

STATE OF COLORADO
COUNTY OF EL PASO

Indexing Note: Please index in grantee's index under "Northbay at Woodmoor" and "Northbay at Woodmoor Townhome Association" and in grantor's index under "Northbay Townhomes, LLC,"

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
NORTHBAY AT WOODMOOR TOWNHOMES

Upon recording, please return to:

NORTHBAY TOWNHOMES, LLC
c/o JM Weston Homes LLC
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- TABLE OF EXHIBITS -

Exhibit	Subject Matter
"A"	Land Initially Submitted
"B"	Initial Rules
"C"	Articles of Incorporation of Northbay At Woodmoor Townhome Association
"D"	By-Laws of Northbay At Woodmoor Townhome Association
"E"	Additional Easements and Licenses
"F"	Rules of Arbitration

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
NORTHBAY AT WOODMOOR TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this _____ day of _____, 2018, by Northbay Townhomes, LLC, a Colorado limited liability company (with its successors and assigns, the "**Declarant**").

PART ONE: INTRODUCTION TO THE NEIGHBORHOOD

Declarant, as the developer of Northbay at Woodmoor Townhomes, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance and preservation of Northbay at Woodmoor Townhomes as a residential neighborhood within the Woodmoor community.

Article I Creation of the Neighborhood

1.1. Name; Planned Community.

This Declaration, together with the recorded subdivision plat(s) referenced in Exhibit "A" hereof and in such Supplemental Declarations as may be recorded pursuant to Article IX of this Declaration, establish a "planned community" as defined in the Colorado Common Interest Ownership Act, C.R.S. § 38 33.3 101, *et seq.* (as it may be amended or renumbered from time to time, the "**Act**"). The name of the planned community is Northbay at Woodmoor Townhomes. This Declaration also provides for automatic and mandatory membership in an owners association named Northbay At Woodmoor Townhome Association, a Colorado nonprofit corporation (the "**Association**").

Northbay at Woodmoor Townhomes (the "**Neighborhood**") is a residential neighborhood within the larger planned community known as Woodmoor located in El Paso County, Colorado.

1.2. Purpose and Intent.

Declarant as the owner of the real property described in Exhibit "A," intend by this Declaration to establish a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance and preservation of the Neighborhood. An integral part of the development plan for the Neighborhood is the formation of the Association, whose membership is comprised of all owners of real property in the

Neighborhood, to own, operate and/or maintain various common areas and subdivision improvements within the Neighborhood and to administer and enforce this Declaration and the other Neighborhood Documents referenced in this Declaration.

1.3. Binding Effect.

All property described in Exhibit "A," and any additional property which is made a part of the Neighborhood in the future by recording an amendment or supplement to this Declaration, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Neighborhood, their heirs, successors, successors-in- title, and assigns.

This Declaration, as it may be amended, is intended to have perpetual duration, subject to the right of the Owners to amend and terminate this Declaration as provided in Articles XIX and XX.

1.4. Governing Documents.

(a) **Community Documents.** All property now or hereafter comprising the Neighborhood is part of the larger planned community known as Woodmoor and, as such, is subject to the Community Documents for Woodmoor North recorded on July 12, 1971 in the office of the Clerk and Recorder for El Paso County, Colorado on Page 215 at Book Number 2421, as amended and supplemented ("**Community Documents**"), the Amended Bylaws of the Woodmoor Improvement Association, a Colorado nonprofit corporation, (the "**Community Association**") recorded on January 30,1995 in the office of the Clerk and Recorder for El Paso County, Colorado in book 6655 at Reception # 095051578, and the Policies, Procedures, Rules and Regulations of Woodmoor Improvement Association effective January, 2002 and amended May 25, 2017, all as they may be amended and supplemented (collectively, the "**Community Documents**"). The Community Documents establishes mutually beneficial covenants, restrictions and easements applicable to all residential property within Woodmoor.

(b) **Neighborhood Documents.** In addition to the Community Documents, the Neighborhood is governed by:

- this Declaration and such Supplemental Declarations as may be recorded from time to time pursuant to Article IX; and
- the Architectural Guidelines described in Article IV; and
- the Association's Articles of Incorporation and By-Laws; and
- the Rules described in Article III; and
- such resolutions as the Association's Board of Directors may adopt;

all as they may be amended (collectively, the "**Neighborhood Documents**"). Diagram 1.1 identifies the various Neighborhood Documents and their functions.

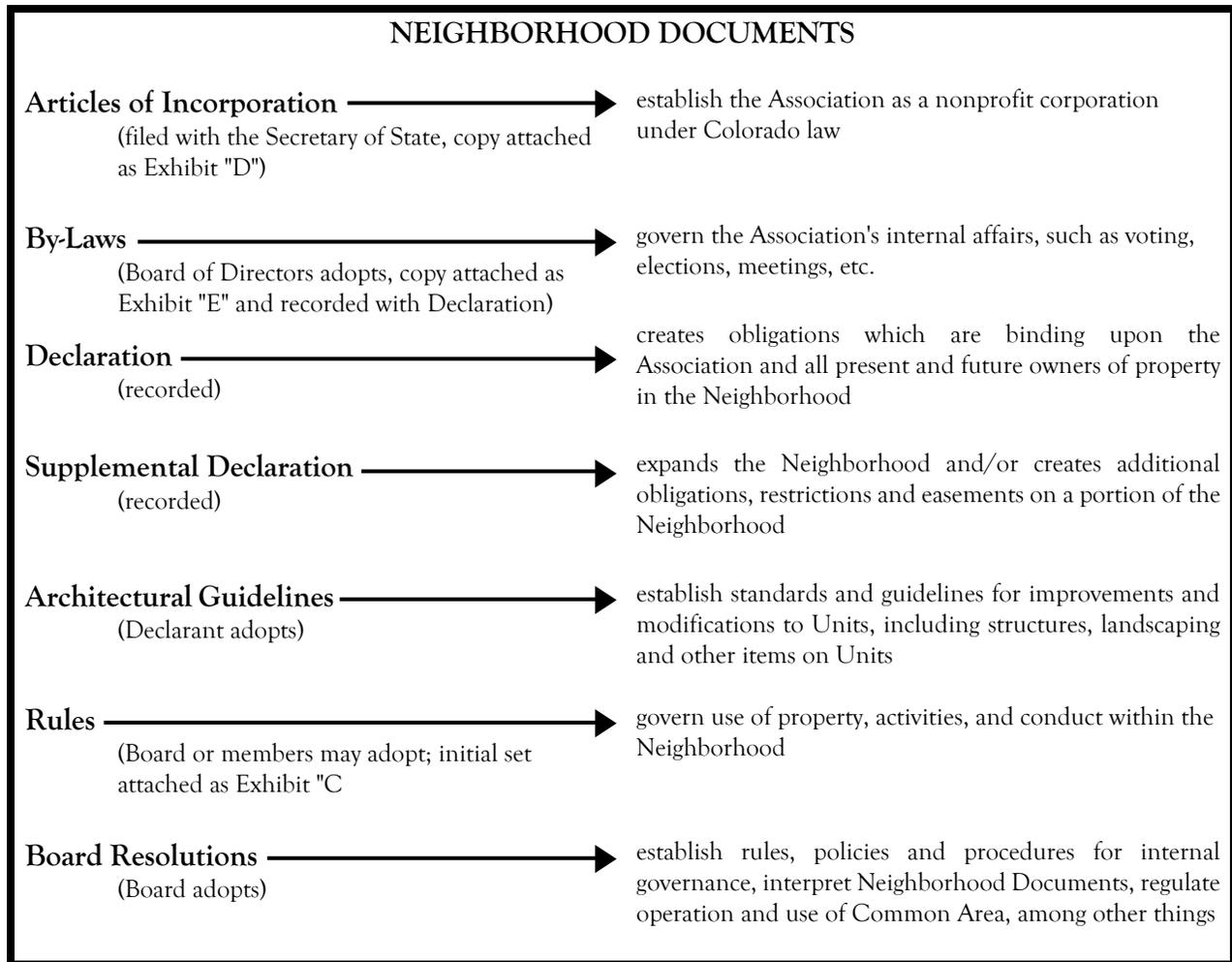


Diagram 1.1 - Neighborhood Documents

The Neighborhood Documents apply to all Owners and occupants of property within the Neighborhood, as well as to their respective tenants, guests and invitees. If a Unit is leased, the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Neighborhood Documents, whether or not the lease so provides.

