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El Paso County, CO



222070208

**CONSENT OF THE BOARD OF DIRECTORS OF  
MINEOLA TOWNHOME OWNERS ASSOCIATION, INC.**

In lieu of a meeting of the Board of Directors of the Mineola Street Townhome Owners Association, Inc. (the "Association"), the following persons: RICKI STARK, RICHARD STARK, Craig Dillion, and Jenna McMullen, who constitute all of the members of the initial Board of Directors, have agreed and consented that this Consent constitutes the organization meeting of the Board of Directors and pursuant to Section 7-128-202 and 204 of the Colorado Revised Statutes (1973), have waived all notice whatsoever of any meeting and have agreed and consented to the following actions and unanimously votes for the following resolutions:

RESOLVED, the Bylaws of even date herewith are hereby adopted and approved by the Board of Directors.

FURTHER RESOLVED, the following persons be and hereby are duly elected to the offices set forth opposite their respective names to serve until the next annual meeting of Directors and until their successors are duly elected and qualified:

- Craig Dillion President
- Jenna McMullen Vice-President
- RICHARD STARK Secretary
- RICHARD STARK Treasurer

FURTHER RESOLVED, the officers of the Association are hereby authorized to establish such accounts, as they deem appropriate in their sole discretion, with any bank, savings and loan, and/or other financial institution, to deliver such copies of this resolution as may be required, and to take such other actions and to execute such further documents as are necessary in their judgment to carry out the foregoing resolution.

FURTHER RESOLVED, the officers of the Association are hereby authorized to purchase such corporate minute book, a corporate seal and such other supplies, as they deem appropriate in their sole discretion.

FURTHER RESOLVED, the annual assessment for the Units within the Project shall be assessed at the rates shown on the attached sheet.

FURTHER RESOLVED, the Association shall collect an initial start-up fee of two months' assessments, to be held and used as provided in the Declaration.

FURTHER RESOLVED, the officers of the Association are hereby authorized to negotiate and execute such agreements, contracts or other documents, upon such terms as they deem appropriate in their sole discretion, in the name of the Association, and without personal responsibility or recourse, to fulfill and accomplish the purposes, powers and duties of the Association, as set forth in the Association's Declaration, its Articles of Incorporation and its Bylaws, including without limitation, any management agreements, insurance contracts, agreements for utilities, maintenance, trash collection, or any other services, and agreements to acquire personal property or to employ any person or party on behalf of the Association.

FURTHER RESOLVED, any actions taken by the officers on behalf of the Association, prior hereto, are hereby ratified and approved in all respects.

FURTHER RESOLVED, the Association shall, to the extent permitted by law, indemnify and hold harmless its directors and officers from any liability resulting from their acts or omissions in the course of performing their rights and duties.

FURTHER RESOLVED, that the Rules attached to this Consent are hereby approved and adopted by the Association, subject to subsequent amendment, modification or change.

FURTHER RESOLVED, that the Board of Directors shall constitute the architectural control or approving committee.

The foregoing actions/resolutions shall have the same effect as actions/resolutions taken at a meeting of Directors.

APPROVED:

BOARD OF DIRECTORS:



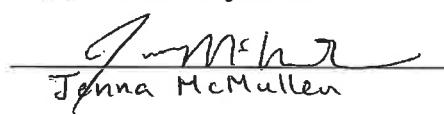
RICHARD STARK



Craig Dillion



RICKI STARK



Jenna McMullen

**BYLAWS  
OF  
MINEOLA TOWNHOME OWNERS ASSOCIATION, INC.**

The following Bylaws correctly set forth the provisions of the Bylaws of **MINEOLA TOWNHOME OWNERS ASSOCIATION, INC.**, and were duly adopted pursuant to the Colorado Revised Nonprofit Corporation Act:

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is **MINEOLA TOWNHOME OWNERS ASSOCIATION, INC.**, hereinafter referred to as the “Association”. The Association has been incorporated as a Colorado nonprofit corporation pursuant to its Articles of Incorporation (which are incorporated herein by this reference and hereafter called the “Articles”). The principal office of the corporation shall be located at such location as determined by the Board, but meetings of Members and Directors may be held at such places within the County of El Paso as may be designated by the Board of Directors, which shall also be known and referred to sometimes herein as the “Board”.

**ARTICLE II  
DEFINITIONS AND STATUS**

All terms which are defined in the Declaration of Covenants, Conditions and Restrictions of Mineola Townhomes (which is incorporated herein by this reference and hereinafter called the “Declaration” and incorporated herein by this reference) or in the Colorado Revised Nonprofit Corporation Act, C.R.S. §7-121-101 et seq. (hereinafter called the “Nonprofit Act”), shall have the same meaning herein. The Project is a “planned community” as defined by the Colorado Common Interest Ownership Act, but pursuant to C.R.S. §38-33.3-116, the Association, the Declarant, the Owners and the Project shall not be subject to that Act except to be subject only to C.R.S. §38-33.3-105, §38-33.3-106 and §38-33.3-107.

**ARTICLE III  
MEETING OF MEMBERS**

3.1. Membership and Voting Rights. The requirements and conditions of Membership and of voting rights shall be as provided in the Declaration and the Articles of Incorporation. By acquiring title to a Lot, a person or entity automatically consents to becoming a Member of the Association and to be subject to the rights and duties set forth in the Declaration, the Articles, Bylaws and applicable laws and statutes. Different rights and obligations with respect to voting and all other matters may be set forth in the Declaration, which shall be controlling over C.R.S. §7-127-202 or otherwise. Members may only transfer their Memberships and any right arising therefrom as permitted by the Declaration, Articles, and these Bylaws and in accordance

therewith. A Member may not resign from the Association, but may be suspended or have Membership terminated as provided by the Declaration, Articles of Incorporation and C.R.S. §7-126-302; a Member shall remain liable for all assessments, fees, charges and sums, whether past, present or future, despite such suspension or termination. Members who are not in good standing shall not have voting or other rights and shall not be counted for quorum or approval percentages under the Declaration, Articles of Incorporation and Bylaws. No votes allocated to a Lot owned by the Association may be cast.

3.2. Annual Meetings. The first annual meeting of the Members shall be held within one year of the date of incorporation, and each subsequent annual meeting of the Members shall be held during the same month of each year thereafter at a place, date and time, within the State of Colorado, as the Board of Directors may determine.

3.3. Special Meetings.

(a) The Association shall hold a special meeting of its Members:

(i) On call of its President or a majority of its Board of Directors; or

(ii) If the Association receives one or more written demands for the meeting, stating the purpose or purposes for which it is to be held, signed and dated by Members holding at least twenty percent (20%) of all votes (based upon Proportionate Interests) entitled pursuant to the Bylaws to be cast on any issues proposed to be considered at the meeting.

(b) If not otherwise fixed under C.R.S. §7-127-103 or §7-127-106, the record date for determining the Members entitled to demand a special meeting pursuant to paragraph (a)(ii) above is the date of the earliest of any of the demands pursuant to which the meeting is called, or the date that is sixty (60) days before the date the first such demands is received by the Association, whichever is later.

(c) If a notice for a special meeting demanded pursuant to paragraph (a)(ii) above is not given pursuant to C.R.S. §7-127-104 within thirty (30) days after the date the written demand or demands are delivered to a corporate Officer, regardless of the requirements of paragraph (d) below, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to C.R.S. §7-127-104.

(d) Special meetings of the Members may be held in or out of this state at the place stated in or fixed in accordance with these Bylaws, or, if not so stated or fixed, at a place stated or fixed in accordance with a resolution of the Board of Directors. If no place is so stated or fixed, special meetings shall be held at the Association's principal office.

(e) Only business within the purpose or purposes described in the notice of the meeting required by C.R.S. §7-127-104(3) may be conducted as a special meeting of the Members.

3.4. Notice of Meetings.

(a) The Association shall give to each Member who is entitled to vote at the meeting notice consistent with its Declaration, Bylaws and Rules of meetings of Members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of paragraph (c) below is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.

(c) Notice is fair and reasonable if:

(i) The Association notifies by hand delivery or U.S. mail sent prepaid to the mailing address of each Member (either to the Member's unit or other mailing address designated in writing by the Member) of the place, date, and time of each annual, regular, and special meeting of Members no fewer than ten (10) days nor more than fifty (50) days before the meeting date, or to the extent allowed or required by statute, or sent by electronic transmittal to the number designated in writing by the Owner with a written confirmation of receipt, not less than ten (10) nor more than fifty (50) days in advance of a meeting. The date notice is sent shall be the date received by the recipient or three (3) days after placing the notice in the United States mail. No action shall be taken at a special meeting except as stated in the notice. If notice is mailed by other than first class or registered mail, no fewer than thirty (30) days, nor more than fifty (50) days before the meeting date, and if notice is given by newspaper as provided in C.R.S. §7-121-402(2), the notice must be published five (5) separate times with the first such publication no more than sixty (60) days, and the last such publication no fewer than ten (10) days, before the meeting date.

