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EL PASO COUNTY CLERK AND RECORDER: INDEX IN GRANTEE INDICES UNDER
PALOMINO RANCH PATIO HOMES AND PALOMINO RANCH PATIO HOMES
HOMEOWNERS ASSOCIATION, INC., A COLORADO NONPROFIT CORPORATION AND
UNDER GRANTOR, MASTER BILT HOMES, INC., A COLORADO CORPORATION.

D E C L A R A T I O N

of

Covenants, Conditions, Restrictions and Easements

for

PALOMINO RANCH PATIO HOMES

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Exhibit A Legal Description of the Community Area
Exhibit B

D E C L A R A T I O N
of
Covenants, Conditions, Restrictions and Easements
for
PALOMINO RANCH PATIO HOMES

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR PALOMINO RANCH PATIO HOMES is made effective as of August __, 2022 (“Declaration”), by **Master Bilt Homes, Inc.**, a Colorado corporation, as declarant and owner of the Community Area described below (“Declarant”), in order to create a common interest community pursuant to the Colorado Common Interest Ownership Act Section 38-33.3-101, et seq., Colorado Revised Statutes (“CCIOA” or the “Act”).

ARTICLE I

GENERAL

1.1 Common Interest Community. The name of the common interest community created by this Declaration is “Palomino Ranch Patio Homes.” Palomino Ranch Patio Homes is a planned community as defined in CCIOA Section 38-33.3-103 (22). All of the Palomino Ranch Patio Homes development is located in El Paso County, Colorado.

1.2 Property Affected. Declarant owns certain real property in the City of Colorado Springs, El Paso County, Colorado (the “City”), described on **Exhibit A** attached hereto and incorporated herein by this reference and desires to subject the property described on **Exhibit A** to this Declaration. The property described on **Exhibit A** is referred to in this Declaration as the “Community Area.”

1.3 Purposes of Declaration. This Declaration is executed and recorded (a) in furtherance of a common and general plan for those parcels of land which are part of the Community Area; (b) to protect and enhance the quality, desirability and attractiveness of all property within the Community Area; (c) to provide for the Association to hold, maintain and manage certain common properties and amenities in the Community Area and to perform certain functions for the benefit of owners of land within the Community Area; (d) to define the duties, powers, and rights of the Association; and (e) to define certain duties, powers, and rights of Owners.

1.4 General Scheme and Plan of Community Area. The Community Area created pursuant to this Declaration encompasses all of the property described on **Exhibit A**. The Association (as defined in Section 1.6 (c) below) will maintain and manage the Association Properties (as defined in Section 1.6 (d) below) within the Community Area as provided in this Declaration. Each Owner acknowledges that the Lots are being developed for townhomes with limited area between each Townhome.

1.5 Declaration. Declarant, for itself, its successors and assigns and as the owner of the Community Area, hereby declares that the Community Area, and each part thereof, shall, on and after the date this Declaration is recorded, be owned, held, transferred, conveyed, sold, leased,

rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, easements, limitations, reservations, exceptions and other provisions set forth in this Declaration, all of which are declared to be a part of and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Community Area. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 15.1 hereof, shall bind, be a charge upon and inure to the mutual benefit of: (a) all of the property within the Community Area and each part or parcel thereof; (b) Declarant and its successors and assigns; (c) the Association and its successors and assigns; and (d) all other persons and entities having or acquiring any right, title or interest in any property which is part of the Community Area or any part or parcel thereof or any Improvement thereon, and their encumbrancers, claimants, heirs, personal representatives, successors and assigns.

1.6 Definitions. Unless otherwise expressly provided in this Declaration, the following words and phrases, whenever used in this Declaration, shall have the meaning specified in this Section 1.6.

(a) Architectural Committee. “Architectural Committee” shall mean the applicable approving authority as described in Section 6.1 of this Declaration. In the event an Architectural Committee is not formed, the Board shall act as the Architectural Committee.

(b) Assessment. “Assessment” shall mean a “Common Assessment,” pursuant to Section 11.3, a “Special Assessment,” pursuant to Section 11.8, and/or a “Site Assessment,” pursuant to Section 11.9, as applicable.

(c) Association. “Association” shall mean the Palomino Ranch Patio Homes Homeowners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.

(d) Association Documents. “Association Documents” shall mean the various operative documents of the Association, whether recorded or adopted at this time or as the same have been or may be amended, modified, supplemented, or otherwise changed from time to time, all of which are incorporated herein by this reference, and shall include the following: (i) the Articles of Incorporation of the Association (the “Articles of Incorporation”); (ii) the Bylaws of the Association (the “Bylaws”); (iii) this Declaration and all amendments to this Declaration; (iv) the Plat for property within the Community Area; (v) the Community Standards; and (vi) the Development Plan and all amendments thereto.

(e) Association Properties. “Association Property” or “Association Properties” shall mean all real and personal property, together with any and all Improvements now or hereafter located within the Community Area and appurtenances and rights thereto, hereafter owned by the Association or that the Association does not hold title but hereafter maintains, holds or uses for the common use and enjoyment of all of the Members as provided herein, without ownership thereof, and for other purposes as may be permitted by this Declaration. The Association Properties shall include Tract A, Palomino Ranch Patio Homes. Association Property shall also include those improvements for the general benefit of the Community Area, without limitation, Tract Fencing and/or Perimeter Fence, common sidewalks, private drainage improvements and irrigation taps for the Association Property, regardless of the location of such improvements within

the Community Area, all of which may be accessed by the Association pursuant to the Association Easement provided for in this Declaration and that identified on the Plats as real property improvements that will be owned and/or maintained by the Association. All of the Association Properties will be “common elements” as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103 (5).

The Association may, from time to time, be granted additional Association Properties. The Association shall be obligated to maintain all aspects of any Association Properties that are granted to it, other than those aspects that are specifically identified on the Plats or in the public record as being the obligation of another party.

Notwithstanding any contrary provision, any items described in CCIOA Section 38-33.3-202 and any surface parking spaces, garage bays, driveways, doorsteps, fenced areas, utility lines, porches, entryways, stairs, or sidewalks leading solely to a Townhome, whether located upon the Association Property or upon any Lot, may be assigned or allocated as a “Limited Common Area” by the Declarant for the exclusive use of the Owners of the Townhome(s) to which they are assigned, allocated or attached, and they shall be cleaned and kept in good condition by the Lot Owner. Any such allocation or assignment may be made by plat, surveyor’s statement, deed or any document recorded by the Declarant or by the Association after the Period of Declarant Control (as defined in Section 7.5(a)). This term shall have the same meaning as “limited common elements” under the Act and may be reallocated pursuant to CCIOA Section 38-33.3-208.

(f) Board of Directors. “Board of Directors” or “Board” shall mean the Board of Directors of the Association.

(g) Community Area. “Community Area” shall mean the real property described on Exhibit A, together with any and all Improvements now or hereafter on such real property and appurtenances and rights to such real property. Unless a majority of the Owners in the Community Area otherwise consent, the Community Area will not be expanded to include any other property. Declarant shall have the right to remove property from the Community Area pursuant to the terms of Section 10.4 hereof.

(h) Declarant. “Declarant” shall mean Master Bilt Homes, Inc., a Colorado corporation, its successors and assigns. A person shall be deemed a “successor and assign” of Master Bilt Homes, Inc., as Declarant, only if specifically designated in a duly recorded instrument as a successor or assignor of Declarant under this Declaration, and shall be deemed a successor and assignor of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument. Notwithstanding the foregoing, a successor to Master Bilt Homes, Inc. by consolidation or merger shall automatically be deemed a successor or assign of Master Bilt Homes, Inc., as Declarant, under this Declaration.

(i) Declaration. “Declaration” shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Palomino Ranch Patio Homes, in its entirety, including all attached exhibits and all subsequent amendments.

(j) Design Guidelines. “Design Guidelines” shall mean the guidelines, if any, adopted by the Architectural Committee pursuant to Section 6.2.

(k) Townhome. “Townhome” and “Dwelling Unit” shall each mean an Improvement on a Lot which is intended or used for residential occupancy, including any townhome constructed and located upon a Lot.

(l) Development Plan. “Development Plan” shall mean the Development Plan for Palomino Ranch Patio Homes, as approved by the City of Colorado Springs Planning Department and all amendments thereto.

(m) First Mortgage. “First Mortgage” shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Office of the Clerk and Recorder of the County of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

(n) First Mortgagee. “First Mortgagee” shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such Person under such First Mortgage.

(o) Improvements. “Improvements” shall mean all changes to the exterior of a townhome or Lot, including without limitation structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, concrete additions or pavers, basketball backboards and supporting structures, porches, or screening, awnings, painting or other finish material of any exterior surfaces or any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, roads, driveways, parking areas, screening walls, retaining walls, stairs, fixtures, Landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, swamp coolers, solar equipment, and exterior air conditioning and water softener fixtures. “Improvements” shall also mean an excavation or fill, the volume of which exceeds two cubic yards, and any excavation, fill, ditch, diversion dam, or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

(p) Landscape. “Landscape” shall mean any type of Improvement consisting of the treatment of ground surface with live or artificial plant materials, pavers, concrete areas, wood chips, crushed stone, decorative rocks, mulch materials, or other decorative surfacing materials. For purpose of this definition, the word “Landscape” shall include all other forms of the word Landscape, such as “Landscaped” and “Landscaping.”

(q) Lot. “Lot” shall mean a parcel of land within the Community Area which is shown as a lot on the Plats or any supplemental Plat upon which at least one Townhome may be constructed pursuant to the ordinances of the City. Each Lot constitutes a “unit” as defined in Section 38-33.3-103(30) of the Act. The maximum number of Lots that may be created within the Community Area shall be as provided in Section 10.8 of this Declaration. Lots may be subject to separately recorded side lot easement agreements.

(r) Maintenance Areas. “Maintenance Areas” shall mean and refer to that portion of each Lot and Dwelling Unit, not within the Association Properties. The Maintenance

Areas shall be repaired, improved and maintained by the Association only to the extent set forth in Article 5 of this Declaration and as provided in Article 8 of this Declaration, and shall otherwise be maintained by the Lot Owner or beneficial user under a separately recorded side lot easement agreement.

(s) Member. “Member” shall mean a member of the Association, who must also be an Owner. Membership in the Association shall be appurtenant to, and may not be severed from, ownership of a Lot.

(t) Owner. “Owner” shall mean the record title holder, including Declarant, whether one or more Persons, of fee simple title to a Lot, including sellers under executory contracts under Colorado law.

(u) Person. “Person” shall mean a natural person, a corporation, a limited liability company, a partnership (including general, limited, and limited liability partnerships) or any other public or private entity recognized as being capable of owning real property under Colorado law.

(v) Plats. “Plats” shall mean the plats that are the current plats of all or a portion of the Community Area.

(w) Related User. “Related User” shall mean: (a) any Person who resides with an Owner within the Community Area; (b) a guest or invitee of an Owner; (c) an occupant, tenant, or contract purchaser of any Townhome on a Lot; and (d) any family member, guest, employee, agent, representative, licensee, contractor, invitee or cohabitant of any of the foregoing Persons.

(x) Community Standards. “Community Standards” shall mean the standards rules and regulations, if any, adopted by the Board of Directors as provided in of this Declaration and the Design Guidelines and all other Association Documents.

ARTICLE II

ASSOCIATION PROPERTY USE; RESTRICTIONS

2.1 Title to the Association Property. Subject to the limitations and restrictions of this Declaration, title to the Association Property shall be conveyed in fee simple, free and clear of all monetary encumbrances, by the Declarant to the Association, on or before the expiration of the Period of Declarant Control; such conveyance shall exclude all water rights, if any. The Association shall be obligated to accept title to each such Association Property when conveyed to it by Declarant.

2.2 Non-Division of Association Property. The Association Property shall remain undivided and shall not be subject to partition. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Association Property. Each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall cause the Association to receive, jointly and severally, from the parties violating

the same, the actual attorney fees, costs, and other damages the Association incurs in connection therewith. It is agreed by all Owners that the foregoing restrictions are necessary to preserve the rights of all Owners regarding the operation and management of the Association Property. Nothing contained herein shall be construed as a limitation of the right of legal partition of a Lot between the Owners thereof, but such legal partition shall not affect any other Lot, nor shall any such partition sever any part thereof from such Lot as a whole.

2.3 Owners' Easement of Enjoyment. Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the Association Property, including without limitation, the right of ingress and egress to and from the Owner's Lot, his parking area, any private street, or any recreational facilities completed upon the Association Property, and such easement shall be appurtenant to and shall pass with the title to every Lot without the necessity of additional reference. No illegal activity may be conducted upon or within any part of the Association Property.

2.4 Extent of Owners' Easement of Enjoyment. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to enforce the restrictions contained herein and to promulgate Community Standards which every Owner and their Related Users shall strictly comply with, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Association Property if deemed necessary. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members to enhance further the overall rights of use and enjoyment of all Members, including without limitation, imposing limits on the times of use and numbers of guests permitted to use the Association Properties.

(b) The right of the Association, as provided in its Articles or Bylaws, to suspend an Owner's voting rights and the right to use the Association Property for any period during which such Owner is in default under this Declaration, including without limitation the non-payment of any assessment levied by the Association, and to make such suspensions for a period not to exceed sixty (60) days for any infraction of its published Community Standards;

(c) The right of the Association to consent to or otherwise cause the construction of additional Improvements on the Association Property or alteration or removal of any existing Improvements on the Association Property for the benefit of the Members of the Association; and to close or limit the use of the Association Property while maintaining, repairing and making replacements in the Association Property. The Association shall have the right to grant easements under, over, across, through and upon the Association Property as long as the easements granted do not interfere with the use of a Lot;

(d) The right of the Association to dedicate or transfer all or any part of the Association Property to any public agency, authority, or utility for such purposes, subject to the provisions of hereof and CCIOA Section 38-33.3-312, and subject to such conditions as may be imposed by the public entity;

(e) The rights of the Association as set forth in the Association's Articles of

Incorporation and Bylaws, including, without limitation, to borrow money for the purpose of improving the Association Property and, subject to the provisions of CCIOA Section 38-33.3-312, to mortgage said property as security for any such loan; and

(f) The right of the Declarant (until termination of the Period of Declarant Control) or the Association's Board (after termination of the Period of Declarant Control) to assign or allocate any part of the Association Property to be a Limited Common Area, for the exclusive use of a particular Owner.

2.5 Delegation of Use. Subject to the provisions of this Declaration and any Community Standards which may be established from time to time by the Association concerning the Association Property, any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Association Property and facilities to such Owner's Related Users. Each Owner shall, to the extent permitted by law, be liable for any damage done to the Association Property by such Owner's Related Users and for any breach of the Association's Community Standards by such persons.

2.6 Non-Dedication of Association Property. Declarant, in recording this Declaration, has designated certain areas of land as Association Property intended for the common use and enjoyment of Owners for recreation and other related activities. The Association Property is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

ARTICLE III

DECLARATION TO PRESERVE THE RESIDENTIAL CHARACTER OF THE COMMUNITY AREA

3.1 Property Uses. Except as otherwise authorized pursuant to this Declaration, all Lots in the Community Area will be used exclusively for Townhome purposes. No business, profession, or other activity conducted for gain shall be carried on or within any Lot or Townhome; provided that any uses that are permitted under the City home occupation ordinance shall be permitted. If the home occupation ordinance is hereafter repealed, then for purposes of this Declaration and its enforcement, the provisions of the home occupation ordinance in effect at the time of the recordation of this Declaration shall be incorporated herein as a part of this Declaration. Any violation of the home occupation ordinance shall be a violation of this Declaration. The Declarant or the Association shall have the right, from time to time, to establish Community Standards regarding the use of a Townhome for any home occupations, including regarding increased traffic within the Community Area.