The Association, Declarant, and every Owner shall have the right to take legal action to enforce the Neighborhood Documents. The Association shall have the specific enforcement powers and remedies described in Section 7.4 and elsewhere in the Neighborhood Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

The Neighborhood Documents may contain diagrams to illustrate the concepts discussed and aid in the reader's comprehension. Any such diagrams are for illustrative purposes only. In the event of a conflict between any diagram and the text of the Neighborhood Documents, the text shall control.

(c) *Conflicts*. In the event of a conflict between or among any of the Neighborhood Documents, the Declaration shall control over the By-Laws and Articles and the By-Laws shall control over the Articles, except to the extent otherwise required by Colorado law. In the event of a conflict between the Neighborhood Documents and the Community Documents as they relate to the Neighborhood, the Community Documents shall control, except that where one is simply more restrictive than the other, the more restrictive shall control.

1.5. Additional Recorded Easements and Licenses.

The recording data for any recorded easements and licenses which pertain to the Neighborhood or to which any portion of the Expansion Property is or may become subject is set forth on Exhibit "F" to this Declaration.

Article II Concepts and Definitions

2.1. Defined Terms.

The terms used in the Neighborhood Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below or in the paragraph where they first appear in bold print.

"Architectural Guidelines": The guidelines and standards for design, construction, landscaping, and exterior items placed on Units adopted pursuant to Article IV, as they may be amended.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles": The Articles of Incorporation of Northbay At Woodmoor Townhome Association, filed with the Office of the Secretary of State, State of Colorado, as they may be amended. A copy of the original Articles is attached to this Declaration as Exhibit "D."

"Association": Northbay At Woodmoor Townhome Association, a Colorado nonprofit corporation, its successors or assigns.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Colorado corporate law.

"Builder": Any Person who purchases one or more Units for the purpose of constructing improvements thereon for later sale to consumers, or who purchases one or more parcels of land within the Neighborhood for further subdivision, development, and/or resale in the ordinary course of its business.

"By-Laws": The By-Laws of Northbay At Woodmoor Townhome Association, as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "E."

"County": The County of El Paso, Colorado.

"Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and benefit of the Owners. The term shall include the Limited Common Area, as defined below, if any.

"Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary or appropriate pursuant to the Neighborhood Documents. Common Expenses shall specifically include, without limitation, the cost of water and sewer service provided to the Neighborhood by any public utility and billed to the Association. Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development or other original construction costs unless approved by Members representing a majority of the total votes in the Association. Payments due under leases of capital improvements such as streetlights shall be a Common Expenses and shall not be considered an initial development expense or original construction cost.

"Community" or "Woodmoor": The planned community by such name located in El Paso County, Colorado.

"Community Association": Woodmoor Improvement Association, Inc., a Colorado nonprofit corporation, its successors and assigns, being the owners association referenced in and responsible for administering the Community Documents.

"Community Documents": The documents referenced in Section 1.4(a), as they may be amended, which govern residential properties within Woodmoor.

"Declarant": Northbay Townhomes, LLC, a Colorado limited liability company, its successors, or any successor-in-title or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale and who the immediately preceding Declarant designates as the "Declarant" in a recorded instrument.

"Declarant Affiliate": Any Person that controls, is controlled by, or is under common control with Declarant, and any Person that is an owner, a member, a partner, or a shareholder of Declarant.

"Declarant Control Period": The period of time during which Declarant is entitled to appoint a majority of the members of the Board, as provided in Article III of the By-Laws. The Declarant Control Period begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

- (a) 60 days after the date as of which 75% of the maximum number of Units permitted by Section 9.1 have been conveyed to Persons other than Declarant;
- (b) 2 years after the last conveyance of a Unit by Declarant in the ordinary course of business;
- (c) 2 years after Declarant's right to expand the Neighborhood pursuant to Section 9.1 was last exercised; or
- (d) when, in its discretion, Declarant so determines and declares in a recorded instrument.

"Development and Sale Period": The period of time commencing on the recording of this Declaration and continuing so long as Declarant, any Declarant Affiliate, or any Builder owns property subject to this Declaration or Declarant is entitled to expand the Neighborhood unilaterally pursuant to Section 9.1, whichever is longer.

"General Assessment": Assessments levied on all Units subject to assessment under Section 8.5 to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.2.

"Governing Documents": The Community Documents and the Neighborhood Documents, as they may be amended.

"Improved Unit": Units improved with a dwelling for which a certificate of occupancy has been issued by the City.

"Limited Common Area": A portion of the Common Area assigned pursuant to Article XII for the primary benefit or use of one or more, but less than all, Units.

"Member": A Person subject to membership in the Association pursuant to Section 6.2.

"Mortgage": A mortgage, a security deed, a deed of trust, or any other form of security instrument affecting title to any Unit. The term **"Mortgagee"** shall refer to a beneficiary or holder of a Mortgage.

"Neighborhood" or "Northbay at Woodmoor Townhomes": The real property described on Exhibit "A" together with such additional property as is submitted to this Declaration pursuant to Article IX.

"Neighborhood Documents": This Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Architectural Guidelines, the Rules, and Board resolutions, all as they may be amended.

"Neighborhood-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing in the Neighborhood, or the minimum standards established pursuant to the Architectural Guidelines, Rules, and Board resolutions, whichever is the highest standard.

Declarant initially shall establish such standard and it may contain both objective and subjective elements. The Neighborhood-Wide Standard may evolve as development progresses and as the needs and desires within the Neighborhood change.

"Owner": One or more Persons who hold the record title to any Unit but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"Person": A natural person, a corporation, a partnership, a limited liability company, trust, or any other legal entity.

"Plats" or "Plat": The recorded subdivision plats depicting any portion of the Neighborhood, or any of them, as referenced on Exhibit "A" to this Declaration or in any Supplemental Declaration recorded pursuant to Article IX to submit additional property to this Declaration.

"Rules": The initial rules set forth in Exhibit "C," as they may be supplemented, modified and repealed pursuant to Article III.

"Special Assessment": Assessments levied in accordance with Section 8.3.

"Specific Assessment": Assessments levied in accordance with Section 8.4.

"Supplemental Declaration": An amendment to this Declaration recorded pursuant to Article IX which submits additional property to this Declaration and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument.

"Surface Water Management System Facilities": All inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, and other facilities located within the Neighborhood which are a part of the storm water and surface water management system serving the Neighborhood, whether located above or below the surface of the ground, on Common Areas or on a Unit.

"Unit": A numbered lot shown on a recorded subdivision map or plat of any portion of the Neighborhood, which lot may be independently owned and conveyed and is intended for development, use, and occupancy of an attached residence for a single family, whether or not such residence has been constructed. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The vertical boundaries of each Unit shall be the planes formed by the boundaries of such Unit shown on the recorded plat and there shall be no horizontal boundaries. Each Plat depicting a separate phase of the Neighborhood shall identify each Unit on such Plat by a unique number and each Unit shall be distinguished from Units on other Plats by reference to both the phase and Unit number of its Plat.

Units may be combined or further subdivided, and boundary lines of Units may be changed, only by recording of a plat or other legal instrument approved by Declarant during the Development and Sale Period or by the Association thereafter, and then only in accordance with the provisions of Section 38-33.3-212 of the Act. Ownership of adjacent Units by the same Owner shall not permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be connected and used as a single dwelling.

2.2. Interpretation of Certain References.

(a) ***Recording.*** All references in the Neighborhood Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the office of the Clerk and Recorder for El Paso County, Colorado, or such other place as may be designated as the official location for filing documents affecting title to real estate in El Paso County in order to make them a matter of public record.

(b) ***Consent or Approval.*** All references in the Neighborhood Documents to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) ***Discretion and Determinations.*** All references in the Neighborhood Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Neighborhood Documents, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

PART TWO: CREATION AND MAINTENANCE OF NEIGHBORHOOD STANDARDS

The standards for use and conduct, maintenance, architecture, landscaping and other aesthetic matters within Woodmoor and Northbay at Woodmoor Townhomes are what give the Neighborhood its identity and make it special. Each Owner and resident participates in upholding such standards and can take pride in the results of that common effort. This Declaration establishes procedures for adopting, modifying, applying and enforcing such standards while providing the flexibility for the Neighborhood standards to evolve over time.

