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El Paso County Clerk & Recorder: Index in Grantee Indexes under Villas at Claremont Ranch Townhomes and Villas at Claremont Ranch Townhome Owners Association, Inc., and under Grantor as PHI Real Estate Services, LLC, a Colorado limited liability company

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OF
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EXHIBITS

- Exhibit A** Legal Description for Phase I
- Exhibit B** Common Area/Limited Common Area
- Exhibit C** Proportionate Interest
- Exhibit D** Easements, Exceptions and Plat

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

VILLAS AT CLAREMONT RANCH TOWNHOMES

THIS DECLARATION, made and entered as of the date shown below, by PHI Real Estate Services, LLC, a Colorado limited liability company (hereinafter called “Declarant”) for itself, its successors and assigns.

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property described on *Exhibit “A”* attached hereto (hereinafter called the “Property”), and

WHEREAS, the Declarant desires to submit the Property to the covenants, terms and provisions hereof.

NOW, THEREFORE, the Declarant hereby declares that all of the Property, as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns. The Declarant further declares that the Project is a planned community created pursuant to the Colorado Common Interest Ownership Act (C.R.S. §38-33.3-101 et seq.) and any amendments, repeals or modifications of that Act (hereinafter called “CCIOA”).

I

DEFINITIONS

The terms used herein shall have the meanings stated in the CCIOA, except as otherwise provided herein:

1.1 “Association” shall mean and refer to the Villas at Claremont Ranch Townhome Owners Association, Inc., a Colorado nonprofit corporation, which has been or shall be

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organized under the laws of the State of Colorado prior to the conveyance of the first Lot in the Project, its successors and assigns.

1.2 “Association Documents” means the Declaration, Articles of Incorporation, Bylaws, Rules and Design Guidelines, if any.

1.3 “Board” means the Board of Directors of the Association and shall also be the “executive board” as defined under the CCIOA. Except as specified herein, or in the Association’s Articles of Incorporation or Bylaws or C.R.S. §38-33.3-303(3) or other provisions of CCIOA, the Board may act on behalf of the Association without any vote or consent of the members.

1.4 “Owner” means any person, corporation, partnership, association, contract sellers or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Lots. The term “Owner” shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined, or other person or entity having an ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. This term shall have the same meaning as “unit owner” under the CCIOA.

1.5 “Property” shall mean and refer to that certain real property described on *Exhibit “A”* attached hereto and incorporated herein by this reference, together with all appurtenances thereto and all improvements now or hereafter thereon,

1.6 “Common Area” shall mean and refer to that certain real property, together with any easements or other rights described on *Exhibit “B”* attached hereto and incorporated herein by this reference which includes all of the Property, together with all improvements located thereon and all common property owned by the Association, but excluding the Lots, together with all improvements and property thereon. Any common landscaping including landscaped strips between the driveways shall be deemed to be part of the Common Area even if located upon the Lots and shall be maintained, repaired and replaced by the Association.

1.7 “Limited Common Area” shall mean that portion of the Common Area assigned or allocated by the Declarant during the Period of Declarant Rights, and thereafter by the Board, for the exclusive use of the Owners of the Townhomes to which it is assigned, allocated or attached. Declarant intends that the drive in front of the garage shall be a Limited Common Area for that Unit. In addition, by illustration and not limitation, the Declarant during the Period of Declarant Rights may designate any of the following: privacy fences, doorsteps, balconies, porches, patios, entryways, decks, utility lines and sidewalks leading solely to a Townhome,

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which are located upon the Common Area. Limited Common Areas may be shown on *Exhibit "B"* attached hereto and incorporated herein by this reference or by any document recorded by the Declarant or by the Association after the Period of Declarant Rights.

1.8 "Lot" shall mean and refer to any of the lots shown on any recorded plat of the Property, together with all appurtenances thereto and improvements now or hereafter thereon. This term shall have the same meaning as "unit" under the CCIOA. The boundaries of any Lot may be relocated pursuant to C.R.S. §38-33.3-212. The boundaries of the Lots shall be shown on any recorded plat of the Property which shall be incorporated herein by this reference.

1.9 "Declaration" means this Declaration as contained herein and as it may be amended or supplemented from time to time as herein provided, which shall be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of the Declarant executing the Declaration. A copy of the Declaration shall be delivered to the assessor of the county in which the Property is located, after recording.

1.10 "Declarant" shall mean and refer to PHI Real Estate Services, LLC, a Colorado limited liability company, its agents, employees, contractors, successors and assigns to whom it expressly transfers all or any part of its rights as Declarant hereunder, in compliance with C.R.S. §38-33.3-304. The Declarant hereby reserves any and all "special declarant rights" and "development rights" as created or set forth in the CCIOA and any other rights as set forth herein. Any such rights shall apply to the Property and the Project and shall terminate as provided below. The "**Period of Declarant Rights**" means that period during which the Declarant, or persons designated by Declarant, may exercise the Declarant's Rights. The Period of Declarant Rights shall commence upon the recording of this Declaration and continue until twenty (20) years from the date on which this Declaration is recorded in the El Paso County, Colorado records, unless sooner terminated in writing by the Declarant. The "**Period of Declarant Appointment**" shall mean the period of time when the Declarant can appoint the Board of Directors and operate the Association, or as otherwise provided in Section 3.2 of this Declaration or the CCIOA.

1.11 "Member" shall mean and refer to every person or entity who holds membership in the Association or, following termination of the Project, of all former Townhome Owners entitled to distributions of proceeds under C.R.S. §38-33.3-218, or their heirs, personal representatives, successors or assigns.

1.12 "Mortgage" means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk and Recorder of the county in which the Property is located, and by which a Lot or any part thereof is encumbered. The term shall include a "security interest" as defined by the CCIOA.

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1.13 “First Mortgage” shall mean a Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). “First Mortgagee” means a mortgagee whose encumbrance is a First Mortgage.

1.14 “Mortgagee” means any person or entity, or any successor or assign thereof, which holds or owns a Mortgage.

1.15 “Project” means all of the Property, together with rights and easements related thereto, and improvements located on the Property and all rights, easements and appurtenances belonging thereto. This term shall have the same meaning as “common interest community” and “planned community” under the CCIOA. The Project will be described on the recorded plat which is described on *Exhibit* “D” attached hereto and which is incorporated herein by this reference; provided, however, the Declarant reserves the right to include additional Lots; the maximum number of possible Lots shall be ninety-nine (99). The Plat shall comply with C.R.S. §38-33.3-209.

1.16 “Architectural Control Committee” shall mean the committee of three (3) or more persons appointed by the Declarant or Association to review and approve the plans for all improvements constructed on the Property.

1.17 “Townhome” shall mean the residential dwelling improvement constructed and located upon a Lot.

1.18 “Owner’s Proportionate Share” or “Proportionate Interest” means that percentage of the total which is equal to such Owner’s fractional or percentage interest as set forth in *Exhibit* “C” attached hereto and incorporated herein by this reference. The percentage shall be based upon a comparison of the number of Townhomes in the Project as a fraction. Except as provided herein, these terms shall have the same meaning as “allocated interest” under the CCIOA.

1.19 “Improvements” shall mean and refer to all structures and any appurtenances thereto or components thereof of every type or kind, including buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, concrete, paving, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, mailboxes, exterior tanks, solar equipment, satellite dishes, and exterior air conditioning and water softener fixtures, and any alterations, changes or modifications to the

foregoing. "Improvements" shall also mean an excavation or fill the volume of which exceeds two (2) 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.

1.20 "Rules" shall mean and refer to the rules, regulations, policies and decisions of the Board, whether or not designated by the Board as "Rules".

II

PROPERTY RIGHTS IN THE COMMON AREA

2.1 Title to the Common Area. Subject to the limitations and restrictions of this Declaration, title to the Common Area shall be conveyed in fee simple, free and clear of all Mortgages except easements or other rights of record, including this Declaration, by the Declarant to the Association, prior to the conveyance of the last Lot in the Project.

2.2 Non-Division of Common Area. Except as provided in this Declaration, the Common Area shall remain undivided and shall not be subject to partition. By the acceptance of its deed or other instrument of conveyance or assignment, each Owner specifically waives his or her right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Area. 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 entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' 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 Common Area. 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' Common Area Easement of Enjoyment. Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, non-exclusive right and easement of enjoyment in and to the Common Area, including the right of ingress and egress to and from the Owner's Lot, his or her parking area, any public street, or any recreational facilities completed upon the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot without the necessity of additional reference.

2.4 Extent of Owners' Common Area Easement. The rights and easements of enjoyment created hereby shall be subject to any or all of the following:

(a) The right of the Association to enforce the restrictions contained in Article V of this Declaration and to promulgate and publish Rules which every Owner, his or her family members, guests, tenants, and contractors shall strictly comply with, including the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area if deemed necessary;

(b) The right of the Association, as provided in its Articles of Incorporation or Bylaws, to suspend an Owner's voting rights and the right to the use of the Common Area for any period during which such Owner is in default under this Declaration, including 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 Rules;

(c) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area;

(d) The right of the Association to grant easements and/or similar rights for utilities, access and related rights and to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes, subject to the provisions of C.R.S. §38-33.3-312, and subject to such conditions as may be imposed by the public entity; for example, if any interior streets are private and have not been built to city or county specifications and so might not be accepted by them;

(e) The rights of the Association as set forth in the Association's Articles of Incorporation and Bylaws, including to borrow money for the purpose of improving the Common Area and, subject to the provisions of C.R.S. §38-33.3-312, to mortgage said property as security for any such loan;

(f) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;

(g) The right of the Declarant (until termination of the Declarant's rights as set forth in Section 12.13 hereof) or the Association's Board (after termination of said period) to assign or allocate any part of the Common Area or Property or Limited Common Area for the exclusive use of a particular Owner; and

(h) The rights of the Declarant to grant easements as set forth in Section 2.5 hereof and other rights of Declarant as set forth in this Declaration.

2.5 Other Easements.

(a) Utility Easements. Notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Property for the purpose of installing, maintaining, repairing and replacing any utilities or related services, including any gas, electric, water or sewer line, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television antenna system, or for other public purposes consistent with the intended use of the Property under this Declaration. The foregoing easements shall include the right of ingress and egress, the right to erect and maintain the necessary pipes, wires, poles and other equipment, subject to the restrictions of Section 7.18 hereof, and the right to enter into agreements relating to such utility service and easements; all of which shall be binding upon the Association and the Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Property without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Property, including any easements granted in the recorded subdivision map. The rights reserved herein for Declarant shall pass to the Association upon the termination of the Period of Declarant Rights, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the Association and be assumed by it in place of the Declarant. Any consideration for any such easement shall be delivered to and become the property of the Association, whether the grant of easement was made by the Declarant or by the Association. The rights and easements described in this Section 2.5(a) shall be for the benefit of the Declarant and shall constitute real property interests running with the land.

(b) Association Easement. A non-exclusive easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Area, Limited Common Area and/or any Lot, as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration or otherwise, including any maintenance required or permitted hereunder, any access or uses described in this Declaration, and any maintenance, repair or replacement of any facilities on the Common Areas; 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. The Association may authorize use of this easement by Owners, contractors, and others pursuant to Rules adopted by the Board.

(c) Emergency Easement. A non-exclusive easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the Property and Common Area in the performance of their duties.

(d) Common Wall Easement. Each Owner, his or her 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 common wall repair or maintenance, in accordance with Section 5.5 of Article V, 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.

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

(f) Easement for Encroachments. If any part of the Common Area or any Common Area 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 Common Area, 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 encroachments caused by error in the original construction of any Townhome or related structure constructed on the Property, by error in the plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any portion thereof. Such encroachments and easements shall not be considered or construed to be title defects or encumbrances either on the Common Area 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.

(g) Easement for Foundations. Owners of adjoining Lots 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 Common Area, and for the benefit of the Common Area shall also exist.

(h) Easement for Ingress and Egress. Subject to the provisions of this Declaration, each Owner, his or her agents and guests are hereby granted a perpetual non-exclusive easement over any streets, roadways, driveways, and sidewalks, which are located upon the Common Area or the Limited Common Area, for the purpose of vehicular and pedestrian ingress to and egress from such Owner's Lot. If any of the streets or roadways upon the Property are private streets, Declarant shall have the right to relocate any portion of them, 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 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 or roadways for ingress, egress and the installation of utilities to any part of the Property and over, under and through the Common Area for the exercise of any special Declarant right hereunder or under the CCIOA.

2.6 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, guests, or contract purchasers who reside on his or her Lot. Each Owner shall, to the extent permitted by law, be liable for any damage done to the Common Area by his or her family, tenants, guests, or contract purchasers and for any breach of the Declaration and/or the Association's Rules by such persons.