3.2 Improvements. No Improvement shall be erected within the Community Area except Townhomes approved by the Architectural Committee and other Improvements which have been approved by the Architectural Committee or Improvements which Declarant or its designees are authorized to place or construct within the Community Area by the terms of this Declaration. No Improvement, other than a Townhome, and no trailer, mobile home, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other Improvement may be placed on any Lot before completion of the Townhome upon such Lot except with the permission

of the Declarant or the Architectural Committee.

3.3 Construction Type. All construction shall be new. No building previously used at another location nor any building or Improvement originally constructed as a mobile dwelling may be moved onto a Lot except as expressly provided in Section 3.7 for temporary construction, sales, or administration buildings.

3.4 Storage. Following the initial construction of a Townhome on a Lot, no building materials shall be stored on any Lot except temporarily during continuous construction of an Association approved Improvement or its alteration unless such building materials are stored in the garage on the Lot or otherwise enclosed and fully screened in a manner approved by the Architectural Committee.

3.5 Substantial Completion. A Townhome shall not be occupied in the course of original construction until substantially completed and, if required by applicable law, until a certificate of occupancy has been issued by all necessary governmental or quasi-governmental authority. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

3.6 Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Declarant or the Architectural Committee. Model homes may be used and exhibited only by Declarant or with the permission of the Declarant or the Architectural Committee. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

3.7 Construction Debris. During the progress of construction, the Owner of a Lot shall use commercially reasonable efforts to ensure that the Lot is kept free of debris and trash, all of which shall be deposited in the trash container area. When construction is commenced upon a Lot, the Owner shall provide a trash container and cause it to be properly used and maintained during construction. Such trash containers must be placed within the Owner's Lot unless the Declarant or the Architectural Committee, in its sole discretion, authorizes its location within the street. The Owner shall use commercially reasonable efforts to ensure that no construction materials, debris, or trash shall be allowed on the property of others and any materials, trash, or debris blown off the Lot shall be promptly retrieved and disposed of properly. In addition, the Owner of a Lot shall cause all excess dirt which may be generated from excavation on the Lot to be removed from the Lot or street following completion of construction.

3.8 Drilling Structures. No derrick or other Improvement designed for use in or used for boring or drilling for water, oil, or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum, or other hydrocarbon substances be produced from any well located upon, in, or under any Lot. The foregoing is not intended to prohibit temporary drilling to obtain samples in connection with the investigation of soils or temporary drilling necessary in the construction of Improvements.

ARTICLE IV

DENSITY, SETBACK AND QUALITY STANDARDS

4.1 Limitation on Dwellings and Subdivisions. No more than one (1) Townhome shall be constructed or maintained within any Lot. No Lot shall be replatted or otherwise subdivided without the approval of the Architectural Committee and applications for such approval will not be favored in the absence of extreme hardship. Lot line adjustments which do not result in an increase in the number of Lots and which are made to accommodate building plans approved by the Architectural Committee may be approved by the Architectural Committee in its sole discretion. This Section does not apply to and shall not restrict Declarant's rights under Article 10. An Owner will be solely responsible for obtaining all required governmental approvals for any such Lot line adjustments and approval by the Architectural Committee shall not remove that obligation.

4.2 Setbacks. All construction must conform to the setback requirements of the City building code, zoning code and subdivision regulations and all other applicable governmental or quasi-governmental agencies having appropriate jurisdiction for front, rear and side Lot lines, as of the date of commencement of construction.

4.3 Minimum Floor Area. No Townhome shall be erected which, exclusive of basements below garden level, porches, patios, covered but unenclosed areas, garages and any attached accessory building, has a gross livable floor area less than 1000 square feet.

4.4 Height Restrictions. The height of any Townhome or other Improvements constructed or to be constructed on any Lot within the Community Area is hereby restricted and shall not exceed thirty-five feet (35') in height or such lower height as may be required by the City. Height shall be measured in accordance with the City's height standards and requirements.

4.5 Exterior Colors and Materials. All exterior colors and materials, including roofing materials, used on Townhomes and other Improvements shall be as determined by Declarant at the time of initial installation and thereafter must be as determined and approved by the Association, in accordance with the Development Plan and Community Standards.

4.6 Antennae and Roof Projections; Satellite Dishes. Except as provided below in this section, no aerial, antenna, satellite dish, or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall any such aerial, antenna, satellite dish, or other device be maintained at any exterior location so as to be visible from neighboring properties or adjacent streets (i.e. the foregoing being permitted if properly screened as approved by the Architectural Committee, such approval not to be unreasonably withheld, conditioned or delayed). Plans for Improvements, other than FCC Protected Structures, as defined below, must be submitted to and approved by the Architectural Committee prior to installation. If the Architectural Committee disapproves such structure, the party requesting approval may modify its plans to eliminate the Architectural Committee's objections and resubmit them for approval. If any such aerial, antennae, satellite dish, or other device is installed without the approval of the Architectural Committee, the Architectural Committee shall have the rights set forth in this Declaration. Notwithstanding the above,

Notwithstanding the foregoing, satellite dishes and antennae that are subject to the rule adopted on August 5, 1996 (and effective on October 14, 1996 as amended) by the Federal Communications Commission pertaining to restrictions on an antenna that is one meter in diameter or less that receives direct broadcast satellite service and video programming via multi-point distribution services and any antenna designed to receive television broadcast signals (collectively, "FCC Protected Structures"), shall be permitted so long as the means, method, and location of such antenna comply with the rules adopted from time to time by the Architectural Committee. No unreasonable delay or unreasonable increase in the cost or installation or maintenance of an FCC Protected Structure shall be imposed by such rules, nor shall the rules prevent reception or otherwise make reception impossible for any Owner who shall seek to install an FCC Protected Structure, other than for health and safety reasons. Notwithstanding the above, no antenna used to transmit signals to, and/or receive signals from, multiple customer locations will be permitted. As long as reception is not impaired, an antenna shall be placed or screened so it is not visible from neighboring property and in compliance with the Architectural Committee requirements.

4.7 Fences.

(a) Lot Fences. Declarant reserves the right (but shall not have the obligation) to construct or install, in its sole discretion, fencing and/or related Landscaping within portions of the Community Area and along lot lines (the "Lot Fencing"). Nothing contained herein will require Lot Fencing provided for above to be constructed by Declarant. The Lot Fencing, if installed by Declarant, shall thereafter be maintained and kept in good condition and repair by the Lot Owner. The height, design, color, and/or other aspect of the Lot Fencing may not be increased, altered, or modified by any Lot Owner. The **only** fences permitted along a lot line shall be fortress type rail fencing. No other fencing on the individual Lots of any kind shall be permitted (including, without limitation, privacy fences, animal pens, dog runs, and other enclosures).

(b) Tract Fences. Declarant reserves the right (but shall not have the obligation) to construct or install, in its sole discretion, fencing and/or related Landscaping within portions of the Association Property (the "Tract Fencing"). Nothing contained herein will require Tract Fencing provided for above to be constructed by Declarant. The Tract Fencing, if installed by Declarant, shall thereafter be maintained and kept in good condition and repair by the Association. The height, design, color, and/or other aspect of the Tract Fencing may not be increased, altered, or modified by any Lot Owner adjacent to such fencing.

(c) Perimeter Fence. Declarant reserves the right (but shall not have the obligation) to construct or install, in its sole discretion, a perimeter fence and related Landscaping (the "Perimeter Fence") generally along the perimeter of all or a portion of the Community Area. Nothing contained herein will require Perimeter Fence provided for above to be constructed by Declarant. The Perimeter Fence, if installed by Declarant, shall thereafter be maintained and kept in good repair by the Association. The height of the Perimeter Fence may not be increased or altered by any Owner since individual Lot fencing of any kind is not permitted.

(d) Maintenance; Alterations. No additions or attachments shall be made to any Lot Fencing, Perimeter Fence or Tract Fence. No sign of any type shall be displayed from the Lot Fencing, Perimeter Fence or Tract Fence, other than promotive sales signs for initial Townhome sales by Declarant or persons authorized by the Declarant or the Architectural

Committee, and not signs for resales. If the maintenance requirements described in this section are not properly performed, the Declarant shall have the right (but not the obligation) to perform such maintenance at the expense of the Association following due notice of the Association's noncompliance with its maintenance obligation as provided in this section. Entry on an applicable Lot by the Association or Declarant in order to construct or maintain the Lot Fencing, Perimeter Fence or Tract Fence shall not be deemed a trespass. Neither the Association nor Declarant shall be liable for any loss, costs or damages to any applicable Lot Owner within the Community Area on account of its performance of such maintenance, except for any such loss, cost, or damage caused by gross negligence or willful misconduct. The Association may from time to time record in the real property records of the County, a map or other documentation confirming the location of the Perimeter Fence or Tract Fence within the Community Area.

4.8 Underground Utilities. All utilities that will be installed within the Community Area after the date of execution of this Declaration, including electrical, telephone, and cable television service, but excluding lighting standards and customary service devices for access, control or use of utilities, shall be installed underground. The Declarant may grant approval for temporary aboveground utility lines as needed during construction. This Section shall have no applicability to overhead utilities or above ground utilities that are or were in place prior to the date of execution of this Declaration.

4.9 Access Restriction. All persons or entities having any interest in any of the Lots are required to and shall each arrange and maintain any drives, dwellings, or other Improvements so that ingress and egress to and from their respective Lots is exclusively from the adjoining platted rights of way and not through other private property or adjoining public lands.

4.10 Compliance with Building Codes. All construction must conform to the City building codes, zoning codes, and subdivision regulations, which regulations may vary from the provisions of this Declaration; provided, however, if this Declaration is more restrictive than such governmental codes and regulations, then the more restrictive provisions of this Declaration shall control.

ARTICLE V

LIVING ENVIRONMENT STANDARDS

5.1 Association Maintenance. The Association will provide such maintenance and repair as follows:

(a) The Association, only on an occasional and as needed basis by Special Assessment, may paint, repair, maintain and care for roofs, stucco, gutters, downspouts, driveways, and exterior building surfaces, including without limitation, perimeter walls and porches of the Townhomes, **but excluding** glass surfaces, exterior light bulbs, doors, whether to the residence and/or the garage, screens and windows, and repair and/or replacement. An Owner shall not change the appearance of the exterior of his Townhome without the prior written approval of the Board, but each Owner shall paint or restain the exterior of their respective Townhomes and repair or resurface the exterior as often as necessary to keep such exterior from having a weather-beaten appearance.

(b) All repair, replacement, improvement and maintenance of the Association Property, and all improvements located thereon, including without limitation, any Landscaping, sprinkler system, any roadways, driveways, utility lines (including any common utilities within a Lot or Townhome which also serve another Townhome, and also any lines located outside of the exterior walls of a Townhome but not including any maintenance which is the responsibility of any public or private utility company or entity), all water lines located within the private streets within the Community Area and other portions of the Association Property, any light fixtures, sidewalks, and pathways, or other Improvements located on the Association Property. **Except as provided herein, each Owner shall** keep any Limited Common Areas cleaned and in good condition; provided, an Owner shall not alter, paint, change, modify, expand, restrict, remove or construct such Improvements nor otherwise modify the Association Property or the Maintenance Area or the exterior appearance of the Lot, nor shall any Owner install Improvements on such areas, without the prior written approval of the Architectural Committee.

(c) Repair and replacement of any buildings or Improvements upon the Lot insofar as the Association receives insurance proceeds or makes a Special Assessment to accomplish such repair or replacement.

(d) The Association shall maintain all private streets within the Community Area.

(e) The Association may also undertake, but shall have absolutely no obligation to undertake, such emergency repairs as the Board of Directors believes necessary to prevent imminent danger to life or property.

5.2 Inspections.

(a) Completion Inspection and Association Acceptance of Association Property. The Association acknowledges that at such time as certain improvements or phases of the townhome development within the Community Area are completed by the Declarant, a third party inspector selected by the Declarant to serve as a representative of the Association (“Completion Inspector”) will inspect the completed improvements or phase within the Community Area to determine compliance with the Development Plan, including without limitation the Area Drains / Stormwater Inlets. The Completion Inspector shall create a list of matters, if any, which require repairs or additional work in order to comply with the Development Plan. Declarant shall promptly thereafter complete the list of repairs and additional work and provide evidence thereof to the Completion Inspector who shall then issue a Certificate of Completion for the applicable Improvements or phase of the development within the Community Area. Upon issuance of the Certificate of Completion, the applicable Improvements or phase of development within the Community Area shall be deemed to be substantially complete, any applicable warranty period shall commence as of the date of issuance of the Certificate of Completion, and the applicable improvements or phase will be fully transitioned to the Association for maintenance as provided for in Section 5.2 (b).

(b) Maintenance Inspections. The Association and each Owner hereby acknowledges that periodic inspections of various Association improvements and maintenance items are essential to insure proper maintenance and management of the Association Properties as

a whole. The Association and each Owner hereby covenants to cause the Association to timely undertake, through a third party inspector (“Inspector”), the Maintenance Inspections described below and to implement the recommendations of the Inspector.

(i) No later than September 1 of each year, the Association shall obtain an inspection of the Community, including all Improvements and other components of the Community for which the Association has an obligation to perform maintenance, repairs or replacement under this Declaration including without limitation the Area Drains / Stormwater Inlets (the “Maintenance Inspection”). The Maintenance Inspection shall include an evaluation on a building-by-building basis of all Townhomes in the Community, as well as all other Improvements, separately evaluated, for which the Association has an obligation to perform maintenance, repairs or replacement under this Declaration. The report of the Maintenance Inspection shall include a review of the Association’s repair and replacement reserves, and recommendations with respect to the increase or decrease of those reserves to address any recommended maintenance, repairs or replacements in the Community.

(ii) To perform the Maintenance Inspection, the Association shall engage the services of a qualified professional engineer or licensed architect having substantial experience in the construction and/or repair of multi-family residential properties in the metropolitan area in which the Community is located (the “Maintenance Inspector”). The Maintenance Inspector shall create a report of the Maintenance Inspection, copies of which report shall be furnished to the Association’s Board, and the original of which shall be maintained with the Association’s books and records for a period of at least eight (8) years following the date of the Maintenance Inspection. The cost of the Maintenance Inspection, including any fees and expenses of the Inspector, shall be a part of the Common Assessment.

(iii) If the report of the Maintenance Inspector recommends that certain maintenance be undertaken, or that certain repairs or replacements be performed, the Association shall cause such maintenance, repairs or replacements to be completed within a reasonable time, unless the Board determines that the cost of such maintenance, repairs or replacements can be defrayed only through a Special Assessment. Unless the Board determines that the cost of such maintenance, repairs or replacements can be defrayed only through a Special Assessment, such cost shall be a part of Common Assessment. If the Board determines that such cost can be defrayed only through a Special Assessment, the Board shall promptly submit the matter for approval as provided in Section 11.8 of the Declaration. If the Association approves the Special Assessment for such maintenance, repairs or replacements, then the Association shall cause such maintenance, repairs or replacements to be performed within a reasonable time after the Special Assessment has been levied, or such earlier time as the Board deems appropriate.

(iv) Each Owner acknowledges that timely Maintenance Inspections and implementation of the Maintenance Inspector’s recommendations constitute proper maintenance and repair of the Association Properties. Each Owner further acknowledges that the failure of the Association to either timely undertake the Maintenance Inspections or implement the Maintenance Inspector’s recommendation shall constitute negligent maintenance by the Association of the Association Property.

