their Guests or any Member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board or the Managing Agent to abate or cure the conduct complained of and the conduct shall not have abated or been cured within forty-five (45) days after the demand is issued.

The policies shall also provide that any "no other insurance" clause expressly excludes individual Owners' policies from its operation so that the property insurance policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors provide for or be brought into contribution with insurance purchased by individual Owners or their First Mortgagees, unless otherwise required by law.

The insurance described in Paragraphs 7.1 and 7.2 shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the Association and provide that all claims are to be settled on a replacement cost basis.

The deductible, if any, on an insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees. Any loss falling within the deductible portion of a policy shall be paid by the Association, provided that the Board shall have the authority to levy, after Notice and Hearing, against Owners causing a loss to the Association for the reimbursement of all deductibles paid by the Association as an Individual Assessment in accordance with the terms hereof. Funds to cover the deductible amounts should be included in the Association's Reserve Funds and be so designated.

**8.3 Insurance to be Maintained by Owners. IN ADDITION TO THOSE ITEMS SET FORTH ABOVE, EACH OWNER SHALL PURCHASE AND MAINTAIN IN EFFECT A UNIT OWNER'S POLICY (HO-6 OR ITS EQUIVALENT) FOR ALL OF THE OWNER'S PERSONAL PROPERTY, FURNITURE, FURNISHINGS, EQUIPMENT, AND RELATED ITEMS, LOCATED WITHIN THE OWNER'S UNIT. THE POLICY SHALL ALSO INSURE ANY AND ALL IMPROVEMENTS MADE TO THE UNIT'S INTERIOR FINISHED SURFACES OF ITS PERIMETER WALLS, FLOORS AND CEILINGS BY THE CURRENT OWNER, TENANT OR GUEST, AND SHALL PROVIDE COMPREHENSIVE GENERAL LIABILITY COVERAGE IN THE MINIMUM AMOUNT OF COVERAGE OF NO LESS THAN \$1,000,000.00. EACH OWNER, EXCEPT FOR DECLARANT AND FIRST MORTGAGEES WHO HAVE BECOME OWNERS OF A NON-OWNER-OCCUPIED UNIT, SHALL PURCHASE AND MAINTAIN IN EFFECT A SUFFICIENT CONDOMINIUM UNIT OWNER'S RENTAL LIABILITY POLICY OR ITS EQUIVALENT WHICH SHALL ALSO INSURE ANY AND ALL IMPROVEMENTS MADE TO THE UNIT'S INTERIOR FINISHED SURFACES OF ITS PERIMETER WALLS, FLOORS AND CEILINGS BY THE CURRENT OWNER. THE ASSOCIATION DOES NOT PROVIDE SUCH COVERAGE IN ITS MASTER POLICIES. EACH UNIT OWNER'S POLICY SHALL INCLUDE COVERAGE TO PAY THE ASSOCIATION'S CONDOMINIUM**

**INSURANCE DEDUCTIBLE AMOUNT IF A CLAIM ARISES WITHIN THE OWNER'S INDIVIDUAL UNIT THAT IS BELOW THE ASSOCIATION'S CONDOMINIUM INSURANCE DEDUCTIBLE AMOUNT.**

In addition, an Owner may obtain such other additional insurance coverage on and in relation to the Owner's Unit as the Owner in the Owner's sole discretion shall deem desirable. Insurance obtained by an Owner shall not affect any insurance coverage obtained by the Association or cause the diminution or termination of the Association's insurance coverage or result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as an Individual Assessment pursuant to Paragraph 5.4(b). Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners.

**8.4 General Insurance Requirements.** The cost of any insurance obtained by the Association shall be paid by the Owners as part of the Common Expense Assessment Liability pursuant to Paragraph 1.3. The Board of Directors shall review at least annually all of its insurance policies in order to insure that the coverages contained in the policies are sufficient.

The Board of Directors or management company engaged by the Board of Directors shall promptly furnish to each Owner and/or an Owner's First Mortgagee, if requested, written notice of the procurement of, changes in or termination of insurance coverages obtained on behalf of the Association.

The Board of Directors shall not obtain any policy where under the terms of the insurance company's charter, bylaws, or policy: (1) contributions or assessments may be made against the Association, Owners or First Mortgage; (2) loss payments are contingent upon action by the carrier's board of directors, policyholders or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent Owners or First Mortgagees from collecting insurance proceeds.

**8.5 Insurance Proceeds.** Any loss covered by the policies carried by the Association under this ARTICLE SEVEN shall be adjusted exclusively by the Board of Directors. The insurance proceeds for any 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 Owners and First Mortgagees as their interests may appear. Subject to the provisions of Paragraph 7.8 below, the proceeds must be disbursed first for the repair or restoration of the damaged property. The Association, Owners and First Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated. The Association or the insurance trustee shall hold and apply any insurance proceeds to fulfill the

Association's obligations and responsibilities to maintain, repair, and reconstruct the Common Elements in accordance with this Declaration. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements.

8.6 Association Policies for Reimbursement. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustment. To the extent the Association settles claims for damages to the property, it shall have the authority to assess negligent or responsible Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles and any premium increase paid by the Association.

8.7 Insurer's Obligation. An insurer that has issued an insurance policy described in this ARTICLE EIGHT shall issue certificates or memoranda of insurance to the Association and, on request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or refusal to renew has been mailed to the Association by certified mail (return receipt requested) and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses by certified mail (return receipt requested).

8.8 Repair and Replacement with Insurance Proceeds. Any portion of the Common Elements for which insurance is required under this ARTICLE EIGHT that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Condominium Community regime created by this Declaration is terminated;
- (b) Repair or replacement would be illegal under any applicable state or local statute or ordinance governing health or safety;
- (c) The Owners to whom at least eighty percent (80%) of the votes in the Association are allocated agree in writing not to rebuild; or
- (d) Prior to the conveyance of any Unit to a person other than Declarant, a lien holder having a Security Interest on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. All insurance proceeds attributable to the damaged Common Elements will be used to restore the damaged areas to a condition compatible with the remainder of the Condominium Community. If additional insurance proceeds are available, the insurance proceeds will be distributed to all the Owners or Eligible Mortgagees in proportion to their respective ownership interests in the Common Elements.