Article III Use and Conduct

3.1. Residential Use; Leasing.

(a) **Residential Use.** Units may be used only for residential and related purposes, except as the Declarant may otherwise authorize with respect to construction, marketing, and sale activities of Declarant and Builders it designates, and as otherwise authorized in this Section. A business activity within a Unit shall be considered "related" to a residential use and thus permitted under this Section only if conducted by a person or persons residing in the Unit and only if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Neighborhood; and

(iv) is permitted by the Community Association Rules, is consistent with the Neighborhood's residential character, and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

Notwithstanding compliance with the above, the propagation, growing, sale, or distribution of marijuana for any purpose shall not be permitted on any Unit.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

(b) **Leasing.** "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any

consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. A Unit that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased. No Unit or portion thereof shall be used for transient occupancy. All leases shall be in writing. All leases shall have an initial term of at least six months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease, in addition to such notice as the Owner may be required to give the Community Association pursuant to the Community Documents. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Rules.

3.2. Rule Making Authority.

The Neighborhood Documents establish a framework of covenants and conditions that govern the Neighborhood. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Neighborhood. Therefore, in addition to such rights as are granted to Declarant pursuant to Article XIX, the Board and the Members are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 3.4.

(a) Subject to the terms of this Article and the Board's duty pursuant to Section 6.1 of the By-Laws to exercise its powers in a reasonable, fair and nondiscriminatory manner, the Board may modify, cancel, limit, create exceptions to, or expand the Rules by majority vote of the directors and, during the Development and Sale Period, the written consent of Declarant. The Board shall send notice to all Owners concerning any proposed rulemaking action that would affect the use of Units at least 14 days prior to the Board meeting at which such action is to be considered, and Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

(b) In addition to the Board's authority under subsection (a) above, Members may, at an Association meeting duly called for such purpose, modify, cancel, limit, create exceptions to, or expand the Rules then in effect. Any such action shall require approval of Persons entitled to cast at least 67% of the total votes in the Association and, during the Development and Sale Period, the written consent of Declarant.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Rules then in effect to any requesting Member or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing or expanding the Architectural Guidelines or any provision of this Declaration other than the Rules set forth in Exhibit "C." In the event of a conflict between the Architectural Guidelines and the Rules, the Architectural Guidelines shall control.

(e) This Section 3.2 shall not apply to Rules or operating policies relating to the Common Area, which the Board may establish by resolution without prior notice to the Owners or opportunity to be heard at a Board meeting.

3.3. Owners' Acknowledgment and Notice to Purchasers.

ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR UNITS AND THE COMMON AREA IS LIMITED BY THE RULES AS AMENDED, EXPANDED AND OTHERWISE MODIFIED FROM TIME TO TIME. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Rules may be obtained from the Association.

3.4. Protection of Owners and Others.

Except as may be set forth in the Community Documents, this Declaration (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," the exercise of rulemaking authority under Section 3.2 shall be subject to the following:

(a) ***Similar Treatment.*** Similarly situated Owners shall be treated similarly.

(b) ***Household Composition.*** Owners shall have the freedom to determine the composition of their households so long as all occupants of the Unit live together as a single housekeeping unit, except that the Association may limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and may restrict the number of vehicles that occupants of a Unit may park in the Neighborhood.

(c) ***Activities Within Dwellings.*** No Rule shall interfere with the activities carried on within the confines of dwellings, to the extent in compliance with the Community Documents, this Declaration, and local laws and ordinances, except that the Association may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that cause an increase in insurance premiums paid as a Common Expense or paid by other Owners in the same building of which the Unit is a part, or that create an unreasonable source of annoyance to persons outside the Unit.

(d) ***Rights of Access and Use.*** No Rule shall diminish the rights of any Owner to use the Common Area (other than Limited Common Area) to the same extent as any other Owner, except that nothing in this provision shall preclude the Association from changing the Common Area available, from adopting generally applicable Rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Neighborhood Documents.

(e) ***Alienation.*** No Rule shall prohibit leasing or transfer of any Unit or require consent of the Association or Board for leasing or transfer of any Unit; however, Rules may require that Owners use lease forms or lease addenda or otherwise include in their leases various provisions specified by the Board for the benefit of the Association.

(f) ***Personal Property.*** No Rule shall be applied to require an Owner or occupant to dispose of personal property kept in or on a Unit by such Owner or occupant in compliance with all Rules in effect immediately prior to the adoption of such Rule; however, the Association may adopt Rules permitting current Owners and occupants to keep such personal property during their period of ownership or occupancy while prohibiting the keeping of similar items by subsequent Owners of the same Unit.

(g) ***Interference with Easements.*** No Rule or action shall unreasonably interfere with the exercise of any easement affecting the Neighborhood.

(h) ***Reasonable Rights to Develop and Sell.*** No Rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Neighborhood or restrict Declarant or such Builders as Declarant may so authorize from maintaining upon Common Areas and Units which they own any facilities necessary or incidental to construction or sale of Units. By way of example and not limitation, no Rule shall prohibit Declarant or such Builders as Declarant may so authorize from maintaining temporary structures for use during construction of a Unit or from using any dwelling as a sales office.

The limitations in subsections (a) through (g) of this Section 3.4 shall only limit rulemaking authority exercised by the Board and the Members under Section 3.2; they shall not apply to Rules set forth on Exhibit "C" initially or amendments to this Declaration adopted in accordance with Article XIX.

Article IV Architecture and Landscaping

4.1. General.

Except to the extent that Colorado Revised Statutes § 38-33.3-106.5 prohibits certain types of restrictions, all site work, landscaping, structures, improvements, and other items (including sports, play, and maintenance equipment, outdoor furniture and storage, and decorative items) placed or stored on any property in the Neighborhood in a manner or location visible from outside of any existing structure ("**Improvements**") are subject to the Architectural Guidelines and the approval procedures set forth in this Article, unless otherwise specified in this Article or the Architectural Guidelines.

Nothing in this Article or the Architectural Guidelines shall authorize the Reviewer to preclude an Owner from exercising any right granted under Section 38-33.3-106.5 of the Act; however, unless otherwise prohibited by that section, the Owner shall comply with the application and review procedures set forth in this Article and such application shall be subject to review and approval or disapproval as to number, location, size, manner of installation and other matters

described in Section 4.3(b) and the Architectural Guidelines. Approval of applications for installation of landscaping may be conditioned upon the Owner's execution and recording of an agreement to maintain such landscaping at the Owner's expense.

No approval shall be required hereunder to rebuild or restore structures damaged by a casualty loss in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of his or her Unit without approval. However, modifications to the interior of porches and similar portions of a Unit visible from outside the structure shall be subject to approval.

All construction on Units shall comply with all applicable building codes and requirements. Approval under this Article shall be in addition to, not in lieu of, any approvals or reviews required by the Community Documents and by the City. However, approval under this Article shall be obtained prior to applying for any approval required under the Community Documents and prior to requesting any building or other permit or submitting any documentation to any governmental authority whose review or approval may be required for the proposed work. Declarant and the Association shall have the right and standing to take action to suspend or enjoin processing of any request for review or approval by the Community Association or a governmental authority submitted prior to any necessary approval being granted hereunder.

This Article shall not apply to restrict Declarant's right to complete improvements indicated on any Plats or to exercise any other rights reserved to Declarant in this Declaration, nor shall it apply to any activities of the Association during the Declarant Control Period.

4.2. Architectural Review Authority.

(a) *By Declarant.* Declarant shall have exclusive authority to review and act upon all applications for review of proposed Improvements until expiration of the Development and Sale Period. Declarant may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, or otherwise exercising or declining to exercise its authority under this Article, the Declarant and its designee act solely in Declarant's interest and owe no duty and shall have no liability to the Association or any other Person.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) an architectural review committee appointed by the Board of Directors pursuant to Section 4.2(b) (the "ARC"), or (ii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated. It shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to them.

(b) *By Architectural Review Committee.* Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over architectural matters. The ARC, when appointed, shall consist of three persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish.

Meetings of the ARC shall be open to all Members, subject to the same exceptions as Board meetings under the By-Laws.

Until such time as Declarant delegates all or a portion of its reserved rights to the ARC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) *Reviewer.* For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer.**"

(d) *Fees; Assistance.* The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

4.3. Guidelines and Procedures.

(a) *Architectural Guidelines.* Declarant may prepare Architectural Guidelines addressing any matter affecting the aesthetics of the Neighborhood or otherwise within the purview of the Reviewer under this Article, except that no provision thereof shall be inconsistent with the Act or be construed to authorize anything prohibited by the Community Documents. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications hereunder, but are not the exclusive basis for decisions of the Reviewer. Compliance with the Architectural Guidelines does not guarantee approval of any application hereunder or eliminate the need for such approval as may be required under the Community Documents.