5.3 Willful or Negligent Damage. In the event that the need for maintenance or repair

described in Section 5.1 is caused, in the sole discretionary determination of the Association, through the willful or negligent acts or omissions of any Owner, his family, guests, tenants, contractors, or invitees, or other persons or parties acting with the consent of any of the foregoing, including without limitation any pets or animals of those persons or parties, the cost of such maintenance shall be the personal obligation of such Owner, shall be added to and become part of the assessment (a Site Assessment) to which the Lot of such Owner is subject, and shall become a lien against such Owner's Lot as provided in Article 11 of this Declaration.

5.4 Access at Reasonable Hours. For the purpose of performing the maintenance referred to in Section 5.1 and inspections related thereto, the Association shall have the right, after reasonable notice to the Owner or occupants thereof and during regular business hours, to enter upon any Lot and Improvements thereon, and such entry shall not be deemed a trespass. In emergency situations, the Association may enter without notice at any time, but the Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its action, except of its gross negligence or willful misconduct.

5.5 Owner Maintenance. Except as provided in Section 5.1, the Owner shall be responsible for all other maintenance and repairs, including without limitation maintenance of his Lot, Townhome, any fixtures, furnishings, equipment and appliances located thereon. All utilities, fixtures and equipment installed within a Townhome, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of such Townhome, shall be maintained and kept in repair by the Owner thereof, except for any common utilities serving other Townhomes which shall be the Association's responsibility as provided in Section 5.1. An Owner shall do no act nor any work that will impair any easement or utility service, nor do any act nor allow any condition to exist which will adversely affect the use and enjoyment of the other Lots or the provision of utility services to such Lots. No Owner shall, in whole or in part, change the Landscaping adjacent to or upon his Lot by the addition or removal of any items thereon without the prior written approval of the Architectural Committee. If Owner fails to fulfill his responsibilities under this Section, the Association, at its option, may take such action as it deems appropriate, including without limitation, performing the Owner's obligations, after ten (10) days' notice to such Owner, except in emergencies, and any costs resulting therefrom shall be an assessment against such Owner and his Lot and shall be due and payable by the Owner thereof.

5.6 Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhomes and placed on or immediately adjacent to the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or

damaged by fire or other casualty and if the Association does not restore such wall with Insurance proceeds or a special assessment, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provisions of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Resolution of Disputes. All disputes concerning the party wall, or under the provisions of this Section 5.6, shall be resolved by submitting the matter to the Board of Directors of the Association. The Association's decision regarding any matter submitted pursuant to this Section 5.6 shall be final and binding on the Owners. The Association may charge a reasonable fee to hear any matters brought pursuant to this Section 5.6.

5.7 Management Agreements and Other Contracts. The Association may enter into agreements for professional management of the Association's business. Each Owner shall be bound by the terms and conditions of any management agreement entered into by the Association. Any agreement for professional management of the Association's business shall provide for termination by either party with or without cause and without payment of a termination fee upon thirty (30) days' prior written notice, and shall have a maximum term of one (1) year. Any contracts and leases during the Period of Declarant Control shall be subject to the provisions of CCIOA. If professional management has been previously in effect after being required by any holder, insurer or guarantor at that time or later, any decision to terminate professional management and to establish self-management by the Association shall require the prior consent of sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgagee held) and vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose.

5.8 Outside Storage. When not in use, all equipment for the maintenance of a Lot or Townhome shall be stored in the Owner's Townhome or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets.

5.9 Clotheslines. No outdoor clothes poles, clotheslines or other facilities for drying or airing clothing or household goods shall be placed on any Lot, and no laundry or wash shall be dried or hung outside any Townhome or other Improvement.

5.10 Swing sets and Play Areas. No swing sets, jungle gyms, slides or other similar Improvements shall be installed on a Lot.

5.11 Refuse. Following the initial construction of a Townhome, no unsightly objects or

materials, including but not limited to ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefore, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collection. After a period of one (1) week of continued violation of this Section, the Association or Declarant shall have the right to enter upon the Lot involved and remove such unsightly objects or materials at the expense of the Owner in addition to the fines and other rights contained in this Declaration. Such an entry shall not be deemed a trespass, and the Owner shall be liable for all costs incurred relative thereto.

5.12 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any Townhome. Excluding the activities authorized pursuant to this Declaration, no annoying lights, sounds or odors shall be permitted to emanate from any Lot or Townhome.

5.13 Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for security purposes, shall be located, used or placed on any Improvement or within any Lot. With the prior approval of the Architectural Committee, an Owner may install exterior stereo speakers, provided that the sound levels from such speakers are not objectionable to neighbors, in the sole discretion of the Board.

5.14 Grading Patterns. No Owner may change the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original, approved finish grading plan for a Lot except after first obtaining the prior consent and approval of the Declarant or the Architectural Committee. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture.

5.15 Transmitters. No electronic or radio transmitter of any kind other than garage door openers, electronic devices and transmitters permitted by Title 47, Part 15 of the United States Code and remote control devices for televisions, stereos, video cassette recorders and similar equipment shall be operated in or on any Improvement or Lot.

5.16 Animals. No animals, except domesticated birds or fish and other small domestic animals permanently confined indoors and those permitted pursuant to this Section 5.17, shall be permitted within any Lot. Domesticated dogs and domesticated cats may be kept or maintained in or on any Lot within the Community Area only if kept as pets and the total number of which, including service animals, may not exceed two (2) such animals, subject at all times to compliance with the Community Standards. No animals shall be kept or maintained within the Community Area for any commercial purposes, and no animals shall be bred within the Community Area for any reason. No dogs or other pets shall left unattended on a Lot outside of the Townhome. Electric fences, dog runs, and other similar enclosures are not permitted. No animal of any kind shall be permitted which in the sole opinion of the Association makes an unreasonable amount of noise or odor or is a nuisance. All dogs shall be kept on a leash and cleaned up after and attended to by their Owners when present in the Association Property. An Owner shall be responsible for any damage caused by the pet. The Board may adopt Community Standards and impose such fines as are deemed advisable to enforce these provisions.

5.17 Restrictions on Parking and Storage. Owners and their guests are required to park within parking areas within the Community Area designated for parking by the Association from time to time. The Association may establish rules and regulations regarding parking within the Community Area from time to time. Notwithstanding any other provision contained herein, no vehicles of any type shall be parked on any private street within the Community Area, unless previously approved in writing by the Association or authorized by the current Parking Policy, if any. Except as specifically authorized by the Association, no part of the Community Area, including but not limited to public or private streets, drives, or parking areas, and no part of the streets adjoining the Community Area shall be used as a parking, storage, display, or accommodation area except as temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Community Area as necessary for the construction of Townhomes or the maintenance of the Association Property and Maintenance Area or Lots or making deliveries or performing services. No abandoned vehicles shall be stored or parked upon any part of the Community Area or any street adjoining the Community Area, but excluding any area designated for such purpose by the Board. In the event that the Board shall determine in its sole discretion that a vehicle is an abandoned vehicle, then a written notice describing the vehicle will be personally delivered to the Owner thereof (if such Owner can be reasonably ascertained) or will be conspicuously placed on the unused vehicle. If the unused vehicle is not removed within seventy-two (72) hours thereafter, the Board shall have the right to remove the vehicle at the sole expense of the Owner thereof. For the purpose of this Section, an "abandoned vehicle" is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, house trailer or other similar vehicle which has not been driven under its own propulsion, or has not been moved for a period of five (5) days or longer. The Board may make Community Standards regarding parking and vehicular traffic in the Community Area, and the Board may also designate any parking spaces as solely for the use of visitors or others, unless such spaces have been previously assigned by Declarant to an Owner, and requiring that all Owners park their vehicles inside their assigned spaces, rather than in driveways, streets or other parts of the Community Area. Neither Owners, tenants, guests, family nor other invitees shall park within or obstruct any prohibited area, including without limitation, any fire lane. Any vehicle or other item which is parked in violation of any Community Standards shall be subject to immediate removal by the Association at the expense of the Owner of such vehicle.

Notwithstanding any provision in the Association Documents, the Association shall not prohibit the parking of a motor vehicle by an Owner on a street, driveway or guest parking area in the Community Area if the vehicle is required to be allowed pursuant to CCIOA Section 38-33.3-106.5 and if all of the criteria contained therein are met.

5.18 Vehicle Repairs. No maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed Improvement which screens the sight and sound of the activity from adjoining streets and from neighboring property.

5.19 Signs. Except as otherwise provided by applicable law, the only signs permitted on any Lot or Improvement shall be:

- (a) One sign of customary size for offering of the signed property for sale or for rent;

- (b) One sign of customary size for identification of the occupant and address of any dwelling;
- (c) Multiple signs for sale, administration and directional purposes installed by or with the permission of the Architectural Committee;
- (d) Signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and
- (e) Such signs as may be required by law.

Except for permitted signs, there shall not be used or displayed on any Lot or Improvement any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental, except by the Declarant or with the prior written permission of the Declarant. All permitted signs must be professionally painted, lettered and constructed. If a permitted sign is not in compliance with the provisions of this Section 5.20, the Association may, upon notice, require it to be modified or removed.

Notwithstanding the foregoing, nothing in the Association Documents shall be deemed to prohibit the display of flags or political signs in accordance with the most restrictive reading of CCIOA Section 38-33.3-106.5.

5.20 Outdoor Burning. There shall be no outdoor fires on any Lot or any of the Association Properties, except fires in grills contained within facilities or receptacles intended for such purpose. In no event shall any such facility or receptacle be used for burning of trash. Any such facilities or receptacles shall be subject to the Community Standards, which may include limitations on the time and manner in which fires will be permitted and may permit the Association to impose total outside fire bans when deemed appropriate by the Association. No Owner shall permit any condition on such Owner's Lot which creates a fire hazard or is in violation of fire prevention regulations adopted by the City or any governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by the City or a governmental authority having jurisdiction and control over outside burning, such ban shall be observed within the Community Area.

5.21 Hazardous Materials. No materials shall be transported to, from or within the Community Area in such a way as to create a nuisance or hazard. Storage, use or disposal of asbestos or hazardous or radioactive material, as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), within the Community Area is prohibited. Any continued or intensive use of pesticides or herbicides is deemed to be a use of hazardous materials.

5.22 Solar Devices, Air Conditioning & Hot Tubs. All solar devices, exterior air conditioning units and systems, swamp coolers and other similar devices must either be architecturally and aesthetically integrated into the building they serve or be screened from the view of adjacent Lots and streets in a manner satisfactory to the Architectural Committee and approved in the manner required by this Declaration. No window-mounted air conditioning units will be permitted. Hot tubs shall NOT be permitted within any Lot outside of a Townhome

(including on a porch), but shall be allowed within the interior of a Townhome.

5.23 Storage Sheds. No storage sheds of any kind will be permitted to be constructed or installed within any Lot without the prior approval of the Association.

5.24 Outside Lighting. The Architectural Committee may establish various standards for exterior lighting, including, without limitation, standards for hue and intensity. All exterior floodlights and spotlights installed or maintained on any Townhome or other Improvement must be approved by the Architectural Committee prior to installation and shall comply with the restrictions described in Section 3.10 of this Declaration. Declarant shall be allowed to have outdoor lighting for purposes of marketing its model home(s).

5.25 Tanks. No tanks of any kind, elevated or buried, shall be erected, placed or permitted upon any Lot, except for customary barbecue grill tanks.

5.26 Use of Association Property.

(a) No use shall be made of the Association Property which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Association Property.

(b) The use of the Association Property shall be subject to such Community Standards as may be adopted from time to time by the Board of Directors of the Association.

(c) No use shall ever be made of the Association Property which will deny ingress and egress for a substantial period of time to those Owners having access to a public street, to their Lots, to their parking areas, or to any recreational facilities completed upon the Association Property.

5.27 Lots to be Maintained. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, bottles, cans, implements, machinery, lumber or other building material shall be permitted to remain exposed upon any Lot so that it is visible from any neighboring Lot or street, except as necessary during the construction by Declarant. No condition shall be permitted within any Townhome, balcony or porch which is visible from other Townhomes or the neighboring property and which is inconsistent with the design integrity of the Community Area as determined by the Board in its sole discretion; such conditions include, but are not limited to, window treatments, draperies, hangings, and articles on porches or common areas or visible through a window. The Board may regulate by Community Standards, the color and appearance of drapes, shades and window coverings, and the use and condition in which patios and porches are required to be maintained.

5.28 Mandatory Trash Collection. In an effort to avoid multiple trash collections within the Community Area, the Association will select, from time to time, one residential trash collection service provider and residential trash collection plan for all Completed Townhomes, which service provider will collect trash on a specified date for the entire Community Area. Owners of Completed Townhomes will be obligated to pay the applicable charge for trash services imposed by the Association, regardless of whether or not the Association has commenced Common Assessments for the Community Area.

Each Owner hereby acknowledges that all Owners of Completed Townhomes will be required to use the residential trash collection service (including any limitation in collection amounts and date of collection) selected from time to time by the Association and are hereby expressly prohibited from arranging a different or additional trash collection service for any Dwelling Unit. The Association will bill each Owner of a Completed Townhome, regardless of whether or not the Completed Townhome is currently occupied. The trash collection service fee will be as established from time to time by the Association and it will be payable quarterly, unless the Board determines to bill more frequently. Each Owner further acknowledges that the Association will not be responsible for rebating any trash collection service charges which it has received in advance, even in the event of a sale of the Dwelling Unit. Each Owner also expressly acknowledges that Lots or Dwelling Units for which a certificate of occupancy has not been issued will not be charged the Site Assessment for residential trash collection since such Lots will not be receiving the benefit of that service. Trash collection service charges may be enforced in the same manner as an Assessment. Any Owner who fails to pay any trash collection service charge for his Lot shall be subject to the same fees, fines, charges, enforcement rights and liens described in the Declaration for nonpayment of an Assessment. Each Owner shall keep all trash receptacles at all times within his garage other than on the designated trash collection day.

5.29 Porches. All porches attached to each Dwelling Unit may not be modified, added to or altered in any way from the original design by the Declarant, including by way of example and not limitation, the enclosure, sun screens, awning, or screening thereof in any manner, unless otherwise specifically approved in writing by the Association. No items other than customary porch furniture and other items specifically approved in writing by the Association are permitted on any porch.

5.30 Leasing. Any Owner shall have the right to lease or allow occupancy of their Lot upon such terms and conditions as the Owner may deem advisable, subject to the restrictions of this Declaration, subject to restrictions of record and subject to the following:

(a) "Leasing" or "Renting" for the purposes of this Declaration is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner; provided, however, for the purposes of this Declaration, persons who reside with the Owner, a guest or invitee of an Owner or a roommate of the Owner, where the Owner occupies the Dwelling Unit as the Owner's primary residence, are not considered tenants and their occupancy does not constitute leasing.

(b) Short term occupancies and rentals of less than thirty (30) days, of Dwelling Units or any portion thereof, including but not limited to transient, hotel, bed-and-breakfast or vacation-type rentals, are prohibited without prior written permission from the Association. Any of the uses set forth in the preceding sentence shall be prohibited of any Dwelling Unit even if such use is determined to be a residential use. Upon the expiration of any lease of at least thirty (30) days, the Owner may thereafter extend that lease on a month-to-month basis. All leases shall be for the entire Dwelling Unit without the subdivision of Dwelling Unit for leasing purposes. Subleasing, meaning the leasing or rental of a leased Dwelling Unit or any portion of a Dwelling Unit from the tenant under the lease to another person, is prohibited.

(c) All leases or rental agreements shall be in writing and shall provide that the

leases or rental agreements are subject to all terms of the Association Documents. Owners are required to provide tenants with copies of the current Declaration and other Association Documents.

(d) Each Owner who leases his or her Dwelling Unit shall provide the Association, upon request, with a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, number and type of pets, and any other information reasonably requested by the Association or its agents.