2.7 Non-Dedication of Common Area. Declarant, in recording this Declaration, has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for recreation and other related activities. The Common Area 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.

2.8 Recorded Easements. The Project, and all portions thereof, shall be subject to all recorded licenses and easements including any as shown on the Plat recorded simultaneously with this Declaration and additionally subject to those recorded matters set forth on *Exhibit "D"* attached hereto and incorporated herein by this reference. The Project is subject to recorded easements, including those described in the Plat and Development Plan, such as Sight Easements which may prohibit or restrict Improvements and vegetation in sight triangles on certain Lots as shown on the Plat. Notwithstanding any provision of this Declaration, the covenants, easements and other provisions of the recorded Plat for this Project (including this Declaration and its

Development Plan) shall prevail over the plat (including covenants, easements, development plan and other recorded documents) for Claremont Ranch Filing No. 7 recorded in Reception No. 205071100.

2.9 Detention Facilities. The Declarant will construct a detention pond on Tract E as shown on the Development Plan. The detention pond shall include the full spectrum drainage pond as well as access, paths, outlets, inlets, and other portion of the drainage facilities (“Detention Facilities”). A “Private Detention Basin Maintenance Agreement and Easement” (“Detention Basin Agreement”) has been required between and among the Declarant, the Association, and the Board of County Commissioners of El Paso County, Colorado. The Detention Basin Agreement shall be recorded in the real property records of the Clerk and Recorder of El Paso County, Colorado, and the provisions of the Detention Basin Agreement shall be incorporated herein by this reference. The Declarant and the Association, their successors and assigns, hereby reserve an easement and right to enter upon any Tract, Common Area, Lot or easement, or related area for the purpose of fulfilling the Detention Basin Agreement described above. The Detention Facilities shall be initially maintained, repaired and replaced by the Declarant, its successors and assigns but such responsibility shall be subsequently transferred to and assumed by the Association and the Declarant, its successors and assigns shall have no responsibility or liability thereafter. Owners are advised to review the Drainage Report on file with El Paso County which is incorporated herein by this reference.

2.10 Avigation Easement. The Project is located in close proximity to the Colorado Springs Airport/Peterson Airport. The Declarant intends to record an Avigation Easement which will allow aircraft flights over the Project and the resulting noise. The Avigation Easement may restrict lighting and other Improvements within the Project. Owners are advised to review the Noise Report on file with El Paso County which is incorporated herein by this reference and hereby release the Declarant, its successors and assigns from any claims relating to noise or other matters related to the airports and airplane operations.

III

MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. The following shall be members of the Association: the Declarant (so long as the Declarant owns a Lot) and every Owner of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. Except as provided herein and after the Period of Declarant Rights, each Lot shall have voting rights based upon that Owner’s Proportionate Interest. Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint a Board of Directors and to operate the Association until the Period of Declarant

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appointment is terminated, and the Association shall not begin to function through its other Members until such time, unless the Declarant otherwise consents in writing. Members who are not in good standing shall not be counted for quorum or approval percentages under the Declaration, Articles of Incorporation and Bylaws.

3.2 Declarant Rights Regarding Board. The Association shall have one class of membership who shall be the Owners and the Declarant. The Owners shall elect all the members of the Board following the termination of the Period of Declarant Appointment as set forth as follows:

(a) Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint the Board of Directors and to control the Association as follows: During the Period of Declarant Appointment, the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board. The period during which the Declarant may appoint the Board shall commence upon recording of this Declaration and shall terminate no later than the earlier of: (1) sixty days after conveyance of seventy-five percent (75%) of the Lots that may be created to Owners other than a Declarant; (2) two years after Declarant has last conveyed a Lot in the ordinary course of business; or (3) two years after any right to add new Lots was last exercised. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Appointment, but in that event, the Declarant may require, for the duration of the Period of Declarant Rights, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

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

(c) Except as otherwise provided above, not later than the termination of any Period of Declarant Appointment, the Owners shall elect a Board of at least three (3) 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 Appointment.

(d) Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a sixty seven percent (67%) vote (based upon Proportionate Interests) of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the 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 C.R.S. §38 33.3 303(9), to the extent such property and items are in Declarant's possession at that time.

IV

COVENANT FOR ASSESSMENTS

4.1 Creation of the Obligation for Assessments. Subject to the provisions of this Declaration, including Section 4.8(a) hereof, each Owner, for each Lot owned within the Property, 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, charges, fees, fines and other sums which are described in this Declaration and which shall be both a personal obligation of the Owner and a lien against his or her Lot as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their Lot. The personal obligation for delinquent assessments and sums 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, charges, fees and other sums provided for herein by non-use of the Common Area or the facilities contained therein, by abandonment or leasing of his or her Lot, or by asserting any claims, defenses or other matters 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 or her Lot, as well as all charges for separately metered utilities servicing his or her Lot. The charges for any utilities which are master metered, if any, shall be included in the annual common expense assessments levied by the Association.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, and welfare of the Owners and to fulfill the purpose and duties of the Association, including the improvement and maintenance of the

Common Area, the Lots and any other areas or Improvements, as more specifically provided herein.

4.3 Annual Assessments. The annual assessment shall specifically include all Common Expenses as defined by the CCIOA and the following:

(a) expenses of management of the Association and its activities, including any expenses of any shared, reciprocal easements, if any;

(b) taxes and special assessments upon the Association's real and personal property including the Common Area;

(c) premiums for all insurance which the Association is required or permitted to maintain and any other expenses connected with such insurance;

(d) water and other common utility and sewer service charges; and any other common expenses, including any common trash collection and snow removal if approved by the Board;

(e) landscaping and care of the Common Area and any facilities or Improvements thereon, except to the extent such maintenance of the Common Area is the responsibility of a governmental entity;

(f) such repairs and maintenance which are the responsibility of the Association;

(g) wages for Association employees;

(h) legal and accounting fees for the Association;

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

(j) a working capital fund;

(k) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of common property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by special assessments;

(l) the creation of reasonable contingency reserves for any applicable insurance deductibles; and

(m) 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.

The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof. The Association may enter into cooperative arrangements for provision of services with other homeowner associations in the surrounding area and may assume responsibility for that part of the cost fairly attributable to this Project.

4.4 Limit on Annual Assessments.

(a) The annual assessments shall be based upon an annual budget adopted, subject to C.R.S. §38-33.3-303, as follows: Within ninety (90) days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by Owners of two-thirds (2/3) of the Lots, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Owners. The budget should include the expenses set forth in Section 4.3 hereof. Unless included in the current or past approved budgets, the Association shall have no obligation for any expense, including any maintenance, repair, replacement or restoration of any item or the provision of any service.

(b) Any surplus funds of the Association remaining after the payment of or provision for Common Expenses and any prepayment of or provision of reserves shall be applied as the Board in its sole discretion determined appropriate, which is not required to credit or pay it to the Owners.

4.5 Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures

and personal property related thereto, or any shortfall in the Association's funding of its operations.

4.6 Procedure for Assessment Under Section 4.5. Any assessment under Section 4.5 shall require the vote, pursuant to a meeting described below, 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, and not less than sixty-seven percent (67%) of the First Mortgagees who are voting at that meeting. Written notice of any meeting called for the purpose of taking such action shall be sent to all Owners and First Mortgagees not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all the votes of membership (based upon Proportionate Interests) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.7 Rate of Assessment. Except as provided herein, including Section 4.8(a) hereof, both annual and special assessments shall be set at the Owner's Proportionate Share, as shown on *Exhibit "D"* attached, sufficient to meet the expected needs of the Association. Assessments shall be applicable to all Lots containing a "Completed Townhome" as defined in Section 4.8(a) below.

4.8 Assessment Procedure.

(a) Annual Assessments. No later than thirty (30) days before the beginning of each annual assessment period, the Board of Directors of the Association shall set the total annual assessment based upon advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. That annual assessment shall be payable in monthly installments on the first day of each successive month, unless the Board otherwise directs. The Association shall cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual assessment. The first annual assessment upon the Lots hereunder shall commence upon the first day of the first month following conveyance of the first Completed Townhome to an individual purchaser; it shall be adjusted according to the number of months remaining in the calendar year; provided, however, notwithstanding any contrary provision of any Association Document, including this Declaration, the Articles of Incorporation, the Bylaws or the Rules, the annual and special assessments and any other sum hereunder shall not commence upon any Lot, whether owned by the Declarant or any other Owner, and shall not be the obligation of the Declarant or such Owner, unless and until a

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Townhome has been fully completed on that Lot (a “Completed Townhome”), which shall be evidenced by a final inspection by the Regional Building Department and the installation of carpeting within the Completed Townhome.

(b) Special Assessments and Other Sums. Special assessments and other sums imposed hereunder shall be due and payable on the date specified by the Board in written notice to each Owner, but such date shall not be less than ten (10) days after such notice is sent. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of an Owner, his or her family, tenants or guests, or any breach by any of such parties of any of the provisions of this Declaration, the Association’s Bylaws or the Association’s Rules, or other sum imposed by the Board, and the same is not paid for by insurance, the cost thereof shall be deemed to be an additional assessment against such Owner and his or her Lot if containing a Completed Townhome pursuant to Section 4.8(a) hereof, and shall be enforceable as provided herein; any such assessment shall not require any vote of the Members. Additionally, the Board may impose assessments against particular Owners and Lots containing Completed Townhomes pursuant to C.R.S. §38-33.3-315(3)(a) and (b), except as provided by Section 4.8(a) hereof.

(c) Procedure. Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner or his or her Lot for such assessment, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice is given. The Association’s acceptance of any partial payment shall not waive, affect or impair its right to full payment of any assessment or sum. The Board may apply any payment to such assessments, charges, interest or fees as are the oldest or most appropriate as determined by the Board in its sole discretion.

4.9 Certificate of Payment. The Association shall furnish to an Owner or such Owner’s designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association’s registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner’s Lot. Upon payment of such fees as requested by the Association’s Rules, the statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request, unless the requesting party has actual knowledge to the contrary or the request was not made in good faith as determined by the Board in its sole discretion.

4.10 Effect of Non-Payment of Assessments - Remedies of the Association.

(a) General. Except as provided by Section 4.8(a) hereof, any assessments upon a Completed Townhome which are not paid when due shall be delinquent. If any such assessment is not paid when due, the Association may impose a late charge/administrative fee not to exceed the amount set forth in the Association's Rules. Any assessments upon Completed Townhomes which are not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot, and/or may suspend the delinquent Owner's right to vote and the right to use any facilities within the Common Area for any period during which any assessment against his or her Lot remains unpaid. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the expenses, late charges, and costs of the action.

(b) Lien. Except as provided by Section 4.8(a) hereof, any unpaid assessment, charge, fee or other sums assessed against an Owner or his or her Lot containing a Completed Townhome, including with interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge of not to exceed the amount set forth in the Association's Rules, court costs and all other collection costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a perpetual continuing lien, from and after the recording of this Declaration, in favor of the Association, upon such Lot against which each such assessment, charge, fee or other sum is made, and such lien and assessment shall constitute an independent, affirmative covenant, payable without set-off or deduction. Such lien shall originate and relate back to the date on which this Declaration is recorded in the real property records of El Paso County, Colorado. The Association's acceptance of any partial payment shall not waive, affect or impair its right to full payment of any assessment or sum. The Board may, in its discretion, apply any payment first to interest, the late charge, any costs or fees, and then to the assessment payment first due. The Board may enforce such lien by filing with the Clerk and Recorder of the county in which the Property is located a statement of lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of delinquent assessments then owing. The lien statement may be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof may be mailed to the Owner of the Lot, at the address of the Lot or at such other address as the Association may then have in its records for the Owner of the Lot. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorneys' fees, administrative charges and interest have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may proceed to the foreclosure of mortgages under the statutes of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the

Association from suing the Owner personally liable therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums which are not fully paid when due. Any recorded lien may be released by recording a Release of Lien executed by an officer or authorized agent of the Association. In addition, the Association shall have the right to a statutory lien under C.R.S. §38-33.3-316 upon Completed Townhomes. Pursuant to C.R.S. §38-33.3-316(4), recording of this Declaration constitutes recorded notice and perfection of the Association's lien for assessments, and notwithstanding any other provision of this Declaration, no further recordation of any claim of lien for assessments is required.

(c) Authority. Each such Owner, by his or her acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of foreclosure.

4.11 Working Capital. The Association shall require an Owner who purchases a Lot from Declarant to pay to the Association an amount equal to two (2) times the amount of the estimated monthly assessment which sum shall be held by the Association as and for working capital. Such sum shall not be refundable to such Owner but shall be placed in a segregated account for use by the Board to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Furthermore, payment of such sum shall not relieve an Owner from making the regular payment of assessments as the same become due. Upon termination of the Period of Declarant Rights, the Declarant shall pay the working capital for any unsold Lots in the Project, but shall be reimbursed by subsequent purchasers. During the Period of Declarant Rights, the Declarant may not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits.