Declarant shall have sole and full authority to amend the Architectural Guidelines so long as it has review authority under Section 4.2(a), notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates to the ARC the power to amend the Architectural Guidelines. Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the consent of the Board.

Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall make the Architectural Guidelines available to Owners and Builders upon request and may charge a reasonable fee to cover reproduction costs.

(b) *Procedures.* Except as specifically approved by Declarant or otherwise specifically provided in this Declaration or the Architectural Guidelines, no activities within the scope of this Article shall commence on any portion of the Neighborhood until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to judicial review or the procedures in Article XIV so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may: (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Until expiration of Declarant's rights under this Article, the ARC shall notify Declarant in writing within three business days after the ARC has approved any application within the scope of matters delegated to the ARC by Declarant. The notice shall be accompanied by a copy of the application and any additional information that Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC.

The Reviewer shall notify the applicant in writing of the final determination on any application within five days thereafter or, with respect to any determination by the ARC subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case

of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed given when deposited with the U.S. Postal Service, first class postage affixed, properly addressed to the applicant at the address stated in such applicant's notice, or upon receipt if given by any other means.

In the event that the Reviewer fails to give notice of its approval or disapproval of any application within the time period required above, the applicant may notify the Reviewer by certified mail, return receipt requested, at the address for such notices set forth in the current edition of the Architectural Guidelines, stating that no response has been received and that unless a written response is given at the address set forth in such notice within 15 days of the Reviewer's receipt of the applicant's notice, as evidenced by the return receipt, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a written variance has been granted pursuant to Section 4.5.

Except in the case of initial construction of a dwelling by a Builder and where the Reviewer has granted a longer period in writing, if construction does not commence on a project for which Plans have been approved within six months after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. A Builder shall complete the initial construction of improvements on a Unit in accordance with the approved plan within six months after commencement. All modifications to a Unit after completion of initial construction shall be completed within 60 days of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

Notwithstanding the above, the Reviewer may: (i) pre-approve Plans for Builders and excuse such Builders from all or a portion of the application and review procedures set forth in this Section with respect to construction undertaken in accordance with such pre-approved Plans; and (ii) by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

(c) *Appeals Process.* After the Board's appointment of the ARC, an applicant may appeal any disapproval of its application by the ARC to the Board. To request an appeal, the applicant must submit to the Association's Secretary, no later than 15 days after the delivery of the notification of disapproval, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request also shall contain a response to any specific concerns or reasons for disapproval listed in the notification of disapproval. The Board may (i) affirm the ARC's decision, (ii) affirm a portion and overturn a portion of the ARC's decision, or (iii) overturn the ARC's entire decision.

The Board shall notify the applicant and the ARC in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the ARC's decision. During the appeal process, the Owner shall not commence any work requiring approval hereunder.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case the Reviewer may elect not to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Neighborhood; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based purely on aesthetic considerations. The Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

With respect to any property owned or improved by any Person subject to the requirements of this Article, Declarant, the Association, its officers, the Board, any committee, and member of any of the foregoing shall not be liable for: (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any Builder, architect or contractor, or their respective subcontractors, employees, or agents; (d) view preservation; (e) construction delays or schedule modifications resulting from any Person's failure

to obtain, or delay in obtaining, approval of plans or approval for modifications to previously approved plans; or (f) any injury, damages, or loss arising out of the manner or quality or other circumstances of construction or modifications, whether or not approved hereunder. In all such matters, the Association shall defend and indemnify the Board, the Reviewer, and the members of each, as provided in the By-Laws.

4.7. Certificate of Compliance.

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Article or the Architectural Guidelines. The Reviewer shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee.

Article V Maintenance and Repair of Units

5.1. Maintenance by Owners.

Except to the extent that such responsibility is assigned to the Association pursuant to Section 5.2, Section 7.2, or any Supplemental Declaration applicable to the Unit, each Owner shall maintain his or her Unit and improvements comprising the Unit in a manner consistent with the Neighborhood Documents and the Neighborhood-Wide Standard, except that there shall be no right to remove trees, shrubs or similar vegetation without prior approval pursuant to Article IV.

5.2. Maintenance by Association.

(a) **Units.** The Association shall be responsible for the following maintenance on Units upon completion thereof as described in Section 5.3:

(i) maintenance of all lawns and landscaping installed as part of the initial construction on the Units and replacements thereof, such maintenance to include mowing of grassed areas, pruning of shrubbery, mulching around trees and shrubs, fertilizing and irrigating planted areas, weed control, treating for disease and insects as needed, and removal and replacement of dead or dying plants, except that the patio, courtyard, and enclosed areas, and Owner added plants and improvements and modifications of the patios, courtyards and enclosed areas are to be maintained by the Owner in a manner consistent with the Neighborhood-Wide Standard);

(ii) operation, maintenance, repair and replacement, as necessary, of any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines and time clocks, wherever located) serving the Units, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or occupant of any Unit;

(iii) the following maintenance of improvements erected or installed by a Builder as part of the original construction on the Units and replacements thereof:

(A) maintenance of the exterior façade of the dwelling on each Unit, including siding and trim but excluding chimneys, windows, window frames, doors and door frames (except for painting or staining thereof), and excluding maintenance of any glass surfaces and window or porch screens;

(B) painting or staining, as applicable, of all exterior painted or stained portions of any structures on the Unit, including any garage, garage door, exterior doors, shutters, fascia on the dwelling, and any fences erected by the Builder on the Units (and replacements thereof) ("**Builder-Installed Fences**");

(C) reglazing and recaulking of the exterior portions of all windows and doors, but only at such time as the Association or its contractor undertakes painting of all exterior painted surfaces; the Association shall have no responsibility for maintaining glazing or caulking between paintings or for air, water, or moisture leaks or damage resulting from the need to reglaze or recaulk windows and doors more frequently, which shall be the Owner's responsibility;

(D) repair and/or replacement, as necessary, of the roofs (including shingles and roof decking) of dwellings and garages, including the roofs of any porches built as part of the original construction of the dwelling or replacements thereof;

(E) cleaning, repair and replacement of gutters and downspouts;

(F) cleaning of driveways and sidewalks, exterior front steps, and the exterior walls of all dwellings and garages;

(G) repair and replacement, as necessary, of any Builder-Installed Fences; and

(H) termite treatment of all exterior walls and foundations of a dwelling and garage; provided, however, that the Association shall not be liable if such treatment proves to be ineffective.

(I) Maintenance by the Association shall specifically include, without limitation, maintenance of the underdrain system, if any, located on the Unit so as to maintain proper performance of such system.

The Board may undertake, as a Common Expense, additional exterior maintenance of Units or landscaping not otherwise required hereunder, but shall have no obligation to do so or, once undertaken, to continue to perform such maintenance in the future. The Board may, upon request of an Owner, permit the Owner to maintain landscaping on his or her Unit; however, there

shall be no reduction or abatement in the assessments otherwise due hereunder by reason of the Owner providing such maintenance and the Association may reassume responsibility for such maintenance at any time if the Board determines, in its judgment, that the Owner is not maintaining such landscaping to the Neighborhood-Wide Standard.

Notwithstanding the above, the Association's responsibilities under this Section 5.2 shall not commence with respect to a particular Unit until the requirements of Section 5.3 have been satisfied, and then subject to satisfaction of the Builder's warranty obligations. Thereafter, the Board shall determine the schedule upon which the Association shall provide routine periodic maintenance, such as painting and pressure cleaning. Each Owner acknowledges that cracking and staining of exterior surfaces is a common occurrence and that the Association shall have no obligation to clean, repair, or repaint such surfaces outside of its regular maintenance schedule. The Association's responsibility for repairs, replacement, and debris removal necessitated by casualty events shall be limited to the extent of available insurance proceeds.

The Association shall not be responsible for any landscaping, improvements or modifications added or made to any Unit by or on behalf of the Owner or occupant after the conveyance of the Unit to the first Owner following completion of the initial improvements thereon.

5.3. Completion.

Notwithstanding anything to the contrary in any contract or agreement between the Builder and any third party for purchase of a Unit, no Builder shall convey a Unit without the prior written consent of Declarant, until:

- (a) completion of construction of a dwelling and all related improvements thereon in accordance with plans approved pursuant to Article IV, except that landscaping may be delayed until the next planting season, if construction is completed between October 1 and May 1; and
- (b) issuance of a certificate of occupancy for such dwelling and related improvements by the City.