(e) All occupancies, leases and rental agreements of Dwelling Units shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Association Documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the landlord or the Association, or by both of them.

(f) All occupancies or rentals of Dwelling Units shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Association Documents.

(g) If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within thirty (30) days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board of Directors, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association brings an eviction action against the lessee as attorney-in-fact for the Owner, the prevailing party shall be entitled to costs incurred, including but not limited to, reasonable attorney fees and court costs. The Association shall be entitled to assess the Owner personally with any attorneys' fees and costs awarded, which fees and costs shall also be a lien against said Owner's Lot.

(h) All leases shall be for or of the entire Dwelling Unit.

(i) All owners who reside at a place other than the Dwelling Unit shall provide to the Association an address and phone number(s) where the Owner can be reached in case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(j) The Association shall have the authority to adopt rules and regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

5.31 Prohibition of Marijuana and Illicit Drug Distribution and Growing. Except for the growth of marijuana for personal use as permitted by Colorado law, no Owner or occupant of a Lot may utilize such Lot or any portion of the Community Area for the purpose of growing or distributing marijuana, medical marijuana, hash oil, or any other illicit or recreational drugs. This prohibition may further be clarified by the Board of Directors through rules and regulations. Owners will be responsible for any damage resulting from a violation of this restriction. Further,

no Owner or occupant of a Lot may engage in any activity or practice which, in the sole discretion of the Board of Directors, is considered a threat to the health and/or safety of other Owners and residents within the Community Area, including but not limited to, creating conditions conductive to indoor fires, allowing Lots to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Lots in the Community Area.

5.32 Use of Lots. All Lots and other property within the Community Area shall be used only for those uses and/or purposes as allowed by local zoning, control and regulations. Occupancies may also be subject to any rules and regulations adopted by the Association. Except as provided in this Declaration, all Lots shall be used for residential purposes only as residential dwellings. Commercial and business uses with any adverse external effect on the nature, perception, operation or ambiance of the Community Area as a first class residential Community, as reasonably determined by the Board of Directors, are prohibited unless approved in writing by the Association, are specifically allowed by this Declaration or are allowed pursuant to restrictions of record and by local zoning ordinances and regulations.

ARTICLE VI

ARCHITECTURAL CONTROL

6.1 Architectural Committee. Until Declarant has sold all of the Lots in the Community Area, or until such earlier time as Declarant elects to assign the right to appoint the Architectural Committee to the Board, the Architectural Committee for the Community Area shall consist of one (1) to three (3) members appointed by Declarant from time to time. After the right to appoint the Architectural Committee for the Community Area has been transferred to the Board, the Architectural Committee for the Community Area shall consist of at least three (3) and not more than five (5) individuals, all of whom shall be appointed by the Board. All references in this Declaration to the Architectural Committee shall be deemed to refer to the Architectural Committee, whether such Architectural Committee is appointed by the Declarant or the Board. The members of the Architectural Committee need not be Members of the Association. The Architectural Committee shall exercise the functions assigned to it by this Declaration and the Community Standards, including without limitation, the Design Guidelines, if any, including reviewing and approving all plans for Improvements as provided in this Declaration. In the event no Architectural Committee is in existence, the Board shall serve as the Architectural Committee.

6.2 Design Guidelines/Community Standards. The Architectural Committee may, at any time and from time to time, enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce, design rules, regulations, and standards for the Community Area, including without limitation, design or architectural guidelines, and provide a guide to interpret and/or implement any provisions of this Declaration (collectively, the "Community Standards"). The Community Standards may, without limitation: (i) contain guidelines to clarify the types of designs and materials that may be considered in design approval; (ii) state requirements for submission in order to obtain review of the Architectural Committee; and/or (iii) may state procedural requirements, or may specify acceptable Improvements that may be installed without the prior approval of the Architectural Committee. Any Community Standards so adopted by the Architectural Committee shall be consistent, and not in conflict with, this Article and this Declaration. If adopted, copies

of the Community Standards will be available from the Association or the Architectural Committee.

6.3 Approval Required. No Improvement shall be placed, erected, installed, altered, or permitted to occur or exist on any Lot, nor shall the exterior of any existing Improvements be altered, nor shall any construction be commenced on any Improvements, unless and until the plans and specifications for such Improvements shall have been submitted to and approved in writing by the Architectural Committee or unless otherwise permitted by the Community Standards.

6.4 Plans Submissions. All plans, samples and other materials to be submitted to the Architectural Committee shall be submitted in duplicate, together with the fee described in Section 6.5 hereof. In discharging its rights and obligations hereunder, the Architectural Committee makes no representations or warranties to the Owner or any other person or entity, and the Architectural Committee shall have no liability or responsibility for defective installation or other similar matters. Each Owner of a Lot acknowledges and agrees that the Declarant, in discharging its rights and obligations hereunder, is not making any warranty or representation, expressed or implied, that any Improvement is suitable for that Lot.

6.5 Approval Process. All action required or permitted to be taken by the Architectural Committee shall be in writing, and any such written statement shall establish the action of the Architectural Committee and may protect any person relying on the statement. The procedure for submitting requests and obtaining approvals shall be as established from time to time by the Architectural Committee. The Architectural Committee may charge reasonable fees to cover expenses incurred in review of all plans (including without limitation Landscaping plans), samples and materials submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Committee for their services. The Architectural Committee shall be entitled to retain one (1) copy of all approved plans as part of its files and records. Approvals of all plans and specifications for an Improvement will automatically expire within one (1) year after approval if construction is not commenced within one (1) year after approval, and if approval so expires, the applicant must resubmit a request for approval of the Improvement.

6.6 Approval Standards. All Improvements to be constructed or installed within the Community Area must comply with the Design Guidelines, if any, and this Declaration. In granting or withholding approval of matters submitted to it, the Architectural Committee shall consider the specific standards and specifications set forth in this Declaration. The Architectural Committee shall have the right to disapprove any plans, specifications or details submitted to it if it determines, in its sole discretion, that (i) the proposed Improvement is not consistent with any provision of this Declaration; (ii) the plans and specifications as submitted are incomplete; or (iii) the plans, specifications, or details, or any part thereof, are contrary to the interest, welfare or rights of all or any part of the Community Area, the Association or the Owners. The decisions of the Architectural Committee shall be final and binding unless they are clearly arbitrary and there is no rationale to support the Architectural Committee's decision.

6.7 No Liability. Neither Declarant, the Board, nor the Architectural Committee nor any member thereof shall be liable in damages or otherwise to anyone submitting plans to them for approval, or requesting a variance, or to any Owner by reason of mistake in judgment,

negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the plans. Approval by the Architectural Committee shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, and it shall be the responsibility of the Owner or other person submitting plans to the Architectural Committee to comply with all codes, ordinances and regulations.

6.8 Variances. The Architectural Committee shall have the authority to grant for a Lot a variance from the terms of this Declaration of the Community Standards, if any, subject to terms and conditions which may be fixed by the Architectural Committee and will not be contrary to the interests of the Owners and residents of the Community Area where, owing to circumstances, literal enforcement of this Declaration or the Community Standards could result in unnecessary hardship in the sole determination of the Architectural Committee. The Architectural Committee may charge reasonable fees to cover expenses incurred in review of all variances submitted pursuant to this Declaration, not including reimbursement or compensation to the members of the Architectural Committee for their services.

Following an application for a variance:

- (a) The Architectural Committee shall, within thirty (30) days after request for the variance was delivered, determine whether to grant or deny the variance. If the Architectural Committee fails to act on the request for the variance within this thirty (30) day period, the variance shall be deemed not to be granted as of the expiration of such thirty (30) days.
- (b) A variance granted hereunder shall run with the Lot for which it is granted.
- (c) If a variance is denied, another application for substantially the same variance for the Lot involved may not be made for a period of at least one (1) year from the date of submittal of the original request.

ARTICLE VII

ASSOCIATION OPERATION

7.1 Association Structure. The Association has been formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers, and rights set forth in the Association Documents. As more specifically set forth hereinafter, the Association shall have a Board to manage its affairs. The Board shall be elected by its Members; provided, however, that the Declarant shall have the sole right to appoint the members of the Board as provided in Section 7.5.

7.2 Board of Directors. The affairs of the Association shall be managed by a Board. The Board shall consist of a minimum of three (3) members during the Period of Declarant Control stated in Section 7.5 and thereafter shall consist of at least three (3) but not more than five (5) members, as determined by the Board. All members of the Board shall be representatives of Declarant or Members of the Association. The terms and qualification of the members of the Board shall be fixed in the Articles of Incorporation and Bylaws. The Board may, by resolution,

delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for the management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration or by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon all Members, Owners, Related Users and other Persons.

7.3 Membership in Association. Each Owner shall be a Member of the Association. An Owner shall automatically be the holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one (1) membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except an Owner may assign some or all of the Owner's rights as an Owner and as Member of the Association to a contract purchaser, tenant or First Mortgagee, and may arrange for such Person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of the Owner under the Association Documents. The rights acquired by any such contract purchaser, tenant or First Mortgagee shall be extinguished automatically upon termination of the sales contract, tenancy or First Mortgage. The assignment of rights by an Owner pursuant to this section shall not be subject to any present or future statutory time limit for the duration of duly notarized proxy rights, but shall be in writing, and delivered to the Association before such Person shall be entitled to exercise any membership rights or privileges. All rights, title and privileges of membership shall be subject to the Association Documents.

7.4 Voting Rights of Members. Subject to the provisions of Section 7.5 which shall control, Members shall have the right to cast votes for the election of Board and on such other matters to be voted on by the Members as provided in the Association Documents. One vote is allocated to each Lot and Members shall have one vote for each Lot owned. The one vote for each Lot may not be split if there is more than one Owner of the Lot, and if the Owners are unable to determine how to cast the one vote allocated to their Lot pursuant to the provisions of CCIOA Section 38-33.3-310, then the Owners shall be deemed to have abstained. Voting rights and procedures may be further defined in the Articles of Incorporation and Bylaws.

7.5 Declarant's Reserved Right to Appoint.

(a) Notwithstanding any contrary provision, but subject to the requirements of Section 7.2 of this Declaration and CCIOA Section 38-33.3-303(6), Declarant hereby reserves the right to appoint the Board, to control the Association and to appoint and remove the officers and members of the Board at all times subsequent to the date of recordation of this Declaration and continuing for a period of twenty (20) years following the date on which this Declaration is recorded (the "Period of Declarant Control"), subject to the following limitations: the Period of Declarant Control shall terminate no later than the earlier of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of all of the Lots that may be created within the Community Area to Owners other than Declarant; (ii) two (2) years after Declarant has last conveyed a Lot in the ordinary course of business; or (iii) two (2) years after any right to add new Lots was last exercised.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Control, but in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. It is hereby expressly acknowledged that any action by Declarant to surrender its authority over the Association or its Board will in no way limit Declarant's rights and authority with respect to architectural control matters or to consent to modifications to the terms of this Declaration, unless such rights are expressly terminated or waived by Declarant.

(b) Not later than sixty (60) days after conveyance to Owners, other than Declarant, of twenty-five percent (25%) of the Lots that may be created, at least one (1) member, and not less than twenty-five percent (25%) of the members of the Board shall be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than one-third (1/3) of the members of the Board must be elected by Owners other than Declarant.

(c) Except as otherwise provided above, not later than the termination of any Period of Declarant Control, the Owners shall elect a Board of at least three (3) but not more than five (5) members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall elect the officers. These Board members and officers shall take office upon termination of the Period of Declarant Control.

(d) Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present following the termination of the Period of Declarant Control may remove any member of the Board with or without cause, other than a member appointed by Declarant.

(e) Within sixty (60) days after the Owners, other than Declarant, elect a majority of the members of the Board, the Declarant shall deliver to the Association all property and items described by CCIOA Section 38-33.3-303(9).

ARTICLE VIII

DUTIES AND POWERS OF ASSOCIATION

8.1 General Duties and Powers of Association. The Association has been formed to further the common interests of the Members and to maintain the Association Property. The Association, acting through the Board or representatives to whom the Board has delegated such powers, shall have the duties and powers given non-profit corporations, including without limitation those hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance Association Properties, to improve and enhance the attractiveness, desirability and safety

of the Community Area, and to use Association funds to enforce this Declaration. The Association shall have and may exercise all powers enumerated in CCIOA Section 38-33.3-302, except as expressly otherwise provided in the Association Documents (including Article 14 below) or by Colorado law. Except as expressly otherwise provided in the Association Documents or by Colorado law, the Association shall act through the Board, without the vote or meeting of the Members, and the Board may exercise all rights, powers and interests of the Association, as described in this Article or elsewhere in the Association Documents.

8.2 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to any property, including without limitation any Improvements thereon, any easement or other right, and personal property transferred to the Association by Declarant or by any third party with Declarant's permission, and equipment related thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and clear of all liens (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration. No representation, express or implied, is made that the Declarant will or will not transfer property to the Association, except as specifically provided in this Declaration.

8.3 Duty to Manage and Care for Property. To the extent owned by the Association, the Association shall, to the extent the Association determines to be commercially reasonable and financially feasible, manage, operate, care for, maintain and repair all Association Properties and Maintenance Areas and keep the same in an attractive and desirable condition for the use and enjoyment of the Members; provided, however, the Association's maintenance responsibilities for any Association Properties and Maintenance Areas, if applicable, shall not commence until Assessments commence. In addition, the Association may manage, operate, care for, maintain and repair property other than Association Properties, if some or all of the Members will benefit thereby or if such Association action is required pursuant to the applicable Plat or the Development Plan. It is the intent that under this Declaration that the properties, Improvements and facilities the Association will be required to maintain will include (i) the Association Properties described in Section 2.5; and (ii) all other Improvements and areas required to be maintained by the Association as provided for in this Declaration, the Plat, or the Development Plan. The specific enumeration of the foregoing items shall not be a limitation on the power and authority of the Association to maintain other items not specifically listed where such repair and maintenance of other items would be in the common interests of the Association and the Owners.

8.4 Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon the Association Properties owned by the Association and all other taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment, and provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest

and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful. The Association may maintain reserves for any taxes, interest and penalties which could be incurred as a result of an adverse ruling on any position taken by the Association.

8.5 Duty to Maintain Insurance. The Association shall maintain insurance as provided for in Article 12.

8.6 Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

8.7 Power to Provide Security. The Association shall have the right, but not the obligation, to provide for the security of the Owners by hiring a security patrol and performing any other functions relating to safety and security authorized by the Board or the Members if it sees fit.

8.8 Power to Acquire and Maintain Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The Association may construct or reconstruct Improvements on property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Community Area, whether or not owned by the Association.

8.9 Power to Adopt Community Standards. The Association may adopt, amend, repeal and enforce such Community Standards as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including Lots. Any such Community Standards shall be reasonable and uniformly applied as determined by the Board in its sole discretion. Community Standards shall be effective upon adoption by resolution of the Board. Written notice of the adoption, amendment or repeal or any rule or regulation shall be provided to all Members by the Association, and copies of the currently effective Community Standards shall be made available to each Member upon request and payment of the copying cost. Each Owner, Related User, Member and other Person shall comply with such Community Standards, and each Owner shall be responsible for ensuring that the Related Users of such Owner comply with the Community Standards. Community Standards shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Community Standards and the provisions of this Declaration, the provisions of this Declaration shall prevail.

8.10 Power to Enforce Declaration and Community Standards. The Association shall have the power to enforce this Declaration and Community Standards pursuant to Article 14 hereof.

8.11 Power to Enforce Association Documents. The Association shall have the power to enforce the covenants, terms and provisions of the Association Documents pursuant to Article 14 hereof.