4.12 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent assessment was due, except as provided in this Declaration. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such mortgage or any such executory land sales contract, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such

executory land sales contract shall extinguish the lien of assessment charges which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including any deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract. No such sale, transfer, foreclosure, or any above-described proceeding in lieu or in cancellation thereof, shall relieve any Lot from liability for any assessment charges becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Lot for assessments due during the period of his or her ownership, nor from the provisions of C.R.S. §38-33.3-316.

4.13 Notice to Mortgagee and Inspection of Books. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under this Declaration and/or the Bylaws of the Association, which is not cured within sixty (60) days after the Board has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall make available to Owners and Mortgagees current copies of the Declaration, Bylaws, other Rules concerning the Project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Because the Project contains fifty (50) or more Lots, the Association shall provide an audited, annual financial statement to any First Mortgagee making a written request for it within a reasonable time following such request. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. The Association shall keep financial records sufficiently detailed to enable the Association to provide the certificates of assessments described in this Declaration.

4.14 Homestead. The lien of the Association assessments 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 said assessment lien. The Association's lien for assessments under this Declaration is superior to all other liens and encumbrances, including statutory liens for mechanics or materialsmen or income taxes and other taxes to the extent permitted by law and/or statute, but excluding the lien for First Mortgages as set forth in Section 4.12 hereof.

4.15 Exempt Property. The following Property subject to this Declaration shall be exempt from the assessments created herein: (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area.

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V

MAINTENANCE

5.1 Association Maintenance. To such standards and necessity as determined by the Board in its sole, absolute discretion, the Association shall provide such maintenance and repair as follows:

(a) Paint, repair, replace, maintain and care for the Townhome's roofs, gutters, downspouts and exterior building surfaces as defined by the Board in its sole discretion, but excluding glass surfaces, exterior light bulbs, doors (including garage doors, except that the Association may do periodic painting of exterior doors), screens, windows, foundations, exterior walls, foundation slabs, fences, porches, decks, patios, balconies, concrete sidewalks, driveways, porches and patios, utility lines and equipment whether located on the Lot or the Common Area but serving only that Townhome, all of which shall be each Owner's responsibility except otherwise determined in writing by the Association's Board of Directors and except for common painting of exteriors. An Owner shall not paint or change the appearance of the exterior of his or her Townhome without the prior written approval of the Board. The Association shall paint or restrain the exterior of all Townhomes as often as necessary to keep such exterior from having a weather-beaten or worn-down appearance.

(b) All repair, replacement, improvement and maintenance of the Common Area and all Improvements located thereon, including any private streets, landscaping, sprinkler system, any parking spaces, roadways, utility lines (including any common utilities within the Common Area which serve multiple Townhomes (but any line serving only one Townhome even if located outside of the exterior walls of the Townhome shall be the responsibility of the Owner using that line), any storm sewer system, perimeter fences and perimeter walls including the noise wall/fence, the detention pond including responsibility for the Detention Basin Agreement, or any drainage structures or facilities or public Improvements to the extent applicable and set forth in C.R.S. §38-33.3-307(1.5), any common light fixtures, common sidewalks, and other common Improvements located on the Common Area but notwithstanding the foregoing, the Association and the Owners shall not be responsible for maintenance, repair and replacement for any drainage structure, detention pond, storm sewer, utility line, trail, sidewalk, or other item or Improvement which is the responsibility of any public or private utility company or other public entity.

(c) Notwithstanding any contrary provisions of this Declaration or other documents, the Association shall maintain, repair, restore, replace, regulate and otherwise treat the following as if constituting part of the Common Area: any portion of a Lot containing

common amenities or common Improvements and which may include, by illustration and not limitation, any common landscaping and sidewalk located at the front and sides of certain Lots, and the common landscaping located at the rear of certain Lots, together with the Improvements related to such area. The Board of Directors shall provide insurance coverage and other services to those areas. Owners shall not paint, alter, expand, change, or modify such areas in any manner, nor construct any Improvement or item thereon, without the prior written approval of the Board. The Board may, in its discretion, regulate the use, maintenance and expenses of such areas, by rule or otherwise, and may provide insurance and other services to such areas at the expense of the Owners thereof or the Association as determined by the Board. Easements are hereby reserved and granted over, under, above and through the Property, including the Lots, and for the purposes set forth in this Section and Article II of this Declaration.

(d) 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; provided, however, insurance coverage shall not expand the Association's maintenance obligations set forth in this Declaration.

(e) The Association or the Owners shall maintain the common landscaping, drainage, and sprinkler systems in such a fashion that the soil surrounding the foundations of the buildings and other Improvements shall not become so impregnated with water that they cause expansion of or shifting of the soils supporting the Improvements or other damage to the Improvements and do not impede the proper functioning of the drainage, landscaping, or sprinkler systems as originally installed. Such maintenance shall include where necessary the removal or replacement of improperly functioning landscaping, drainage, or sprinkler system elements and shall also include preventing ponding and regrading and resurfacing where necessary to provide for adequate drainage and preventing Owners from installing landscaping or using water on the Lots in such a way as to endanger the structural integrity or the stability of any of the landscaping, drainage or sprinkler systems, the Townhome or the other Improvements upon the Lots or Common Area. The Association shall indemnify the Declarant as to any breach of this provision.

(f) 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 Willful or Negligent Damage. In the event that the need for maintenance or repair described in Section 5.1 of this Article is caused, in the sole discretionary determination of the Board of Directors, through the willful or negligent acts or omissions of any Owner, his or her family, guests, tenants, contractors, or invitees, or other persons or parties acting with the consent of any of the foregoing, including 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 to which the Lot of such Owner is subject and shall become a lien against such Owner's Lot as provided in this Declaration.

5.3 Access at Reasonable Hours. For the purpose of performing the maintenance referred to in Section 5.1 of this Article and inspections related thereto, the Board of Directors of the Association, through its duly authorized agents, contractors or employees 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 Board of Directors or its agents, contractors or employees 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 on account of its gross negligence or wanton and willful misconduct.

5.4 Owner Maintenance. Except as provided in Section 5.1 of this Article, the Owner shall be responsible for all other maintenance, repairs, replacements and Improvements on that Owner's Lot, including maintenance of the Owner's Townhome, and/or the Owner's Limited Common Area and any fixtures, furnishings, furniture, personal property, equipment and appliances located thereon. Limited Common Areas shall be repaired, replaced, maintained and kept in good appearance by the Owners thereof; provided, however, the Board may provide services to the Limited Common Areas such as snow removal and/or concrete or asphalt repair to driveways and sidewalks, and/or repairs, replacement and maintenance to any common privacy fences, to the extent that the Board in its sole discretion determines that such services are a benefit to all Owners and should be paid as a Common Expense. All utilities, fixtures and equipment installed within a Townhome or serving only that Townhome, even if located on the Common Area or within the exterior walls of the 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 of this Article. 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 or her Lot, including the addition or removal of any items thereon, including fences, without the prior written approval of the Board. If an Owner fails to fulfill his or her responsibilities under this Section, the Board, at its option, may take such action as it deems appropriate, including 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 or her Lot and shall be due and payable by the Owner thereof.

5.5 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 or her 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) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 5.5, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by an Owner, the Board of Directors of the Association shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorneys' fees.

5.6 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. Subject to the provisions of CCIOA, any agreement for professional management

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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. Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declarant or other developer controls the Association shall terminate absolutely, in any event, not later than thirty (30) days after termination of the Period of Declarant Rights. If professional management has been previously in effect after being required by any holder, insurer or guarantor of a First Mortgage 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 Mortgage 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.

VI

ARCHITECTURAL CONTROL

6.1 Composition of Committee. The Architectural Control Committee shall consist of three (3) persons appointed by the Association's Board of Directors, which may appoint itself to be the Committee; provided, however, that until the Period of Declarant Rights terminates, Declarant shall have the right to appoint the Architectural Control Committee. A majority of the Committee may designate a representative to act for it. It shall be the duty of the Architectural Control Committee, and it shall have the power, by the exercise of its best judgment, to determine that all structures, Improvements, construction, decoration and landscaping on the Property conform to and harmonize with the existing surroundings and structures. For convenience, the Architectural Control Committee shall hereinafter sometimes be referred to in this Article as the "Committee".

6.2 Review by Committee. After the purchase of a Lot from the Declarant, no changes, additions or modifications shall be made to any Townhome or Lot or Common Area, no Improvement shall be constructed or maintained upon the Property; no alterations, restaining, repainting to the exterior of a Townhome or Lot shall be made; no landscaping performed; and no Owner shall enclose, by means of screens or otherwise any balcony, porch or patio, unless the following, if applicable, shall have been submitted to and approved by the Committee: complete plans, specifications, and lot plans therefor, showing the exterior design, height, square footage, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and the grading plan shall have been submitted to and approved in writing by the Committee, and a copy of such plans and specifications as finally approved shall be deposited

with the Committee. The provisions of Sections 6.1, 6.2, and 6.3 of this Article shall not apply in any way or manner whatsoever to the Declarant or any Lot owned by Declarant.

6.3 Procedures.

(a) The Committee shall approve or disapprove all plans and requests (except Declarant's plans) within sixty (60) days after requests have been submitted. In the event the Committee fails to take action within sixty (60) days after plans have been received by the Committee, the plans shall be deemed rejected, and this Article will not be deemed to have been fully complied with. A majority vote of the members of the Committee is required for approval or disapproval of proposed Improvements. The Committee shall maintain written records of all applications submitted to it and of all action taken. In approving or disapproving the plans submitted to it, the committee shall take into consideration the design, style and construction of the proposed Improvements or alteration, its location upon the Property, the harmony of its design, architecture and location with the terrain and surrounding neighborhood, and shall determine whether such proposed Improvement or alteration is consistent with the general terrain, the architecture of other buildings located upon the Property subject to this Declaration and whether or not the construction or alteration of said building will adversely affect or decrease the value of other Lots and/or dwellings because of its design, location, height or type of material used in construction. The Committee may make reasonable requirements of the Owner, including the submission of additional plans, to ensure conformance of such building or alteration when erected with these restrictions and covenants and with the plans submitted and approved. All construction or alterations performed on any Lot or the Common Area will conform to the approved plans and specifications. The Committee may require such changes as may be necessary to conform to the general purposes as herein expressed. The Committee shall be responsible for enforcing compliance of the approved plans with these covenants and restrictions.

(b) The Committee shall have authority to grant variances from the provisions of this Article VI in cases of conditions wherein the strict enforcement of these restrictions would result in unusual hardship. The Committee shall be the sole and exclusive judge of whether or not said hardship exists, subject to an appeal under Section 6.3(e) below.

(c) Whenever the Committee disapproves of any proposed plans or specifications, it shall state in writing its reason for such disapproval in general terms so that the objections can be met by alterations acceptable to the Committee.

(d) All plans submitted to the Committee shall be left on file with the Committee.

(e) It is the intent of this Declaration that the Committee shall exercise broad discretionary powers hereunder; provided, however, any decision by the Committee may be appealed to the Board within thirty (30) days of such decision; any decision which is not appealed within that time or any decision by the Board shall be final and conclusive, except as provided in Section 12.14 of the Declaration.

(f) The Board shall resolve all questions of interpretation under this Declaration, which shall be interpreted in accordance with their general purpose and intent as herein expressed. Decisions by the Board shall be conclusive and binding upon the Owners and all persons.

VII

RESTRICTIONS

7.1 General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Property, all thereof in order to enhance the value, desirability, and attractiveness of the Property and serve and promote the sale thereof.

7.2 Leases. Any lease agreements between an Owner and a tenant shall provide that the term of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws of the Association, and that any failure by the tenant to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing, and a copy thereof shall be provided upon request to the Board of Directors, which may require the use of its approved lease form or the insertion of particular provisions. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who has repeatedly violated any provision of this Declaration, the Articles of Incorporation or the Bylaws. No short-term leases (i.e., for terms less than month-to-month) shall be permitted and no time-sharing or such other forms of interval ownership shall be permitted.

7.3 Residential Use. Each Lot shall be occupied and used as a private single-family dwelling for the Owner, and members of his or her family, guests and tenants for residential purposes only, and the Board of Directors may make Rules which limit the maximum occupancy permitted upon Lots in the Project. No Lot shall be used for any business, manufacturing or commercial purpose whatsoever; provided, however, if the appropriate zoning so allows and if prior written approval of the Board is obtained, an Owner may use a specifically designated portion of his or her Lot as a home business office or live/work area as defined by City Code, which approval may thereafter be withdrawn or terminated by the Board at any time. Prohibited

uses include any of the following purposes: group home, vacation rental, bed and breakfast, hotel, boarding house, multi-family dwelling, short-term rental, treatment facility, nursing home, any housing for transients, a human services home, human services residence, human services facilities and human services shelter, health care support facility, hospice, or youth home, as such facilities and uses are defined in the zoning code of the City of Colorado Springs, or if not so defined, as determined by the Board in its sole discretion to be similar to the foregoing prohibitions or within the intent of these prohibitions. Any violation of these restrictions shall allow the Board to obtain legal redress and/or impose fines for such violations and/or allow the Board to obtain injunctive relief without the posting of a bond, and the Board shall recover all of its attorneys' fees and expenses of enforcement.