8.9 Decision Not to Utilize Insurance. The Board may determine not to file an insurance claim where (i) the amount of the damage is less than \$15,000 (increased hereafter to reflect

increases in the consumer price index after the date hereof) or (i) the amount of the damage is such that the benefits of the net insurance recovery after payment of the deductible will be outweighed, in the reasonable judgment of the Board, by the affect of such claim on the ability of the Association to procure insurance at a reasonable cost. In such circumstances, the Board may determine (i) to pay the loss through assessments or reserves (ii) to seek recovery against any responsible person, including an Owner or occupant of a Unit, whose breach, negligence or omission has resulted in the loss; (iii) to pursue any other remedy at law or in equity; or (iv) to use any combination of the foregoing.

#### ARTICLE NINE: REPAIR AND RECONSTRUCTION UPON DAMAGE OR DESTRUCTION

9.1 Duty to Restore. In the event of damage or destruction to any portion of the Planned Community which is covered by insurance carried by the Association or any Owner, the insurance proceeds shall be applied to reconstruction and repair. That portion of the Planned Community which is damaged or destroyed must be repaired and restored in accordance with either (a) the original plans and specifications, or (b) other plans and specifications which have been approved by the Owners of all Lots within a Building.

#### ARTICLE TEN: MAINTENANCE, REPAIR, AND RECONSTRUCTION

10.1 Maintenance of the Lots and Dwelling Units. To provide and maintain exterior harmony for all of the Lots and Dwelling Units located within the Planned Community, the Association shall (unless it elects otherwise) maintain and repair (a) all of the Lots lying outside of the foundation of a Dwelling Unit, to include but not be limited to the landscaping, sprinkling system, sidewalks and driveways; and (b) the day to day maintenance, painting, caulking and minor repair of the exterior of the Dwelling Unit located upon each Lot within the Planned Community to include but not be limited to painting, caulking repairing, and maintaining roofs, irrigation systems, trim, gutters, downspouts, shutters, exterior building surfaces, patios, porches, stoops, decks, doorsteps and lighting fixtures (excluding light bulbs). Such obligation is limited to day to maintenance and repair and does not to extend to or include the fundamental repair or replacement of any interior or exterior building systems, including roofs, walls, windows, structural systems, water and sewer, utility or other building systems. The Association may elect at any time whether or not to perform any such activities. In the event the Association elects to forego any such activities, to such extent the Owners shall have all responsibility for the maintenance and repair of their respective Lots and the Dwelling Units and Improvements thereon and to maintain the exterior thereof in a clean, neat and well maintained condition, and failure to do so shall be subject to the enforcement remedies of the Association, including Individual Assessments.

Such Association maintenance shall not include the maintenance, repair or replacement of glass in doors or windows or screened surfaces, exterior door frames, flashing and hardware, window frames, flashing and hardware, garage doors and garage openers, or individual decorative items all of which (except for painting as provided above) shall be the sole responsibility of the Dwelling Unit's Owner and shall be kept in good order, condition and repair.



No planting or gardening shall be allowed, including planting and vegetation in the exterior courtyards of the Lots, and no fences, hedges or walls shall be erected upon a Lot to benefit a Dwelling Unit, except such as are installed in accordance with the initial construction or the approved initial construction plans of the Dwelling Unit or as approved by the Design Review Committee. If such improvements are made to a Lot, then such improvements must be maintained by the Owner of the Dwelling Unit benefitted in a manner acceptable to the Board of Directors, provided that the Board of Directors may include any such improvement in the common maintenance provided by the Association. In the event the Owner shall fail to maintain such improvements in a manner acceptable to the Board of Directors, the Board of Directors shall have the right and duty to remove the improvement and restore the Lot to a condition compatible with the remainder of the Planned Community. The cost of such removal and restoration shall be charged to the benefitted Owner by an Individual Assessment in accordance with Paragraph 4.4(b) hereof.

In the event an Owner constructs a Committee approved exterior modification to his or her Dwelling Unit, the expense of repair, maintenance and reconstruction of such exterior modification shall be the responsibility of the Owner unless such responsibility is specifically assumed in writing by the Board of Directors. As part of the design review process, an agreement shall be entered into between the Owner and the Board of Directors to reflect this responsibility which shall be recorded.

The maintenance obligation on the part of the Association shall apply to such maintenance required by ordinary wear and tear of the Lots and Dwelling Units, and shall not apply to maintenance, repair or reconstruction resulting from the act, omission, neglect or destruction by any Owner or such Owner's Guest.

In the event such repair, maintenance and/or replacement results from the willful act, omission, neglect or destruction by an Owner or such Owner's Guests, the Board of Directors shall have the right to charge the costs of such repair, maintenance and/or replacement, to such Owner by an Individual Assessment in accordance with Paragraph 4.4(b) hereof.

Determination of whether repair or maintenance is the obligation of the Association, or if the Association's obligation is necessary, shall rest solely with the Board of Directors, which will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

All other Dwelling Unit maintenance and repair shall be the sole responsibility and at the sole expense of the Owner.

10.3 Owner's Failure to Maintain or Repair. To the extent not maintained by the Association as provided herein, each Owner shall maintain the visible portions of their Lot in a clean, orderly and attractive fashion. In the event that a Lot or Dwelling Unit is not so maintained by an Owner, then the Board of Directors, after Notice and Hearing shall have the right to enter upon the Lot to

perform such work as is reasonably required and to charge the cost thereof to such Owner as an Individual Assessment in accordance with Paragraph 4.4(b) hereof.

10.4 Board of Directors Responsibility. The determination of when and the magnitude and the manner of the above described maintenance and repair shall be determined solely at the discretion of the Board of Directors. Access to all of the Lots within the Planned Community to perform the said maintenance, repair and/or replacement by the Board of Directors, its agents and employees shall be made pursuant to the maintenance easement granted in accordance with Paragraph 7.2 hereof.