(ii) Notice of an annual or regular meeting should include a description of any matter or matters that must be approved by the Members or for which the Members' approval is sought under C.R.S. §7-128-501, §7-129-110, §7-130-103, §7-130-201, §7-131-102, and §7-134-102. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, and any proposal to remove a Director from the Board. Notwithstanding any provision of these Bylaws, any notices required by the CCIOA or the Nonprofit Act shall be given and the meetings held in accordance with any applicable statutory requirement; and

(d) Unless otherwise provided by articles 121 to 137 of the Nonprofit Act or these Bylaws, notice of a special meeting includes a description of the purpose or purposes for

which the meeting is called.

(e) Members may waive notice as provided by C.R.S. §7-127-105.

(f) If an annual, regular, or special meeting of Members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under C.R.S. §7-127-106, however, notice of the adjourned meeting must be given under this section to the Members of record as of the new record date.

(g) When giving notice of an annual, regular, or special meeting of Members, the Association shall give notice of a matter a Member intends to raise at the meeting if:

(i) Requested in writing to do so by a person entitled to call a special meeting; and

(ii) The request is received by the Secretary or President of the Association at least ten (10) days before the Association gives notice of the meeting.

(h) The Board may fix the record date for determining the Members entitled to notice or to vote at any Members' meeting or to exercise any rights in respect to any lawful action pursuant to C.R.S. §7-127-106 or otherwise. Such record date may not be more than seventy (70) days before the meeting or action requiring a determination of Members occurs. Unless otherwise directed by the Board, the Association shall not be required to prepare the list of names described in C.R.S. §7-127-201.

3.5. Action Taken Without Meeting or by Telecommunication. Notwithstanding any provision to the contrary, any action required or permitted to be taken at any meeting of Members may be taken without a meeting, prior notice or vote, if Members entitled to vote thereon unanimously agree and consent to such action in writing; such action shall be taken in accordance with C.R.S. §7-127-107 of the Nonprofit Act. Action may also be taken by means of telecommunication (including e-mail) pursuant to C.R.S. §7-127-108.

### 3.6. Quorum.

(a) The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, seventy-five percent (75%) of the votes (based upon Proportionate Interests) in the Association shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting, from time to time, without notice other than announcement at the

meeting, until a quorum as aforesaid shall be present or be represented.

(b) Once a Member is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, the Member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or shall be set for that adjourned meeting.

### 3.7. Voting.

(a) Each Lot is allocated the voting rights as set forth in the Declaration.

(b) The vote of a corporation, limited liability company, trust or other entity may be cast by a person authorized in writing to cast such vote. The individual presiding at the meeting may require reasonable evidence that a person voting on behalf of an Owner who is a corporation, limited liability company, limited liability partnership, limited partnership, general partnership or any other type of entity recognized by Colorado is qualified to vote.

(c) The Board is entitled to reject a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation if the Secretary or other Officer or agent authorized to tabulate the votes, acting in good faith, has a reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the Owner. The Association and its Officer or agent and the Board and its members who accept or reject a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation in good faith and in accordance with the standards of the Nonprofit Act, and these Bylaws are not liable in damages for the consequences of the acceptance or rejection.

### 3.8. Proxies.

(a) If only one of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners, unless the Declaration expressly provides otherwise. There is majority agreement if any one of the multiple Owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

(b) Votes allocated to a Lot may be cast pursuant to a proxy duly executed by a Lot Owner. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. A Lot Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the Association or as otherwise provided in Section 3.7(e) of these Bylaws. A proxy is void if it is not dated or purports to be

revocable without notice. A proxy terminates eleven (11) months after its date, unless it provides otherwise.

(c) A Member may appoint a proxy by transmitting or authorizing the transmission of a fax, e-mail, or other electronic transmission providing a written statement of the appointment to the proxy, to a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy or to the Association; except that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the Member transmitted or authorized the transmission of the appointment.

(d) An appointment of a proxy is revocable by the Member.

(e) Appointment of a proxy is revoked by the person appointing the proxy:

(i) Attending any meeting and voting in person; or

(ii) Signing and delivering to the Secretary or other Officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

3.9. Majority of Members. As used in these Bylaws, the term “majority of Members” shall mean Owners of Lots to which at least seventy-five percent (75%) of the votes (based upon Proportionate Interests) in the Association are attached, present at a meeting containing a quorum. Unless otherwise provided herein, or in the Declaration, an affirmative vote of seventy-five percent (75%) of the Members present, in person or by proxy, shall be required to transact the business of the meeting and shall be valid and binding upon all Members.

3.10. Voting by Mail. Except for removal of a Director under Section 4.4, the Board may decide that voting of the Owners on any matter required or permitted by the statutes of Colorado, the Declaration, the Articles of Incorporation, or these Bylaws shall be by written ballot. Pursuant to C.R.S. §7-127-109 of the Nonprofit Act, and subject to any amendments thereof, any action that may be taken at any meeting of Members may be taken without a meeting if the Secretary delivers a written ballot to every Member entitled to vote on the matter. “Delivery” to the Member of the ballot, and the Member’s return of the completed ballot shall be made by the same methods available for providing notice to a Member set forth in Section 3.3 above, or by e-mail attachment if the address has been provided to the Association.

(a) A written ballot shall: (i) set forth each proposed action; and (ii) provide an opportunity to vote for or against each proposed action.



(b) Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than the election of member(s) of the Board; (iii) specify the time by which a ballot must be received by the Association in order to be counted; and (iv) be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.

(d) A written ballot, once received by the Association, may not be revoked.

(e) The Board may adopt reasonable Rules for voting by mail, including that a Member who fails to respond to a written ballot within thirty (30) days shall be deemed to have voted in the affirmative.

3.11 Order of Business. The order of business at all meetings of the Members shall be as determined by the Board.

#### ARTICLE IV BOARD OF DIRECTORS: SELECTION, TERM OF OFFICE

4.1. Number. The property, business and affairs of the Association shall be managed by a Board of Directors. The Board shall be composed of four (4) Directors; the Owners of each Lot shall appoint one Director to represent that Lot. Only Owners, eligible to vote and otherwise in good standing, may be elected or appointed to fill a vacancy on the Board; provided, however, Declarant shall have the right to appoint and remove Directors who may not be Owners to the Board as provided in the Declaration during the Period of Declarant Rights. In the case where, through removal or resignation, the total number of Directors is less than four, the Board will be considered properly constituted until such vacancies are filled.

4.2. Term of Office.

(a) At each annual meeting after the termination of the Period of Declarant Rights, each Director shall be appointed to serve a one (1) year term. The term of any Director filling a vacancy expires at the end of the unexpired term that such Director is filling. Vacancies shall be filled as provided by C.R.S. §7-128-120 of the Nonprofit Act.

(b) Despite the expiration of a Director's term, a Director continues to serve until the Director's successor is elected, appointed, or designated and qualifies, or until there is a decrease in the number of Directors.

4.3. Vacancies. Vacancies created by resignation or removal of a Director of the Board by the Owners pursuant to Sections 4.4 or 4.5 shall be filled by a majority of the Board (at a regular or special meeting) remaining after such vote to remove even though the members of the Board present at such a meeting may constitute less than a quorum; provided, however, if a majority of the Board is removed at once, an election shall be held immediately thereafter at the same meeting and the Owners shall appoint new Board members. Each person elected or appointed to the Board shall serve out the term of the Member he or she replaced. Notwithstanding any provision in Sections 4.3, 4.4 and/or 4.5 to the contrary, vacancies of members of the Board who are appointed by the Declarant shall be filled by the Declarant.

4.4. Resignation. A Director may resign at any time by giving written notice of resignation to the Board. A resignation of a Director is effective when the notice is received and accepted by the Board unless the notice specifies a later effective date. If a resignation is made effective at a later date, the Board may permit the Director to remain in office until the effective date and may fill the pending vacancy before the effective date with the provision that the successor does not take office until the effective date, or the Board may remove the Director at any time before the effective date and may fill the resulting vacancy by appointment at that time.

4.5. Removal.

(a) Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners by a vote of seventy-five percent (75%) of all Proportionate Interests 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. Directors appointed by the Owners may be removed as follows:

(i) The voting Members may remove one or more Directors elected by them with or without cause.

(ii) Subject to C.R.S. §7-127-208(3), a Director may be removed only if the number of votes cast to remove the Director would be sufficient to elect the Director at a meeting to elect Directors.

(iii) A Director may be removed by the voting Members only at a meeting called for the purpose of removing that Director, and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the Director. In the event of removal, the vacancy shall be filled as provided by Section 4.3 above.

(iv) A majority of the Board of Directors may be removed under paragraphs (i) to (iii) above, provided, however, if a majority of the Board is removed, the vacancies shall be filled by election of replacements at the same meeting as provided in Section 5.2 below.

(v) A Director elected by the Board of Directors may be removed with or without cause by the vote of a majority of the Directors then in office or such greater number as is set forth in the Bylaws; except that a Director elected by the Board of Directors to fill the vacancy of a Director elected by the voting Members may be removed without cause by the voting Members, but not the Board of Directors.

(b) An appointed Director may be removed without cause by the Declarant appointing the Director. The person removing the Director shall do so by giving written notice of the removal to the Director and to the Association. A removal is effective when the notice is received by both the Director to be removed and the Association unless the notice specifies a future effective date.