5.4. Insurance Coverage on Units.

(a) ***Property Coverage.*** Unless otherwise determined by resolution of the Board and at least 30 days' prior written notice to each Owner, the Association shall obtain as a Common Expense a blanket insurance policy providing property insurance coverage for the full replacement cost of all structures on Units (exclusive of contents and improvements made by Owners, sometimes referred to as "walls out" coverage). Any such insurance obtained by the Association shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit insured. Within 30 days after receipt of notice that the Association will not provide such insurance, each Owner shall immediately obtain, in his or her own name and at his or her own expense, property insurance with a face amount which is not less than the full replacement cost of

the dwelling and other insurable improvements comprising the Unit. Such policy may provide for a reasonable deductible. Insurance responsibility and maintenance responsibility are separate and independent; this Section 5.4(a) shall not be construed to expand the Association's responsibility for maintenance of Units beyond that specified in Section 5.2.

(b) ***Liability Coverage.*** Every Owner shall be obligated to obtain and maintain at all times personal liability insurance covering consequential damages to any other Unit or the Common Area due to occurrences originating within the Owner's Unit caused by the negligence of the Owner, the failure of the Owner to maintain the Unit, and any other casualty within the Unit which causes damage to the Units or the Common Area, to the extent such coverage is not provided by policies maintained by the Association or to the extent insurable losses may result in the Owner's liability for payment of deductibles under the Association's policies. Such insurance policy or policies shall name the Association as an additional insured. In addition, Owners are encouraged to obtain a "loss assessment" endorsement.

(c) ***Evidence of Coverage.*** Each Owner shall submit to the Association, at least annually and within 10 days of any written request from the Board of Directors, a certificate or certificates evidencing that all insurance coverage which the Owner is obligated to provide hereunder is in effect. In addition, if the Board so requests, each Owner shall file with the Association a copy of the individual policy or policies covering his or her Unit. Each Owner shall promptly notify the Board in writing in the event such policy on his or her Unit is canceled or not renewed. The Association shall have no liability arising out of failure to ensure compliance with insurance requirements under this Section 5.4.

(d) ***Failure to Maintain Insurance.*** In the event that an Owner fails to obtain or maintain any insurance that the Owner is required to obtain hereunder, the Association may, but shall not be obligated to, obtain such insurance on behalf of the Owner and assess the costs thereof to the Owner and the Owner's Unit as a Specific Assessment.

5.5. Casualty Losses; Responsibility for Repair and Replacement.

Regardless of whether the insurance on a Unit is obtained by the Association or the Owner, in the event of a casualty loss, the Association shall be entitled to file a claim under such insurance for the cost of any repair or reconstruction to the Unit and improvements thereon which is the Association's responsibility. If the Owner of the Unit suffering the loss is responsible for maintaining such insurance on the Unit, the Owner shall pay the amount of any deductible and shall be responsible for any deficiency in the insurance proceeds. If the Association is responsible for maintaining such insurance, such deductible and any deficiency shall be Common Expenses to be assessed against all Units covered by the insurance policy, unless the Board determines, after notice and an opportunity for a hearing, that the casualty loss was the result of the negligence of the Owner or occupant of the damaged Unit, in which case the deductible may be assessed against the Unit and the Owner thereof as a Specific Assessment. The Association shall be entitled to adjust with the insurance provider the amount of any proceeds payable to the Association and the Owner thereunder, based upon the amount necessary to enable the Owner

and the Association each to repair and replace those portions of the Unit and improvements thereon which are their respective responsibilities.

If an Owner is required to maintain property insurance on his or her Unit and such insurance is insufficient, the Association shall be relieved of its obligations to maintain, repair and replace damaged or destroyed portions of such Owner's Unit to the extent of such insufficiency, and the Owner shall be responsible for the same. Alternatively, the Association may perform required repairs, whether the responsibility of the Association or the Owner, and assess all costs to the Owner and the Owner's Unit as a Specific Assessment pursuant to Section 8.4 of the Declaration.

Neither the Association nor Declarant shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Unit, their family, guests or invitees, nor shall the Association or Declarant be held liable for the condition of, or any loss or damage to, any such personal property except to the extent directly attributable to the reckless acts or willful misconduct of the Association, Declarant or their respective agents or employees.

PART THREE: NEIGHBORHOOD GOVERNANCE AND ADMINISTRATION

This Declaration establishes the Association as a mechanism by which each Owner is able to participate in the governance and administration of the Neighborhood. While many powers and responsibilities are vested in the Association's board of directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership - the owners of property in the Neighborhood.

Article VI The Association and its Members

6.1. Function of Association.

The Association has been established to administer the Neighborhood in accordance with the Neighborhood Documents. Its responsibilities include, but are not limited to:

- (a) management, maintenance, operation and control of the Area of Common Responsibility; and
- (b) interpretation and enforcement of the Neighborhood Documents; and
- (c) establishing and upholding the Neighborhood-Wide Standard; and
- (d) upon delegation or termination of Declarant's authority under Article IV, administering the architectural review process for the Neighborhood, as provided in that Article.

6.2. Membership.

Every Owner automatically becomes a Member of the Association upon taking title to a Unit and remains a Member as long as the Owner holds title to such Unit. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

Each Unit is allocated one vote equal to that of every other Unit. The share of the total votes in the Association allocated to each Unit shall be represented by a fraction, the numerator of which is one and the denominator of which is the total number of Units subject to this Declaration. Upon annexation of additional property pursuant to Article IX, the votes in the Association shall be reallocated among all Units in accordance with this Section.

If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it. No vote shall be exercised for any property that is exempt from assessment under Section 8.5.

6.4. Notices.

All notices required to be given to or by the Association under the Neighborhood Documents shall be provided in a manner authorized under the notice provisions of the By-Laws.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property, subject to the provisions of Article XVIII. The Association may enter into leases, licenses or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of Owners, occupants and residents of the Neighborhood.

(b) Declarant, any Declarant Affiliate, and their respective designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B."

Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area which Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate, consistent with Section 3.4.

(d) Nothing herein shall be construed to require conveyance of any property to the Association.

7.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility in accordance with the Neighborhood-Wide Standard. The Area of Common Responsibility shall include, but need not be limited to:

- (a) all portions of and structures situated on the Common Area; and
- (b) all streets and any alleys and storm sewer culverts within the Neighborhood, unless and until such time as they are dedicated to and accepted by a metropolitan district or other governmental body for perpetual maintenance; and
- (c) any landscaping, signage, street lights and sidewalks on the Common Area or within easements over Units, except to the extent such responsibility is assumed by a metropolitan district or other governmental body or a utility provider; and
- (d) any retaining walls installed by Declarant, whether located on a Unit or Common Area, and replacements thereof; and
- (e) such portions of Units or other property as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and
- (e) any pipes, lines, pumps, or other apparatus comprising the irrigation system, if any, located within Common Area, rights-of-way, or easements granted to the Association (in addition to such irrigation systems on Units as may be the Association's responsibility under Section 5.2); and
- (f) the water and sewer lines, common meter, if any, and other apparatus comprising the water and sewer system serving the Neighborhood to the extent that they lie between the master meter and the boundaries of the Units, or lie within utility easements over the Units and serve more than one Unit (that portion lying within the boundaries of a Unit and serving only that Unit

being the responsibility of the Unit Owner pursuant to Section 5.1), unless such responsibility is assumed by a metropolitan district or other governmental body or utility provider; and

(g) any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and

(h) any portion of the Surface Water Management System Facilities located within the Neighborhood, except to the extent that the Community Association or a metropolitan district is responsible for the same under the terms of permits, regulatory approvals, or other recorded covenants or agreements applicable to the Neighborhood.

The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Neighborhood-Wide Standard.

The Association shall provide for snow removal, within a reasonable time after a winter storm event constituting of at least 3 inches of snow as measured in the Town of Monument, on all streets within the Neighborhood, and to the extent the Board deems appropriate, on driveways and sidewalks within the Neighborhood; however, the act of undertaking snow removal shall not, under any circumstances, give rise to liability for the Association for any claim arising out of the presence of snow or ice or any injury or inconvenience resulting from the same.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities hereunder.

Some portions of the Area of Common Responsibility may consist of open space or buffer areas intentionally left in a natural or relatively undisturbed state. The level of maintenance that the Association provides to the Area of Common Responsibility may vary from a high level of landscaping and regular, weekly maintenance to intermittent or no maintenance, depending on the nature and intended use of the particular open space area.

The Association shall maintain the facilities and equipment, if any, within the Common Area in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Owners representing 75% of the total votes in the Association and, during the Development and Sale Period, Declarant, agree in writing to discontinue such operation.