#### ARTICLE ELEVEN: EXPANSION

11.1 Reservation of Right to Expand. Declarant reserves the right (without in any way being bound) to enlarge the Planned Community in Phases without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees, by submitting to the Planned Community from time to time a Supplemental Declaration adding any of the real property described in Exhibit B attached hereto.

If the Planned Community has been or is to be approved by the Federal Housing Administration and/or the Veterans Administration, any such addition, expansion or annexation must be according to a General Plan heretofore filed with and approved by the Federal Housing Administration or the Veterans Administration and such addition, expansion or annexation must be supported by the written consent of the Federal Housing Administration or the Veterans Administration, evidence of which may be recorded.

11.2 Supplemental Declarations. Such expansion must be accomplished by the filing for record by the Declarant in the Office of the County Clerk and Recorder, a supplement or supplements to this Declaration containing the legal description of the new real property to be included in such expansion. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion so long as each subsequent phase is contiguous to the Planned Community already subject to this Declaration.

All future improvements will be consistent with the initial improvements in structure type and quality of construction and must be substantially completed prior to being brought into the Planned Community.

11.3 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded. For example, "Lot," and "Planned Community" shall mean the Lots and the Planned Community described herein plus any additional Lots added by a Supplemental Declaration or Declarations, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the Planned Community as expanded with additional references to the Supplemental Declaration.

11.4 Declaration Operative on New Properties. The new real property shall be subject to all the terms, covenants, conditions, and restrictions of this Declaration as amended or supplemented,

by recording by the Declarant in the Office of the County Clerk and Recorder of a Supplemental Declaration.

11.5 Interests on Enlargement. An Owner at the time of his or her purchase of a Lot which has been brought into the Planned Community by a Supplemental Declaration shall be a Member of the Association. Such Owner shall be entitled to the same voting privileges as the Owners of the initial property brought into the Planned Community through this original Declaration and shall be subject to the same Assessments. The Assessments for that Phase shall commence for Owners within that Phase including the Declarant upon the recording of the Supplemental Declaration for that Phase.

Whenever any additional property is brought into the Planned Community, the Assessment Liability of each Owner after such addition will change and shall be reallocated by the Declarant in accordance with Paragraph 1.3 hereof.

The Supplemental Declaration recorded at the time of the expansion shall set forth the new Assessment Liability of the existing Lots and the newly added Lots.

11.6 Taxes, Assessments, and Other Liens. All taxes and other assessments then due and owing covering any period of time prior to the addition of such property or any portion thereof to the Planned Community must be paid.

Liens arising out of the construction of improvements in later phases shall not extend into prior phases and shall not adversely affect the rights of Owners or the priority of first mortgages and deeds of trust on any Lot in a prior phase.

11.7 Project Treated as a Whole. For all purposes hereof, each of the Phases of the Planned Community after the recording of the Supplemental Declaration submitting each Phase to the Planned Community, shall be treated as a part of the Planned Community developed as a whole from the beginning.

It is the express purpose hereof to provide that from and after the date of the submission of a Phase of the Planned Community in accordance with the above, that such Phase shall be treated as though such Phase had been developed, owned, occupied and used by the Owners thereof as a single undivided Development.

11.8 Termination of the Right of Expansion. The right of expansion shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such right of expansion shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 12.3 hereof.

## ARTICLE TWELVE: DECLARANT RIGHTS

12.1 Reservation. The Declarant reserves the following Declarant Rights which may be exercised, where applicable, anywhere within the Planned Community:

- (a) To complete the improvements as planned, including construction on all Lots and appurtenant facilities;
- (b) To exercise any Declarant Rights reserved herein;
- (c) To maintain business/sales offices, parking spaces, management offices, storage areas, nursery, construction yard, signs, advertising and model Dwelling Units;
- (d) To maintain signs and advertising in the Lots held by Declarant to advertise the Planned Community;
- (e) To have and use, and to permit others to have and use, easements through the Lots as may be reasonably necessary for construction within the Planned Community and for the purpose of discharging the Declarant's obligations under the Act and this Declaration;
- (f) To expand, without in any way being bound, the Planned Community in Phases from time to time, by adding to the Planned Community any of the real property described in Exhibit B attached hereto, in accordance with ARTICLE ELEVEN hereof;
- (g) To amend the Declaration and/or the Plat in connection with the exercise of any Declarant Rights;
- (h) To merge or consolidate the Planned Community with a common interest community of the same form of ownership;
- (i) To make minor amendments to the Declaration; and
- (i) To exercise any other rights created by any other provisions of this Declaration.

12.2 Rights Transferable. Declarant Rights reserved or described herein for the benefit of Declarant may be transferred to any Person by an instrument describing the Declarant Rights transferred and recorded in the Office of the County Clerk and Recorder. Such instrument shall be executed by the transferor Declarant and the transferee.

12.3 Limitations. The Declarant Rights shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such Declarant Rights shall terminate without further act or deed seven years after recording of this Declaration.

Declarant shall have a right to create in one or more phases the maximum number of Units allowed by any governmental entity having jurisdiction over the Community, pursuant to any development plan for the Community. Declarant shall not be obligated to expand the Community beyond the number of Units initially submitted to this Declaration. Declarant's Rights of development shall be exercised in phases and on those proportions of the real estate shown on the final Map.

In the event that the process of entitlement for the Declarant to obtain Building Permits is placed on "hold" (e.g., moratorium, anti-growth legislation, etc.) for reasons beyond the control of Declarant, the time limitations set forth herein shall be extended until the impediment to entitlement is removed.

12.4 Interference with the Declarant Rights. Neither the Association the Board of Directors nor any Owner may take any action or adopt any rule that will interfere with or diminish Declarant Rights without the prior written consent of the Declarant.

12.5 Use by Declarant. The exercise of the Declarant Rights by Declarant shall not unreasonably interfere with the access, enjoyment or use of any Lot by any Owner; nor shall any activity be conducted which might be unsafe, unhealthy, or hazardous to any person.