(c) If, at the beginning of a Director's term on the Board, any Rules adopted by the Board pursuant to the Bylaws provide that a Director may be deemed to have resigned for failing to attend a specified number of Board meetings, or for failing to meet other specified obligations of Directors, and if such failure to attend or meet obligations is confirmed by an affirmative vote of the Board of Directors, then such failure to attend or meet obligations shall be effective as a resignation at the time of such vote of the Board.

4.6. Compensation. No Director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties. Nothing herein shall prohibit the Association from compensating a member of the Board, or any entity with which a Director of the Board member is affiliated, for services or supplies furnished to the Association in a capacity other than as a member of the Board pursuant to a contract or agreement with the Association, provided that the interest of such Director of the Board was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Director of the Board.

## ARTICLE V ELECTION OF DIRECTORS

5.1. Election. After the termination of the Period of Declarant Rights, election to the Board of Directors may be by secret written ballot or other voting procedure set by the Board. At such election, Each Lot shall be entitled to appoint one Director to represent that Lot. be required for election to the Board of Directors.

ARTICLE VI  
MEETINGS OF DIRECTORS

6.1. Regular Meetings. Regular meetings of the Board of Directors shall be held with such frequency and at such times and places as shall be determined by a majority of the Directors. Notice of regular meetings of the Board of Directors shall be given to each Director personally or by mail, telephone, fax or e-mail, at least three (3) days prior to the day named for such meeting.

6.2. Organizational Meeting. The first meeting of a newly elected Board of Directors following the annual meeting of the Members shall be held within ten (10) days thereafter at such place as shall be fixed by the Directors at the meeting at which such Directors were elected and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

6.3. Special Meetings. Special meetings of the Board of Directors may be called by the President of the Association, or by any two or more Directors, upon three (3) days' notice to each Director, given personally or by mail, telephone, fax or e-mail, which notice shall state the time, the place and the purpose of the meeting.

6.4. Notice of Meetings.

(a) Unless otherwise provided in articles 121 to 137 of the Nonprofit Act or in these Bylaws, regular meetings of the Board of Directors may be held without notice of the date, time, place, or purpose of the meeting. Any meeting may be held as allowed by C.R.S. §7-128-201.

(b) Unless the Bylaws provide for a longer or shorter period, special meetings of the Board of Directors shall be preceded by at least three (3) days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless otherwise required by articles 121 to 137 of the Nonprofit Act or these Bylaws.

6.5 Waiver of Notice.

(a) A Director may waive any notice of a meeting before or after the time and date of the meeting stated in the notice. Except as provided by paragraph (b) below, the waiver shall be in writing and signed by the Director entitled to the notice. Such waiver shall be delivered to the Association for filing with the corporate records, but such delivery and filing shall not be conditions of the effectiveness of the waiver.

(b) A Director's attendance at or participation in a meeting waives any required notice to that Director of the meeting unless:

(i) At the beginning of the meeting or promptly upon the Director's later arrival, the Director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and does not thereafter vote for or assent to action taken at the meeting; or

(ii) If special notice was required of a particular purpose pursuant to C.R.S. §7-128-203(2), the Director objects to transacting business with respect to the purpose for which such special notice was required and does not thereafter vote for or assent to action taken at the meeting with respect to such purpose.

6.6. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by complying with C.R.S. §7-128-202. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

6.7 Meeting by Telecommunication. Pursuant to C.R.S. §7-128-201(2), any Director may attend a meeting of the Board by: (i) using an electronic or telephonic communication method whereby the Director may be heard by the other Directors and may hear the deliberations of the other Directors on any matter properly brought before the Board; or (ii) by participating in "real time" e-mail communication when the Directors are participating in this form of communication. The vote of such Director shall be counted and the presence noted as if that Director were present in person on that particular matter.

6.8. Quorum.

(a) At all meetings of the Board of Directors, the presence of seventy-five percent (75%) of the Directors shall constitute a quorum for the transaction of business, and the acts of seventy-five (75%) of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board, there is less than a quorum present, those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

(b) For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Director may be deemed to be present at a meeting and to vote if the Director has granted a signed written proxy to another Director who is present at the meeting, authorizing the other Director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this paragraph and as permitted by C.R.S. §7-128-202, Directors may not vote or otherwise act by proxy.

(c) A Director who is present at a meeting of the Board of Directors when corporate action is taken is deemed to have assented to all action taken at the meeting unless:

(i) The Director objects at the beginning of the meeting, or promptly upon the Director's arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting;

(ii) The Director contemporaneously requests that the Director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or

(iii) The Director causes written notice of the Director's dissent or abstention as to any specific action to be received by the presiding Officer of the meeting before adjournment of the meeting or by the Association promptly after adjournment of the meeting. The right of dissent or abstention pursuant to this paragraph as to a specific action is not available to a Director who votes in favor of the action taken.

## ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

7.1. Powers. The Board of Directors shall have power to:

(a) exercise all powers granted by the Declaration, the Association's Articles of Incorporation, the Nonprofit Act or other law or statutes allowed to boards of corporations;

(b) adopt and publish Rules and policies and to establish penalties for the infraction thereof. A rule or policy may interpret, enforce or implement, but not directly conflict with the Declaration or these Bylaws. A copy of such Rules and policies may be delivered by hand to each Lot or mailed to each Member upon the adoption thereof or published on the Association's website, if applicable, or notice thereof may be recorded in the real property records of El Paso County;

(c) suspend any Member's right to vote and the right to receive Association services and privileges and to use of any Association facilities during any period in which such Member shall be in default under the Declaration, including the non-payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing for each infraction of published Rules. A Member who is not in good standing because of any default shall not be entitled to serve on the Board and shall not be counted in computing any percentages required for quorum or any approval under the Association's Governing Documents;

(d) exercise for the Association all powers, duties and authority vested in or delegated to the Board or the Association and not reserved to the Membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration, and as are

necessary for the administration of the affairs of the Association and for the operation and maintenance of the Project;

(e) incur such costs and expenses as may be necessary to perform the Association's duties under the Declaration and to keep in good order, condition and repair any area or improvement which it is the Association's duty to maintain;

(f) declare the office of a Director of the Board of Directors to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board unless excused by the Board;

(g) make such distributions as authorized by the Nonprofit Act and the Declaration;

(h) appoint plans of merger or dissolution as permitted by the Nonprofit Act;

(i) except as provided in the Declaration and Articles and C.R.S. §7-132-101 and 102, authorize sale and/or pledge or mortgage of any property of the Association including assessments or other sums owed to the Association;

(j) employ a property manager, an independent contractor or such other employees as they deem necessary, and to delegate any of the Board's powers to them and prescribe their duties; provided, however, the Board when so delegating shall not be relieved of its responsibilities under the Declaration;

(k) determine whether Members are in good standing for voting, quorum, approval and other purposes;

(l) provide such supervision of all Officers, agents and employees of this Association as the Board deems reasonably necessary and appropriate;

(m) as more fully provided in the Declaration, to adopt and amend budgets for revenues, expenditures and reserves in accordance with the Declaration to fix the amount of any assessment against each Lot and to collect any assessments by the remedies set forth in the Declaration or as provided by law or statute;

(n) issue, or to cause an appropriate Officer to issue a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates;

(o) procure and maintain adequate liability and hazard insurance on the property owned by the Association, insure and keep insured all of the insurable common

property or facilities and procure and maintain all other insurance required by the Declaration or deemed advisable by the Board of Directors;

(p) cause all Officers or employees having fiscal responsibilities to furnish adequate fidelity insurance or bonds as required by the Declaration. The premiums on such insurance or bonds shall be a common expense as may be deemed appropriate by the Board;

(q) fulfill all obligations of the Board under the Declaration and cause any area and/or improvement to be maintained and to make repairs, additions, alterations and improvements in the manner consistent with the Declaration to the extent that such are the Association's responsibility;

(r) establish a bank account or accounts for the common treasury and for all separate funds which are required or may be deemed advisable and to keep and maintain full and accurate books and records showing all of the receipts, expenses or disbursements and to permit examination thereof at any reasonable time by each of the Lot Owners, and to cause an annual accounting for association funds and a financial statement to be prepared and presented to the Association by the managing agent, a public accountant, or a certified public accountant. If the Association employs a managing agent, that agent shall maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other and shall maintain all reserve accounts of each association so managed separate from operational accounts of each association;

(s) meet as often as the Board deems reasonable and appropriate;

(t) grant easements for any period of time, including permanent easements, and grant leases, licenses, and concessions through or over the Property;

(u) provide for the indemnification of the Association's Officers and the Board to the extent provided by law, provide for the indemnification of committee members and others in accordance with these Bylaws to the extent the Board deems just and reasonable, and maintain directors' and officers' liability insurance;

(v) appoint any committee as required or permitted by the Declaration or these Bylaws or as may be deemed appropriate by the Board to carry out its purpose and duties and by resolution, establish committees, permanent and standing, to research, make recommendations or perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee;

(w) adopt Rules which shall be considered incorporated herein by reference as though set forth in full, and which provide for corporate actions and powers which are different than those set forth in the Nonprofit Act but which are permitted by the Nonprofit Act to be



“otherwise set forth in the bylaws”. Such Rules shall be given the same force and effect as if specifically enumerated in these Bylaws;

(x) exercise any other powers conferred by the Declaration, the Articles of Incorporation, these Bylaws, or the Nonprofit Act. In addition, the Board shall have the powers comparable to those set forth in C.R.S. §38-33.3-302 which are incorporated herein by this reference but shall be subject to the provisions and restrictions of the Declaration, the Articles of Incorporation, these Bylaws and the Rules, which shall control in the event of any conflict;

(y) exercise any other power necessary and proper for the governance and operation of the Association; and

(z) exercise any other power that may be exercised in the state by a legal entity of the same type as the Association;

7.2 Duties. It shall be the duty of the Board of Directors to exercise reasonable business judgment in the performance of its duties, subject to the provisions and protections of the Declaration and Colorado law and statute.