At any time, and from time to time, Declarant or the Association may transfer ownership and/or maintenance responsibility for properties within the Neighborhood to the Community

Association or a metropolitan district or other governmental body, subject to acceptance by the transferee. As a result of any such transfer, the scope of the Association's maintenance responsibilities under this Declaration may be reduced. Otherwise, the Area of Common Responsibility shall not be reduced without Declarant's prior written approval as long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration.

Except as otherwise specifically provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense, subject to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. The costs that the Association incurs or expects to incur for maintenance, repair and replacement of any Limited Common Area shall be assessed against only the Units to which the Limited Common Area is assigned.

7.3. Insurance.

(a) **Required Coverage.** In addition to such insurance, if any, as the Association provides on Units pursuant to Section 5.4, the Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(i) Property insurance covering all risks typically covered under a "broad form" policy (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes as of the effective date of the policy and each renewal thereof, excluding land, foundation and excavation costs;

(ii) Commercial general liability insurance, insuring the Association, its management agent, and their respective officers, directors, employees, and agents, and the Association's Members (in their capacities as Owners and Members), against claims and liabilities in connection with the ownership, existence, use, and management of the Common Area, including coverage for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits. Such policy shall name Declarant as an additional insured in its capacity as an Owner and Board member. The insurance shall cover claims of one or more insured parties against other insured parties;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and Officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Association may be required to maintain pursuant to C.R.S. § 38-33.3-313, as it may be amended, and such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

Premiums for all insurance on the Common Area shall be a Common Expense, except that premiums for insurance on any Limited Common Area shall be assessed solely against the Units to which such Limited Common Area is assigned.

If any insurance required hereunder is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

(b) ***Policy Requirements.*** The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in El Paso County, Colorado. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner.

Association policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Limited Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in Colorado which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate; and

(ii) identify the Association as the named insured, as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members; and

(iii) be primary and not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually; and

(iv) contain a building ordinance or law endorsement, if enforcement of any building, zoning, or land use law could increase the cost of demolition, repairs or reconstruction in the event of a casualty; and

(v) contain an inflation guard endorsement, if available, and include an agreed amount endorsement, if the policy contains a co-insurance clause; and

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member); and

(vii) provide a waiver of subrogation under the policy against any Owner or occupant of any Unit; and

(viii) include an endorsement requiring at least 30 days' written notice to the Association prior to cancellation, invalidation, suspension, or non-renewal by the insurer; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners or members of their households, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies that provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests; and

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
and

(iii) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal; and

(iv) a cross liability provision; and

(v) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) ***Restoring Damaged Improvements.*** In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall cause damaged improvements on the Common Area to be repaired or reconstructed unless a decision not to repair or reconstruct is approved within 60 days after the loss or damage by Owners of at least 67% of the Units, including the 100% of the Units to which any Limited Common Area is assigned, if the damaged improvements are Limited Common Area, and during the Development and Sale Period, by Declarant. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Neighborhood-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed as follows: (i) to the extent that the excess insurance proceeds are attributable to damaged improvements on Limited Common Area that are not rebuilt, they shall be distributed to the Owners of Units to which such Limited Common Area was assigned or to their Mortgagees, as their interests may appear; and (ii) the remainder shall be distributed to all Owners or their Mortgagees, as their interests may appear, at an equal rate per Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

7.4. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Neighborhood Documents and shall be responsible for ensuring that their guests and invitees comply with the Neighborhood Documents. The Board may impose sanctions for violation of the Neighborhood Documents as set forth in this Section 7.4 and elsewhere in the Neighborhood Documents. In addition, the Community Association shall have the power to take action to enforce the Neighborhood Documents in the same manner as it may enforce the Community Documents, as if the provisions of the Neighborhood Documents were incorporated into the Community Documents; provided, the Community Association shall give written notice to the Neighborhood Association and a reasonable opportunity to cure or take enforcement action on its own prior to the Community Association taking any action hereunder.

(b) The Board may impose the following sanctions only after notice and a hearing in accordance with the procedures set forth in Article VIII of the By-Laws:

(i) reasonable monetary fines in accordance with a written policy adopted by the Board governing the imposition of fines. The Board may adopt a schedule of fines establishing a range of fines for particular types of violations, which range may vary depending on the nature of the violation. In the case of a continuing violation, only a single notice and opportunity for hearing is required, and fines may be imposed for each day of a continuing violation. In the event that any occupant, guest or invitee of a Unit violates the Neighborhood Documents and a fine is imposed, the Owner shall be responsible for payment of such fine; and

(ii) suspension of any Person's right to use any Common Area facilities (other than for access to and from a Unit owned or occupied by such Person) and suspension of any services which the Association provides to the Unit owned or occupied by the violator (other than essential utilities, *e.g.*, electricity, water, natural gas): (A) for a period not to exceed 30 days for a single violation; or (B) for any period during which the violation continues or any charge against the Unit owned or occupied by the violator remains delinquent; provided, no hearing is required if the Owner is more than 90 days delinquent in paying any assessment or other charge owed the Association;

(iii) suspension of the voting rights of any Owner that is more than 90 days delinquent in paying any assessment or other charge owed to the Association; and

(iv) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Architectural Guidelines from continuing or performing any further activities in the Neighborhood; and

(v) levying Specific Assessments pursuant to Section 8.4 to cover costs which the Association incurs to bring a Unit into compliance with the Neighborhood Documents, or costs incurred as a consequence of the conduct of an Owner or occupant of a Unit, their guests or invitees; and

(vi) record a notice of violation with respect to any Unit on which a physical violation exists.

(c) In addition, the Association, acting through the Board or its designee, may take the following action to enforce the Neighborhood Documents without the necessity of compliance with the procedures set forth in Article VIII of the By-Laws:

(i) requiring an Owner, at its own expense, to perform maintenance on such Owner's Unit, or to remove any structure, item or improvement on such Owner's Unit in violation of the Neighborhood Documents and to restore the Unit to its previous condition; or

(ii) entering the property and exercising self-help to remove or cure a violating condition upon failure of an Owner to take action as required pursuant to subsection (i) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(iii) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and/or

(iv) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XIV, if applicable.

(d) All remedies set forth in the Neighborhood Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Neighborhood Documents, if the Association prevails with respect to any claim, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred with respect to such claim, in addition to such other amounts as may be authorized by Colorado law.

(e) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

(f) The Association, by contract or other agreement, may enforce applicable county ordinances and permit the County to enforce ordinances within the Neighborhood for the benefit of the Association and its Members.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Neighborhood Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. The Board may exercise all rights and powers of the Association without a vote of the membership except to the extent that the Neighborhood Documents or Colorado law specifically requires a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, interpretation or enforcement of the Neighborhood Documents, or any other civil claim or action affecting the rights, powers, and responsibilities of the Association under the Neighborhood Documents. However, the Neighborhood Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Article VI of the By-Laws.

7.6. Provision of Services to Units.

The Association may provide, or provide for, services and facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. By way of example, such services and facilities might include trash collection; landscape maintenance; pest control service; cable, digital, satellite or similar television service; telecommunication and internet connection services; security monitoring; utilities; and other services and facilities. The Association may enter into bulk service agreements by which a particular service is provided (a) to all Units, with the charges allocated among all Units as part of the General Assessment, or (b) to all Improved Units, with the charges allocated only among Improved Units, as a Specific Assessment. Alternatively, the Association may arrange for or offer various services at the option of each Owner. The Community Association or the Association may contract with a single company to provide trash collection within the Neighborhood for all Improved Units and assess the cost thereof against all

Improved Units, whether or not the Unit makes use of such service. In such event, no Owner may separately contract for trash pick-up on any schedule other than that established by the Association's contractor without the prior written approval of the Board, nor shall any Owner be relieved of liability for its share of the costs incurred by the Community Association or Association for trash pickup by non-use of the service arranged for by the Community Association or Association.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Neighborhood Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.7. Safety and Security.

The Association may, but shall not be obligated to, maintain or support certain activities within the Neighborhood designed to enhance the level of safety or security that each person provides for himself and his property. However, no representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Neighborhood or any portion thereof, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Neither the Association, Declarant, any Builder, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall in any way be considered insurers or guarantors of safety or security within the Neighborhood, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Neighborhood and each of them assumes all risks of personal injury and loss or damage to their property, including Units and their contents, resulting from acts of third parties.

7.8. Cooperation with Special Districts.

The Association is hereby authorized to contract with, and shall cooperate with, any metropolitan districts or other special districts which may be created as a special purpose unit of local government in accordance with Colorado law to provide community services to any property within Woodmoor, to facilitate the discharge of their respective responsibilities.