12.6 Models, Sales Offices and Management Offices. Declarant and its duly authorized agents, representatives and employees may maintain any Lot or Dwelling Units owned by the Declarant as a model Dwelling Unit, or as a sales, leasing and/or management office (and may locate one or more sales trailers within the Planned Community for any such purposes). Declarant may maintain or authorize the maintenance of construction materials, equipment, offices and facilities on any Lot owned by Declarant.

12.7 Declarant's Easements. The Declarant for itself and any contractor performing reserves the right to perform warranty work, and repairs and construction work on Lots and Dwelling Units, to store materials in secure areas, and to control and have the right of access to work and repair until completion. Such rights may be exercised without the consent or approval of the Board of Directors.

The Declarant reserves an easement on, over, in, under and through the Lots Areas as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising of the Declarant Rights, whether arising under the Act or reserved herein.

Notwithstanding any other provision of this Declaration, the easements reserved herein shall remain in effect for the benefit of Declarant until the termination of all applicable warranty periods with respect to any particular Lot and Dwelling Unit.

12.8 Signs and Marketing. The Declarant reserves the right to post signs and displays on the Lots owned by Declarant in order to promote sales of Lots and Dwelling Units. Declarant also reserves the right to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

12.9 Other Reserved Rights. The rights reserved in this ARTICLE TWELVE are in addition to all other rights reserved by or granted to Declarant in this Declaration or by the Act.

12.10 Exercise of Declarant Rights. The exercise of any or all of the Declarant Rights shall be at the sole option and discretion of Declarant. Notwithstanding anything in this Declaration to

the contrary, no consent or agreement of, or notice to, the Owners or any Eligible Mortgagee shall be required in order to allow Declarant to exercise any of its Declarant Rights, provided such exercise otherwise complies with the applicable provisions of this Declaration.

#### ARTICLE THIRTEEN: FIRST MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first mortgages recorded against Lots within the Planned Community who qualify as an Eligible Mortgagee as defined by Paragraph 1.23 hereof. To the extent applicable, necessary, or proper, the provisions of this ARTICLE THIRTEEN apply to both this Declaration and to the Articles and Bylaws of the Association.

13.1 Notices of Action. An Eligible Mortgagee shall be entitled to timely written notice of:

(a) any material condemnation loss or any casualty loss which affects a material portion of the Planned Community or any Lot or Dwelling Unit in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;

(b) any 60 day delinquency in the payment of Assessments or charges owed by an Owner of any Lot on which an Eligible Mortgagee holds a Security Interest;

(c) any lapse, cancellation, or material modification of any mandatory insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees; and

(e) any material judgment rendered against the Association.

13.2 Amendment to Documents/Special Approval:

(a) The consent of Owners to which at least 67% of the votes in the Association are allocated and the consent of 51% of the Eligible Mortgagees shall be required to add to or amend any material provisions of this Declaration or the Articles or Bylaws of the Association. A change to any of the following would be considered material.

(i) voting rights;

(ii) increases in the Common Expense Assessment by more than 25% over the previously levied Common Expense Assessment, Assessment Liens, or the priority of the Assessment Liens;

(iii) reduction in the reserves for maintenance, repair and replacement of the Common Areas, if any;

- (iv) responsibility for maintenance and repairs;
- (v) right to use any Common Areas;
- (vi) hazard or fidelity insurance requirements;
- (vii) imposition of any restrictions on the leasing of Lots;
- (ix) imposition of any restrictions on a Lot Owner's right to sell or transfer his or her Lot;
- (x) restoration or repair of the Planned Community (after damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (xi) any provision that expressly benefits mortgage holders, insurers or guarantors; or
- (xii) subject to the provisions of ARTICLE ELEVEN, (a) the reallocation of interests in the Common Areas or rights to their use; or (b) the expansion or contraction of the Planned Community; or (c) the addition, annexation or withdrawal of property to or from the Planned Community.

(b) The Association may not take any of the following actions without the consent of Owners to which at least 67% of the votes in the Association are allocated and the approval of at least 51% of the Eligible Mortgagees.

(i) Reconstruct or repair the Planned Community after damage due to an insurable hazard or a partial condemnation in a manner other than specified in the Project Documents.

(ii) Merge or consolidate the Planned Community with any other Planned Community or subject it to a Master Association. Such action shall also require the written approval from the Federal Housing Administration and/or the Veterans Administration if the Planned Community has been or may be approved by such agencies.

(iii) Not repair or reconstruct, in the event of substantial destruction, any part of the Common Areas.

(c) Any action to terminate the legal status of the Planned Community after substantial destruction or condemnation occurs must be agreed to by Owners to which at least 67% of the votes in the Association are allocated, and by 51% of the Eligible Mortgagees.

(d) Any action to terminate the legal status of the Planned Community for reasons other than substantial destruction or condemnation must be agreed to by Owners to which at least 67% of the votes in the Association are allocated, and by 67% of the Eligible Mortgagees.

13.3 Special FHLMC Provisions. Except as provided by statute in the case of a condemnation or a substantial loss to the Lots and/or Common Areas, unless at least 2/3 of the Eligible Mortgagees or Owners (other than the Declarant) have given their prior written approval, the Association may not:

- (a) by act or omission seek to abandon or terminate the Planned Community;
- (b) subject to the provisions of ARTICLE ELEVEN hereof, change the pro rata interest or obligations of any Lot in order to levy Assessments, allocate distribution of hazard insurance proceeds or condemnation awards;
- (c) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas by act or omission. (The granting of easements for public utilities or other purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this Paragraph 13.3(c)); and
- (d) use hazard insurance proceeds for losses to any planned community property for other than the repair, replacement or reconstruction of the planned community property).

13.4 Implied Approval. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment or consent as required by the Project Documents within 60 days after said Eligible Mortgagee receives proper notice of the proposal, provided this notice was delivered by certified or registered mail with return receipt requested.

13.5 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the procedure set forth in the Association's Bylaws.