7.4 Animals. No horses, dogs, cats, snakes, insects, birds, reptiles, cattle, sheep, goats, pigs, rabbits, poultry or other animals of any description shall be kept or maintained on any Lot, except that, if specifically permitted by the Board's Rules or written consent, any Owner may keep a reasonable number of bona fide household pets, so long as such pets comply with the Board's Rules, are not kept for commercial purposes, do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and are kept in compliance with all existing applicable local ordinances and any Rules of the Association. An Owner, family member, tenant or guest is responsible for any damage caused by his or her pet and shall be obligated to clean up after his or her pet while it is on the Property. If permitted, dogs shall be kept on leash and attended by their owners when present in the Common Area. The Board may institute such Rules as it deems advisable for the control of pets, including prohibitions and restrictions, and may impose such fines as are necessary in its sole discretion to enforce such Rules and this Declaration.

7.5 Structures. All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property, and no subsequent buildings or structures other than townhome buildings joined together by a common exterior, roof and foundation, shall be constructed. No sheds, temporary house, trailer, tent, garage or outbuilding shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however, that the foregoing shall not apply to the Declarant. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until the completion thereof.

7.6 Miscellaneous Structures. Except as permitted in writing by the Committee or pursuant to its Rules, no advertising or signs of any character shall be erected, placed, permitted or maintained on any Lot or within any Townhome other than a name plate of the occupant and a

street number; except that the Declarant shall be permitted to use signs such as will not unreasonably interfere with Owners' use of the Common Area until all Lots are sold by the Declarant. All types of refrigerating, cooling or heating apparatus shall be concealed, except as installed by the Declarant.

7.7 Lots to be Maintained. Except as provided in Section 5.1 or otherwise in this Declaration, each Owner shall maintain and replace that Owner's Townhome, Limited Common Area and Lot to meet the standards imposed by this Declaration and the Rules and shall be kept by the Owner thereof at all times in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot and/or Limited Common Area so that same are visible from any neighboring Lot or street, except as necessary during the period of construction by Declarant. No condition shall be permitted within any Lot and/or Limited Common Area such as driveway, balcony, porch, patio or deck which is visible from other Townhomes or the Common Area and which is inconsistent with the design integrity of the Project as determined by the Board in its sole discretion; such conditions include window treatments, draperies, shades and hangings, and articles on balconies, porches, patios, decks or Common Area or visible through a window. All drapes, shades, blinds and other window coverings shall be white when viewed from the outside, unless prior written approval of the Board is obtained.

7.8 Lots Not to be Subdivided. No Lot or Lots shall be subdivided without the prior written approval of the Board, except for the purpose of combining portions with an adjoining Lot or except as done by the Declarant.

7.9 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No marijuana or controlled substance shall be allowed on the Property, including medical marijuana or any growing of marijuana. No electronic or radio transmitter of any kind shall be operated upon the Property. No aerials or antennae shall be installed upon the exterior of any Lot or for the transmission of electronic signals, except for garage door openers and except for devices specifically authorized by federal statute or regulation but subject to such review and prior approval by the Committee as permitted by law.

Notwithstanding any provision of this Declaration, no Owner or any other person or entity shall use or allow the use of the Lot in any way whatsoever for the purpose of cultivating, producing, processing, manufacturing, packaging, advertising, distributing, transferring, selling, storing, or providing any drug or substance which is illegal or prohibited under federal, state, municipal or local laws or regulations. In addition, the cultivating, producing, processing,

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manufacturing, packaging, advertising, distributing, transferring, selling, storing, or providing of marijuana, hash, hemp, or any other related product or substance is strictly prohibited within the Project. Any violation of any federal, state, municipal or local law, ordinance, rule or regulation pertaining to the ownership, occupation or use of any Lot or activities thereon is hereby declared to be a violation of this Declaration.

7.10 No Hazardous Activities. No activities shall be conducted on the Property and on Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property or might cause the cancellation or diminution of insurance or an increase in insurance premiums. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or except such campfire or picnic fires in an area designated for such by the Association.

7.11 No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; and no odor shall be emitted on any Lot which is noxious or offensive to others. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of the neighboring Townhomes. Ornamental post lights must be approved by the Architectural Control Committee.

7.12 Restrictions on Parking and Storage.

(a) Except as specifically authorized by the Board of Directors, no part of the Property, including streets, drives, or parking areas, and no part of the streets adjoining the Property shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck larger than 3/4 ton, bus, or self-contained motorized recreational vehicle, except as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Properties which are necessary for the construction of Townhomes or the maintenance of the Common Area or Lots or making deliveries or performing services.

(b) No abandoned vehicles shall be stored or parked upon any part of the Property or any street adjoining the Property, 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 owner thereof cannot be reasonably ascertained), and 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; provided, however, an Owner may seek to obtain from the Board an extended parking permit for extended absences. 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.

(c) The Board of Directors may make Rules and restrictions regarding parking and vehicular traffic on the Property, 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 the Board may require that all Owners, tenants, family members, guests, and contractors park their vehicles in their garages, rather than in driveways in front of garages, public or private streets or any other parts of the Property. Neither Owners, tenants, guests, family, nor other invitees shall park within or obstruct any prohibited area, including any fire lane. NOTWITHSTANDING ANY ASSOCIATION DOCUMENT, PARKING IN THE FIRE LANES ON CERTAIN STREETS IS ABSOLUTELY PROHIBITED AND ANY VEHICLES PARKED IN VIOLATION OF THIS PROHIBITION ARE SUBJECT TO IMMEDIATE TOWING WITHOUT NOTICE AT THE VEHICLE OWNER'S EXPENSE AND SUBJECT TO OTHER REMEDIES STATED IN THIS DECLARATION. Any vehicle or other item which is parked in violation of any Rules or this Declaration shall be subject to the remedies set forth in the Rules regarding parking as adopted in the future by the Board.

(d) The garages shall be used for vehicular parking which shall not be prevented by storage of items in the garage. Garage doors shall be kept closed at all times except when open for immediate ingress and egress.

(e) The driveway in front of the garage door is a Limited Common Area for the exclusive use of the Townhome Owner and their guests, family members and tenants; provided, however, no parking shall be allowed in the driveway overnight (as defined by the Parking Rule) unless the Board adopts a Rule allowing such parking.

7.13 Clotheslines and Storage. Outside clotheslines or basketball hoops and backboards, whether on buildings or free-standing, carports, patio covers or similar structures, and wood piles and storage areas shall not be allowed unless approved by the Architectural Control Committee in its sole discretion. All such approved structures shall be located out of view of the street or of any neighboring Townhomes. Service or storage areas shall be so located as not to be visible from a street or road.

7.14 Garbage and Refuse Disposal. No garbage, refuse, rubbish or cuttings shall be deposited on any street, on the Common Area, or on any Lots unless placed in an appropriate,

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clean container suitably located, solely for the purpose of garbage pickup. All trash and refuse containers, except when placed as noted above the sole purpose of garbage pickup, will be kept inside the Townhomes. The burning of trash in outside incinerators, barbecue pits or the like is prohibited, it being intended that all refuse, trash, garbage and the like shall be hauled from the Property.

7.15 Repair. No activity such as maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers, boats, or vans may be performed on any Lot unless it is done within completely enclosed structures located on the Lot which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.

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

7.17 Underground Electric Lines. All electric, television, radio and telephone line installations and connections shall be placed underground, except for power substations and switching stations which shall be adequately screened from view and except for customary surface devices for access or control and except that during the construction of a residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction and which shall be subject to Declarant's prior written approval.

7.18 Use of the Property.

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

(b) The use of the Property shall be subject to such Rules 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 Common Area 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 Association facilities completed upon the Common Area.

7.19 Sales and Construction Facilities and Activities of Declarant. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractor shall have all rights set forth in C.R.S. §38-33.3-215 and shall be permitted to maintain during the period of any construction on and sale of the Lots, upon such portion of the Common Area as Declarant may choose, such uses and facilities as may be reasonably required, convenient or incidental to the construction, sale or rental of Lots, to the construction and assignment of Common Areas, the Limited Common Areas, sidewalks, driveways, fences, decks, patios and related Improvements, and to the development of the Project, including storage of equipment and vehicles, a business office, use of a Lot, or even a clubhouse if applicable, for a sales office, storage area, construction yards, signs of any size and type, model Townhomes, sales offices, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Lots; the Declarant may promptly remove any of the above items if Declarant ceases to be an Owner. The Declarant and its contractors may maintain such management offices, signs, model units, construction offices, trailers and sales offices in such numbers, size and locations, as the Declarant may determine in its sole discretion from time to time. In addition, Declarant, its agents, employees, financiers, and any contractor involved in the construction or sale of said Improvements and Lots, or in the development of the Property, shall have all rights set forth in C.R.S. §38-33.3-216, and shall have the right to ingress and egress over the Common Area as in Declarant's discretion may be necessary to complete the Project. Notwithstanding any provision of this Section, no right under this Section shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his or her family members, guests, or invitees, to or of that Owner's Lot, his or her parking area, any public street, or any recreational facility completed upon the Common Area. The Declarant shall have the right to execute or record or both any writing or document necessary or advisable to confirm, implement or transfer the rights reserved in this Declaration or granted by law or statute; the rights set forth in this Section shall terminate upon the termination of the Period of Declarant Rights.

7.20 RELEASES, DISCLAIMERS AND INDEMNITIES.

A. THE PROVISIONS OF THIS SECTION 7.20 SHALL APPLY TO ANY "PROTECTED PARTY" WHICH IS DEFINED AS ANY PERSON OR PARTY, INCLUDING THE DECLARANT, ITS AGENTS, EMPLOYEES, SHAREHOLDERS, CONTRACTORS, BROKERS, SUCCESSORS, ASSIGNS OR ANY PERSON OR PARTY RELATED TO THEM OR ANY PRIOR OWNER OF THE PROPERTY, AGAINST WHOM IS ASSERTED ANY CLAIM, DEMAND, LIABILITY, OBLIGATION OR MATTER WHATSOEVER REGARDING THE CONSTRUCTION, PHYSICAL CONDITION, VALUE, ASSESSMENTS, RESERVES, ASSOCIATION, AND ANY OTHER MATTERS RELATED THERETO IN CONNECTION WITH THE PROJECT.

B. OWNERS ACKNOWLEDGE AND UNDERSTAND THAT CERTAIN PHYSICAL AND/OR ENVIRONMENTAL CONDITIONS, INCLUDING MOLD, LEAD, ASBESTOS, RADON GAS, OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES, MAY AFFECT THIS PROJECT AND THAT ANY PROTECTED PARTY DOES NOT WARRANT AND DISCLAIMS ANY LIABILITY FOR ANY EXISTING OR FUTURE SOIL, ECOLOGICAL OR ENVIRONMENTAL CONDITIONS AFFECTING THE PROJECT. OWNERS ACKNOWLEDGE THAT THEY HAD BEEN ADVISED AND GIVEN A FULL OPPORTUNITY TO INSPECT THE PROJECT AND OBTAIN ANY PROFESSIONAL INSPECTION AND ENVIRONMENTAL REPORTS IF THEY SO DESIRED. BY ACCEPTANCE OF A DEED TO A LOT, EACH OWNER ACCEPTS THE PHYSICAL AND/OR ENVIRONMENTAL CONDITION OF THE PROJECT, INCLUDING NOISE (AIRPLANE AND OTHER) AND ACKNOWLEDGES A FULL, ADEQUATE OPPORTUNITY TO CONDUCT ANY INSPECTIONS THEREOF AND RELEASES AND INDEMNIFIES THE PROTECTED PARTIES FROM ANY FAILURE TO UNDERTAKE SUCH INSPECTIONS. IN ADDITION, OWNERS UNDERSTAND THAT THE SOIL IN THE COLORADO AREA CONTAINS CLAY AND OTHER SUBSTANCES WHICH MAY CAUSE IT TO SWELL WHEN WET AND SO CAN CAUSE EARTH MOVEMENT AROUND A BUILDING'S FOUNDATION. OWNERS, FOR THEMSELVES, THEIR HEIRS, SUCCESSORS, ASSIGNS AND THEIR ASSOCIATION, WAIVE AND RELEASE THE PROTECTED PARTIES FROM ALL CLAIMS, LIABILITIES, LAWSUITS AND OTHER MATTERS ARISING FROM OR RELATED TO ANY PHYSICAL AND/OR ENVIRONMENTAL CONDITION AT THE PROJECT AND FROM ANY MATTER OR CONDITION DISCLOSED IN ANY REPORT OR STUDY ON FILE WITH EL PASO COUNTY, COLORADO.