Article VIII Association Finances

8.1. Authority to Levy Assessments for Association Expenses.

(a) ***Purposes and Types.*** There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, the Articles and the By-Laws, specifically including but not limited to: any assessments charged to the Association by the Community Association pursuant to the Community Documents; the cost of water and sewer service provided to the Neighborhood by any public utility and billed to the Association; expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility, to the extent the Association is responsible therefor; expenses of monitoring and enforcing compliance with the provisions of the Neighborhood Documents; expenses arising out of the Association's indemnification obligations; expenses arising out of any measure undertaken to enhance the safety of the Owners and occupants of Units and the Neighborhood; expenses incurred in exercising architectural control under Article IV; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Owners; administrative expenses such as postage, copying expense, office supplies and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Neighborhood in good, clean, and attractive condition and to maintain and enhance property values and marketability of Units within the Neighborhood.

There shall be four types of assessments: (a) General Assessments for Common Expenses; (b) Limited Common Assessments for Limited Common Expenses; (b) Special Assessments as described in Section 8.3; and (c) Specific Assessments as described in Section 8.4.

(a) ***Allocation of Liability for Common Expenses; Surplus.*** Except as otherwise provided in this Declaration, each Unit shall be allocated an equal share of liability for Common Expenses, represented by a fraction, the numerator of which is one and the denominator of which is the total number of Units in the Neighborhood. Upon annexation of additional property containing Units, the fractional share of liability for Common Expenses shall be reallocated among all Units in accordance with this Section. Notwithstanding the foregoing:

(i) any expense associated with the maintenance, repair, or replacement of a Limited Common Area shall be allocated among only the Units to which that Limited Common Area is assigned, in equal shares, and levied as a Limited Common Expense;

(ii) any expense or portion thereof which the Association incurs or expects to incur for the benefit of only Improved Units, including expenses for maintenance of Units pursuant to Section 5.2 and insurance on Units pursuant to Section 5.4, if applicable, shall be assessed exclusively against Improved Units, in equal shares, except that if insurance premiums for insurance on Units procured by the Association are allocated by the insurance company or its agent among Units in proportion to value or risk, such premiums shall be allocated among the

Improved Units in the same manner, expenses benefiting only Improved Units to be levied as a Specific Assessment pursuant to Section 8.4;

(iii) any Common Expenses or portion thereof which the Association incurs or expects to incur for utilities provided to Units may be allocated in proportion to usage, if the Association is able to establish relative usage through metering or otherwise, and assessed as a Specific Assessment pursuant to Section 8.4; and

(iv) any Common Expense caused by the misconduct of any Owner, or the occupants of such Owner's Unit, or their guests, shall be assessed exclusively against such Owner's Unit as a Specific Assessment pursuant to Section 8.4.

Any surplus funds of the Association remaining after payment of or provision for Common Expenses and reserves may, in the Board's discretion: (A) be paid to, or credited to the accounts of, the Owners of Units subject to assessment during the period for which such surplus arose in proportion to the liability for Common Expenses allocated to their Units under this subsection (b); or (B) be added to any reserve fund for repair and replacement of capital items or any reserve fund for operating contingencies, except that any surplus arising under the Limited Common Expense budget described in Section 8.2 shall be paid or credited only to Owners of Units subject to Limited Common Assessments or placed in reserves for Limited Common Expenses.

(b) ***Personal Obligation and Lien.*** Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Neighborhood, is deemed to covenant and agree to pay all assessments authorized in the Neighborhood Documents. All assessments, together with interest (computed from its due date at a rate of 12% per annum or such higher rate as the Board may establish by resolution, not to exceed 21% per annum), late charges at the rate of \$25 or 10% of the past due amount, whichever is greater, for each assessment or installment thereof which is past due or such other amount as the Board may determine by resolution, costs, and reasonable attorneys' fees (regardless of whether a legal proceeding is commenced), shall be the personal, joint and several obligation of each Owner, and, except as limited by Colorado law, shall be a charge and continuing lien upon each Unit as provided in Section 8.6, until paid in full.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(c) ***Estoppel Certificate.*** Within 14 days after receipt from an Owner or Mortgagee or its designee of a written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, for an estoppel certificate, the Association shall provide a certificate in writing signed by an officer or authorized agent of the Association setting forth the amount of any unpaid assessments or other charges owed to the Association with respect to the Unit. Such certificate shall be binding on the Association and every Owner. If such statement is not delivered personally or by certified mail, first-class postage prepaid, return receipt requested, within such 14-day period, then the Association shall have no right to assert a lien upon the Unit for unpaid assessments which were due as of the date of the request. If so authorized by Board resolution or in a written management or similar agreement executed by the Association, the Association may require the advance payment of a reasonable processing fee for the issuance of such certificate and the amount of such fee shall be stated on the certificate.

8.2. Budgeting and Allocating Association Expenses.

(a) ***Preparation of Budget.*** At least 60 days before the beginning of each fiscal year, the Board shall prepare budgets of the estimated Common Expenses and Limited Common Expenses it expects to incur for the coming year. The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Limited Common Expense. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost or deferred maintenance expense, and the contribution required to fund the projected need by an annual contribution over the useful life of the asset.

Each budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of assessments. Each budget shall also reflect the estimated surplus or deficit as of the end of the current year.

(b) ***Calculation of General Assessments and Limited Common Assessments.*** The Board shall establish the General Assessment for each Unit and any Limited Common Assessment applicable to a Unit based on an allocation of the budgeted expenses to each Unit in accordance with Section 8.1(b).

Declarant may, but shall not be obligated to, reduce the General Assessment and Limited Common Assessment for any fiscal year by payment of a subsidy, provided that any such subsidy shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

(c) *Notice of Budget and Assessment; Right to Disapprove.* Within 90 days following the Board's adoption of any budget, the Board shall send to each Owner of a Unit to be assessed thereunder a summary of the applicable budget, together with notice of the amount of the General Assessment and any Limited Common Assessment to be levied against each Unit pursuant to such budget and notice of the date, time and location of a meeting of the Owners to consider the budget. The budget shall not require approval of the Owners and shall automatically take effect on the date stated in such notice unless the budget is vetoed at the noticed meeting by a vote of at least 67% of the Owners, if such meeting is held during the Declarant Control Period, and by a vote of a majority of the Owners, if such meeting is held after termination of the Declarant Control Period. If the proposed budget is vetoed as provided herein, or the Board fails for any reason to determine the budget for any year, the budget most recently in effect shall continue in effect until the Board adopts a new budget is adopted which is not vetoed pursuant to this subsection (d).

(d) *Budget Revisions.* The Board may revise the budget and adjust the General Assessment or Limited Common Assessments from time to time during the year, subject to the notice and ratification requirements set forth above.

8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted under Section 8.2, any such expenses to be levied among the Units in accordance with the allocations set for in Section 8.1(b). Any Special Assessment may be adopted by the Board subject to the same notice and ratification procedures as applicable to the annual budget under Section 8.2. In addition, during the Development and Sale Period, any Special Assessment shall also be subject to Declarant's written consent.

8.4. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit pursuant to Section 7.6 which are not provided to all Units;

(b) for monetary fines assessed pursuant to Section 7.4 and to cover costs incurred in bringing the Unit into compliance with the Neighborhood Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b); and

(c) to cover any insurance deductible levied against a Unit pursuant to Section 5.5 or Section 7.3(b), to cover costs of maintenance or insurance that this Declaration or any

Supplemental Declaration authorizes the Association to levy against Units in proportion to the benefit received, and for the working capital contribution levied pursuant to Section 8.7; and

(d) in the case of an Improved Unit, to cover the charges for expenses incurred for the benefit of all Improved Units pursuant to this Declaration.

8.5. Payment of Assessments.

Except as otherwise provided herein, the obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration; or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual General Assessment levied on each Unit shall be adjusted to reflect the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The Board may permit assessments to be paid in two or more installments. Unless the Board otherwise provides, the General Assessment and any Limited Common Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

Notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying the payment, all payments accepted by the Association on the account of any Owner shall be applied first to interest accrued, then to any late charge, then to any costs and reasonable attorneys' fees incurred in collection, and then to the principal amount of the delinquent assessment.

8.6. Lien for Assessments.

(a) The Association shall have a statutory lien against each Unit to secure payment of assessments, as well as interest, late charges, and costs of collection (including attorneys' fees and expenses), subject to such limitations as may be imposed by Colorado law. Such lien shall be superior to all other liens, except: (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; (ii) the lien or charge of any first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value and recorded prior to the date on which the assessment sought to be enforced became delinquent, except that the Association's lien shall have priority over any such first Mortgage to the extent authorized in Section 38-33.3-316(2)(b)(I) of the Act; and (iii) the lien of the Community Association under the Community Documents.