8.12 Power to Provide Special Services. The Association shall have the power to provide special services beyond this Declaration to a Member or group of Members and any

services to any other Person. Any such service or services shall be provided pursuant to an Agreement in writing, or through one or more amendments to this Declaration, which shall provide for payment to the Association by such Member or group of Members or other Persons of the costs and expenses which the Association estimates it will incur in providing such services, including a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns or the Member or group of Members or other Persons, and may be collected in the same manner as a Site Assessment, or, if the written agreement so provides, in installments as part of the Common Assessments or may be collected in any manner permitted by law or statute or the Association Documents.

8.13 Power to Operate and Charge for Facilities. The Association shall have the power to acquire, create, own, and operate any and all such services as it deems appropriate, including, without limitation, Landscape maintenance and to establish charges for the use of services. Such charges or fees shall be as determined from time to time by the Board.

8.14 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under Association Property for any lawful purpose, including, without limitation, the provision of emergency services, utilities, telephone, television, or other uses or services to some or all of the Members or to facilitate the development of the Community Area.

8.15 Power to Employ Managers. The Association shall have the power to retain and pay for the services of a manager or managers to undertake any of the management of any functions for which the Association has responsibility under this Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to the manager. Any contract or agreement with a manager shall be terminable by the Association for cause on no more than thirty (30) days prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety (90) days prior written notice. No such contract or agreement shall be for a term of more than one (1) year. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and its Board shall remain ultimately responsible for the performance and exercise of such duties, power and functions. In addition to a manager, the Association may employ and pay a consultant, which may be Declarant, an affiliate of Declarant, or a third party, to assist in operating and managing the Association.

8.16 Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents (except as otherwise provided in management contracts) and to retain and pay for such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under the Association Documents.

8.17 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act and all powers contained in CCIOA Section 38-33.3-302, subject to any limitations, restrictions, or requirements expressly set forth in the Association Documents.

8.18 Other Powers. The Association shall have the power to regulate the days and hours during which trash and solid waste may be collected or put out for collection in any portion of the Community Area, and the Association may require all Owners to use a common trash collection company or entity selected by the Board. Additionally, the Association will provide snow removal services for the Community Area in accordance with the Community Standards to be adopted by the Board. The Association shall have the power, but not any duty, to sponsor or conduct various community activities or special events of a social or recreational nature, to hire and provide a security or courtesy patrol, which shall be unarmed and shall not be a substitute for the municipal police, and to provide general informational services which may include, without limitation, community newsletter, radio broadcast, cable television services and similar services.

ARTICLE IX

ASSOCIATION PROPERTIES

9.1 Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner or a Related User of such Owner of the Association Documents. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Site Assessment against a Member, Owner, Lot, Related User, or other Person to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of the Association Documents, including without limitation, the deductible on any insurance of the Association, interest, costs, expenses and attorneys' fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

9.2 Damage to Association Properties. In the event of damage to or destruction of all or a portion of the Association Properties due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage or destruction, then the Association shall levy a Special Assessment in the aggregate amount of such insufficiency pursuant to this Declaration and shall proceed to make such repairs or reconstruction, unless the Owners and First Mortgagees by a majority vote agree not to repair and reconstruct such damage in accordance with the terms and provisions of this Declaration. No distributions of insurance proceeds shall be made to the Owners, unless made jointly payable to Owners and the First Mortgagees, if any. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction or replacement, the Association may use the excess for future maintenance, repair, and operation of and improvements to Association Properties.

9.3 Attorney-in-Fact. All of the Owners and First Mortgagees irrevocably constitute and appoint the Association as insurance trustee under C.R.S. 38-33.3-313(5) and (9) and under this Declaration and as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Community Area in the event of their destruction, damage, condemnation, or liquidation of all or a part of the Community Area or from the termination of the Community Area, including without limitation the repair, replacement and improvement of any buildings, fixtures,

improvements and service equipment located on the Community Area (but excluding any furniture, furnishings or other personal property installed by the Owners).

Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. As attorney-in-fact, the Association, by its Board or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the power herein granted and to represent the Owners in any proceedings, negotiations, settlements or agreements. The proceeds of any insurance collected shall be payable to the Association, for the benefit of the Association, the Owners and their First Mortgagees as their interests appear, for the purpose of repair, restoration, reconstruction or replacement as provided in this Declaration.

In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact to deal with the Community Area upon its destruction, damage, or condemnation shall be appointed. Said appointment must be approved by vote or agreement of Owners of Lots to which at least sixty-seven (67%) percent of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and at least sixty-seven (67%) percent of the First Mortgagees. Notwithstanding any contrary provision of this Declaration, the Association's Articles of Incorporation and Bylaws, no Owner or any other party shall have priority over any rights of the First Mortgagee of the Lot pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Community Area.

9.4 Damage or Destruction of Association Property. Any portion of the Community Area for which insurance is required under CCIOA Section 38-33.3-313 which is damaged or destroyed must be repaired or replaced promptly by the Association pursuant to that statutory section.

9.5 Damage or Destruction of Townhomes.

(a) In the event of damage to or destruction of a Townhome due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the Improvements, shall be applied by the Owner and/or the First Mortgagee, through the Association as attorney-in-fact, to such reconstruction, and the Improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair and restoration of the Improvements. The Common Assessments shall not be abated during the period of insurance adjustments and repair and reconstruction.

(b) If the insurance proceeds are insufficient to repair and reconstruct any or all of the damaged or destroyed Townhomes, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a Special Assessment to be made only against the Owners of the damaged or destroyed Townhomes and their Lots. Such Special Assessment shall be made by the Board of Directors

without a vote of the Owners and shall be a debt of each such Owner and a lien on his Lot and may be enforced and collected as is provided in Article 11. The Association shall have full authority, right and power as attorney-in-fact to cause the repair, replacement or reconstruction of the Improvements using all of the insurance proceeds or reconstruction of the Improvements using all of the insurance proceeds for such purposes, notwithstanding the failure of an Owner to pay the assessment.

(c) Notwithstanding any provision to the contrary, but subject to C.R.S. 38-33.3-313(9) to the extent applicable, if sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgagee held) and by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes (based upon Proportionate Interests) in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, have given their prior written approval, the Association shall provide that the Owners and First Mortgagees of any or all of the destroyed or damaged Townhomes may agree that such Townhomes shall forthwith be demolished and all debris and rubble caused by such demolition removed from the Lot, and the Lot regraded and landscaped to the satisfaction of the Board. The cost of such demolition work and landscaping, together with all taxes, liens and encumbrances and any costs in repairing any party walls, shall be paid for by any and all available insurance proceeds, with any deficiency thereof to be paid by the Owner(s) of the applicable Townhome. Any excess insurance proceeds shall then be disbursed to such Owner and his First Mortgagee jointly and said Owner shall convey merchantable title to his Lot to the Association, free and clear of all liens, encumbrances, assessments, and taxes (except as prorated), for its fair market value as determined by a MAI appraisal, the cost of which shall be paid by the Owner of the applicable Townhome, with the appraiser thereof to be named by the Association. Upon the Association's acquisition of the Lot, said Lot shall become part of the Association Property.

9.6 Condemnation. If a Lot, or any part thereof, is acquired by eminent domain, the provisions of C.R.S. 38-33.3-107 shall apply. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Association Property, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Association Property and improvements thereon), as reasonably determined by the Association is in excess of \$5,000.00, the Association shall give prompt notice thereof, including a description of the part of or the interest in the Association Property or Improvement thereon sought to be so condemned, to all Owners. The Association shall have full power and authority to defend in said proceedings, but the Association shall not enter into proceedings pursuant to which the Association Property or any part thereof or any interest therein, is relinquished without giving all First Mortgagees of Lots and all Owners at least fifteen (15) days' prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Association Property, the award made for such taking shall be paid to the Association as provided by C.R.S. 38-33.3-107(3) and after the approval described below, the award shall be applied toward the repair and restoration of the Association Property, the Association shall arrange for the same and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that sixty-seven percent (67%) or more of the Owners and at least fifty-one percent (51%) of First Mortgagees do not duly and promptly approve the repair and restoration of such Association

Property, the Association shall disburse the net proceeds of such award jointly to the Owners and their respective First Mortgagees at the rate of one (1) equal share per Lot, except that any award attributable to the acquisition of a Limited Common Area shall be paid solely to the Owner thereof and that Owner's First Mortgagee.

9.7 Repair and Reconstruction. Unless otherwise agreed by sixty-seven percent (67%) of the First Mortgagees (based on one (1) vote for each Lot subject to a First Mortgage held) and by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any restoration or repair of the Community Area and applicable Improvements after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and with the original plans and specifications, and shall restore any Townhome or other improvement partially condemned or damaged by an insurable hazard to substantially the same condition in which it existed prior to such condemnation or damage.

9.8 Excess Insurance Proceeds. With the prior written approval of sixty-seven percent (67%) of the First Mortgagees (based on one (1) vote for each Lot subject to a First Mortgage held) and by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any insurance proceeds remaining after any repairs or reconstructions are completed shall be paid to each Owner and his First Mortgagee jointly at the rate of one (1) equal share per Lot. Without such approval, any excess insurance proceeds shall be placed in the Association's reserves.

9.9 Notice of Loss to First Mortgagee. Provided that a First Mortgagee has, in writing, requested the following information with respect to a Lot upon which said First Mortgagee holds the First Mortgage and has furnished the Association with the address to which said First Mortgagee wants the information sent, then in the event that there shall be any damage to or destruction of: (a) any improvement on the Lot on which such First Mortgagee holds the First Mortgage which shall be in excess of Five Thousand Dollars (\$5,000.00) and/or (b) the Association Property which shall be in excess of Five Thousand Dollars (\$5,000.00), or in the event of the condemnation of any part of the Association Property as described in Section 9.4 in excess of Five Thousand Dollars (\$5,000.00), then timely written notice of any such damage, destruction or condemnation shall be given by the Association to such First Mortgagee. Notwithstanding any provision to the contrary, no provision of this Declaration or of any other document relating to the Property shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee in the case of a distribution to an Owner of Insurance proceeds or condemnation awards for loss to or taking of Lots or Association Property or both.

ARTICLE X

DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

10.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Association Properties for a period of twenty (20) years after the date this Declaration is recorded in the real property records of El Paso County, Colorado, or until such earlier date when Declarant ceases to

own any real property within the Community Area, expressly excluding the rights contained in Articles 14 and 15 of this Declaration which shall survive. The rights and reservations set forth in this Declaration shall be deemed reserved in each conveyance of property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents. Declarant's consent to any one such amendment shall not be construed as consent to any other amendment.

10.2 Declarant's Development Rights. For the period stated in Section 10.1, Declarant shall have the following development rights:

- (a) Subject to the limitation contained in Section 10.8, Declarant may create additional Lots within the Community Area;
- (b) Declarant may create additional Association Properties within the Community Area or convert any of the Declarant owned Lots within the Community Area to Association Properties; and/or
- (c) Declarant may remove Property from the Community Area pursuant to the terms of this Declaration.

All of the foregoing development rights shall be exercised by Declarant, if at all, in accordance with CClOA Section 38-33.3-210. All of the development rights set forth above may be exercised by Declarant with respect to all or any portion of the Community Area. No assurances are made by Declarant concerning which portions of the Community Area may be affected by Declarant's exercise of its development rights or the order in which portions of the Community Area may be affected. Declarant is not obligated to exercise any of its development rights and may elect not to exercise any or all of them. If Declarant does exercise a development right in any portion of the Community Area, Declarant is not obligated to exercise that development right in all or any other portion of the remainder of real estate affected by the exercise of the development right or in all or any other portion of the remainder of the Community Area.

10.3 Special Declarant Rights. For the period stated in Section 10.1, and as more particularly set forth in this Article 10 or elsewhere in this Declaration, Declarant shall have the following special Declarant rights:

- (a) to complete any Improvements shown on an applicable Plat;
- (b) to exercise any development rights set forth in Section 10.2;
- (c) to maintain anywhere within the Community Area, sales offices, management offices, signs advertising the Community Area, and model homes;
- (d) to use easements through the Association Properties and easements granted to the Association for the purpose of making improvements within the Community Area and

completing development of the Community Area; and

(e) to appoint or remove any officer of the Association or any member of the Board appointed by Declarant.

10.4 Removal Property.

(a) **Right to Remove Property from the Community Area.** Until the expiration period indicated in Section 10.1, Declarant reserves the right to remove property that it owns or that a consenting third party owns from the Community Area, without the approval of the Owners or First Mortgagees. By accepting a deed to a Lot, each Owner hereby grants to Declarant a right to remove property from the Community Area that Declarant owns or with the consent of the owner thereof.

(b) **Procedure for Removal.** Such removal may be accomplished by the filing for record by Declarant with the Clerk and Recorder of El Paso County, Colorado no later than the expiration of the period set forth in Section 10.1 an amendment or amendments to this Declaration containing a legal description of the land area to be removed from the Community Area. Any such amendment or amendments to this Declaration shall also contain a listing of the total number of Lots then contained within the Community Area. The removal may be accomplished in "phases" by successive amendments.

(c) **Effect of Removal.**

(i) In the event of such removal, the definitions used in the Declaration shall automatically be modified to refer to the Community Area as so modified; e.g., "Community Area" shall mean the real property described on **Exhibit A**, as it may have been amended, less any property removed from the Community Area pursuant to the terms of this Section. Similarly, "Lots" shall cease to include those areas located within the removed real property. References to the Declaration shall mean the Declaration, any removal amendments and any future amendments to the Declaration.

(ii) Upon recording of the removal amendment or amendments to the Declaration with the Clerk and Recorder of the County, the removed Lots shall no longer be subject to the provisions of the Declaration, as amended.

(iii) Until the removal of real property from the Community Area is accomplished by recording the removal annexation amendment(s) to the Declaration, the real property described on **Exhibit A** and any improvements constructed thereon shall be subject to the Declaration in all ways, including, but not limited to, consideration for the purpose of apportioning assessments or determining voting rights or privileges. The Declarant's right to remove property from the Community Area may be exercised at different times and as to different portions of the Property, and so no assurances are made hereby regarding the boundaries of any portion of real property that may be removed hereunder nor the order in which said portion may be removed.

10.5 Right to Construct Additional Improvements on Association Properties. Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional Improvements on Association Properties, at Declarant's cost, at any time and from time to time in

accordance with this Declaration for the improvement and enhancement of the Association Properties and for the benefit of the Association and the Owners.

10.6 Declarant's Rights to Use Association Properties in Promotion and Marketing.

Declarant shall have and hereby reserves the right to use the Association Properties and to use services offered by the Association in connection with the promotion and marketing of property within the boundaries of the Community Area or nearby areas. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of the Association Properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Community Area; may use vehicles and equipment on Association Properties for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Community Area to use Association Properties.

10.7 Declarant's Rights to Complete Development of Community Area. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Community Area or nearby areas and to subdivide, re-subdivide, or rezone any portion of such property; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements on any property owned by Declarant within the Community Area; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Community Area; or to post signs incidental to development, construction, promotion, marketing, sales, or leasing of property within the boundaries of the Community Area. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant; to make changes or modifications to Article 6 of this Declaration by means of an amendment to this Declaration; to change any Landscaping, grading, drainage, vegetation, or view; or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant, or to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Community Area. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in the Association Documents, which rights are incorporated in this section by this reference.

10.8 Maximum Number of Lots. Notwithstanding any other provision of this Declaration, the maximum number of Lots that Declarant may create within the Community Area is thirty one (31).