#### ARTICLE FOURTEEN: MANDATORY DISPUTE RESOLUTION

The provisions of this ARTICLE FOURTEEN are not intended to waive or alter the applicability of C.R.S. § 13-20-801 *et seq.*, to any action brought by Owners or by the Association, as the term "action" is defined by C.R.S. § 13-20-802.5(1). It is intended that Owners and the Association fully comply with all applicable provisions of both this ARTICLE FOURTEEN and C.R.S. § 13-20-801 *et seq.*

14.1 Statement of Clarification. Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course



of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a "Claim" as defined herein, that the Mandatory Dispute Resolution provisions contained in this Article are activated.

14.2 Alternative Method for Resolving Disputes. This ARTICLE FOURTEEN is established to promote the fair and efficient resolution of the Claims that are subject to the Mandatory Dispute Resolution as provided herein. This Article shall specifically bind (i) the Declarant, (ii) the Association, including all officers, directors and members thereof (iii) Owners (iv) architects, engineers, other design professionals, contractors, subcontractors, suppliers, and other persons or entities involved in any way in to any aspect of the land development, design, construction, repair, maintenance, reconstruction or other act or improvement on or related to any Common Area, Improvement, Building, Common Element, Lot, Unit or other aspect of the Planned Community (collectively a "Construction Party") (v) any individual or entity who is an officer, director, member, manager, shareholder, partner, employee or agent, of any Party (as defined in ARTICLE FOURTEEN, and any reference to a Party in this ARTICLE FOURTEEN, shall be deemed to refer to and include any individual or entity who is an officer, director, member, manager, shareholder, partner, employee or agent, of any such Party and (vi) any person or entity not otherwise subject to this Declaration but who elects in writing to submit themselves to this Article for purposes of any Claim as defined herein (each and all of the foregoing being referred to as a "Party"). Accordingly, all Claims that involve or relate to a Party shall be resolved through the procedures set forth in this ARTICLE FOURTEEN, including mandatory binding arbitration. The Parties directly involved in a Claim as Claimant and Respondent as defined herein are termed the 'Affected Parties.' The Association and Declarant, even where not Affected Parties, shall have the right to participate in an advisory or informational capacity in any Inspection, Negotiation or Mediation pursuant to Articles 13.7, 13.8 or 13.9, Gon the same terms as an Affected Party in any procedure applicable to a Claim.

14.3 Claims. Except as specifically excluded in Paragraph 13.4, ARTICLE FOURTEEN applies to all claims, demands, disputes and other controversies arising out of or in any way relating to:

- (a) the purchase of any Lot, including the interpretation and enforcement of any agreement for such Purchase and rights or obligations related thereto;
- (d) the interpretation, application or enforcement of this Declaration;
- (e) the soils or other subsurface condition as related to any aspect of the Planned Community, any Common Area, Improvement, Building, Common Element Lot or Unit;
- (f) acts, rights, errors, duties, omissions or obligations of Declarant or Construction Party, including any claim within the scope of C.R.S. § 13-20-801 *et seq.*, and any claim of a Construction Party seeking compensation or to establish a mechanics lien on any Lot, Unit, Building, or other aspect of the Planned Community;
- (g) acts, rights, errors, duties, omissions or obligations of any Party under or related

to this Declaration or the Planned Community or any aspect thereof;

- (h) acts, rights, errors, duties, omissions or obligations of the Declarant, including any claim within the scope of C.R.S. § 13-20-801 *et seq.* and any claim relating to the Declarant's rights or obligations under the Declaration or C.R.S. § 38-33.3-101 *et seq.*
- (i) any claim against any officer or director of the Association;

For purposes of this Article Except as specifically excepted in Article 13.4, all of the foregoing are hereinafter referred to as a "Claim" and shall be subject to and resolved by submitting the Claim to mediation and, if not resolved during mediation, shall be resolved by Mandatory Binding Arbitration all in accordance with this ARTICLE FOURTEEN and not in a court of law.

14.4 Claims Not Subject to ARTICLE FOURTEEN . Unless Declarant, the Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated and any Party involved in the Claim agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this ARTICLE FOURTEEN:

- (a) any action, lien or suit by the Association against any Party to collect Assessments or to otherwise enforce the provisions of ARTICLE FOURTEEN;
- (b) any action or suit by the Association or Declarant to act under and/or enforce the provisions of ARTICLE FIVE and ARTICLE SIX;
- (c) any suit between or among Owners, which does not include Declarant or the Association as a party.

14.5 Notice of Claim: Any Party alleging a Claim ("Claimant") against any other Party ("Respondent") shall submit all of its Claims by written notification delivered to each Respondent, stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (b) a detailed description of the basis of the Claim; and
- (c) an itemization of the specific damages, relief and/or proposed remedy sought.

Notice shall be effective upon delivery to a valid address of the Respondent through actual delivery, transmission by courier or guaranteed overnight delivery. Delivery may be by e-mail or facsimile transmission where there is reasonable confirmation or acknowledgement of actual receipt by the Respondent. In cases where the Association and/or Declarant are not Affected Parties, the Claimant shall, to the extent reasonably practicable, provide an informational copy to the Declarant and the Association.

14.6 Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations or repose.

14.7 Right to Inspect. If a Claim involves Declarant or a Construction Party and is based on or relates to any aspect of the land development, design, construction, repair, maintenance, reconstruction or other act or improvement on or related to any Common Area, Improvement, Building, Common Element, Lot, Unit or other aspect of the Planned Community, including, but not limited to claims arising under C.R.S. § 13-20-801 *et seq.*, after the Notice provided in Article 13.5, the Declarant and/or the Construction Party shall have the right to access the affected area at a reasonable time(s) for purposes of inspecting the condition complained of, including but not be limited to, any investigative or destructive testing.

The Association shall have the same right to inspect for any Claims by an Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the party causing the inspection to be made ("Inspecting Party") shall:

(a) be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the affected party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected ("Claim Property");

(b) minimize any disruption or inconvenience to any Person who occupies the Property;

(c) remove daily all debris caused by the inspection and located on the Claim Property; and

(d) in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove all equipment and materials relating to the Inspection from the Claim Property and repair and replace all damage resulting from the Inspection, such that the Claim Property is reasonably restored to the condition of the Claim Property as of the date of the inspection, unless the Claim Property is to be immediately repaired.