C. THE ASSOCIATION AND/OR THE OWNERS SHALL MAINTAIN THE LANDSCAPING, DRAINAGE, AND SPRINKLER SYSTEMS UPON THE PROPERTY IN SUCH A FASHION THAT THE SOIL SURROUNDING THE FOUNDATIONS OF THE BUILDINGS AND OTHER IMPROVEMENTS SHALL NOT BECOME SO IMPREGNATED WITH WATER THAT THEY CAUSE EXPANSION OF OR SHIFTING OF THE SOILS SUPPORTING THE IMPROVEMENTS OR OTHER DAMAGE TO THE IMPROVEMENTS AND DO NOT IMPEDE THE PROPER FUNCTIONING OF THE DRAINAGE, LANDSCAPING, OR SPRINKLER SYSTEMS AS ORIGINALLY INSTALLED. SUCH MAINTENANCE SHALL INCLUDE, WHERE NECESSARY THE REMOVAL OR REPLACEMENT OF IMPROPERLY FUNCTIONING LANDSCAPING, DRAINAGE, OR SPRINKLER SYSTEM ELEMENTS AND SHALL ALSO INCLUDE REGRADING AND RESURFACING WHERE NECESSARY TO PROVIDE FOR ADEQUATE DRAINAGE AND TO PREVENT ANY PONDING; NO CHANGES IN LANDSCAPING SHALL BE MADE IN SUCH A WAY AS TO ENDANGER THE STRUCTURAL INTEGRITY OR THE STABILITY OF ANY OF THE LANDSCAPING, DRAINAGE OR SPRINKLER SYSTEMS, OR THE

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OTHER IMPROVEMENTS UPON THE PROPERTY. THE ASSOCIATION SHALL INDEMNIFY ANY PROTECTED PARTY FROM ANY LIABILITY, CLAIMS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, RESULTING FROM ANY BREACH OF THIS SECTION.

D. THE U.S. ENVIRONMENTAL PROTECTION AGENCY ("EPA") STATES THAT EXPOSURE TO ELEVATED LEVELS OF RADON GAS CAN BE INJURIOUS. ANY TEST TO MEASURE THE LEVEL OF RADON GAS CAN ONLY SHOW THE LEVEL AT A PARTICULAR TIME UNDER THE CIRCUMSTANCES OCCURRING AT THE TIME OF TESTING. NO PROTECTED PARTY IS QUALIFIED TO MEASURE RADON GAS OR TO EVALUATE ALL ASPECTS OF THIS COMPLEX AREA OF CONCERN. PRIOR OR SUBSEQUENT TO CLOSING OF THE OWNER'S PURCHASE OF THE LOT, THE OWNER MAY WISH TO TEST FOR THE PRESENCE OF RADON GAS AND TO PURCHASE OR INSTALL DEVICES THAT MAY BE RECOMMENDED BY QUALIFIED INSPECTOR. ALL PROTECTED PARTIES EXPRESSLY DISCLAIM AND THE OWNER AND THE ASSOCIATION AGREE TO WAIVE AND RELEASE ANY AND ALL PROTECTED PARTIES FROM ANY CLAIMS OF LIABILITY OR RESPONSIBILITY WITH RESPECT TO RADON GAS AND RELATED MATTERS AND TO HOLD HARMLESS FROM ANY CLAIMS OR LIABILITY AGAINST ANY PROTECTED PARTY WITH RESPECT TO RADON GAS AND RELATED MATTERS.

E. FIBERGLASS INSULATION (ALSO KNOWN AS GLASS WOOL) IS COMMONLY USED FOR INSULATION OF HOMES. FIBERGLASS IN VARIOUS THICKNESSES AND VALUES IS USED IN THE AREAS OF WALLS, FLOOR TO CEILING ASSEMBLIES AND CEILING TO ROOF ASSEMBLIES OF HOMES TO PREVENT MOVEMENT OF HEAT AND TO REDUCE NOISE. THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PRODUCED A REPORT THAT LISTS GLASS WOOL AS A SUBSTANCE "WHICH MAY BE REASONABLY ANTICIPATED TO BE A CARCINOGEN", BUT THAT REPORT MERELY IDENTIFIES SUBSTANCES SELECTED FOR FURTHER STUDY BECAUSE OF POTENTIAL RISK. THE LISTING OF A SUBSTANCE IN THE REPORT IS NOT AN ASSESSMENT THAT THERE IS A CAUSAL CONNECTION BETWEEN GLASS WOOL AND ILLNESS. THE OWNERS AND THE ASSOCIATION ACKNOWLEDGE THAT FIBERGLASS IS USED IN THE WALL AND FLOOR TO CEILING ASSEMBLIES, AND WAIVE ANY CLAIMS AGAINST THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, ARISING AS A RESULT OF THE USE OF FIBERGLASS INSULATION, AND AGREES TO HOLD DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM THE EXISTENCE OF FIBERGLASS INSULATION IN THE TOWNHOME OR THE PROJECT.

F. EACH OWNER FURTHER COVENANTS AND AGREES THAT NO REPRESENTATION, PROMISE OR WARRANTY, HAS BEEN MADE BY ANY OF THE PROTECTED PARTIES REGARDING THE DEVELOPMENT OF ADJACENT PROPERTIES, THE INVESTMENT POTENTIAL OF THE TOWNHOME, ANY ECONOMIC BENEFITS TO THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, TO BE DERIVED FROM THE MANAGERIAL OR OTHER EFFORTS OF THE RELEASED PARTIES, OR ANY OTHER THIRD PARTY DESIGNATED OR ARRANGED BY ANY PROTECTED PARTY, RELATED TO THE OWNERSHIP OR RENTAL OF THE TOWNHOME, OR REGARDING THE CONTINUED EXISTENCE OF ANY VIEW FROM THE TOWNHOME. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, UNDERSTAND THAT THE PROTECTED PARTIES ARE UNDER NO OBLIGATION WITH RESPECT TO FUTURE PLANS, ZONING OR DEVELOPMENT OF ADDITIONAL PROPERTY IN THE AREA. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, UNDERSTAND THAT THE SQUARE FOOTAGES, SIZES AND TYPE OF TOWNHOMES HAVE BEEN SET FORTH AT THE SOLE DISCRETION OF THE DECLARANT, AND THAT THE SALES PRICES MAY DECREASE OR INCREASE AT THE SOLE DISCRETION OF THE DECLARANT.

G. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT THE PROTECTED PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE REGARDING THE PROJECT (ALL OF WHICH ARE HEREBY DISCLAIMED BY THE PROTECTED PARTIES), INCLUDING ANY AS TO THE FITNESS, WORKMANLIKE CONSTRUCTION, SAFETY, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, OR HABITABILITY OF THE TOWNHOME, THE PROJECT, OR THE COMMON AREA OR IMPROVEMENTS RELATED THERETO OR ANY ELECTRICAL, PLUMBING, HEATING, GAS, WATER, SEWER, STRUCTURAL COMPONENTS, OR OTHER MECHANICAL OR UTILITY SYSTEMS OR COMPONENTS OR APPLIANCES OR FIXTURES RELATED THERETO. THE OWNERS AND THE ASSOCIATION ACCEPT THE FOREGOING DISCLAIMER OF WARRANTIES AND WAIVE, RELEASE AND INDEMNIFY THE PROTECTED PARTY FROM ALL CLAIMS RELATED THERETO, AND ANY EXPENSES AND ATTORNEYS' FEES INCURRED BY ANY PROTECTED PARTY, TOGETHER WITH ANY CLAIMS FOR BODILY INJURY, PROPERTY DAMAGE AND INCIDENTAL OR CONSEQUENTIAL DAMAGES MADE BY ANY PERSON OR PARTY.

H. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS AND THE ASSOCIATION COVENANT AND AGREE THAT ANY PROTECTED PARTY SHALL NOT BE LIABLE FOR CLAIMS FOR CONSEQUENTIAL AND/OR PUNITIVE DAMAGES OR FOR CLAIMS RELATING TO THE TOWNHOME, THE LOT, OR TO THE COMMON AREA OR ANY IMPROVEMENTS ARISING OR RELATING TO ANY DEFECT IN

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WORKMANSHIP OR IN ANY MATERIAL USED IN CONSTRUCTION, AND THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, AND THE ASSOCIATION, EXPRESSLY WAIVE AND RELEASE ALL RIGHTS TO SUE FOR A DEFECT IN CONSTRUCTION OF THE TOWNHOME OR THE LOT OR COMMON AREA OR IMPROVEMENTS OR BOTH AND SHALL RELY SOLELY ON THE OWNER'S OWN INSPECTION AND EXAMINATION OF THE PROJECT AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY PROTECTED PARTY. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT THIS DECLARATION WAIVES AND/OR LIMITS RIGHTS AND REMEDIES AND THAT THE SALES PRICES OF THE TOWNHOMES ARE BASED IN PART UPON THE RELEASES, WAIVERS AND INDEMNITY CONTAINED IN THIS SECTION AND THE OTHER PROVISIONS OF THE DECLARATION.

I. ANY ACTION, DISPUTE, CLAIM OR CONTROVERSY BETWEEN ANY PERSON OR ENTITY, INCLUDING ANY OWNER AND/OR THE ASSOCIATION, AND ANY PROTECTED PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT CONCERNING AN INDIVIDUAL TOWNHOME OR THE COMMON ELEMENTS MAY BE SUBMITTED BY ANY PROTECTED PARTY, AT ITS OPTION, TO BE RESOLVED BY BINDING ARBITRATION AS SET FORTH IN THIS SECTION AND SHALL INCLUDE ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH ANY CONDITION OF A TOWNHOME OR THE LOT OR COMMON AREA OR IMPROVEMENTS, THIS DECLARATION, AND ANY RELATED AGREEMENTS OR INSTRUMENTS AND ANY TRANSACTION CONTEMPLATED HEREBY. IF SO SUBMITTED, SUCH DISPUTES SHALL BE RESOLVED BY BINDING ARBITRATION BEFORE A SINGLE ARBITRATOR IN ACCORDANCE WITH TITLE 9 OF THE U.S. CODE, COLORADO UNIFORM ARBITRATION ACT, C.R.S. §13-22-201, ET. SEQ., AND THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). IN THE EVENT OF ANY INCONSISTENCY BETWEEN SUCH RULES AND THESE ARBITRATION PROVISIONS, THESE PROVISIONS SHALL SUPERSEDE SUCH RULES. ALL STATUTES OF LIMITATIONS THAT WOULD OTHERWISE BE APPLICABLE SHALL APPLY TO ANY ARBITRATION PROCEEDING UNDER THIS SECTION. THE PARTIES SHALL BE ENTITLED TO CONDUCT DISCOVERY AS IF THE DISPUTE WERE PENDING IN A COURT OF LAW IN THE STATE OF COLORADO. IN ANY ARBITRATION PROCEEDING SUBJECT TO THESE PROVISIONS, THE ARBITRATOR IS EMPOWERED TO DECIDE PRE-HEARING MOTIONS THAT ARE SUBSTANTIALLY SIMILAR TO PRE-HEARING MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY ADJUDICATION. JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. EXCEPT AS OTHERWISE PROVIDED, THE ARBITRATOR SELECTED UNDER THIS SECTION SHALL BE KNOWLEDGEABLE IN THE SUBJECT MATTER OF THE

DISPUTE. THE ARBITRATOR SHALL BE SELECTED THROUGH PANELS OF QUALIFIED JUDGES MAINTAINED BY THE DENVER, COLORADO OFFICE OF THE AAA. ALL SUCH ARBITRATION SHALL BE HELD IN COLORADO SPRINGS, COLORADO, AND VENUE SHALL BE PROPER IN THE DISTRICT COURT FOR EL PASO COUNTY, COLORADO.