7.3. No Waiver of Rights. The omission or failure of the Association or any Member to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations or other provisions of the Declaration, these Bylaws or Rules adopted pursuant thereto, shall not constitute or be deemed a waiver, modification or release thereof, and the Board of Directors, the Association or any Member shall have the right to enforce the same thereafter.

## ARTICLE VIII OFFICERS AND THEIR DUTIES

8.1. Enumeration of Offices. The Officers of the Association shall be a President and a Vice-President, both of whom shall at all times be Members of the Board of Directors, and a Secretary and a Treasurer, and such other Officers as the Board of Directors shall, from time to time, elect. The office of Treasurer and Secretary may be held by the same person. The offices of Secretary and Treasurer need not be held by members of the Board of Directors. An Officer shall be a natural person who is eighteen (18) years of age or older.

8.2. Election of Officers. The initial Officers shall serve until the termination of the Period of Declarant Rights; thereafter, the election of Officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

8.3. Term. Each Officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year, unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

8.4. Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

8.5. Resignation and Removal.

(a) Any Officer may be removed from office with or without cause by the Board.

(b) An Officer may resign at any time by giving written notice of resignation to the Association. A resignation of an Officer is effective when the notice is received by the Association unless the notice specifies a later effective date. If a resignation is made effective at a later date, the Board of Directors may permit the Officer to remain in office until the effective date and may fill the pending vacancy before the effective date with the provision that the successor does not take office until the effective date, or the Board of Directors may remove the Officer at any time before the effective date and may fill the resulting vacancy.

8.6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

8.7. Duties. The duties of the Officers are as follows:

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign on behalf of the Association all leases, mortgages, deed and other written instruments, shall prepare, execute, certify and record amendments to the Declaration on behalf of the Association, and shall co-sign all checks (unless delegated to a managing agent). Further, subject to the limitations in the Association's operative documents, he or she shall have all of the general powers and duties which are usually vested in the office of president of a corporation, including the power to appoint committees from among the Members from time to time as he or she may, in his or her discretion, decide is appropriate to assist in the conduct of the affairs of the Association or as may be established by the Board or by the Members of the Association at any regular or special meetings. The President may fulfill the role of Treasurer in the absence of the Treasurer. The President may cause to be prepared and may execute amendments, attested by the Secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

(b) The Vice-President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of any meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) Except to the extent performed by any managing agent, the Treasurer shall receive and deposit in appropriate governmentally insured accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall co-sign all checks and promissory notes of the Association; keep proper books of account; cause an annual accounting to be made as required by the Board and/or these Bylaws; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members. In the event a managing agent has the responsibility of collecting and disbursing funds, the Treasurer shall review the accounts of the managing agent not less often than once each calendar quarter.

#### ARTICLE IX NON-LIABILITY OF OFFICERS AND DIRECTORS

9.1 Contracts. Contracts or other commitments made by the Board of Directors or Officers shall be made as agent for the Association, and they shall have no personal responsibility on any such contract or commitment.

9.2. Indemnification of Officers and Directors. Each Officer and Director of the Corporation, whether serving in any such capacity at this time or in the past or future, shall be indemnified by the Corporation against any and all claims and liabilities to which he or she has or shall become subject by reason of serving or having served in any such capacity, or by reason of any action alleged to have been taken, omitted, or neglected by him or her in any such capacity, to the fullest extent allowable by the Articles of Incorporation and/or law and statute, including the Nonprofit Act. The right of indemnification herein provided shall not be exclusive of any rights to which any Director or Officer of the Corporation may otherwise be entitled by law or statute, provided, however, this indemnification shall not reduce or impair any insurance coverage. No Director or Officer shall be personally liable to the Corporation or its Members except as otherwise provided by the Nonprofit Act. Directors and Officers shall be indemnified by the Association to the fullest extent allowed by the Declaration, Articles of Incorporation and these Bylaws and by law and statutes, including C.R.S. §7-129-101 through 107; in the event of any conflicting provision, the provision providing the broadest or greatest indemnity or non-liability shall prevail.

9.3. Non-Liability. The Directors, Officers, employees and Members of the Association are not, as such, personally liable for the acts, debts, or obligations of the

Association and are not liable for any acts or omissions except for wanton and willful wrongful acts or omissions.

9.4. Standards. Except as may be allowed by the Declaration and the Nonprofit Act, Directors and Officers shall comply with the standards set forth in C.R.S. §7-128-401 and §7-128-501 and shall be indemnified as provided therein.

9.5. Actions Other Than by or in the Right of the Association. The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a member of the Board or Officer of the Association, who is or was serving at the request of the Association in such capacity, for expenses (including expert witness fees, attorney's fees and costs), judgments, fines, amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner which such individual reasonably believed to be in the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner he or she reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe his or her conduct was unlawful. Such liability shall be satisfied within thirty (30) days after request therefor if there exists adequate operating funds but, if not, the funds shall be raised by a special assessment of the Owners as quickly as possible, without the need of Owners' approval.

9.6. Actions by or in the Right of the Association. The Association shall indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure judgment in its favor by reason of the fact that such person is or was a member of the Board or Officer of the Association or is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorney's fees and costs) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner which he or she reasonably believed to be in the best interests of the Association; but no indemnification shall be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence, recklessness, or willful misconduct in the performance of his or her duty in the Association unless, and to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses if such court deems proper. Such liability shall be satisfied within thirty (30) days after request therefor if there exists

adequate operating funds but, if not, the funds shall be raised by a special assessment of the Owners as quickly as practical, without the need of Owners' pre-approval.

9.7. Successful on the Merits. Although the indemnification in this Article IX do not require a final determination of non-culpability, to the extent that a member of the Board, committee member, employee, fiduciary or agent of the Association (collectively or singularly as context requires, "appropriate person") has been wholly successful on the merits in defense of any action, suit or proceeding referred to in this Article IX, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including expert witness fees, attorney's fees and costs) actually and reasonably incurred by him or her in connection therewith.

9.8. Determination Required. Any indemnification under this Article IX (unless ordered by a court) shall be made by the Association only as authorized by the specific case upon a determination that indemnification of the member of the Board or other appropriate person proper in the circumstances because such individual has met the applicable standard of conduct set forth in this Article IX. Such determination shall be made by the Board by majority vote of a quorum consisting of those members of the Board who were not parties to such action, suit or proceeding or, if a majority of disinterested members of the Board so directs, by independent legal counsel or by Members entitled to vote thereon. Such determination shall be reasonable, based on substantial evidence of record, and supported by a written opinion. The Board shall provide a copy of its written opinion to the Officer or member of the Board or other appropriate person seeking indemnification.

9.9. Payment in Advance of Final Disposition. The Association shall pay for or reimburse the reasonable expenses incurred by a former or current member of the Board, Officer or other appropriate person who is a party to a claim or proceeding in advance of final disposition if: (i) the appropriate person furnishes to the Association a written affirmation of such person's good faith belief that he or she has met the standard of conduct described in this Article IX; (ii) such appropriate person furnishes to the Association a written agreement, executed personally or on the Board member's or Officer's behalf to repay the advance if it is ultimately determined that the Board member or Officer did not meet the standard of conduct; and (iii) a determination is made that the facts then known to those who otherwise would make the determination would not preclude indemnification under this Article. The agreement required in this Article IX shall be an unlimited general obligation of the appropriate person of the Association and shall be in form, substance and security (if required by the Board) and upon such conditions (e.g. adequate financial ability to repay) as the Board deems appropriate. Such advances shall bear interest at the periodic prime rate, as published in the Wall Street Journal, plus ten (10) points. If the person is ultimately determined to be culpable and/or not entitled to indemnification and advances, all costs of the Association Board member, Officer, committee member, employee, fiduciary or agent shall be paid by the culpable person, plus interest as described above.

9.10. No Limitation of Rights. The indemnification provided by this Article IX shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or disinterested members of the Board, or otherwise, nor by any rights which are granted pursuant to the Nonprofit Act. Upon a vote of the Board, the Association may also indemnify a Member appointed by the Board to serve on a committee (when such committee member is not also a member of the Board) or any other volunteer upon such terms and conditions as the Board shall deem just and reasonable.