The repair, replacement and restoration work shall include, without limitation, the repair or replacement of any structures, driveways, landscaping, utility lines or other improvements on the Claim Property that were damaged, removed or destroyed by Inspecting Party. In the event the Inspecting Party wishes to make appropriate and necessary repairs to resolve the subject matter of the Claim, the same shall be made upon terms and conditions acceptable to all affected Parties.

The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the Claim Property. The

Inspecting Party shall indemnify, defend and hold harmless the affected Owners and their tenants, Guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorney's fees, resulting from any breach of this Paragraph 13.7 by the Inspecting Party.

14.8 Good Faith Negotiations/Right to Be Heard. The Affected Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any Affected Party may be represented by attorneys and independent consultants to assist such Party in negotiations and to attend meetings.

Upon Declarant's receipt of a Claim and prior to the Association or any Owner asserting the Claim commencing any arbitration, judicial or administrative proceeding which may fall within the scope of this ARTICLE FOURTEEN, Declarant shall have the right to be heard by the Claimant, the affected Owners, and the Association in an effort to resolve the Claim.

14.9 Mediation:

(a) If the Affected Parties do not resolve the Claim through negotiations within thirty (30) days after the delivery of the Notice of the Claim to Respondent(s), as may be extended upon agreement of the Affected Parties, the Affected Parties shall forthwith pursue resolution of the Claim through mediation under the auspices of an independent mediator or mediation service acceptable to all Parties. If the Affected Parties are unable to agree on a mediator or mediation service, the same may be appointed by the District Court for Larimer, County, Colorado. Mediation shall be a condition precedent to further proceedings, including arbitration, provided that arbitration may be initiated contemporaneously with the mediation.

(b) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Affected Parties.

(c) If the Affected Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(d) Within ten (10) days after issuance of a Termination of Mediation, the Claimant shall make a final written Settlement Demand to the Respondent(s), and the Respondent(s) shall make a final written Settlement Offer to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Claim shall constitute the Settlement Demand. If the Respondent(s) fail to make a Settlement Offer, Respondent(s) shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(e) Each Affected Party shall bear its own costs, including attorney's fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the mediation proceeding.

(f) If the Affected Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this ARTICLE FOURTEEN, such agreement shall be enforceable in any court of competent jurisdiction in the Larimer County, Colorado. If any Party thereafter fails to abide by the terms of such agreement, then any other affected Party may file suit to enforce such agreement without the need to again comply with the procedures set forth in this ARTICLE FOURTEEN. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including, without limitation, attorney's fees and court costs.

#### 14.10 Arbitration:

(a) If the Affected Parties do not reach a settlement of the Claim within fifteen (15) days after issuance of any Termination of Mediation and reduce the same to writing, the Claimant shall have fifteen (15) additional days to submit the Claim to binding arbitration in accordance with the Arbitration Procedures contained herein and deliver an Arbitration Notice to all Respondent(s).

(b) The Affected Parties agree that any Party and/or third party having a direct right, liability or obligation related to the Claim may be joined into the arbitration and that separate arbitrations or proceedings related to the subject matter of the Claim may be consolidated with the arbitration hereunder, all as determined by the Arbitrator. The express intent of the arbitration is to provide for an efficient comprehensive resolution to the extent practicable while minimizing the potential for multiple proceedings and inconsistent resolutions..

(c) If the Claim(s) are not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claims shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims.

(d) The arbitration shall be conducted in accordance with the procedures set forth in Exhibit F attached hereto. The award rendered by the Arbitrator shall be final and binding and may be filed and confirmed as a judgment in accordance with applicable law.

(e) The Association or the Owner shall notify Declarant prior to retaining any Person or entity as an expert witness for purposes of any arbitration or authorized litigation.

14.11 Consensus for Association Action. The Association shall not commence any action, mediation or arbitration against Declarant or a Construction Party for a Claim unless at least a majority of the Board of Directors and the Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated consent to the commencement of proceedings. The Association may seek such consent from the Owners, however, only after it delivers notice or ballots to all Members of the Association in accordance with the procedures set forth in the Bylaws with respect to meetings of Members. The delivery of the notices or ballots shall also include written materials that provide:

(a) A description of the Claim;

(b) A copy of Declarant's or the Construction Party's written response thereto, including any settlement proposal;

(c) A statement advising Owners of their duties to disclose to prospective purchasers and lenders the Claim that the Association seeks to assert against Declarant;

(d) A statement that any recovery from the action may not result in receipt of sufficient or any funds to pay all costs of remedying the Claim as estimated by experts retained by the Association;

(e) An estimate of the cost to the Association in prosecuting the cause of action; and

(f) A description of the agreement with the attorneys whom the Board of Directors proposes to retain to prosecute the cause of action.

14.12 Liability for Failure to Maintain an Action Against Declarant. No Director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a claim against Declarant if the following criteria are satisfied: (a) the Director or officer was acting within the scope of his or her duties; (b) the Director or officer was acting in good faith; and (c) the act or omission was not willful, wanton or grossly negligent.

14.13 Binding Effect. This ARTICLE FOURTEEN and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction in the Larimer County, Colorado to the fullest extent permitted under the laws of the State of Colorado.

14.14 Utilization of Funds Resulting from the Claim. In the event the Association receives funds as a result of any settlement, mediation, arbitration or judgment based on the Claim, after payment of fees and costs incurred in connection with prosecution of the Claim, the Association shall: (a) deposit the proceeds in a special, interest-bearing account; and (b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions that were the subject of the Claim or otherwise for purposes of remedying the Claim.

14.15 Exclusive Remedy. The provisions contained in this Article shall be the sole and exclusive remedy that the Association and other Parties shall have against Declarant for any Claim. Should any Party ("Commencing Party") commence litigation or any other action against any other Party, in violation of the terms of this Article, such Commencing Party shall reimburse the costs and expenses, including reasonable attorney's fees, incurred by the other Party seeking dismissal of such litigation or action.