10.9 Declarant's Approval. Until Declarant no longer has the right to appoint a majority of the Board, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change, or alter the use of Association Properties; mortgage the Association Properties; use Association Properties other than for the benefit of Members; levy any Special Assessment; change or repeal any rules of the Architectural Committee; make any substantial reduction or change in Association services; or make any amendment of Association Documents. Nothing contained in this Article 10 limits in any way the Declarant's express rights contained in this Declaration, including without limitation, those rights set forth in Articles 14 and 15 which shall control.

ARTICLE XI

ASSESSMENTS

11.1 Obligation for Assessments. Each Owner, for each Lot owned within the Community Area, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all Assessments applicable to his Lot which are provided for in the Association Documents and which shall be both a personal obligation of the Owner and a lien against his Lot as provided therein.

Each Owner shall be jointly and severally liable to the Association for the payment of all applicable Assessments attributable him and/or his Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for herein by non-use of the Association Properties or the facilities contained therein, by non-use of any service provided by the Association for all Owners, by abandonment or leasing of his Lot, or by asserting any claims against the Association, the Declarant or any other person or entity. In addition to the foregoing Assessments, charges, fees and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot. All property dedicated to and accepted by a public or governmental authority and the Association Properties shall be exempt from Assessments hereunder.

11.2 Purpose of Assessments. The Assessments levied by the Association shall be used, all as provided herein, to pay expenses related to the Association Property, management of the Association, maintenance of the Association Properties and to promote the recreation, health, safety, and welfare of the residences of the Townhomes, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or any other Association Document, including without limitation, maintenance, operation, repair, and replacement of Association Properties, the Maintenance Areas, if applicable, drainage facilities, and easements.

11.3 Common Assessments. The Common Assessments may include, but shall not be limited to, the following common expenses:

(a) expenses of management of the Association and its activities, including without limitation, the cost of the Maintenance Inspections and related maintenance repairs and replacements;

(b) taxes and special assessments upon the Association Properties, both real and personal property;

(c) premiums for all insurance which the Association is required or permitted to maintain;

(d) common services to Owners as authorized in accordance with the terms of

this Declaration;

(e) expenses to maintain, including without limitation the cost of Landscaping and care of the Association Properties and any recreational or other Association Improvements located thereon and the Maintenance Areas, if applicable;

(f) repairs and maintenance that are the responsibility of the Association, including, without limitation, the obligations described in Section 8.3 of this Declaration;

(g) wages for Association employees and payments to Association contractors;

(h) legal and accounting fees for the Association;

(i) any deficit remaining from a previous Assessment year;

(j) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs, and replacement of those elements of Association Property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by Special Assessments, subject to the provisions of Section 11.19;

(k) the creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies, subject to the provisions of Section 11.19;

(l) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration;

(m) trash collection fees and fees for snow removal services; and

(n) Common Assessments shall be paid as provided in this Article 11.

11.4 Commencement of Common Assessments. Each Owner acknowledges that benefits accorded to an Owner of a Lot that contains a completed Townhome (“Completed Townhome”) are significantly greater than Lots that do not contain Completed Townhomes. In recognition of this fact and to establish a clear, reasonable, and cost effective administrative process for the commencement of Common Assessments in light of this distinction in benefits, Common Assessments will commence as follows:

(a) The “Start Date” for Common Assessments for the Lots within the Community Area will be the date a Lot is sold to a Lot Owner other than the Declarant.

(b) As of the Start Date, all Completed Townhomes, together with all Townhomes located in the same building or physically connected to a Completed Townhome by a shared wall (collectively a “Completed Building”), will be assessed 100% of applicable Common Assessments;

(c) As of the Start Date, all Lots and Townhomes, other than those that are located in a Completed Building, will be subject to Common Assessments in an amount that is the lesser of (A) 10% of the applicable Common Assessment or (B) \$5.00 per month, without proration; and

(d) Following the Start Date, as of the date as applicable Completed Townhome and all Townhomes within the then Completed Building will thereafter be assessed at 100% of Common Assessments (prorated as provided for in Section 11.5).

11.5 Common Assessment Procedure.

(a) After this Declaration is recorded, the Board shall set the total annual Common Assessment for 2022 based upon an estimated budget for the Association for 2022. No later than ninety (90) days before the beginning of each year after 2022, the Board shall set the total annual Common Assessment based upon an advanced budget of the Association's requirements for the following Assessment year. Within thirty (30) days after adoption of the Association's budget for each year, by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the budget summary. Unless a majority of all Owners present and voting in person or by proxy at the meeting called to discuss the budget or voting by the mailed ballot returned to the Board prior to that meeting reject the budget, the budget is ratified, whether or not a quorum is present at the meeting. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

(b) After approval of the budget by the Owners, the Board shall cause to be prepared, delivered, or mailed to each applicable Owner as of the billing date, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth the respective annual Common Assessment for Completed Townhomes and for Lots and all other Townhomes. That applicable annual Common Assessment (as adjusted when applicable) shall be payable in advance in quarterly installments due on the first (1st) day of each successive quarter unless the Board otherwise directs. All payments of Common Assessments shall be due and payable, without any notice or demand, on the due dates declared by the Board. As of the Start Date provided for in Section 11.4, Common Assessments shall be applicable to all Lots, including those owned by Declarant, at the applicable level set forth in Section 11.4. Each Owner who subsequently acquires a Lot shall become responsible for Common Assessments assessed against that Lot as of the date the Lot is transferred to such Owner as provided for in Section 11.4. The first annual Common Assessment applicable to a Completed Townhome shall be adjusted according to the number of months remaining in the fiscal year as established pursuant to the Bylaws of the Association. The Board may adopt Community Standards requiring the Owner, at the time a Lot is first assessed as a Completed Townhome or is then located within a Completed Building to prepay the Common Assessments for the balance of the quarterly period and an additional period which shall not exceed an additional twelve (12) months; such prepayment shall not relieve the Owner from any additional requirement to pay working capital pursuant to Section 11.18.

11.6 Rate of Assessments. Common Assessments and Special Assessments shall be sufficient to meet the expected needs of the Association on the basis set forth in Section 11.4. Common Assessments and Special Assessments shall be allocated equally and uniformly among every Lot within an applicable category as provided for in Section 11.4. The rate for Common Assessments and Special Assessments shall be determined by dividing the total Common Assessments or Special Assessments, as applicable, payable for any Assessment period, as determined by the ratified budget, by the number of Completed Townhomes and Townhomes within a Completed Buildings. The resulting quotient shall be the amount of the Common Assessments or Special Assessments, as applicable, payable with respect to each Completed Townhome and Townhome within a Completed Building and the remaining Lots will pay the applicable amount calculated pursuant to Section 11.4 for both Common Assessments and Special Assessments.

11.7 Failure to Fix Assessment. The failure by the Board to levy an Assessment for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments for that or any subsequent period. The rate for Common Assessments and Special Assessments shall be determined by dividing the total Common Assessments or Special Assessments, as applicable, payable for any Assessment period, as determined by the ratified budget, by the number of Completed Townhomes. The resulting quotient shall be the amount of the Common Assessments or Special Assessments, as applicable, payable with respect to each Completed Townhomes and the remaining Lots will pay the applicable amount calculated pursuant to Section 11.5 for both Common Assessments and Special Assessments.

11.8 Special Assessments. The Board may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds to construct or reconstruct, repair or replace capital Improvements upon Association Properties, including personal property relating thereto; to add to the Association Properties; to provide for necessary facilities and equipment; to offer the services authorized in this Declaration; to correct any deficit or cost overrun; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. Special Assessments shall be equally, uniformly imposed upon Lots within the same category as provided in Section 11.6. No Special Assessment shall be assessed until it has been approved in accordance with a procedure substantially identical to the procedure set forth in Section 11.5(a). At any time that insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed Improvements on the Association Properties, or on any other property which the Association maintains, the Association may levy Special Assessments for the purpose of repair or reconstruction of such damaged or destroyed Improvements; all such Special Assessments shall be equal to the amount by which the costs of repair or reconstruction of Improvements exceeds the sum of insurance proceeds awarded for the damage or destruction, and shall be set in the same manner as other Special Assessments. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable, and the Owners shall pay any such Special Assessment in the manner so specified.

11.9 Site Assessments. The Board may, subject to the provisions hereof, levy a Site Assessment against any Member, Owner, or Lot if additional services are provided to a Member, Owner, or Lot or if the willful or negligent acts or omissions of the Member, Owner or a Related

User cause any violation of the Association Documents or cause any loss or damage to the Association or Association Properties or cause any expenditure of funds in connection with the enforcement powers of the Association. Except for a default consisting solely of a failure to timely pay any Assessment, including, without limitation, Special Assessments or Common Assessments, which shall not require any notice and hearing, a Site Assessment, other than charges for additional services, shall be levied only after such notice and hearing as may be required by the Association Bylaws. The amount of the Site Assessment shall be due and payable to the Association upon notice by the Board that the Site Assessment is due and owing. Imposition or non-imposition of Site Assessments shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies. In no event will the amount of any Site Assessment levied against any Lot be counted in calculating the amount allowed pursuant to CCIOA Section 38-33.3-116(2) and (3).

11.10 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within ten (10) days after it is due, the Member, Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorneys' fees, court costs, witness expenses, and all related expenses ("collection expenses"), and to pay a reasonable late charge to be determined by the Board. Any Assessment which is not paid within ten (10) days after the date of any notice of default given under Section 11.12 shall bear interest from the due date at a rate determined by the Board, not to exceed eighteen percent (18%) per annum, or the maximum percentage permitted by law, from the due date until paid.

If any Owner fails to timely pay Assessments or any money or other sums due to the Association, the Association may require reimbursement for collection costs and reasonable attorneys' fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

11.11 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board, in its discretion, determines.

11.12 Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of default to the Owner and to each First Mortgagee of the Lot who has requested a copy of such notice. The notice shall substantially set forth: (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty (20) days from the date of mailing of the notice by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in the foreclosure of the lien for the Assessment against the Owner's Lot. A default shall not be considered cured unless the past due sums, collection expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all collection expenses, charges and interest thereon in any manner authorized by law or in the Association Documents.

11.13 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed. In the event of a default in payment of any Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and expenses of collection, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance with Section 11.15.

11.14 Lawsuit to Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement against the defaulting Owner, including, without limitation, court costs and reasonable attorneys' fees.

11.15 Lien to Enforce Assessments. The Association shall have a lien for Assessments (the "Lien") as provided in CCIOA Section 38-33.3-316. In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its Lien as provided by law and in this Section. The Board may elect (but is not required to) to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which has accrued thereon and which shall continue to accrue in accordance with the terms of Section 11.10 of this Declaration, (c) the legal description and street address of the Lot against which the lien is claimed, and (d) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The Lien shall have the priority provided by CCIOA and shall be prior to any declaration of homestead rights recorded after the time that the Lot becomes part of the Community Area. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver by the Owner of the homestead exemption as against said Lien. The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all collection expenses, court costs, recording costs and filing fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recorded the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage, and convey the same. The Lien under this Section shall be subject to the provisions and restrictions of Section 15.6 hereof.

11.16 Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Board, and upon the written request of any Member or Owner and any Person which has acquired, or intends to acquire, any right, title or interest in the Lot of such Member or Owner, the Association shall furnish a written statement setting forth the amount

of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner thereof, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person whom it is issued, if relied thereupon in good faith and without actual knowledge to the contrary, be conclusive against the Association.

11.17 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association Properties, or the non-use by an Owner of Association Properties or services provided by the Association or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

11.18 Working Capital Fund. The Board may, at its option, require each Owner, expressly excluding Declarant, at the time of the first transfer of title to a Completed Townhome, and at the time of each transfer of the Completed Townhome thereafter, to make a nonrefundable contribution to the Association of an amount established from time to time by the Board, but in no event will the amount exceed one (1) time the amount of the annual Common Assessment against the Completed Townhome in effect on the date of delivery of the deed conveying the Completed Townhome. All such contributions shall be maintained in a non-segregated account for the use and benefit of the Association for, among other purposes, meeting unforeseen expenditures, funding Association deficits or purchasing additional equipment, property or services. The working capital contribution shall be in addition to Assessments, and shall not relieve the Owners from paying all Assessments as they come due. Declarant is excluded from the provisions of this Section because the Association and Owners of Lots with Completed Townhomes will receive all of the benefits from payments made under this Section.

11.19 Association Reserves. Each Owner hereby acknowledges that it has purchased its Lot and Townhome within the Community Area with the knowledge and consent that the Association will NOT collect funds to establish reserve funds ("Reserves") for the Association until such time as each Lot within the entire Community Area is located within a Completed Building. At such time, the Association may establish such Reserves for the Association as the Association, through its Board in consultation with its property management company, if any, determines to be reasonable in its sole discretion. Each Owner further acknowledges that the Association will NOT have any obligation to establish Reserves at a level which will fully fund the replacement of all Association Properties, but merely a commercially reasonable offset of such anticipated expenses. The Association and each Owner acknowledges that the Reserves are not stagnant and will fluctuate from time to time, increasing as Reserves are collected and decreasing when utilized. Declarant covenants that at such time as Declarant no longer has a representative on the Board of Directors of the Association, Reserves will be funded in an amount equal to at least 40% of the suggested level of Reserves indicated in a Declarant ordered reserve study compiled by an independent third party (the "Reserve Study"). The Reserve Study will be deemed conclusive and binding on Declarant, the Association and each of the Owners.

ARTICLE XII

INSURANCE

12.1 Insurance. The Association shall maintain insurance as required by the Act and other applicable law, including the following types of insurance, on the Association Property to the extent that such insurance is reasonably available, considering the availability, cost, and risk coverage provided by such insurance, and the cost of said coverage to be paid by the Association as part of the Common Assessments is reasonable. In addition, the Association may maintain such insurance on such other property as the Board of Directors may determine in its discretion from time to time, or as may hereafter be required. The Association may also consider, in determining the type and amount of insurance it needs to obtain, the then-existing requirements of any applicable governmental agencies.

(a) Property insurance on the Association Properties for broad form covered causes of loss; and, if reasonably available, the total amount of insurance must not be less than the full insurable replacement cost of all the insured property less applicable deductibles at the time the insurance is purchased and such renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Association Property, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Board of Directors, the Association, any managing agent and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Board of Directors. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection an Owner's membership in the Association. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) If reasonably available, as determined by the Board, a policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community Area and/or any Owner who disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community Area to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subsection (c).

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

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

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

(e) In addition, the Association may obtain insurance against such other risks of similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect directors and officers of the Association and the members of the Architectural Committee and other representatives.

12.2 General Provisions of Insurance Policies. If available at reasonable rates, all policies of insurance carried by the Association shall be carried in blanket policy form naming the Association, as insured, or its designee, as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory clause in favor of each First Mortgagee or other mortgagee (collectively, "Security Interest Holder") and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and to each Security Interest Holder, insurer or guarantor of a security interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest including Security Interest Holders, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association. Insurance obtained by the Association, to the extent reasonably feasible, shall name Declarant as an additional insured and shall contain a waiver of subrogation rights against Declarant. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

12.3 Deductibles. 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.

(a) To the extent the Association settles a claim for damages, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any one (1) Lot and/or related Improvements are damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

(b) Any loss to any Lot or to any Association Property or other property that the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the Person who is responsible for the repair and maintenance of the property that is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned

among the Persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, his tenants, family members, guests or invitees. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any general assessment.