9.11. Directors and Officers Insurance. The Association shall purchase and maintain insurance on behalf of any person who is or was a member of the Board or an Officer of the Association or, in the Board's discretion, a member of a committee against any liability asserted against him or her and incurred by such individual in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify such individual against such liability under provisions of this Article IX. Nothing in this Article IX shall impair or adversely affect any such insurance coverage.

#### ARTICLE X COMMITTEES

The Board of Directors may appoint such committees as deemed appropriate in carrying out its purpose, including committees pursuant to C.R.S. §7-128-206 of the Nonprofit Act or to appoint itself as any committee under the Declaration or the Nonprofit Act, and to adopt Rules, if any, for procedures and appeals from committees to the Board.

#### ARTICLE XI BOOKS AND RECORDS

The Association shall maintain all records, documents, books, records, and financial documents as required by the Nonprofit Act and make copies available as required by such statutes.

#### ARTICLE XII ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If any assessment is not paid when due, the Association may impose an administrative fee not to exceed a sum set forth in the Rules.

ARTICLE XIII  
CORPORATE SEAL

The Association may have a seal in circular form having within its circumference the words: MINEOLA TOWNHOME OWNERS ASSOCIATION, INC.

ARTICLE XIV  
AMENDMENTS

The Association's Articles of Incorporation or these Bylaws, or both, may be amended, at a regular or special meeting of the Members, with a quorum present, by a vote of seventy-five percent (75%) of the entire Membership. Notwithstanding any provision of the Association's Declaration, Articles of Incorporation, Bylaws or Rules, any amendment of said documents during the Period of Declarant Rights as set forth in the Declaration shall require the prior written consent of the Declarant in the Declarant's sole and absolute discretion. The Declarant reserves the right, until the termination of the Period of Declarant Rights, but without the vote of the Owners, to exercise the Declarant's rights under the Declaration, the Association's Articles of Incorporation, Bylaws or Rules, or to make amendments to the Association's Articles of Incorporation or these Bylaws, or both, as may be necessary to correct typographical errors or make clarifications in these Bylaws or as may be approved in writing by Federal National Mortgage Association or Federal Home Loan Mortgage Corporation so as to induce any of such organizations to make, purchase, sell, issue, or guarantee First Mortgages in the Project, and each Owner, 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 name and recording any such amendments to these Bylaws, the Articles of Incorporation and the 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.

ARTICLE XV  
MISCELLANEOUS

15.1. Fiscal Year. Unless the Board otherwise determines, the fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.




15.2. Conflict of Documents. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control, and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

15.3. CCIOA Exemption. Notwithstanding any provision of the Declaration, the Association's Articles of Incorporation, these Bylaws or the Rules, the Association, the

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Declarant, the Owners, the Lots, and the Project shall not be subject to the Colorado Common Interest Ownership Act (C.R.S. §38-33.3-101, et seq.) because C.R.S. §38-33.3-116 specifically exempts from CCIOA any planned community which contains no more than twenty (20) units and is not subject to any Development Rights; such community is subject only to C.R.S. §38-33.3-105, 106 and 107. Any provision of the Declaration, the Association's Articles of Incorporation, these Bylaws or the Rules which refers to any section of CCIOA is for the purposes of reference only and may thereby incorporate, by that reference, comparable provisions into those documents, but shall not cause CCIOA to apply to the Project generally or in any manner. Furthermore, to the extent that any provision of the Declaration, the Articles of Incorporation, these Bylaws or the Rules are inconsistent with any provision of CCIOA, the provisions of those documents shall control, unless otherwise specifically provided herein.

 RICHARD STARK  
 RICKI STARK  
 JENNA MCMULLEN  
CRAIG DILLON



CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of MINEOLA TOWNHOME OWNERS ASSOCIATION, INC., a Colorado nonprofit corporation, and,

That the foregoing Bylaws constitute the original Bylaws of said Corporation, as duly adopted at a meeting of the Board of Directors thereof, held on the 9<sup>th</sup> day of MAY, 2022.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 9<sup>th</sup> day of MAY, 2022.

  
Secretary RICHARD STARK

**APPOINTMENT OF DIRECTORS  
MINEOLA TOWNHOME OWNERS ASSOCIATION, INC.**

1971 Mineola Street Trust, a Colorado trust, as Declarant under that certain Declaration of Covenants, Conditions and Restrictions of Mineola Townhomes, hereby appoints RICKI STARK, RICHARD STARK, Jenna McMullen and Craig Dillier to be the Directors of Mineola Townhome Owners Association, Inc.

DECLARANT:

1971 MINEOLA STREET TRUST

By:   
Its: Trustee

Signed: MAY 9TH, 2022  
Effective Date: MAY 9TH 2022

El Paso County Clerk & Recorder: Index in Grantee Indexes under Mineola Townhomes and Mineola Townhome Owners Association, Inc. and under Grantor as 1971 Mineola Street Trust

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**EXHIBITS**

- Exhibit "A"* Legal Description for Property
- Exhibit "B"* Common Area
- Exhibit "C"* Proportionate Interest
- Exhibit "D"* Easements, Exceptions and Recorded Plat
- Exhibit "E"* Limited Common Areas

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**MINEOLA TOWNHOMES**

**THIS DECLARATION** is made and entered into as of the date shown below, by 1971 Mineola Street Trust, a Colorado trust (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 shall not be subject 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”) pursuant to the exemption set forth in C.R.S. §38-33.3-116.

I

**DEFINITIONS**

The terms used herein shall have the meanings stated herein:

1.1 “Association” shall mean and refer to Mineola Townhome Owners Association, Inc., a Colorado nonprofit corporation, which has been or shall be organized under the laws of the State of Colorado prior to the conveyance of the first Lot in the Project, its successors and assigns.

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1.2 “Board” means the Board of Directors of the Association. Except as specified herein, or in the Association’s Articles of Incorporation (the “Articles of Incorporation”) or Bylaws (the “Bylaws”), the Board may act on behalf of the Association without any vote or consent of the Members.

1.3 “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.

1.4 “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.

1.5 “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.

1.6. “Limited Common Area” shall mean any portion of the Common Area, if any, assigned or allocated by the Declarant during the Period of Declarant Rights for the exclusive use of a specific Owner of a Townhome to which they are assigned, allocated or attached, such as, by illustration, any of the following: parking spaces, storage sheds, or front and rear porches, if any. Any such assignment may be done as shown on *Exhibit* “E” attached hereto and incorporated herein by this reference or by any document recorded by the Declarant or by the Association after the termination of the Period of Declarant Rights. Limited Common Areas shall be repaired, replaced, and maintained by the Association but shall be kept in good, clean appearance by the Owners of the Limited Common Area, rather than by the Association, except as otherwise provided in Article V, Section 5.1(a) hereof.

1.7 “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. The boundaries of any Lot may be relocated by the Declarant. The boundaries of the Lots shall be shown on any recorded plat of the Property, which shall be incorporated herein by this



reference, and the boundaries of any Lot shall extend to one foot beyond the foundation and to the middle of common party walls.

1.8 “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.

1.9 “Declarant” shall mean and refer to 1971 Mineola Street Trust, a Colorado Trust, its agents, employees, contractors, successors and assigns to whom it expressly transfers all or any part of its rights as Declarant hereunder. The “Period of Declarant Rights” means that period commencing upon the recording of this Declaration and continuing until December 1, 2035, unless sooner terminated by a recorded document executed by the Declarant.

1.10 “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 unit owners entitled to distributions of proceeds under this Declaration, or their heirs, personal representatives, successors or assigns.

1.11 “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.

1.12 “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.

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

1.14 “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. The Project shall include Lots on which Townhomes have been or will be constructed in the future. The Project shall be a “common interest community” and “planned community” under the CCIOA; provided, however, the Project shall be exempt from the provisions of the CCIOA as provided by C.R.S. §38-33.3-116, except for C.R.S. §§ 38-33.3-105, 38-33.3-106 and 38-33.3-107. The Project is described on the recorded plat which is described on *Exhibit “D”* attached hereto and which is incorporated herein by this reference.

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

1.16 “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 approximate square footages of finished living areas of each Townhome as determined by the Declarant in its sole discretion.

1.17 “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 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.

1.18 “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, 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

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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 (except for the Limited Common Areas). Such rights shall include the right of ingress and egress to and from the Owner's Lot, to and from his or her parking space, storage shed, front and rear porches, if any, and to and from any public street. 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 VII of this Declaration and to promulgate and publish rules and regulations (the "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 during which there is 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 Article XI hereof, 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 Article XI, 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 to be a 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. Any covenants and easements created or reserved by this Declaration shall be for the benefit of the Declarant, its successors and assigns and shall constitute real property interests owned by the Declarant, its successors and assigns running with the land for the Period of Declarant Rights. There is hereby reserved for all Owners an easement for the water and other utility lines running through the crawl spaces and other areas beneath the Townhome Units. In addition, the Plat shows a twenty (20) foot "Drainage & Utility Easement" along the Northeast boundary of the Property; that easement has been used for a shared access driveway with the neighbor's property, but Declarant makes no representations or warranties regarding the scope, validity or otherwise regarding that easement.