14.16 Amendment. This ARTICLE FOURTEEN and Exhibit F attached hereto shall not be amended unless such amendment is approved by Declarant and a majority of the Board of Directors and by the Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated. The rights of Declarant under this Article 13.16 are not tied to the

Period of Declarant Control and do not lapse or expire at the end of the Period of Declarant Control, it being expressly stated that this ARTICLE FOURTEEN is intended to create rights in favor of Declarant and that the rights and interests of Declarant in the Planned Community extend beyond the Period of Declarant Control. Notwithstanding the foregoing, commencing twenty years after the recording of this Declaration, the Declarant's consent to a proposed amendment to ARTICLE FOURTEEN and/or Exhibit D will be implied if notice of a proposed amendment is mailed, certified mail, return receipt requested, to the last known address of Declarant or any principal therein, and written objection to the amendment has not been received by the Association within 60 days of the date of such mailing. No Amendment of ARTICLE FOURTEEN shall have retrospective effect as to rights, obligations, Claims as related to any Party that took place or accrued or arose prior to such Amendment without the written consent of such Party.

14.17. Vested Rights of Party. Notwithstanding any amendment of this ARTICLE FOURTEEN, any Party as defined in Article 13.2 who has performed, acted or been involved in any work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Planned Community or any right or interest therein (i) shall be deemed to have a vested right in the terms of this ARTICLE FOURTEEN as in effect at the time of such any work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Planned Community or any right or interest therein, with no applicability of the terms of any subsequent amendment (ii) to the extent of any express or implied contract relating to such work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Planned Community or any right or interest therein, shall be deemed to have incorporated into such contract the terms of this ARTICLE FOURTEEN as enacted and in effect at the time of such contracting with no applicability of the terms of any subsequent amendment; (iii) shall expressly be entitled to enforce the provisions of this ARTICLE FOURTEEN as enacted and in effect at the time of such work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Planned Community or any right or interest therein, with no applicability of the terms of any subsequent amendment; (iv) shall not be affected by any subsequent amendment to ARTICLE FOURTEEN and (v) any subsequent amendment to ARTICLE FOURTEEN shall not alter such Party's right and entitlement to enforce the terms of ARTICLE FOURTEEN as enacted and in effect at the time of such work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Planned Community or any right or interest therein with no applicability of the terms of any subsequent amendment. The rights and provisions of this Article 13.17 may be altered as to any such Party only by the written consent of such Party.

#### ARTICLE FIFTEEN: DURATION, AMENDMENT, AND TERMINATION OF THE DECLARATION

15.1 Duration. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Paragraph 14.7 below.

15.2 Amendments by Owners. Except in case of amendments that may be executed by the Board of Directors as provided herein or under applicable law or by the Declarant pursuant thereto, including ARTICLE TWELVE and Paragraphs 14.3, and subject to Paragraphs 11.2, 11.3 and 14.5 hereof, the Owners shall have the right to amend the Declaration, the Map and the Articles, by the written approval of the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. In particular, any amendment to the Declaration, Map or Articles to (a) create or increase Declarant Rights; (b) increase the number of Units; (c) change the uses to which a Unit is restricted; or (d) change the Allocated Interests of a Unit shall require the written approval of the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, including at least sixty-seven percent (67%) of the votes allocated to Units not owned by Declarant. Amendments may be made by the Board of Directors pursuant to Paragraphs 1.36 and 8.5 and by Declarant pursuant to ARTICLE TWELVE and Paragraph 14.3.

Any amendment to the Declaration shall be effective upon the recording of the amendment together with a notarized certificate of an officer of the Association certifying that the requisite number of Owners and Eligible Mortgagees, if required, have given their written consent to the amendment. The officer shall further certify that originals of the written consents by Owners and Eligible Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection. Each amendment to the Declaration must be recorded in the Office of the Clerk and Recorder of Larimer County, Colorado. Signatures of Owners on the amendment or written consent need not be notarized.

Amendments may be executed in counterparts, provided that the recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole. All signatures on any amendment or written consent shall be irrevocable even upon the death of an Owner or the conveyance of the Unit, except that if an amendment is not recorded within three (3) years of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles or Bylaws unless it is commenced within one (1) year from the date of the recording of the amendment, unless fraud or willful misconduct is asserted and proven.

15.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of Owners or First Mortgagees this Declaration, the Map, the Articles and the Bylaws, any time within the limitations set forth in Paragraph 10.3 hereof, as follows:

(a) to make nonmaterial changes, such as the correction of a technical, dimensional, mapping, clerical, grammatical or typographical error or clarification of a statement;

(b) to comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure, or guarantee First Mortgagees; or



(c) to comply with any requirements of the Act or governmental authorities.

The foregoing power shall include a right to correct any error in calculating or setting forth the square footage of a Unit for purposes of Article 1.4. The amendments cannot impair the lien of a First Mortgagee or any warranties made to any First Mortgagee prior to the amendment.

15.4 Consent of Eligible Mortgagees Required. Amendments may be subject to the consent requirements of Eligible Mortgagees as more fully set forth in ARTICLE ELEVEN hereof.

15.5 Consent of Declarant Required. During the Period of Declarant Control, and as long as Declarant has any rights or obligations under or pursuant to this Declaration or any of the other Project Documents, any proposed amendment of any provision of this Declaration shall require Declarant's written consent to such amendment. Any amendment made without Declarant's written consent as required herein shall be null and void and shall have no effect.

15.6 FHA/VA Approval. If the Community has been or may be approved by the Federal Housing Administration and/or the Veterans Administration, then until the termination of the Period of Declarant Control in accordance with Paragraph 4.7 hereof, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: annexation of additional properties, except as provided for in ARTICLE TWELVE hereof, amendment of this Declaration, amendment to the Association's Bylaws and the Assessment of a Special Assessment.

15.7 Termination. The Community may be terminated only in accordance with Paragraphs 11.2(c) and (d) hereof. The proceeds of any sale of real estate together with the assets of the Association shall be held by the Board of Directors as trustee for Owners and holders of Security Interests on the Units as their interests may appear as more fully set forth in § 38-33.3-218 of the Act.