J. IF ANY CLAIM REGARDING DEFECTS IN CONSTRUCTION IS MADE, EACH CLAIM SHALL BE SPECIFIED WITH PARTICULARITY. EACH LOCATION OF ANY CLAIMED DEFECT MUST BE IDENTIFIED AND ALL EVIDENCE SUPPORTING EACH CLAIM, ALONG WITH ALL THE REPAIR METHODOLOGIES AND COSTS OF REPAIR, MUST BE PROVIDED BY THE CLAIMANT IN ADVANCE OF ANY MEDIATION HEREUNDER. IN ANY ARBITRATION OR OTHER PROCEEDINGS, IT SHALL BE REBUTTABLY PRESUMED THAT ANY CONSTRUCTION DONE BY THE BUILDER OR DECLARANT WAS NOT DEFECTIVE, THAT THE BUILDER OR DECLARANT ADEQUATELY PERFORMED ITS OBLIGATIONS UNDER ITS CONTRACT, AND THAT THE BUILDER OR DECLARANT WAS NOT NEGLIGENT IF THE BUILDER OR DECLARANT'S PERFORMANCE WAS SUBSTANTIALLY IN ACCORDANCE WITH ANY OF THE FOLLOWING: (A) THE STANDARDS OF TRADE IN THE COLORADO SPRINGS AREA ON THE DATE HEREOF; OR (B) ANY APPLICABLE BUILDING CODE IN COLORADO SPRINGS ON THE DATE HEREOF; OR (C) ANY APPLICABLE NATIONAL ASSOCIATION OF HOMEBUILDERS' RESIDENTIAL CONSTRUCTION GUIDELINES. IN ANY SUCH PROCEEDINGS, EVIDENCE OF ANY SCIENTIFIC, ENGINEERING, OR TECHNICAL ADVANCEMENTS OR OTHER KNOWLEDGE OR TECHNIQUES, OR ANY DESIGN THEORY OR PHILOSOPHY, OR ANY CONSTRUCTION OR TESTING KNOWLEDGE OR TECHNIQUES, WHERE SUCH ADVANCEMENTS WERE DISCOVERED SUBSEQUENT TO THE DATE HEREOF, SHALL NOT BE ADMISSIBLE FOR ANY PURPOSE. IF ANY OF CLAIMANT'S CLAIMS RELATE, IN ANY WAY, TO ANY WORK COMPLETED BY ANY OF DECLARANT'S OR BUILDER'S SUBCONTRACTORS OR ANY MATERIALS AND/OR EQUIPMENT PROVIDED BY ANY SUPPLIERS, DECLARANT OR BUILDER, AS APPLICABLE, 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 OBLIGATIONS UNDER THIS DECLARATION, ANY OBLIGATIONS WHICH MAY EXIST BY LAW OR REASON OF ANY STATUTE, INCLUDING APPROPRIATE REPAIR COSTS, SHALL BE THROUGH THE TESTIMONY OF A HOMEBUILDER WITH EXPERIENCE IN EL PASO COUNTY, COLORADO. THE ARBITER SHALL COMPLETELY EXCLUDE THE TESTIMONY OF ANY TENDERED EXPERT WHO DOES NOT MEET THE FOREGOING QUALIFICATIONS.

K. IN ADDITION TO THE ABOVE PROCEDURES IN THIS SECTION 7.20, ANY PERSON OR PARTY ASSERTING ANY CLAIM AS DESCRIBED ABOVE MUST COMPLY WITH THE REQUIREMENTS AS SET FORTH IN C.R.S. §13-20-802.5, 803, 803.5, 804, 805 AND 806 (NOW ENACTED OR HEREAFTER AMENDED) AND DECLARANT AND ANY OTHER PROTECTED PARTY SHALL HAVE AN ABSOLUTE UNLIMITED RIGHT TO REPAIR ANY ITEM DESCRIBED IN THE CLAIM IN ACCORDANCE WITH SAID STATUTE OR AT DECLARANT'S SOLE DISCRETION IN ACCORDANCE WITH DECLARANT'S REPAIR PROCEDURES. FAILURE TO PROVIDE SUCH NOTICE AND SUCH OPPORTUNITY TO REPAIR OR ANY OTHER REQUIREMENT OF COLORADO STATUTES OR THIS DECLARATION SHALL COMPLETELY INVALIDATE SUCH CLAIM. FURTHERMORE, IN ADDITION TO THE ABOVE PROCEDURES IN THIS SECTION, ANY OWNER, PERSON OR THE ASSOCIATION ASSERTING ANY CLAIM MUST COMPLY WITH THE REQUIREMENTS OF C.R.S. §38-33.3-303.5. IN THE EVENT OF ANY CONFLICT BETWEEN THE PROVISIONS OF THIS DECLARATION AND C.R.S. §13-20-802.5 THROUGH 806, OR C.R.S. §38-33.3-303.5, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL.

L. NOTWITHSTANDING ANY PROVISION OF THE ASSOCIATION DOCUMENTS, OWNERS AND OCCUPANTS UNDERSTAND AND AGREE THAT NEITHER THE ASSOCIATION NOR THE BOARD IS A LAW ENFORCEMENT AGENCY, THAT NEITHER INVESTIGATES NUISANCE OR CRIMINAL ACTIVITY, AND THAT NEITHER SHALL HAVE ANY LIABILITY OR RESPONSIBILITY FOR THE ENFORCEMENT OF NUISANCE OR CRIMINAL LAWS, NOR FOR THE SAFETY OR SECURITY OF THE PROJECT OR OCCUPANTS. EACH OWNER OR OCCUPANT IS RESPONSIBLE FOR HIS OR HER OWN SAFETY AND SECURITY. OWNERS AND OCCUPANTS SHOULD PROMPTLY REPORT ANY CRIMINAL ACTIVITY OR THREAT OR NUISANCE TO THE POLICE. NEITHER THE ASSOCIATION NOR THE BOARD NOR ANY MEMBER, AGENT OR EMPLOYEE OF ANY OF THE SAME SHALL BE LIABLE TO ANY OWNER OR OCCUPANT FOR ANY ACTION OR FOR ANY FAILURE TO ACT REGARDING SAFETY OR SECURITY UNLESS THE ACTION OR FAILURE TO ACT WAS GROSSLY NEGLIGENT OR IN WANTON AND WILLFUL BAD FAITH, AND SHALL BE RELEASED BY OWNERS AND OCCUPANTS AND INDEMNIFIED BY THE ASSOCIATION TO THE FULLEST EXTENT PERMISSIBLE BY THE STATUTES AND CASE LAW OF COLORADO, INCLUDING CIRCUMSTANCES IN WHICH INDEMNIFICATION IS OTHERWISE DISCRETIONARY UNDER COLORADO LAW. FURTHER RELEASE AND INDEMNIFICATION PROVISIONS MAY BE SET FORTH IN THE ASSOCIATION'S ARTICLES OF INCORPORATION AND/OR THE BYLAWS AND/OR THE RULES.

M. THE RELEASES, DISCLAIMERS AND PROVISIONS OF THIS SECTION 7.20 MAY BE MODIFIED OR CHANGED ONLY BY TO THE EXTENT THAT THE DECLARANT EXECUTES AND DELIVERS A WRITTEN AMENDMENT, MODIFICATION OR CHANGE TO ANY OWNER, AND NO OTHER AMENDMENT, MODIFICATION, OR CHANGE OF THIS SECTION AND/OR THE DECLARANT'S RIGHTS UNDER THIS DECLARATION SHALL BE VALID OR ENFORCED WITHOUT THE DECLARANT'S PRIOR WRITTEN CONSENT.

VIII

INSURANCE

8.1 Common Insurance. Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall obtain and maintain at all times, to the extent reasonably obtainable, insurance policies covering the following risks:

(a) Property. Property insurance on the Project for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Such insurance must include all personal property owned by the Association and any Improvements and fixtures located upon the Common Area and the Limited Common Areas (or other area which is the responsibility of the Association), and such insurance shall also include, unless the Board determines otherwise, the Townhomes and the Lots, together with all fixtures, structural portions, building service equipment and any appliances which are attached thereto to the extent financed by a First Mortgage. Such insurance shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a one hundred percent (100%) of current replacement cost basis without deduction for depreciation or coinsurance, and including, to the extent available and applicable, an "Agreed Amount" and "Inflation Guard Endorsement", a "Demolition Costs Endorsement", a "Building Ordinance or Law Endorsement", "Increased Cost of Construction Endorsement" and a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent. Such insurance as maintained by the Association pursuant to this Section shall afford protection against at least the following:

(i) loss or damage by fire and all other hazards that are covered by the standard extended coverage endorsement, including endorsements for vandalism and malicious mischief, and

(ii) all other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement.

Notwithstanding the foregoing, the Board in its sole discretion may obtain “studs out” or “studs in” or “all in” property coverage and may require that each Owner obtain and provide a certificate or written proof of coverage constituting HO-6 or comparable insurance coverage, which includes sufficient loss assessment coverage for the Association’s deductible and covers any property damage to “walls in” items including those described in this Section 8.1(a).

(b) Public Liability. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas and deemed sufficient in the judgment of the Board but not less than any amount specified herein, insuring the Board, the Association, the management 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 Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area. The insurance shall cover claims of one or more insured parties against other insured parties. Such insurance shall be in such amounts as the Board of Directors of the Association may from time to time determine, but not in an amount less than One Million Dollars (\$1,000,000.00) per occurrence covering claims for personal injury, bodily injury and/or for property damage. To the extent reasonably obtainable, coverage shall include liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance or other use of the Common Area and the Townhomes by the Association, its officers, directors, agents, employees, representatives and the Owners, off-premises employee coverage, water damage liability, contractual liability, bailee’s liability for property of others, and any legal liability that results from lawsuits related to employment contracts to which the Association is a party.

(c) Workmen’s Compensation. Workmen’s Compensation and employer’s liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance. The Association shall purchase, in an amount equal to the maximum amount of funds in the Association’s custody at any one time, but not less than the greater of any sum required under C.R.S. §38-33.3-306(3) or the sum of three (3) months’ assessments on the entire Project, plus reserves, blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association’s directors, managers, including any person employed as an independent contractor for the purpose of managing the Association and any employee thereof, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners; provided,

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however, any managing agent which handles funds for the Association should be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association. Such policy shall also cover destruction or disappearance of money or securities and forgery. Such policy shall cover any person or entity handling funds of the Association, including employees of the professional manager which should also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and as obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of “employee” or similar expression.

(e) Directors’ and Officers’ Personal Liability Insurance. To the extent obtainable, appropriate directors’ and officers’ personal liability insurance shall be obtained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

(f) Flood. If the Property is located in an area identified by the Secretary of Housing and Urban Development or the Director of the Federal Emergency Management Agency as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a “blanket” policy of flood insurance on the Property in an amount which is the lesser of the maximum amount of insurance available under the Act or one hundred percent (100%) of the current replacement cost of all buildings and other insurable common and individual property owned in common by the Lot Owners and located within the Property.

(g) Other Insurance. In addition, the Board of Directors may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Project. Notwithstanding any provision of this Declaration, the Board, in its sole discretion, may obtain insurance and adopt Rules regarding insurance which are comparable to the provisions of C.R.S. §38-33.3-313.

(h) Notice of Unavailability. If any insurance described in this Declaration is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association should promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and First Mortgagees as provided herein.

8.2 Annual Review. At least annually and prior to obtaining any insurance policy required under Section 8.1 of this Article, the Board of Directors shall obtain an estimate of the full replacement value of all Improvements on each Lot, including all buildings, fixtures, Improvements and service equipment located thereon, and of the Common Area Improvements

including landscaping and underground facilities, without deduction for depreciation, for the purpose of determining the amount of insurance required under that Section. The amount of such insurance shall be shown in the Association's annual report. Upon written challenge by the Owners of twenty percent (20%) or more Lots that the Association's estimate of maximum replacement value is too low, the Association will secure a certified appraisal of replacement value prepared by an appraiser and will conform the hazard insurance to the value indicated by that appraisal to the extent such insurance is reasonably obtainable and financially feasible as determined by the Board in its discretion. In any event, each Owner of a Lot is responsible for the adequacy of the insurance coverage carried for the protection of himself/herself or his or her Lot, and each Owner, at his or her own expense, may have the amount or extent of his or her coverage increased.

8.3 Form of Issuance.

(a) All insurance shall be carried in blanket policy form, shall name the Association (pursuant to Article IX, Section 9.1) as the insured, as trustee and attorney-in fact pursuant to Article IX hereof, and shall provide that the proceeds shall be paid to the Association for the benefit of and in trust for the Association, the Owners and their First Mortgagees, as their interests may appear, shall additionally insure and identify the interest of each Owner and the First Mortgagee, and shall provide a standard, non-contributory mortgage clause in favor of each First Mortgagee which has given the Association notice of its lien. Each Owner shall be an insured person under such policy with respect to liability arising out of such Owner's interest in the Common Areas.

(b) To the extent possible, in the Board's sole discretion, all insurance policies shall:

(i) be obtained from responsible companies duly authorized and licensed to do insurance business in the State of Colorado, and having at least a "B" general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide.