(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 and any Lot, including any Limited Common Area 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 party 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 dwelling unit, 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, for the purpose of vehicular and pedestrian ingress to and egress from such Owner's Lot.

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, his or her tenants, his or her 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 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 the uses and activities described herein. 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 Property, and all portions thereof, shall be subject to all recorded licenses and easements including any as shown on any plat affecting the Property, or any portion thereof, and additionally subject to those recorded matters set forth on *Exhibit "D"* attached hereto and incorporated herein by this reference.

### III

#### MEMBERSHIP AND BOARD OF DIRECTORS

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 which is subject to assessment hereunder. 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, 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 Rights 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 Board of Directors.

(a) Appointment of Board. 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 Rights, the Declarant, or persons designated by him or her, subject to certain limitations, may appoint and remove the officers and members of the Board. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Period of Declarant Rights, 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.

After the termination of any Period of Declarant Rights, the Owners shall elect a Board of at least four (4) members, as set forth in the Bylaws. The Board shall elect the officers. These Board members and officers shall take office upon termination of the Period of Declarant Rights.

(b) Powers of Board. The Board shall have any and all powers provided to it by this Declaration, the Articles of Incorporation, the Bylaws and the Rules and as set forth in the Colorado Revised Nonprofit Corporation Act (C.R.S. §7-121-101 et seq.) and other statutes and common law of the State of Colorado. In addition, the Board shall have the powers set forth in C.R.S. §38-33.3-302 which are incorporated herein by this reference but shall be subject to the provisions and restrictions of this Declaration, the Articles of Incorporation, the Bylaws and the Rules, which shall control in the event of any conflict.

## 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 benefit 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 the Project as more specifically provided herein.

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4.3 Annual Assessments. The annual assessment shall specifically include all Common Expenses as defined by the Board 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; if the common water for landscaping is provided through the water meter for an individual Unit, the Owners of other Units shall pay a share of that water cost based upon the increase over domestic water for the Unit, with such increase to be prorated between all of the Units; the Association shall impose a special assessment for such cost to be collected on a monthly basis from April through September of each year or as otherwise agreed by the Owner of that Unit;

(e) landscaping and care of the Common Area, or other areas described herein, except as provided herein, and any facilities or Improvements thereon;

(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 homeowners' 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 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 three-quarters (3/4) 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 said percentage of 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 determines 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, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency or unexpected 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 seventy-five percent (75%) 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 seventy-five percent (75%) 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 seventy-five percent (75%) 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 "C"* attached, sufficient to meet the expected needs of the Association. If an Owner's Proportionate Share is reallocated due to any other provisions of this Declaration, assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Owner's Proportionate Share.

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 Lot from the Declarant to the first Owner, and shall be adjusted according to the number of months remaining in the calendar year; provided, however, notwithstanding any contrary provision of this Declaration, the Articles of Incorporation or the Bylaws, the annual and special assessments hereunder shall not commence upon any Lot, until that Lot is conveyed by the Declarant to the first Owner.

(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 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 pursuant to the Bylaws.

(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 requested, 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.

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

(a) General. Any assessments which are not paid when due shall be delinquent. If any 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 assessment 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 Association 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 attorneys' fee to be fixed by the court, together with the expenses, late charges, and costs of the action.

(b) Lien. Any unpaid assessment, charge, fee, or other sum assessed against an Owner or his or her Lot, including with interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge 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 levy or assessment thereof, in favor of the Association, upon the 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 sole 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, has 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. 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 4.10 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. In addition to the above remedies in this Section 4.10 and otherwise, the Association shall have an absolute unconditional right to have a Court appoint a receiver for any Lot which fails to pay all assessments and charges or otherwise is in default hereunder. The appointment of a receiver shall be done ex parte, without notice to any Mortgagee, and without posting any bond.

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. The Board, in its sole discretion, may use any or all 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 described in Section 4.10 hereof, nor the personal liability of the Owner of such Lot for assessments due during the period of his or her ownership. In addition to other remedies and notwithstanding the foregoing, the Association shall have the right to a lien for an amount equal to any assessments of the Association which would have become due during the six (6) months immediately preceding institution by either the Association or a First Mortgagee on the Lot of a public trustee foreclosure or deed in lieu or other legal action or a non-judicial foreclosure either to enforce or to extinguish the lien, together with any attorneys' fees, costs of collection, and assessments attributable to unreasonable delay or contested litigation by such

First Mortgagee in foreclosing or obtaining title to the Lot. The Association's lien under this Declaration is prior to all other liens and encumbrances on a Lot.

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. The holders of fifty-one percent (51%) or more of First Mortgagees shall be entitled to have an audited financial statement prepared at their expense if one is not otherwise available; said financial statement shall be furnished 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.

## V

### MAINTENANCE

5.1 Association Maintenance. The Association may provide the following maintenance to such standards and levels determined by the Board in its sole discretion:

(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, screens, windows, foundations, foundation slabs, door and window frames and structure, decks, patios, balconies, and any individual equipment or apparatus serving only that Townhome, all of which shall be each Owner's responsibility unless otherwise determined in writing by the Association's Board of Directors.

(b) All repair, replacement, improvement and maintenance of the Common Area and all Improvements located thereon, including any landscaping, sprinkler system, any common parking areas, storage shed, front and rear porches, if any, roadways, common utility lines (including any common utilities within a Lot or Townhome which also serve another Townhome and any lines located outside of the exterior walls of a Townhome but not including any maintenance of any utility line which serves only one Townhome or which is the responsibility of any public or private utility company or service provider, such as a cable provider), any drainage structures or facilities or public Improvements to the extent applicable and set forth in applicable Colorado statutes, any light fixtures, common sidewalks, common fences, or other Improvements located on the Common Area.

(c) Notwithstanding any provision hereof, any repair, maintenance, replacement and improvements related to any Limited Common Areas shall be the responsibility of the Association, but the Owner thereof shall keep the Owner's Limited Common Area in a clean, attractive condition 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.

(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 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.

(g) Easements are hereby reserved and granted over, under, above and through the Limited Common Areas, if any, and for the purposes set forth in this Section and Article II of this Declaration.

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 for its wanton and willful wrongful acts or omissions.

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 his or her Lot and Townhome, and any fixtures, furnishings, furniture, personal property, equipment and appliances located thereon. Limited Common Areas, if any, shall be kept in good, clean, attractive appearance by the Owners thereof, provided, however, the Board may provide services to the Limited Common Areas, such as snow removal, 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 serving only a particular Townhome or installed within a Townhome, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of such Townhome, shall be maintained and kept in repair by the Owner thereof, except for any common utilities serving other Townhomes which shall be the Association's responsibility as provided in Section 5.1 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 by 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. An Owner shall not change the appearance of the exterior of his or her Townhome or the Common Area without the prior written approval of the Board.

#### 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. Any agreement for professional management of the Association's business shall provide for termination by either party with or without cause and without payment of a termination fee upon thirty (30) days' prior written notice, and shall have a maximum term of one (1) year. 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 seventy-five percent (75%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) and the vote or agreement of Owners of Lots to which at least seventy-five percent (75%) 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 Role of Board. The Board shall have all architectural review powers hereunder, provided, however, that until the Period of Declarant Rights terminates, Declarant shall have the right to appoint the Board. It shall be the duty of the Board, 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.

6.2 Review by Board. 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, or 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 Board: 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 Board, and a copy of such plans and specifications as finally approved shall be deposited with the Board. 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 Board 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 Board fails to take action within sixty (60) days after plans have been received by the Board, the plans shall be deemed rejected, and this Article will not be deemed to have been fully complied with. A vote of three of the four members of the Board is required for approval or disapproval of proposed Improvements. The Board 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 Board shall take into consideration the design, style and construction of the proposed Improvement 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 Board 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 Board may require such changes as may be necessary to conform to the general purposes as herein expressed. The Board shall be responsible for enforcing compliance of the approved plans with these covenants and restrictions.

(b) The Board 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 Board 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 Board 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 Board.

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

(e) It is the intent of this Declaration that the Board shall exercise broad discretionary powers hereunder, and 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 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. Unless allowed in writing or pursuant to a Rule by the Board in its sole discretion, no short-term leases (i.e., for terms less than six (6) months) 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 dwelling for the Owner, and members of his or her family, guests and tenants for single family private residential purposes only, and the Board of Directors may make Rules which define "single family private residential purposes" or which limit the maximum occupancy permitted upon Lots

in the Project. No Lot shall be used for any business, manufacturing or commercial purpose whatsoever as defined by the Rules of the Board; 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.

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 sheds, temporary house, trailer, tent, garage or outbuilding shall be placed or erected upon any Lot. 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 Board 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, Lot and Limited Common Area to meet the standards imposed by this Declaration and the Rules. Each Lot at all times shall be kept 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 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 Townhome, 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.

7.9 No Noxious or Offensive Activity.

(a) 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 smoke or obnoxious smells shall be allowed to spread into other Lots.

(b) 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 Board as permitted by law.