#### ARTICLE SIXTEEN: GENERAL PROVISIONS

16.1 Right of Action. Subject to the provisions of ARTICLE THIRTEEN hereof, the Association and any aggrieved Owner shall have an appropriate right of action against Owners for failure to comply with the Declaration, the Bylaws, the Articles of Incorporation and the Rules of the Association or with decisions of the Board of Directors. Owners shall have a similar right of action against the Association.

16.2 Successors and Assigns. This Declaration shall be binding on and shall inure to the benefit of the Declarant, the Association, and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

16.3 Severability. If any part of any provision of this Declaration shall be invalid or unenforceable under applicable law, the part shall be ineffective to the extent such invalidity or

unenforceability only, without in any way affecting the remaining parts of the provision or the remaining provisions of this Declaration.

16.4 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.

16.5 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address and e-mail address with the Association. In the event the Act requires any particular form or manner of delivery, notices shall be made in accordance with such requirements. Otherwise, notices, demands or communications may be transmitted to either such address or e-mail address and shall additionally be posted on the Association website.

All notices, demands or other notices intended to be served on the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the Registered Agent for the Association on file in the Office of the Secretary of State, State of Colorado.

16.6 Conflict. The Project Documents are intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act. If there is any conflict between the documents and the provisions of the statutes, the provisions of the statutes shall control. In the event either the Articles of Incorporation or Bylaws conflict with this Declaration, this Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

16.7 Certificate of Completion. The Certificate of Completion required by § 38-33.3-201(2) of the Act will be found on the Map.

16.8 Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provision of this Declaration.

16.9 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

Sunriver Development Company, LLC

*Craig Wrigley, Member/Manager*  
By: Craig Wrigley, Member/Manager

County of Boulder

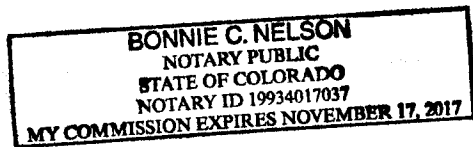
State of Colorado

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of September, 2015, by Craig Wrigley as Member/Manager of Sunriver Development Company, LLC, a Colorado Limited Liability Company.

My commission expires:

Witness my hand and official seal.

*Bonnie C. Nelson*  
\_\_\_\_\_  
Notary Public



**EXHIBIT A  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
GATEWAY PARK PAIRED HOMES**

---

**LEGAL DESCRIPTION OF THE REAL PROPERTY  
SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
GATEWAY PARK PAIRED HOMES**

---

Lots 1-14 in the Amended Gateway Park First Filing Phase 2 Replat B and whose address shall be as follows:

740 13<sup>th</sup> Street, Berthoud, CO 80513

736 13<sup>th</sup> Street, Berthoud, CO 80513

732 13<sup>th</sup> Street, Berthoud, CO 80513

728 13<sup>th</sup> Street, Berthoud, CO 80513

724 13<sup>th</sup> Street, Berthoud, CO 80513

720 13<sup>th</sup> Street, Berthoud, CO 80513

716 13<sup>th</sup> Street, Berthoud, CO 80513

712 13<sup>th</sup> Street, Berthoud, CO 80513

824 13<sup>th</sup> Street, Berthoud, CO 80513

820 13<sup>th</sup> Street, Berthoud, CO 80513

816 13<sup>th</sup> Street, Berthoud, CO 80513

812 13<sup>th</sup> Street, Berthoud, CO 80513

808 13<sup>th</sup> Street, Berthoud, CO 80513

804 13<sup>th</sup> Street, Berthoud, CO80513

**EXHIBIT B  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
OF  
GATEWAY PARK PAIRED HOMES**

---

**LEGAL DESCRIPTION OF THE REAL PROPERTY  
WHICH MAY BE SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
GATEWAY PARK PAIRED HOMES  
IN LATER PHASES**

---

Any Lot in the Amended Gateway Park First Filing Phase 2 Replat B

**EXHIBIT C  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
GATEWAY PARK PAIRED HOMES**

---

**LEGAL DESCRIPTION OF THE COMMON AREAS OF  
GATEWAY PARK PAIRED HOMES**

---

Tracts A and B

Amended Gateway Park First Filing Phase 2 Replat B

**EXHIBIT D  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
GATEWAY PARK PAIRED HOMES**

---

**THE RECORDING DATA FOR RECORDED EASEMENTS AND  
LICENSES WHICH THE PLANNED COMMUNITY  
IS OR MAY BECOME SUBJECT TO:**

---

1. All easements contained in this Declaration.
2. All easements set forth on the recorded plat.
- 3.

64

**EXHIBIT E**  
**TO THE DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**  
**OF**  
**GATEWAY PARK PAIRED HOMES**

---

**ARBITRATION PROCEDURES**

---

1. The Arbitrator must be a person qualified, either with applicable industry experience or legal experience, to consider and resolve the applicable Claim.
2. No person shall serve as the Arbitrator where that person has any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to the arbitration. Any person designated as an Arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any Arbitrator within 14 days after receipt of that Arbitrator's Disclosure, such Arbitrator shall be replaced in the same manner in which that Arbitrator was selected.
3. The Arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the County in which the Planned Community is located unless otherwise agreed by the Parties.
4. Except as modified herein the arbitration shall be conducted pursuant to the then current Construction Industry Rules of Arbitration of the American Arbitration Association to the extent applicable, but shall not be conducted or administered by the American Arbitration Association.
5. The arbitrator shall have the authority to fix and determine all procedures for discovery, exchange of information, scheduling, presentation of evidence, briefing and the conduct of the hearing.
6. The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than 30 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing and shall be signed by the Arbitrator.
8. Any issue about whether a claim is covered by ARTICLE FOURTEEN shall be determined by the Arbitrator.
9. The Arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado, but shall not have the power to award punitive damages or attorney's fees and costs to the prevailing Party (such fees and costs being the responsibility of each Party).
10. The fees and costs of the Arbitrator or Mediator and its consultants shall be borne equally by the Parties.