12.4 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Article 12 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Article 9 of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

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

12.6 Insurance to be Maintained by Owners. IT IS THE RESPONSIBILITY OF EACH OWNER TO OBTAIN APPROPRIATE FULL INSURABLE REPLACEMENT COST PROPERTY AND CASUALTY INSURANCE, AS WELL AS SUCH OTHER POLICIES OF INSURANCE DEEMED PRUDENT BY THE UNIT OWNER, INSURING THE OWNER'S LOT, TOWNHOME AND ANY LIMITED COMMON AREAS. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot, Townhome, Maintenance Area and any other Improvements thereon, including but not limited to casualty, property, flood and public liability insurance coverage on each Lot and the Improvements thereon, and the possessions therein, shall be the responsibility of the Owner of such Lot and each Owner shall maintain appropriate insurance. The Association shall have no responsibility regarding the obtaining or continuation of any such insurance. Each Owner shall provide evidence of Owner's insurance if requested by the Association within two (2) business days of the request.

12.7 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board of Directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance

appraiser, or seek other advice or assistance.

12.8 Notice of Cancellation. If the insurance described in Section 12.1 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States Mail, to all Owners. If the insurance described in Section 12.1 is not reasonably available, the Association may carry any other insurance it considers appropriate. In addition, if the insurance described in Section 12.6 for any Lot is cancelled or not renewed without a replacement policy therefore having been obtained, the Lot Owner shall notify the Association within two (2) business day thereof. Notwithstanding the provisions of Section 12.6, if any Owner fails to maintain appropriate insurance, the Association may, but is not obligated to do so, obtain or continue such insurance as is appropriate in the Association's discretion and the costs associated therewith may be collected as a Site Assessment.

12.9 Owners' Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of any or all of the Association Property or Maintenance Area is caused by the willful or negligent act or omission of any Owner, or a Related User of such Owner, the cost of such repair, maintenance or reconstruction shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction may be collected as a Site Assessment as provided in this Declaration or by the Association exercising any rights or remedies under the Association Documents or otherwise as permitted by law. A determination of the negligence or willful act or omission of any Owner's liability therefore shall be determined by the Board at a hearing after any notice required by the Bylaws to be given to the Owner, but any determination by the Board shall be subject to judicial review as appropriate.

12.10 Applicable Insurance for Losses Coverable under Multiple Insurance Policies. As this Declaration provides, both the Association and Owners are responsible for maintaining various insurance policies. When there is overlapping insurance coverage, the Owner's policy will always be the primary insurance policy to be utilized. The Association's policy will provide a secondary coverage as available and needed. In the event of any loss that is covered under (i) any policy in the name of the Association, and (ii) any policy of insurance in the name of any Owner, then such Owner's insurance policy shall be the applicable insurance for covering such a loss without any contribution or coverage under the Association's applicable insurance policy. If an Owner's insurance policy only covers a portion of any loss that is also covered by any policy in the name of the Association, then such Owner's insurance policy shall be the primary insurance to the extent it covers any such loss.

ARTICLE XIII

EASEMENTS

13.1 Association Easement. A non-exclusive easement is hereby granted to the Association, their respective officers, agents, employees and assigns upon, across, over, in and under the Association Property and any Lot as may be necessary or appropriate to perform the Association owned and/or maintained improvements and the Association duties and functions which it is obligated or permitted to perform pursuant to this Declaration or otherwise, including

without limitation any maintenance required or permitted hereunder, any inspection, repair, replacement, construction or reconstruction of any facilities or utilities on or within the Association Property and Maintenance Areas, if applicable; provided, however, that entry into any Townhome in non-emergency situations shall only be made after service of reasonable written notice and during regular business hours, and, under emergency circumstances, shall only be made after such notice, if any, as is reasonable under the circumstances.

13.2 Emergency Easement. A non-exclusive easement is hereby granted to all police, fire protection, ambulance and all similar persons to enter upon the Community Area, including but not limited to all Lots, Maintenance Areas and the and Association Property, in the performance of their duties.

13.3 Party Wall Easement. Each Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Lots and in and upon adjacent Townhomes for purposes of party/common wall repair or maintenance, in accordance with Section 5.6, upon reasonable notice to the Owners thereof. Any damage occasioned to the adjacent Lot or Improvements, including the Townhome, thereon in exercising said easement shall be the responsibility of the Owner whose negligence or wrongful acts or omissions cause such damage.

13.4 Exterior Wall Easement. Each Owner, his agents and contractors, are granted a non-exclusive easement in, over, under and upon the adjacent Association Property or Lot for the purpose of maintenance, construction, reconstruction and repair of any exterior wall on such Owner's Townhome; provided, however, that such Owner shall be liable for any damage to the Association Property or a Maintenance Area, which shall be restored to its condition prior to such work.

13.5 Easement for Encroachments. If any part of the Association Property or any Association Property Improvement or structure encroaches upon a Lot or Lots, a valid easement for such encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Lot or any Townhome or other structure related thereto encroaches upon the Association Property, or upon any adjoining Lot or Lots, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event that a Townhome or structure related thereto is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachment of parts of the Townhome due to such construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Townhome or related structure constructed on the Community Area, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction. Such encroachments and easements shall not be considered or construed to be title defects or encumbrances either on the Association Property or on the Lots. In interpreting any and all provisions of this Declaration, subsequent deeds, Mortgages, or other security instruments relating to Lots and Townhomes, the actual location of a Townhome, and related structures, shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Lot, Townhome, and related structure, as indicated on the plat.

13.6 Easement for Foundations. Owners of adjoining Townhomes shall have mutual easements of horizontal and vertical support for the foundations on which adjacent walls of their Improvements rest, and similar easements for support from the Association Property, and for the benefit of the Association Property shall also exist.

13.7 Easement for Ingress and Egress. Subject to the provisions of this Declaration, each Owner, his agents and guests are hereby granted a perpetual, non-exclusive easement, over any streets, roadways, driveways, and sidewalks, which are located upon the Association Property, for the purpose of vehicular and pedestrian ingress to and egress from such Owner's Lot. Declarant shall have the right to relocate any portion of the private streets, but only if it provides all Owners with reasonable access to their Lots, and Declarant may also dedicate any portion of any private street or roadway upon the Association Property as a public right-of-way, in which case, if accepted by a public entity, the Association's obligations for repair and maintenance of the road shall cease. Furthermore, Declarant hereby reserves a non-exclusive easement across, over and under any such private streets, sidewalks or roadways for ingress, egress, maintenance of Association Property and the installation of utilities to any part of the Community Area and over, under and through the Association Property for the exercise of any special Declarant right hereunder or under the Act.

13.8 Easements Deemed Created. All conveyance of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Declaration, whether or not specific reference to such easements or to this Article appears in the instrument of such conveyance.

13.9 Easements of Record. In addition to the easements created in this Declaration and on the Plat, the Community Area is subject to those easements and other matters currently of record in El Paso County, Colorado.

13.10 Community Mailboxes. The U.S. Postal Service will locate one or more "community mailbox" structures within the Community Area, in accordance with U.S. Postal Service and other applicable regulations. The Declarant hereby creates and reserves to the Association and the U.S. Postal Service, perpetual, alienable, divisible, and releasable easements over, under, in, and across the Association Property and the first five feet (5') of each Lot adjacent to a public street right of way, for use of portions of such areas for the "community mailbox" structure(s). The easement provided for in this section shall in no way affect, void, extinguish or modify any other easement in the Community Area. Each Owner acknowledges that the Association will issue the initial mailbox key to the initial Lot Owner following the completion of construction of the Dwelling Unit and that it will be the responsibility of the initial Lot Owner and each subsequent Lot Owner to transfer the mailbox key to his or her purchaser and failure to do so will require the purchaser to acquire a new mailbox key directly from the U.S. Postal Service and to undertake whatever requirements that may entail. Each Owner acknowledges that the Association shall not have any responsibility or obligation regarding the issuance, maintenance or transfer of mailbox keys after issuing the initial key as above provided.

ARTICLE XIV

ENFORCEMENT; DISPUTE RESOLUTION

The Association, Architectural Committee, Declarant, and all Owners agree to encourage the use of mediation or arbitration in the resolution of disputes pertaining to the Declaration and Association Document and the Community Area. Accordingly, each covenants and agrees to be bound by the provisions set forth in this Article.

14.1 Collection of Assessments. Any action or proceeding by the Association to collect any Assessments, together with interest, late charges, and expenses of collection, shall precede according to Article 11, and shall not be included within or impacted by this Article 14.

14.2 Enforcement of Declaration, Community Standards, and Association Documents by the Architectural Committee, the Association, or Declarant. The Architectural Committee, the Association, or Declarant, including an assignee or delegate thereof, may give notice to the Owner of the Lot where a violation of this Declaration occurs or to the occupant when the Lot at issue is occupied by the persons causing or responsible for the violation, which notice shall state: the nature of the violation, the action required to cure the violation; a date not less than ten (10) days from the date of mailing of the notice by which such violation must be cured (a shorter time period may be stated in the event of emergency); and the intent of the Architectural Committee, the Association, or Declarant to invoke this Section. Further action shall be stayed if the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated, or if appropriate measures to cure and terminate are begun and are not thereafter continuously prosecuted with diligence, as required by the notice, then at any time following an Owner's failure to cure the violation, the Architectural Committee, Association, or Declarant (whichever gives the notice, and in their reasonable discretion) may, but shall not be obligated to: (i) impose fines established by the Architectural Committee from time to time and/or elect, for any matter which then presents an emergency situation, to cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, pursuant to Section 14.3 below, (ii) cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, pursuant to Section 14.3 below; (iii) proceed with an action to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief), together with such other ancillary relief as a court may deem necessary in order to enforce any of the provisions of this Declaration; and/or (iv) proceed with the dispute resolution procedure set forth in Section 14.5(e). Any other disputes between any of the Architectural Committee, the Association, and the Declarant, whether in contract, tort or statutory, shall be resolved pursuant to the dispute resolution procedures set forth in Section 14.5(e).

14.3 Entry Upon a Lot to Cure Violation/Liens.

(a) License. Each Owner of a Lot hereby grants a license to the Declarant, the Association and the Architectural Committee for the purpose of entering onto a Lot to remedy violations or breaches of this Declaration pursuant to Section 14.2. The Architectural Committee, the Association, or Declarant may delegate their entry and removal rights hereunder to agents and independent contractors.

(b) No Liability. In the event that the Architectural Committee, the Association, or Declarant, whether acting for themselves or through their agents, officers, members, employees, and representatives, elect to exercise the right to enter upon a Lot to remedy a violation of this Declaration, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless: damage is caused to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Declaration, and is caused by the willful and wanton acts of the Architectural Committee, the Association, or Declarant. In no event shall there be any liability for damage to an Improvement that is in violation of this Declaration.

(c) Lien. The costs incurred by the Architectural Committee, the Association, or Declarant pursuant to any enforcement pursuant to this Article 14 shall be paid by the Lot Owner and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen percent (18%) per annum and costs of enforcement and of collection (including reasonable attorneys' fees), shall be a lien on the ownership interest in the Lot (including Improvements thereon) and shall in all respects be the personal obligation of the Owner.

(d) Collection. The Architectural Committee, the Association, or Declarant may bring an action at law for recovery of fines and/or costs incurred by it pursuant to this Article 14, against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien, and the judgment or foreclosure in any such action shall include interest as above provided and the costs of collection, including reasonable attorneys' fees.

(e) Foreclosure of Lien. The Architectural Committee, the Association, or Declarant may enforce a lien pursuant to this Article 14 by suit or by filing and foreclosure of the lien as hereinafter provided. Such party may elect (but is not required to) to file a claim of lien against the Lot of the defaulting Owner by recording a notice ("Notice of Article 14 Lien") substantially setting forth: (i) the amount of the claimed delinquency, (ii) the interest and expenses of collection which has accrued thereon and which shall continue to accrue in accordance with the terms hereof, (iii) the legal description and street address of the Lot against which the lien is claimed, and (iv) the name of the record Owner thereof. Such Notice of Article 14 Lien shall be signed and acknowledged by an officer of the entity. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to agree to pay all such amounts, and this covenant shall be a charge on the land and a continuing lien upon the Lot. The lien created by this Section shall exist from the date of entry upon the Lot until all sums are paid, whether or not a Notice of Article 14 Lien is filed in accordance herewith. The lien created by this Section shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded but shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against the lien established in this Section. When all amounts claimed under the lien have been fully paid or satisfied, the filing entity shall execute and record a notice releasing the Notice of Article 14 Lien, if recorded, upon payment by the Owner of a reasonable fee fixed to cover the cost of preparing and recording the release. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The lien under this Section shall be subject to the provisions

and restrictions of Section 15.6 hereof.

14.4 Enforcement of Declaration, Community Standards, and Association Documents by an Owner. Any action by a Lot Owner against the Association, the Declarant, the Architectural Committee, or any of the officers, directors, partners, members, employees, agents or representatives of the foregoing, or any Owner of another Lot, whether in contract, tort or statutory, shall proceed pursuant to the dispute resolution procedure set forth in Section 14.5(e); provided that (i) all actions against the Declarant, or any of its officers, directors, partners, members, employees, agents or representatives, by an Owner related to warranty claims or any other claims related to alleged construction defects of any kind or nature shall be governed solely by the terms of the contract between the Owner (or their predecessor in interest subsequent to Declarant's ownership) and the Declarant or Townhome builder, and by the terms of the limited warranty which was provided to each initial Owner following Declarant as part of such initial Owner's purchase of a Townhome; and (ii) any suit between or among Owners that does not include Declarant or the Association as a party, and that asserts a claim independent of the Association Documents, is not governed by Section 14.5(e) unless mutually agreed by such Owners.

14.5 Actions by Association on behalf of Owners. Pursuant to CCIOA Section 38-33.3-302(1)(d), the Association may institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Owners on matters affecting the Community Area (expressly including any litigation or administrative proceedings, as described in CCIOA Section 13-20-802.5 which is commonly referred to as a construction defect proceeding). In such litigation or administrative proceedings, it shall be subject in all instances to each of the following provisions and conditions:

(a) **Limited Warranty and Contracts Control.** By an Owner's purchase of a Townhome and by the Association's receipt of title to any Association Property, all Owners and the Association acknowledge that, to the extent allowed by applicable law, all actions related to warranty claims or any other claims related to alleged construction defects of any kind or nature are governed by the terms of the contract between the Owner (or their predecessor in interest subsequent to Declarant's ownership) and the Declarant or Townhome builder, and by the terms of the limited warranty which was provided to each initial Owner by or following Declarant as part of such initial Owner's purchase of a Townhome. All Owners, the Declarant (and any of its officers, directors, partners, members, employees, agents or representatives), and the Association acknowledge and agree that all matters governed by the terms of such contract(s) and the limited warranty are not matters affecting the common interest community; and are not included within the Association's authority pursuant to CCIOA Section 38-33.3-302(1)(d).

(b) **Association's Rights Coextensive with Owner's Rights.** The Association's rights and limitations in any such litigation or administrative proceedings shall be coextensive with and shall not exceed the respective Owner's rights; and the Association shall be bound by any mediation or arbitration procedures to the same extent as individual Owners.