(ii) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, its Owners and members of their households;

(iii) provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees and agents;

(iv) provide for a waiver of any defense based on co-insurance;

(v) provide that the policy of insurance shall not be permitted to lapse, be terminated, canceled or materially or substantially changed or modified without at least thirty (30) days' prior written notice to the Association, the Owners and the First Mortgagees which have given notice of their liens;

(vi) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(vii) provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance;

(viii) provide that no assessments therefor may be made against First Mortgagees and any such assessments made against other shall not become a lien on the Property superior to the First Mortgagee.

(c) On written request the Association shall furnish, by certificate or otherwise, a copy of any insurance policy, identifying the interest of the Owner in question, to any Owner or First Mortgagee, together with proofs of payment of premiums. Further, an insurer that has issued an insurance policy for the insurance described in this Declaration shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, and each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

(d) Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and as are consistent with the requirements of First Mortgagees and any secondary lenders purchasing First Mortgages. The deductible for an individual Townhome should not exceed an amount determined by the Board in its sole discretion, but should not exceed five percent (5%) of the face amount of the policy, unless a greater deductible is allowed by secondary lending entities (VA, FHA, FNMA or FHLMC). Any loss falling within the deductible portion of the policy should be borne by the Association or the Owners as determined by the Board in its sole discretion.

(e) Notwithstanding any provision of this Declaration, the Board may, in its sole discretion, adopt and establish Rules regarding insurance coverages and may adopt written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, 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 one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association.

8.4 Owner's Personal Property and Liability Insurance. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Each Owner shall be solely responsible, at his or her expense, and subject to the Association's Rules which may further define and establish insurance duties and coverages, for any and all insurance other than the Association's insurance, including any and all insurance covering any liability of the Owner and other persons related to the Townhome and covering all loss or damage to any and all fixtures, appliances, furniture, furnishings or other personal property supplied, maintained or installed by the Owner and covering liability for injury, death or damage occurring within his or her Lot. Such insurance shall contain waivers of subrogation and shall be so written that the insurance obtained by the Association shall not be affected or diminished thereby. The Association shall have no responsibility regarding the obtaining or continuation of any such insurance. If at any time of the any loss under any policy which is in the name of the Association there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall then be primary insurance not contributing with any of such other insurance, except that the Board may require Owners to obtain and maintain HO-6 or similar insurance in such amounts and coverages as the Board may require in its sole discretion and may require that claims be submitted first to the Owner's insurance carrier.

IX

DAMAGE, DESTRUCTION, CONDEMNATION AND MERGER

9.1 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 Property in the event of their destruction, damage, condemnation, or liquidation of all or a part of the Project or from the termination of the Project, including the repair, replacement and improvement of any buildings, fixtures, Improvements and service equipment located on the Property (but excluding any furniture, furnishings or other personal

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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 President and Secretary or Assistant Secretary 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 powers 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 Project 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 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, and at least sixty-seven percent (67%) 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 Project common property.

9.2 Damage to or Destruction of Common Area. Any portion of the Project for which insurance is required under this Declaration or C.R.S. §38-33.3-313 which is damaged or destroyed must be repaired or replaced promptly by the Association pursuant to that statutory section or the Declaration.

9.3 Damage to 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 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 annual assessments set forth in Article IV 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 or her Lot and may be enforced and collected as is provided in this Declaration. 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 for such purpose, 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 one (1) vote per Lot) 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 or her First Mortgagee jointly and said Owner shall convey merchantable title to his or her 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 an 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 Common Area or may be conveyed as determined by the Board in its sole discretion.

9.4 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 Common Area, 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 Common Area and Improvements thereon), as reasonably determined by the Association in excess of Five Thousand Dollars (\$5,000.00), the Association shall give prompt notice thereof, including a description of the part of or the interest in the Common Area 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 Common Area or any part thereof or any interest therein, or any Improvement thereon or any part thereof or interest therein,

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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 Common Area, 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 Common Area, 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 seventy-five percent (75%) 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 Common Area, 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 an Owner's exclusive use portion of a Common Area shall be paid solely to the Owner thereof and that Owner's First Mortgage. Notwithstanding any provision of this Declaration, the Board in its sole discretion may choose to apply the provisions of C.R.S. §38-33.3-107 to any condemnation.

9.5 Repair and Reconstruction. Unless otherwise agreed by sixty-seven percent (67%) of the First Mortgagees (based on one (1) vote for each First Mortgage 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, any restoration or repair of the Project 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.

9.6 Excess Insurance Proceeds. With the prior written approval of sixty-seven percent (67%) of the First Mortgagees (based on one (1) vote for each 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 or her First Mortgagee jointly at the rate of one equal share per Lot. Without such approval, any excess insurance proceeds shall be placed in the Association's reserves.

9.7 Notice of Loss to First Mortgagees. 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 Common Area which shall be in excess of Five Thousand Dollars (\$5,000.00), or in the event of the condemnation of any part of the Common Area as described in Section 9.4 of this Article 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 Common Area, or both.

9.8 Merger. The Association may merge with one or more homeowner associations in the surrounding area on such terms and conditions as may be agreed to 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, and by sixty-seven percent (67%) of all First Mortgagees. The surviving entity in any such merger or affiliation shall be the Association for purposes of this Declaration.

X

LIMITED COMMON AREAS

10.1 Designation of Limited Common Areas. During the Period of Declarant Rights, the Declarant, its successors and assignees may designate any portion of the Common Area as a Limited Common Area. After the expiration or termination of the Period of Declarant Rights, the Board shall have the right and authority to make such designation. The designation at the recording of this Declaration is shown on *Exhibit "C"* attached hereto and incorporated herein by this reference.

10.2 Maintenance of Limited Common Areas.

(a) Notwithstanding any provision hereof, any repair, maintenance, replacement and Improvements related to any Limited Common Area shall be the responsibility of the Owner thereof and shall be performed at the expense of that Owner and the Board may, in its sole discretion, adopt Rules regulating, controlling and determining all maintenance of the Limited Common Areas, the Common Area, and the Townhomes; provided, however, the Board may provide services to the Limited Common Areas such as snow removal or concrete or asphalt repair to driveways and sidewalks, or other Limited Common Areas, to the extent that the Board

in its sole discretion determines that such services are a benefit to all Owners and should be paid as a Common Expense.

(b) The Board may, in its sole discretion, provide maintenance and other services to any Limited Common Area. Owners shall not paint, alter, expand, change, or modify any Limited Common Area in any manner nor construct any Improvement or item thereon, without the prior written approval of the Board. The Board may, in its sole discretion, regulate the use, maintenance and expenses of any Limited Common Areas, by Rule or otherwise, and may provide maintenance and other services to such areas at the expense of the Owners thereof or the Association as determined by the Board.

10.3 Other Matters Relating to Limited Common Areas. Pursuant to Section 8.1(a) of this Declaration, the Association shall insure the Limited Common Areas in the same manner as Common Areas. Notwithstanding any provision of this Declaration, any condemnation award attributable to the acquisition of a Limited Common Area shall be paid solely to the Owner thereof and that Owner's First Mortgagee. Notwithstanding any provision of this Declaration, the Board in its sole discretion may choose to apply the provisions of C.R.S. §38-33.3-107 to any condemnation.

XI

ADDITIONAL RESTRICTIONS

11.1 Restrictions Upon Association and Owners. Unless at least sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) and the Owners (other than Declarant) by the written agreement of Owners of Lots to which at least sixty-seven percent (67%) of all of the Proportionate Interests in the Association are attached, have given their prior written approval, neither the Association nor the Owners shall be empowered or entitled to do any of the following:

(a) by act or omission, seek to abandon or terminate this Declaration or any scheme or architectural control, or enforcement thereof, as set forth in this Declaration, regarding the architectural design, exterior appearance, or exterior maintenance of the Lots, Improvements thereon, or the Common Area, or the maintenance of the common property, party walls or common fences and roads, or the upkeep of lawns and plantings in the Project as set forth herein; or

(b) by act or omission, seek to abandon, partition, subdivide, mortgage, encumber, sell or transfer any of the Common Area, except for the granting of utility easements

as provided by Section 2.5 (a) of Article II hereof; any conveyance or encumbrance of the Common Area shall also comply with voting requirements of C.R.S. §38-33.3-312; or

(c) fail to maintain full current replacement cost fire and extended insurance coverage on the Lots and Common Area, and such other insurance as is required under this Declaration; or

(d) use hazard insurance proceeds for loss to the Improvements for other than repair, replacement or reconstruction of such Improvements as herein provided; or

(e) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner; or

(f) a material change in any of the following provisions of this Declaration: voting rights; assessments, assessment liens, or the priority of assessment liens; reserves for maintenance, repair, and replacement of Common Areas; responsibility for maintenance and repairs; reallocation of interests in the Common Areas, or rights to their use; redefinition of any Lot boundaries; convertibility of Lots into Common Areas or vice versa; insurance or fidelity bond; leasing of Lots; imposition of any restrictions on an Owner's right to sell or transfer his or her Lot; a decision by the Association to establish self-management when professional management had been required previously by this Declaration or by a First Mortgage holder; restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration; any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or any provisions that expressly benefit First Mortgage holders, insurers, or guarantors; or

(g) notwithstanding any provision hereof or otherwise, threaten, file or pursue any lawsuit and/or arbitration against any Protected Party as defined in Section 7.20 hereof, including the Declarant, its agents, employees, shareholders, contractors, brokers, successors, assigns or any person or party related to them or any prior owner of the Property, for any claim, demand, liability, obligation or matter whatsoever regarding any construction matter and/or defect, any environmental matter, any physical condition, any condition affecting the value or use, and any other matters related to any of the foregoing in connection with the Property, the Lots, the Townhomes and/or the Common Areas.

11.2 Implied Approval by Mortgagee. Except as to Sections 7.19, 7.20, 11.1(g), 12.7(b) (c), and 12.13, any matter requiring Mortgagee approval will be assumed when that Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Any First Mortgagee shall be given notice

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of any proposed action requiring its consent, if the First Mortgagee has sent a written request to the Association, stating both its name and address and the Lot number or address of the Lot on which it has (or insures or guarantees) the First Mortgage.

XII

GENERAL PROVISIONS

12.1 Acceptance of Provisions of All Documents. The conveyance or encumbrance of a Lot or the Improvements thereon shall be deemed to include the acceptance of all provisions of this Declaration, the Association's Articles of Incorporation and the Association's Bylaws and Rules, all of which shall be binding upon each Owner, his or her heirs, personal representatives, family, guests, tenants, successors and assigns, and everyone having an interest in the Lot without the necessity of inclusion of an express provision in the instrument of conveyance or encumbrance. The Association and the Owners shall obey and perform any protective or other covenants recorded against the Property prior to the recording of this Declaration.

12.2 Enforcement. The Board, the Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board or by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board may make such Rules to enforce the provisions of this Declaration or the Bylaws or to govern the use of the Common Areas or Lots or Townhomes, as are, in its sole discretion, consistent with the rights and duties established in this Declaration, and all Owners and other parties subject thereto shall strictly comply therewith. The Board shall have the sole discretion and authority to interpret this Declaration or the Bylaws and to resolve any dispute as to the interpretation thereof; the Board's interpretation shall be final, conclusive and binding on all persons and parties. In addition to all other remedies, the Board of Directors shall have the right, after notice and an opportunity of hearing, to impose upon any Owner reasonable fines for any breach by that Owner of the provisions of this Declaration, the Bylaws and/or the Association's Rules. All rights and remedies provided in this Declaration are distinct and cumulative to any other right or remedy hereunder or afforded by law or in equity, and may be exercised concurrently, independently or successively.

12.3 Non-Waiver. Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of any such provision. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by

law or in equity and may be exercised concurrently, independently or successively without effect or impairment upon one another.