(c) Notwithstanding any provision of this Declaration, no Owner or any other person or entity shall use or allow the use of any 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, 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 heating or cooking apparatus.

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 Board.

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, 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 regarding parking and vehicular traffic on the Property, which may include the use of stickers or signs to designate vehicles which are allowed in the Project. 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 park their vehicles in their garages, or their Limited Common Area driveway, rather than in other parts of the Property. Neither Owners,



tenants, guests, family, nor other invitees shall park within or obstruct any restricted or prohibited area, including any fire lane. Any vehicle or other item which is parked in violation of any Rules or restrictions shall be subject to immediate removal by the Board or its agents at the expense of the owner of such vehicle.

(d) The assigned parking spaces shall be used for vehicular parking which shall not be prevented by storage of items in the space.

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 exterior storage of items shall not be allowed unless approved by the Board in its sole discretion or allowed by applicable Colorado statutes. All such approved structures shall be located out of view of the street or of any neighboring Townhomes.

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, clean container suitably located, solely for the purpose of garbage pickup. All trash and refuse containers, except when placed as noted above for 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 Property.

(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 contractors 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 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, construction office, storage area, construction yards, signs of any size and type, model Townhomes, 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 they may determine in their 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 the right to ingress and egress over the Common Area as in Declarant's sole 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 Association 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. EACH OWNER ACKNOWLEDGES, AGREES AND COVENANTS THAT THE DECLARANT DID NOT CONSTRUCT THE PROPERTY, WHICH WAS CONSTRUCTED MANY YEARS AGO AND HAS BEEN USED FOR RENTAL UNITS, AND THAT THE SALES PRICE FOR EACH TOWNHOME UNIT HAS BEEN BASED UPON IT BEING SOLD IN "AS IS – WHERE IS" CONDITION WITHOUT WARRANTIES, EXPRESS OR IMPLIED, AND SUBJECT TO THE PROVISIONS OF THIS DECLARATION.

B. EACH OWNER FURTHER COVENANTS AND AGREES THAT NO REPRESENTATION, PROMISE OR WARRANTY HAS BEEN MADE BY THE DECLARANT REGARDING THE DEVELOPMENT OF ADJACENT PROPERTIES, THE INVESTMENT POTENTIAL OF THE UNIT, ANY ECONOMIC BENEFITS TO THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, TO BE DERIVED FROM THE MANAGERIAL OR OTHER EFFORTS OF THE DECLARANT, OR ANY OTHER THIRD PARTY DESIGNATED OR ARRANGED BY ANY DECLARANT, RELATED TO THE OWNERSHIP OR RENTAL OF THE UNIT, OR THE VALUE OR INCOME OF ANY UNIT. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS UNDERSTAND THAT THE DECLARANT IS 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 UNITS 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.

C. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT THE DECLARANT HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE REGARDING THE PROJECT (ALL OF WHICH ARE HEREBY DISCLAIMED BY THE DECLARANT), INCLUDING ANY AS TO THE FITNESS, WORKMANLIKE CONSTRUCTION, SAFETY, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, OR HABITABILITY OF THE TOWNHOME UNIT, THE PROJECT, OR ANY COMMON ELEMENTS 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 OR ANY ENVIRONMENTAL OR PHYSICAL CONDITIONS OF THE PROPERTY, THE TOWNHOME UNIT, OR THE COMMON AREA, INCLUDING ANY REGARDING SOILS, MOLD, RADON, LEAD, ASBESTOS, FIBERGLASS INSULATION, OR ANY SIMILAR MATERIAL OR CONDITION. THE OWNERS AND THE ASSOCIATION ACCEPT THE FOREGOING DISCLAIMER OF WARRANTIES AND WAIVE, RELEASE AND INDEMNIFY THE DECLARANT FROM ALL CLAIMS,

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DEMANDS, LIABILITIES, OR LAWSUITS, INCLUDING ANY OF THE FOREGOING RELATED TO BODILY INJURY, PERSONAL INJURY, PROPERTY DAMAGE AND INCIDENTAL OR CONSEQUENTIAL DAMAGES BY ANY PERSON OR PARTY AS RELATED THERETO, AND ANY EXPENSES AND ATTORNEYS' FEES INCURRED BY ANY DECLARANT, IN ASSERTING OR DEFENDING AGAINST ANY OF THE FOREGOING.

D. THE RELEASES, DISCLAIMERS, INDEMNITIES 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 in the sole discretion of the Board, insurance policies covering the following risks:

(a) Property. Property insurance on the Project, including the Common Area, the Limited Common Areas, the Lots and the Townhomes, 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 such insurance shall include the Townhomes and 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 should afford protection against at least the following:

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(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) Worker’s Compensation. Worker’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

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, 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) Officers' and Directors' Personal Liability Insurance. To the extent obtainable, appropriate officers' and directors' 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 deemed appropriate even if such insurance and/or Rules expand, restrict, amend or otherwise modify the provisions of this Article VIII, and such insurance and/or Rules shall be deemed to be in full compliance with this Declaration.

(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 may cause notice of that fact to

be hand delivered or sent prepaid by United States mail or e-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 seventy-five percent (75%) 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 sole discretion. In any event, each Owner of a Lot is responsible for the adequacy of the insurance coverage carried for the protection of himself or 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 should:

(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 unless the Board determines otherwise;

(viii) provide that no assessments therefor may be made against First Mortgagees and any such assessments made against other persons or entities 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 Five Thousand Dollars (\$5,000.00) unless a greater deductible is allowed by secondary lenders or otherwise determined by the Board. Any loss falling within the deductible portion of the policy should be borne by the Association, except as otherwise provided in this Declaration or otherwise 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 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 sole discretion may assess each Owner a pro rata share of any deductible paid by the Association.

8.4 Owner's 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, installed or owned by the Owner and covering any 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 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, notwithstanding any provision of this Declaration, **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 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 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 seventy-five percent (75%) 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 seventy-five percent (75%) 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 which is damaged or destroyed must be repaired or replaced promptly by the Association pursuant to 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, if seventy-five percent (75%) 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 seventy-five percent (75%) 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 may become part of the Common Area or conveyed as determined by the Board.

9.4 Condemnation. 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, 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 herein 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 a Limited 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 seventy-five percent (75%) 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 seventy-five percent (75%) 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 seventy-five percent (75%) 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 seventy-five percent (75%) 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 (1) 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 homeowners' 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 seventy-five percent (75%) 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 seventy-five percent (75%) of all First Mortgagees. The surviving entity in any such merger or affiliation shall be the Association for purposes of this Declaration.

## X

### STATUTORY PROVISIONS

10.1 Statutory Compliance. The Association shall perform and comply with any and all applicable requirements of Federal, State and Local statutes, codes and regulations, including any nonprofit corporation laws, fair housing laws, building codes, development plan requirements and any other regulations of the City of Colorado Springs, County of El Paso, State of Colorado or the United States.

10.2 Exemption from CCIOA. Notwithstanding any provision of this Declaration, the Association's Articles of Incorporation, Bylaws or Rules, the Association, the Declarant, the Owners, the Lots, and the Project shall not be subject to the Colorado Common Interest Ownership Act (C.R.S. §38-33.3-101, et. seq.) because C.R.S. §38-33.3-116 specifically exempts from CCIOA any planned community which contains no more than twenty (20) units and is not subject to any Development Rights; such community is subject only to C.R.S. §§ 38-33.3-105, 106 and 107. Any provision of this Declaration, the Association's Articles of Incorporation, Bylaws or Rules which refers to any Section of CCIOA is for the purposes of reference only and may thereby incorporate, by that reference, comparable provisions into this Declaration, but shall not cause CCIOA to apply to the Project generally or in any manner. Furthermore, to the extent that any provision of this Declaration is inconsistent with any provision of CCIOA, the provisions of this Declaration shall control, unless otherwise specifically provided herein.

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## XI

### ADDITIONAL RESTRICTIONS

11.1 Restrictions Upon Association and Owners. Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) and the Owners (other than Declarant) by vote or agreement of Owners of Lots to which at least seventy-five percent (75%) of the votes (based upon 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; 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 any provision of this Declaration and the Bylaws; 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 but subject to the provisions of 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; expansion or contraction of the Project, or the addition, annexation, or withdrawal of Property to or from the Project; 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 Mortgagee; 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 Mortgagees, insurers, or guarantors; or

(g) notwithstanding any provision hereof or otherwise, threaten, file or pursue any lawsuit and/or arbitration against 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 Units and/or the Common Areas.

11.2 Implied Approval by Mortgagee. Except as to Sections 7.20, 11.1(g), 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 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 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 and the Board shall be entitled to recover its attorneys' fees and expenses even if litigation is not filed to enforce the Association's rights hereunder. 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. In case of 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 representative 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. This



Declaration may be amended or modified by agreement of Owners of Lots to which at least seventy-five percent (75%) of the Proportionate Interests in the Association are attached and not less than seventy-five percent (75%) 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, any amendment of this Declaration during the Period of Declarant Rights shall require the prior written consent of Declarant in Declarant's sole and absolute discretion;** (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, 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. 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 an amendment must 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 each person executing the amendment. The amendment shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association. The Association shall notify any First Mortgagee who has requested notice in writing of any proposed action under this Declaration which would require the consent of a specified percentage of First Mortgagees.