(c) **Approvals Required.** In the event the Association or Board desires to institute any action on behalf of the Association and/or two (2) or more Owners, whether in contract, tort or statutory, prior to commencing such action, the Board shall obtain the approval of Owners holding not less than sixty-seven percent (67%) of all votes in the Association (whether

in person or by proxy), at a duly called Owner meeting following the Association's delivery of a meeting notice and written ballot (if any) that contains a detailed statement regarding the nature of the claim, an estimate of the costs and fees reasonably anticipated to be incurred by the Association, a statement that such costs and fees may increase the amount of Assessments; and an estimate of the projected time frame for resolution of the claim; and

(d) Construction Defect Approvals Required. In addition to Section 14.5(c) above, in the event the Association or the Board desires to institute an action asserting defects in the construction of two (2) or more townhomes or any Association Property or Maintenance Areas, the provisions of this Section 14.5(d) shall apply. For purposes of this section, "construction defect action" shall have the same meaning as set forth in section C.R.S. Section 38-33.3-303.5(1)(b)(I). The Board shall comply with the following steps, which are in addition to all other notices and requirements imposed by applicable law, including without limitation to C.R.S. 38-33.3: (i) prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the executive board shall mail or deliver written notice of the commencement or anticipated commencement of such action to each Owner at the last known address described in the Association's records, which notice shall contain the required disclosures set forth in C.R.S. Section 38-33.3-303.5(1)(c)(II) and state a description of the following: the nature of the action and the relief sought, and the expenses and fees that the Board or Association anticipates will be incurred in prosecuting the action. Nothing in this Section shall be construed to: (i) require the disclosure in the notice or the disclosure to an Owner of attorney-client communications or other privileged communications; (ii) permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or (iii) limit or impair the authority of the executive board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

(e) Dispute Resolution Procedures.

(i) Notice; Negotiation. For any claim governed by this Section 14.5, whether in tort, contract, or statutory, or the election to proceed under this Section 14.5(e) and including any claims against the Association's or the Declarant's managers, members, officers, directors, employees, and/or agents (the "Claim"), the claimant ("Claimant") shall, in addition to the requirements set forth elsewhere in this Declaration, give notice to the other Person against whom the claim is asserted ("Respondent"), setting forth: the nature of the Claim; the basis or reason for the claim; any other material information regarding the claim; the specific relief and/or proposed remedy sought; and the intent to invoke this Section (the "Notice of Claim"). A Claimant may not deliver such notice during any cure or enforcement period pursuant to Section 14.2. Claimant and Respondent shall use good faith efforts to resolve the Claim through negotiations following delivery of the Notice of Claim, pending mediation pursuant to Section 14.5(e)(ii) below.

(ii) Mediation. The Claim shall first be submitted to non-binding mediation before a mediator selected by the parties. The cost of the mediation shall be borne equally by all parties. Mediation shall be a condition precedent to arbitrating any dispute. The mediation shall occur within forty-five (45) days' following delivery of the Notice of Claim ("Mediation Period"). In the event that mediation is unsuccessful, either party may demand

arbitration pursuant to Section 14.5(e)(iii) within thirty (30) calendar days of the date of the mediation.

(iii) Arbitration. The Declaration and this Supplemental Declaration are transactions involving interstate commerce and shall be governed by the Federal Arbitration Act. Following the Mediation Period and a written demand for arbitration, the Claim shall be resolved by arbitration administered by the American Arbitration Association in accordance with the current Construction Industry Arbitration Rules with an Arbiter appointed by Declarant. The costs of the arbitration shall be borne equally by the parties, subject to reallocation by the Arbiter. Any arbitration award may be enforced through entry of judgment by any court having jurisdiction thereover. Exclusive venue for any arbitration proceeding shall be in El Paso County, Colorado.

(iv) Construction Defect Actions. In the event any Action asserting construction defects in a townhome, Association Property, and/or a Maintenance Area provided for in C.R.S. Section 13-20-802.5 (construction defects), the provisions of this Section 14.5(e)(iv) shall also apply. If any of Claimant's claims relate, in any way, to any work completed by any of Respondent's subcontractors or any materials and/or equipment provided by any of Respondent's suppliers, Respondent, in its sole discretion, may join such subcontractors and/or suppliers to any arbitration proceeding with Claimant. The sole manner which may be used to establish breach of any of Respondent's obligations under this Declaration, any obligations which may exist by law or reason of any statute, any applicable industry standards, and/or Claimant's damages, including, but not limited to, appropriate repair costs, shall be through the testimony of a homebuilder currently licensed by the Pikes Peak Regional Building Department who has built and sold at least fifty (50) homes with a sales price exceeding \$400,000 in the two (2) calendar years immediately preceding the calendar year in which the claim is brought. The Arbiter shall completely exclude the testimony of any tendered expert who does not meet the foregoing qualifications.

(v) Amendment. The terms and each and every provision of Articles 14 and 15 of this Declaration inures to the benefit of Declarant, are enforceable by Declarant and shall not ever be amended without the written consent of Declarant and without regard to whether Declarant owns any portion of the Community Area, any Lots and/or the status of the Period of Declarant Control. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF ARTICLES 14 AND 15 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE LOTS AND TOWNHOMES AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN ARTICLES 14 AND 15, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE LOTS AND TOWNHOMES FOR THE PRICE PAID BY THE ORIGINAL PURCHASERS. THIS PROVISION IS IN ADDITION TO AND NOT CONTRARY TO THE TERMS OF ARTICLE 15 CONCERNING ALL OTHER AMENDMENTS TO THIS DECLARATION.

(f) Accrual of Claims. In the event of any amendment of any provision of this Article in violation of Section 14.5(e), or in the event Section 14.5(e) is deemed unenforceable, then and in such event any amendment or modification of the terms of this Article 14 shall only apply prospectively, to claims that accrue following the date of such amendment or modification.

14.6 **Violations Constitute a Nuisance.** Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

14.7 **Violations of Law.** Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

14.8 **Remedies Cumulative.** Except as expressly stated herein, each remedy provided under the Association Documents is cumulative and not exclusive.

14.9 **Costs and Attorneys' Fees.** In addition to any other rights provided herein and not by way of limitation thereof, any party which seeks to enforce the Association Documents and prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees. For each claim or defense, including but not limited to counterclaims, cross-claims and third-party claims, and except as otherwise provided herein, in any legal proceeding to enforce or defend the provisions of CCIOA or the Association Documents, the prevailing party shall be awarded on such claim the prevailing party's reasonable collection costs and attorneys' fees and costs incurred in asserting or defending the claim. For any failure to comply with the provisions of CCIOA or any provision of the Association Documents other than the payment of Assessments or any money or other sums due to the Association, the Association, any Owner or any class of Owners adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorneys' fees and costs incurred as a result of such failure to comply without the necessity of commencing a legal proceeding.

In connection with any claim in which an Owner is alleged to have violated a provision of CCIOA or a provision of the Association Documents and in which the Owner prevails because the Owner did not commit the alleged violation: (i) the Owner shall be awarded the Owner's reasonable attorneys' fees and costs incurred in asserting or defending the claim; (ii) the Association shall not be awarded court costs and attorneys' fees; and (iii) the Association shall be precluded from allocating to the Owner's account with the Association any of the Association's costs or attorneys' fees incurred in asserting or defending the claim. Nothing in the Association Documents shall be construed to mean that an Owner shall be deemed to have confessed judgment to attorney's fees or collection costs.

14.10 **Limitations.** Notwithstanding any other provision of this Article, no claim or proceedings may be initiated after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitation or statute of repose.

14.11 **Liability for Failure of Association to Maintain an Action.** 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 if the following criteria are satisfied: (i) the director or officer was acting within the scope of his or her duties; (ii) the director or officer was acting in good faith; and (iii) the act or omission was not willful, wanton or grossly

negligent.

14.12 Severability. All provisions of this Article are severable. Invalidation of any of the provisions of this Article, by judgment, court order or otherwise, shall in no way affect or limit the effectiveness of any other provisions of this Article, all of which shall remain in full force and effect.

ARTICLE XV

MISCELLANEOUS

15.1 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years after the date when this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by agreement of the Owners with at least sixty-seven percent (67%) of the voting power of the Association, in the manner provided in CCIOA Section 38-33.3-218.

15.2 Amendment of Declaration by Declarant or the Association. Declarant is hereby granted the unilateral authority to amend this Declaration as follows:

(a) Until the first Lot subject to this Declaration has been conveyed by Declarant to an Owner other than a successor Declarant, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

(b) Declarant may amend the Declaration in accordance with Article 10 as necessary to exercise any of the development rights set forth in Article 10 or elsewhere in this Declaration.

15.3 Amendment of Declaration by Members. Expressly subject to the additional specific requirements contained in Section 14.5(e) and Section 15.4, each setting forth specific additional requirements and circumstances for Declarant consent, this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members with at least sixty-seven percent (67%) of the voting power of the Association, in accordance with the requirements of CCIOA Section 38-33.3-217. Every amendment to the Declaration must be recorded in the County and if effective only upon recordation.

15.4 Required Consent of Declarant to Amendment. Any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall not terminate when Declarant conveys the last Lot in the Community Area. Each Owner and the Association expressly acknowledge Declarant's consent right provided for in this Section and that Declarant's consent right includes without limitation each provision contained in Articles 14 and 15 of this Declaration.

15.5 Special Rights of First Mortgagees. Any First Mortgagee, upon filing a written request therefore with the Association, shall be entitled to: (a) receive written notice from the Association of any default by the Owner indebted to such First Mortgagee in the performance of the Owner's obligations under the Association Documents, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) upon request, receive a copy of financial statement, within ninety (90) days following the end of any fiscal year of the Association; (d) receive written notice of all meeting of Members; (e) designate a representative to attend any meeting of Members; (f) receive written notice of abandonment or termination of the Association or of this Declaration; (g) receive notice of any amendment to this Declaration, the Articles of Incorporation or the Bylaws; (h) receive written notice of termination of any agreement for professional management of the Association of the Association Properties following a decision of the Association to assume self-management of the Association Properties; and (i) receive written notice of any damage to the Association Properties if the cost of reconstruction exceeds Ten Thousand and 00/100 Dollars (\$10,000.00), and of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

15.6 Priority of First Mortgage Over Assessments. Each First Mortgagee who recorded its First Mortgage before Assessments have become delinquent and who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot other than as provided in CCIOA. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, on the date of receipt of a Certificate of Purchase from the Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the Sheriff's Certificate of Purchase, as the case may be.

15.7 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any one or more First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may become or have become a charge against any of the Association Properties, and may pay any overdue premiums on hazard insurance policies for any Association Properties, or may secure new coverage if the insurance policy on any Association Properties lapses, and the First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

15.8 Evidence of Required Approvals. Whenever the validity of any amendment to or revocation of this Declaration is conditioned upon voting by a stated percentage of Members and approval by First Mortgagees or Agencies, or both, the recorded document implementing the amendment or revocation shall contain a certification by an officer or the Association that the approvals of the required percentages of Members, First Mortgagees and Agencies were obtained. The Association shall keep on file in its offices such proxies, letters, minutes of meetings or other documentation as may be required to evidence compliance with applicable approval requirements, but the officer's certificate on the recorded instrument shall be sufficient public notice of compliance.

15.9 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail. If served by mail, each notice shall

be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second (2nd) business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

15.10 Persons Entitled to Enforce Declaration. The Association (acting by authority of the Board) or any Member (acting on his own behalf), shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration or the other Association Documents, unless otherwise expressly stated herein. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents and at law or in equity.

15.11 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

15.12 Violations of Law. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Community Area, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

15.13 Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

15.14 Costs and Attorneys' Fees. In addition to any other rights provided herein and not by way of limitation thereof, the party which seeks to enforce the Association Documents and prevails shall be awarded its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees in any action or proceeding under the Association Documents.

15.15 Limitation on Liability. The Association, the Board, the Architectural Committee, Declarant, and any member, agent, employee, or representative of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent permissible by Colorado law, including without limitation, circumstances in which indemnification is otherwise discretionary under Colorado law, in accordance with the subject to the terms and limitations contained in the Bylaws.

15.16 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Community Area, or any Improvements thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended

use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

15.17 Liberal Interpretation. The provisions of the Association Documents shall be liberally construed as a whole to effectuate the purposes of the Association Documents. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

15.18 Governing Law. The Association Documents shall be construed and governed under the laws of the State of Colorado.

15.19 Severability. Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

15.20 Number and Gender. Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural, the singular and the use of any gender shall include all genders.

15.21 Captions for Convenience. The titles, headings and captions used in the Association Documents are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

15.22 Mergers and Consolidation. The Association may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Community Area together with the covenants and restrictions established upon any other property, as one plan. Notwithstanding the foregoing, the Association shall have the right to merge into one association upon a vote of the respective boards of directors of such associations.

15.23 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

15.24 Interpretive Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intent or meaning of any of this Declaration, the Declarant, during the Period of Declarant Control, and thereafter, the Association (the "Interpretive

Authority”), shall determine the proper construction of the provisions in question and shall set forth in a written instrument duly acknowledged by the Interpretive Authority and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect, and application of the provision. This determination will thereafter be binding on all parties so long as it is neither arbitrary nor capricious. Nothing contained herein will permit the Association to interpret the provisions of Section 14.5 in any manner that limits Declarant’s authority and/or rights.

ARTICLE XVI

DISCLOSURES

16.1 Statutory Disclosure. C.R.S. Section 38-35.7-101 requires that the following disclosure be made to you:

SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

16.2 Plat and Development Plan Restrictions. The Development Plan and Plats may each contain general notes and restrictions with which each Owner should familiarize itself.

[Signature Page – Declaration of Covenants, Conditions, Restrictions and Easement for
Palomino Ranch Patio Homes]

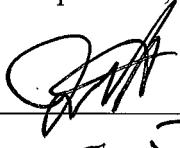
IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective as of the Effective Date.

DECLARANT:

Master Bilt Homes, Inc.,
a Colorado corporation,

ATTEST:

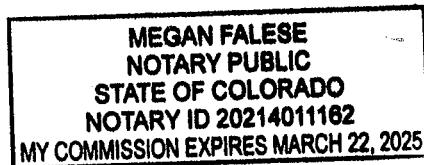
By: _____
Name: _____
Its: _____

By: 
Name: JAMES A STITTNER.
Its: Secretary

STATE OF COLORADO)
)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 30th day of August, 2022
by James A. Stittner as Secretary of Master Bilt
Homes, Inc., a Colorado corporation.

Witness my hand and official seal.
My Commission Expires: 03-22-25.




Megan Falese
Notary Public

CONSENT

This Declaration is hereby consented to by **Palomino Ranch Patio Homes Homeowners Association, Inc.**, a Colorado nonprofit corporation.

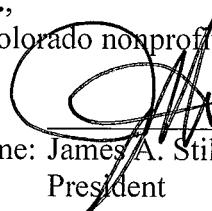
**Palomino Ranch Patio Homes Homeowners Association,
Inc.,**

a Colorado nonprofit corporation

By:

Name: James A. Stiltner

Its: President

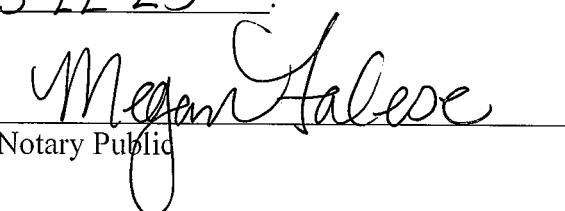


STATE OF COLORADO)
COUNTY OF EL PASO)
)
)
)

The foregoing instrument was acknowledged before me this 30th day of
August, 2022, by James A. Stiltner as President of **Palomino Ranch Patio Homes
Homeowners Association, Inc.**, a Colorado nonprofit corporation.

Witness my hand and official seal.

My Commission Expires: 03-22-25.


Megan Falese
Notary Public

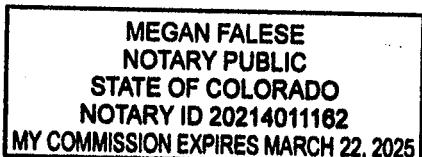


EXHIBIT A
TO
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR PALOMINO RANCH PATION HOMES

LEGAL DESCRIPTION OF THE COMMUNITY AREA

Lots 1 through 8, Block 1, Lots 1 through 8, Block 2, Lots 1 through 8, Block 3 and Lots 1 through 7, Block 4, and Tract A, Palomino Ranch Patio Homes, in the City of Colorado Springs, County of El Paso, State of Colorado.