12.4 Cumulative. Each of these covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

12.5 Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

12.6 Conflicts of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. The Rules shall be deemed to be incorporated into this Declaration as if set forth herein, unless the Board determines in its sole discretion that a Rule is in clear conflict with the specific provisions of this Declaration, in which event the Board shall provide notice that the provision of the Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

12.7 Duration and Amendment. Each and every provision of this Declaration shall be binding upon each and every Owner, his or her heirs, successors, assigns and personal representatives and shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as is otherwise provided herein, this Declaration shall not be revoked or terminated unless all of the Owners and all of the First Mortgagees agree to such termination or revocation by an instrument duly recorded and such termination and revocation shall comply with C.R.S. §38-33.3-218. This Declaration may be amended or modified by agreement of Owners of Lots to which at least sixty-seven percent (67%) of the Proportionate Interests in the Association are attached and not less than sixty-seven (67%) of the First Mortgagees; provided, however, (a) that any Section in this Declaration which requires a particular percentage of Owners and/or Mortgagees may be amended only by written consent of that percentage of those parties, (b) that notwithstanding any provision of this Declaration, this Section, Sections 3.2, 7.19, 7.20, 10.1, 10.2, 10.3, 11.1, 12.7 and 12.13, and any other Section or provision requiring Declarant's consent or providing particular rights or privileges to Declarant may only be amended, changed, added, modified or terminated only with the prior written consent of the Declarant during the Period of Declarant Rights or such longer period as allowed by law or statute; (c) that this Section may be amended by an instrument signed by Owners owning not less than ninety percent (90%) of the Lots, and one hundred percent (100%) of the First Mortgagees who have given the Association notice of their lien, and

(d) that the Declarant hereby reserves the right, for the period set forth in Section 12.13 hereof, but without the vote of the Owners or First Mortgagees, to make such amendments to this Declaration, the Articles of Incorporation, the Bylaws, and/or Rules to the extent permitted by the CCIOA, or as may be necessary or desirable to exercise any right of Declarant under this Declaration or as may be necessary to correct typographical errors or to make clarifications or to comply with the requirements, standards or guidelines of recognized secondary mortgage market or as may be approved in writing by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Department of Veterans Affairs so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Property, and each Owner and Mortgagee by accepting a deed, Mortgage or other instrument affecting a Lot appoints Declarant as his or her attorney-in-fact for purposes of executing in said Owner's and/or Mortgagee's name and recording any such amendments to this Declaration, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments. The consent of any junior Mortgagee shall not be required under the provisions of this Article XII. In determining whether the appropriate percentage of First Mortgagee approval is obtained, each First Mortgagee shall have one (1) vote for each First Mortgage owned. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the county in which the Property is located, and must comply with applicable Colorado statutes, and must contain the certification of the Association's President that all necessary approvals have been obtained from the Owners and the First Mortgagees. The ballots, consents or other written documents of the Owners and the First Mortgagees approving amendments need not be recorded, but shall be retained in the Association's records for at least one year after the amendment is recorded; any action to challenge an amendment must be filed in the El Paso County District Court no later than one year after recording of the amendment. All amendments, certifications and approvals shall be conclusively presumed to be valid and binding. Any matter requiring First Mortgagee approval will be assumed when that First Mortgagee fails to submit a negative response to any written proposal for an amendment within sixty (60) days after it was sent proper notice of the proposal, provided the notice was sent by certified or registered mail, with a "return receipt" requested. Any First Mortgagee shall be given notice of any proposed action requiring its consent, if the First Mortgagee has sent a written request to the Association, stating both its name and address and the Lot number or address of the Lot on which it has (or insures or guarantees) the First Mortgage. Notwithstanding the above, any provisions regarding the obligations of the Declarant, the Association and the Owners with respect to the Detention Basin Agreement shall neither terminate nor be amended except by written agreement of the Board of County Commissioners of El Paso County, Colorado, or except as otherwise provided in the Detention Basin Agreement.

12.8 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address or by email showing receipt. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association at his or her address filed with the Secretary of State of the State of Colorado, together with a copy addressed to the President of the Association at his or her registered address.

12.9 Assignment of Declarant's Rights. The Declarant may assign its rights and authority hereunder, in whole or in part, by express written assignment, duly recorded.

12.10 Terms. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. The terms "including" or "includes" shall mean "including without limitation" or "includes without limitation".

12.11 Captions. The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of the Declaration or the intent of any provisions hereof.

12.12 Governing Law. This Declaration shall be governed by, and construed in accordance with, the statutes and laws of the State of Colorado. In the event of any conflict between the Association Documents and the CCIOA, the provisions of the CCIOA shall prevail, unless the CCIOA provides otherwise. In the event of any conflict between the Association Documents and any statute, code or governmental regulation, including the Development Plan or the Plat, either the more restrictive provision or the provision of the Association Documents shall prevail as to Owners, occupants and other persons, parties or entities, except as the Board may determine in its reasonable discretion.

12.13 Development Rights and Special Declarant Rights. In addition to and supplement of all rights reserved by the Declarant under this Declaration, or under any law or statute, the Declarant reserves the following development rights and other special Declarant rights applicable to the Property and the Project for the Period of Declarant Rights as set forth in Section 1.10 hereof:

(a) The right to complete or make Improvements indicated on the plats or maps, or otherwise necessary or desirable to complete construction of the Project and related Improvements;

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(b) The right to maintain sales offices, management offices and models on Lots or on the Common Area;

(c) The right to install, assign and/or maintain signs on the Property and to advertise the Project;

(d) The right to use and permit others to use easements and rights through the Common Area as may be reasonably necessary for the purpose of making Improvements within the Property or performing other rights under the Declaration.

(e) The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Project.

(f) The right to enter into, establish, execute, amend, and otherwise deal with contracts, assignments, and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Project for the benefit of the Owners and/or the Association.

(g) The right to appoint or remove any officer of the Association or any director of the Association during the Period of Declarant Appointment as set forth in Section 3.2 hereof and to appoint or remove any member of the Architectural Control Committee.

(h) The right to amend the Declaration, the Articles of Incorporation, the Bylaws and/or the Rules in connection with the exercise of any development rights or other rights, and to require that any amendments of said documents be approved in writing by Declarant prior to adoption.

(i) The right to amend any plat for the Property in connection with the exercise of any development rights or other rights.

(j) The right to transfer, assign or delegate any right reserved or granted by this Declaration, law or statute to any person or party to the fullest extent permitted under this Declaration, law or statute.

(k) The right to withdraw Lots or Common Area from the Project or to annex additional real property by amendment of this Declaration during the Period of Declarant Rights as provided herein.

(l) The right to assign any portion of the Common Area as an area for the exclusive use of an Owner and to subdivide any portion of the Property into Lots and Common Areas.

(m) Any and all other rights of Declarant as set forth in this Declaration, by law or statute, including any development rights and special Declarant rights under CCIOA; in the event of any conflict, the broadest right reserved by Declarant shall prevail.

12.14 Board to Resolve Ambiguities. If any doubt or question shall arise (except as to the Declarant's rights and/or duties hereunder) concerning the true intent or meaning of any of this Declaration or other Association Documents, except as to the Declarant's rights under the Association Documents, including Sections 7.19, 7.20, 11.1(g), 12.7(b) and (c) and 12.13 of this Declaration, the Board of Directors of the Association shall, by resolution, determine the proper construction of the provision in question and such resolution shall fix and establish the meaning, effect and application of the provision. The Board's decision shall be final, conclusive and binding on all parties, except for gross negligence and willful misconduct and except as to Sections 7.19, 7.20, 11.1(g), 12.7(b) and (c) and 12.13 or other provisions of this Declaration or Association Documents setting forth the rights and interests of the Declarant or any Protected Party.

12.15 Special Taxing Districts. The Property is located in two special taxing districts described as follows: Cherokee Metropolitan District, as evidenced by an instrument recorded on August 11, 1986, in Book 5216 at Page 353 and Central Marksheffel Metropolitan District as evidence by an instrument recorded October 3, 2002 at Reception No. 202169647; said special districts may have easements, covenants and other rights regarding the Property and may provide services to the Project. Declarant makes the following disclosure: **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 tax 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. Buyers should investigate the Special Taxing Districts in which the Property is located by contacting the County Treasurer, by reviewing the certificate of taxes due for the Property and by obtaining further information from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.**

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal as of this 19th day of July, 2022.

DECLARANT:

PHI REAL ESTATE SERVICES, LLC,
a Colorado limited liability company

By: 
PAUL BROUSSARD
Its: Manager

STATE OF COLORADO)
) ss.
COUNTY OF El Paso)

The foregoing instrument was acknowledged before me this 19th day of July, 2022, by PAUL BROUSSARD as Manager of PHI Real Estate Services, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

(S E A L)


Notary Public
My commission expires: 1/13/2026

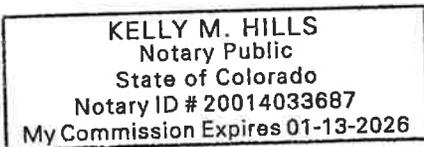


EXHIBIT "A"

Legal Description of Property

Tract A & Tract G, Claremont Ranch Filing No. 7,
County of El Paso, State of Colorado.

EXHIBIT "B"

Common Area/Limited Common Area

Tracts A-E, Villas at Claremont Ranch, County of El Paso, State of Colorado

EXHIBIT "C"

Owner's Proportionate Share/Proportionate Interest

<u>Lot #</u>	<u>Proportionate Interest</u>
1	1/83
2	1/83
3	1/83
4	1/83
5	1/83
6	1/83
7	1/83
8	1/83
9	1/83
10	1/83
11	1/83
12	1/83
13	1/83
14	1/83
15	1/83
16	1/83
17	1/83
18	1/83
19	1/83
20	1/83
21	1/83
22	1/83
23	1/83
24	1/83
25	1/83
26	1/83
27	1/83
28	1/83
29	1/83
30	1/83
31	1/83
32	1/83
33	1/83

<u>Lot #</u>	<u>Proportionate Interest</u>
34	1/83
35	1/83
36	1/83
37	1/83
38	1/83
39	1/83
40	1/83
41	1/83
42	1/83
43	1/83
44	1/83
45	1/83
46	1/83
47	1/83
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69	1/83
70	1/83

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<u>Lot #</u>	<u>Proportionate Interest</u>
71	1/83
72	1/83
73	1/83
74	1/83
75	1/83
76	1/83
77	1/83
78	1/83
79	1/83
80	1/83
81	1/83
82	1/83
83	1/83
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TOTAL:	100%

EXHIBIT “D”

Easements, Exceptions and Recorded Plat

See attached.

1. Any facts, rights, interests or claims that are not shown by the Public Records but which could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachments, encumbrances, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by Public Records.
4. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for the value the estate or interest or mortgage thereon covered by this Commitment.

NOTE: Upon satisfaction of all requirements herein, the above exception will not be reflected on any proposed title policy identified in Schedule A.

6. Water rights, claims of title to water, whether or not these matters are shown by the Public Records.
7. All taxes and assessments, now or heretofore assessed, due or payable.

NOTE: This tax exception will be amended at policy upon satisfaction and evidence of payment of taxes.

8. The right of proprietor of a vein or lode to extract or remove his ore should the same be found to penetrate or intersect the premises thereby granted as reserved in United States patent recorded November 16, 1886 in [Book 72 at Page 90](#); and any and all assignments thereof or interest therein.
9. Any assessment or lien of Cherokee Metropolitan District, as disclosed by the instrument recorded August 11, 1986 in [Book 5216 at Page 353](#) and recorded may 27, 1992 in [Book 5983 at Page 83](#).
10. Any assessment or lien of Central Marksheffel Metropolitan District, as disclosed by the instrument recorded October 3, 2002 at Reception No. [202169647](#) and recorded December 12, 2002 at Reception No. [202221165](#).
11. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. 03-127 of the Board of County Commissioners, El Paso County recorded May 8, 2003 at Reception No. [203099698](#).
12. An Avigation and Hazard Easement granted to the City of Colorado Springs, by the instrument recorded November 18, 2004 at Reception No. [204190786](#) and recorded November 18, 2004 at Reception No. [204190787](#), upon the terms and conditions set forth in the instrument, over subject property.
13. Terms, conditions, provisions, agreements and obligations contained in the Claremont Ranch Filing No. 7 Development Plan recorded January 18, 2005 at Reception No. [205007124](#).
14. Terms, conditions, provisions, agreements and obligations contained in the Subdivision Improvements Agreement, recorded May 17, 2005 at Reception No. [205071099](#).

15. Terms, conditions, restrictions, provisions, notes and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on the Plat(s) of said subdivision set forth below:

Recording Date: May 17, 2005
Recording No: [205071100](#)

16. Terms, conditions, provisions, agreements and obligations contained in the Resolution No. 04-496 as set forth below:

Recording Date: January 31, 2005
Recording No.: [205015064](#)

17. Terms, conditions, provisions, agreements, easements and obligations contained in the Right of Entry as set forth below:

Recording Date: October 14, 2008
Recording No.: [208112358](#)

18. Terms, conditions, provisions, agreements, easements and obligations contained in the Amendment to Right of Entry as set forth below:

Recording Date: March 22, 2010
Recording No.: [210025995](#)

19. Terms, conditions, provisions, agreements, easements and obligations contained in the Right of Entry Easement as set forth below:

Recording Date: November 9, 2010
Recording No.: [210113781](#)

20. Terms, conditions, provisions, agreements, easements and obligations contained in the Permanent Easement Agreement as set forth below:

Recording Date: December 3, 2010
Recording No.: [210123365](#)

21. Southern Delivery System Land Survey Diagram Phase 2A recorded February 27, 2013 at Reception No. [213025835](#).

22. Terms, conditions, provisions, agreements and obligations contained in the Amended and Restated Resolution of the Board of Directors of the Central Marksheffel Metropolitan District concerning the Imposition of Capital Facilities Fee as set forth below:

Recording Date: November 14, 2017
Recording No.: [217138355](#)