12.8 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address and/or e-mail 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

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shall be sent by either e-mail or by certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address or by e-mail 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 "include" shall mean "including without limitation" or "include 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 of Covenants, Conditions and Restrictions shall be governed by, and construed in accordance with, the statutes and laws of the State of Colorado.

12.13 Declarant Rights. In addition to and supplement of all rights reserved by the Declarant under this Declaration, the Declarant reserves the following rights for the Period of Declarant Rights:

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

(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.

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(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 Association 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 Rights and to appoint or remove any member of the Board.

(h) The right to amend the Declaration, the Articles of Incorporation, the Bylaws and/or the Rules in connection with the exercise of any Declarant 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 Declarant 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 submit any development document to any governmental entity or official for the construction and completion of the Project.

(l) The right to assign any portion of the Common Areas as a Limited Common Area by recorded document.

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

Notwithstanding any provision of this Declaration, the Project shall not be subject to any Development Rights as defined by C.R.S. §38-33.3-103(14).

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 (except as to Sections 7.19, 7.20, 11.1(g), 12.7(b) and (c) and 12.13), the Articles of Incorporation, the Bylaws or the Rules, 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 its wanton and willful wrongful acts or omissions and except for its decisions as to Sections 7.19, 7.20, 11.1(g), 12.7(b) and (c) and 12.13.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal as of this 9<sup>TH</sup> day of MAY, 2022.

**DECLARANT:**

**1971 MINEOLA STREET TRUST**  
a Colorado Trust

By: [Signature]  
Its: TRUSTEE

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

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of May, 2022, by Craig Dillion as President of 1971 Mineola Street Trust, a Colorado trust.

WITNESS my hand and official seal.

(S E A L)

**SASHA N STRAUB**  
Notary Public  
State of Colorado  
Notary ID # 20114014909  
My Commission Expires 03-20-2023

[Signature]  
Notary Public  
My commission expires: 3/20/2023

**EXHIBIT "A"**

**Legal Description for Property**

Lot 12, Cimarron-Eastridge Filing No. 4, County of El Paso, State of Colorado

**EXHIBIT "B"**

**Common Area**

Tracts A and B, Mineola Townhomes  
County of El Paso, State of Colorado

**EXHIBIT "C"**

**Proportionate Interest**

<b><u>Unit</u></b>	<b><u>Proportionate Share</u></b>
A	1/4
B	1/4
C	1/4
D	1/4
<b>TOTAL:</b>	<b><u>100%</u></b>

**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. Reservations contained in the Patent

From: The United States of America  
Recording Date: July 31, 1917  
Recording No: Book 565 at Page 24

Which among other things recites as follows:

The right to prospect for, mine and remove all oil, gas and other mineral deposits.

9. Easement(s), together with its terms, agreements, provisions, conditions and obligations for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of Colorado Springs  
Purpose: avigation  
Recording Date: April 25, 1973  
Recording No: Book 2580 at Page 379

10. Covenants, conditions, restrictions 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 in the document recorded in Book 2453 at Page 265 and amended by instruments recoded in Book 2467 at Page 762 and in Book 2473 at Page 601 and in Book 2750 at Page 913, and any and all amendments and supplements thereto.

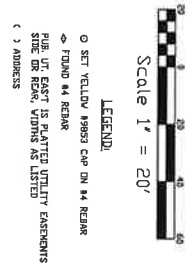
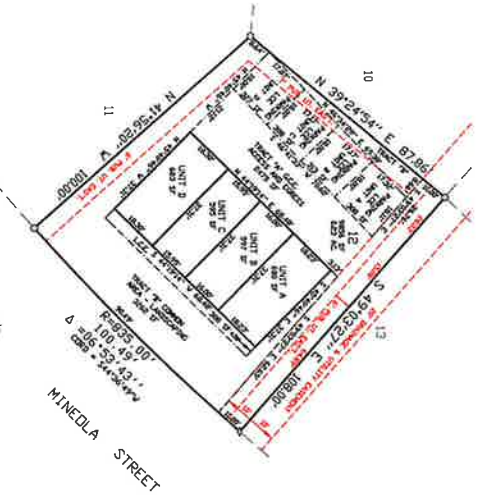
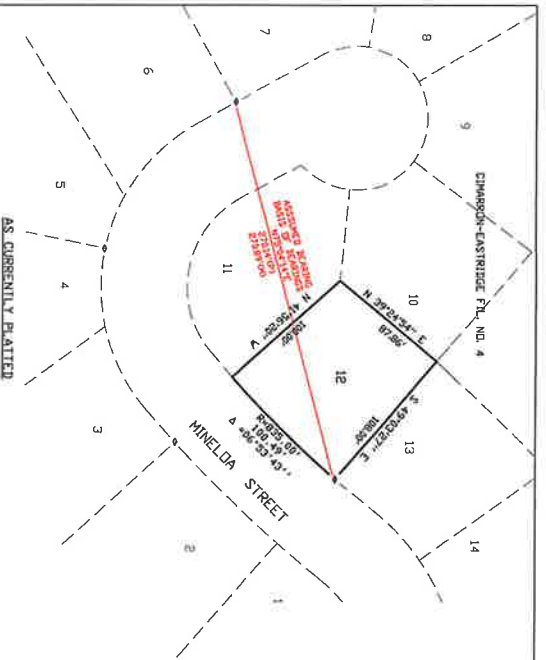
11. Terms, conditions, restrictions, provisions, notes and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source 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: April 25, 1973  
Recording No: Plat Book Y2 at Page 23

Note: Certificate of Correction recorded August 29, 1972 in Book 2518 at Page 819.

12. Existing leases and tenancies, if any.

**MINEOLA TOWNHOMES**  
 A SUBDIVISION OF LOT 12, CIMARRON-EASTRIDGE FILING NO. 4  
 BEING A PART OF SECTION 5, T. 14 S., R. 65 W., 6th P.M.  
 EL PASO COUNTY, COLORADO



NOTICE: This is a plat of a subdivision of land to be known as MINEOLA TOWNHOMES, the owner of the following tract of land to wit: Lot 12, Cimarron-Eastridge Filing No. 4, County of El Paso, State of Colorado and containing 9.2868 SR / 0.22 AC.

**Project Description:**  
 The undersigned, having all the owner, mortgagee, beneficiary of deeds of trust and holders of other interests in the above described tract of land, and all persons claiming or claiming an interest therein, do hereby certify that the same interests as shown herein under the name and subdivision of Mineola Townhomes.

**Director/Notary Signature:**  
 Oliver E. Watts, Notary Public  
 State of Colorado )  
 County of El Paso ) SS

Adopted and before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Richard Steinhilber, member, 1971 Nevada \$1 Trust.  
 Witness my hand and official seal

This Townhome Plat for Mineola Townhomes was approved for filing by the El Paso County, Colorado Planning and Community Development Department Director on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, subject to any notes or conditions of approval set forth herein. The Townhome Plat was prepared by the El Paso County Clerk and Recorder, Reception # 9746232.

AREA	USE	A-SF
UNIT ID	USE <td>A-SF</td>	A-SF
A	RESIDENCE	680
B	RESIDENCE	595
C	RESIDENCE	683
D	RESIDENCE	308
LCE A	PARKING	308
LCE B	PARKING	308
LCE C	PARKING	308
LCE D	PARKING	308
LCE SVA	SIDEWALK	308
UNIT A	ACCESS	2775
UNIT B	LANDSCAPING	3262
TOTAL		9856

**AS RECALLED**

**NOTICE:**  
 All measurements are based on the standard bearing of N270°04'14"E for a line from the northeast corner of Lot 6, Cimarron-Eastridge Filing No. 4, to the southwest corner of Lot 4, section 5, T. 14 S., R. 65 W., 6th P.M. and the southeast corner of the lot monumented by a 6 inch diameter iron pipe driven 4 feet deep and the northeast corner of the lot monumented by a 6 inch diameter iron pipe driven 4 feet deep and the southeast corner of the lot monumented by a 6 inch diameter iron pipe driven 4 feet deep.

**STATE OF COLORADO**  
 COUNTY OF EL PASO  
 I hereby certify that this instrument was filed in my office on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and was recorded at \_\_\_\_\_ of the records of El Paso County.

**Oliver E. Watts Consulting Engineer Colorado Springs**  
 614 Easton Drive  
 Colorado Springs, CO 80907  
 (719) 599-0173 office  
 (719) 599-0173 fax  
 (719) 599-0173 cell  
 Fax: (719) 599-0173  
 City: Colorado Springs, CO 80907  
 State: CO  
 License: 11307  
 Exp: 12/31/2025

## **EXHIBIT "E"**

### **Limited Common Areas**

Typical Limited Common Areas are the parking spaces as shown on the Plat and assigned by the conveyance deeds. In addition, the other Limited Common Areas are the front porch area and the patio/storage area and all Improvements located thereon, as those Improvements are assigned and attached to the adjacent Townhome.