(b) Prior to taking any action to enforce its lien, the Association shall provide the delinquent Owner with written notice or demand for the past due assessments and any other amounts which the Owner owes to the Association pursuant to the Neighborhood Documents. Such notice shall give the Owner at least 10 days within which to pay all amounts due, including, but not limited to, any attorneys' fees and actual costs which the Association has incurred in connection with the preparation and delivery of such notice. Such notice may inform the Owner of the Association's intent to file a claim of lien and to foreclose such lien and collect the amounts due if not paid within such 10-day or longer period. The notice shall be sent by first class mail to the last address of the Owner reflected in the Association's records and to the address of the Unit, if different from the address in the Association's records. If the Owner's address as reflected in the Association's records is located outside the United States, sending the notice to such address by first class United States mail shall be sufficient.

(c) The Association may take action to foreclose its lien in the same manner as the foreclosure of a Mortgage under Colorado law and may also bring an action to recover a money judgment for the amounts due without foreclosing or waiving its claim of lien; however, no such action shall be brought until at least 10 days after the Owner has been provided with notice of the Association's intent to foreclose and collect the unpaid amount as provided in subsection (b) and the requirements of the Act at C.R.S. § 38-33.3-316(11)(a) have been met. The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. Nothing herein shall limit the Association's ability to pursue any and all other remedies allowed by law to enforce its lien.

(d) Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit and the subsequent owner thereof from the personal obligation for assessments due at the time of transfer of title, except that the liability of a holder of a first Mortgage who acquires title to a Unit pursuant to foreclosure of the Mortgage or a deed in lieu of such foreclosure for assessments due prior to such acquisition of title shall be limited as provided in C.R.S. § 38-33.3-316. Any unpaid assessments for which such holder is not liable shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

8.7. Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual General Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, other assessments due hereunder and shall not be considered an advance payment of such assessments. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

PART FOUR: NEIGHBORHOOD DEVELOPMENT

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of the Neighborhood and to accommodate changes in Declarant's plans for development that inevitably occur as a neighborhood such as Northbay at Woodmoor Townhomes is developed.

Article IX Expansion of the Neighborhood

9.1. Expansion by the Association.

The Association may expand the Neighborhood to include additional property by recording a Supplemental Declaration describing the additional property and the intent to submit it to the provisions of this Declaration. Any such Supplemental Declaration shall require the affirmative vote of persons entitled to cast more than 50% of the votes in the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

9.2. Additional Covenants and Easements.

Declarant may subject any portion of the Neighborhood to additional covenants and easements. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration.

9.3. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall have the same effect as an amendment to this Declaration and shall be effective upon recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article X Additional Rights Reserved to Declarant

10.1. Development Rights.

Declarant reserves the right, during the Development and Sale Period:

(a) to replat any portion of the Neighborhood which it owns, or if not owned by Declarant, with the consent of the Owner, to subdivide or combine Units, change Unit boundaries, convert all or portions of any Unit into Common Area or Limited Common Area, convert Common Areas to Units, or to adjust the boundaries of any Common Area or Limited Common Area, except that the right to convert Common Area to Units and adjust boundaries of any Common Area or Limited Common Area shall automatically terminate upon recording of a deed conveying such Common Area or Limited Common Area to the Association;

(b) to amend this Declaration or any Supplemental Declaration to withdraw property from the Neighborhood and the coverage of this Declaration, provided that such property has not been improved with a dwelling. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. Declarant may separately exercise this right as to each portion of the Neighborhood which is the subject of a separately recorded subdivision map or plat; however, Declarant may not exercise such right with respect to any property on a particular subdivision map or plat after a Unit shown on such map or plat has been conveyed to a Person other than Declarant, a Declarant Affiliate, or a Builder. Any such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

Declarant may exercise any of the above rights with respect to any portion of the Neighborhood and such exercise shall not obligate Declarant to exercise any of the above rights with respect to any other portion of the Neighborhood.

10.2. Development and Sales Activities.

Notwithstanding anything in the Neighborhood Documents to the contrary, during the Development and Sale Period:

(a) Declarant and any Builder whom Declarant so authorizes may construct and maintain such facilities on the Common Area and conduct such activities on the Common Area as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, subject to any limitations imposed by applicable zoning including, but not limited to, business or management offices, sales offices, signs, model homes, parking facilities, and exterior lighting features or displays. Declarant and authorized Builders and their invitees shall have easements for access to and use of such facilities at no charge. There shall be no limit on the number or location of such facilities, except as otherwise restricted by state law or local ordinance or regulations.

(b) Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area and roads within the Neighborhood for the purpose of:

- (i) exercising any rights reserved to Declarant pursuant to this Declaration; and
- (ii) making, constructing, and installing any improvements indicated on recorded Plats and such other improvements to the Common Area as it deems appropriate; and
- (iii) making repairs or correcting any condition on the Common Area or any Unit.

10.3. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and the transferee and recorded.

The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.4. Exclusive Rights to Use Name of Development.

The names "Northbay at Woodmoor Townhomes" and "Northbay," along with all logos associated with such names, are the proprietary trade names and/or service marks of

Declarant, Declarant Affiliates, the Founder under the Community Documents, or its affiliates. No Person shall use either such name, or any associated logo, for advertising or any other purpose in any promotional material, whether printed, audio, video, or otherwise, in any signage, on any Internet website, or in any logo or depiction, without the prior written consent of Declarant or the Person who owns such mark. In addition, due to the integrated nature of Northbay as a planned community and the public identification of the Units with Northbay, any name or "logo" to be used in connection with or displayed on any signage or in any sales or other materials or documentation related to any Unit shall be subject to Declarant's prior written consent. Such approval may be given or withheld in Declarant's discretion and may be subject to such terms and conditions as Declarant deems appropriate.

The owner of any such trade mark or name may require a person requesting use of the same to sign one or more license agreement(s), which are intended to protect the trade names and service marks from unauthorized use by others. Such license agreement(s) shall be non-exclusive, non-transferable, and in form and substance acceptable to the owner of the mark. Subject to such licensing agreements, the Association may use the words "Northbay at Woodmoor Townhomes" and "Northbay" in its name and Owners may use the name "Northbay at Woodmoor Townhomes" where such term is used solely to specify that particular property is located within the Neighborhood.

10.5. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Neighborhood in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the Owner's concerns and conduct their own inspection pursuant to the rights reserved in Section 11.6.

PART FIVE: PROPERTY RIGHTS WITHIN THE NEIGHBORHOOD

The nature of living in a planned community requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the Neighborhood.

Article XI Easements

11.1. Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Neighborhood Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area; and
 - (ii) suspend the right of an Owner or occupants of any Unit to use facilities within the Common Area pursuant to Section 7.5; and
 - (iii) dedicate or transfer all or any part of the Common Area, subject to Section 18.3; and
 - (iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 18.3; and
- (d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2. Easements of Encroachment.

- (a) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or right-of-way and between adjacent Units due to the unintentional placement or

(b) settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(c) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or right-of-way and between adjacent Units as reasonably necessary to install, maintain, repair and replace (i) any fence constructed on or within one foot of the boundary line of any Unit, and (ii) air conditioning condenser units in such location as originally installed by the Builder between driveways on the Units or in the side yard of any Unit adjacent to CommonArea.

11.3. Easements for Utilities, Etc.

(a) ***Installation and Maintenance.*** Declarant reserves for itself, its successors, assigns and designees (which may include utility providers), and grants to the Association following expiration of the Development and Sale Period, perpetual, non-exclusive easements throughout the Neighborhood (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Neighborhood, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant or any Builder owns or within public rights-of-way or easements reserved for such purpose on recorded plats or in other recorded documents; and

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

(b) ***Specific Easements.*** Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B." The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

(c) ***Minimal Interference.*** No Person shall construct, install, or place any structure, wall, fence, trees, shrubs, or other plantings within utility easements shown on the recorded plats which may damage or interfere with the installation or maintenance of utilities, or which may impede the flow of water through drainage easements.

All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements for Use and Access.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use and access. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant, its successors-in-title or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions.

11.5. Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over the Neighborhood as necessary to enable the Association to fulfill its maintenance responsibilities under Sections 5.2 and 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform other maintenance, to inspect for the purpose of ensuring compliance with and enforce the Neighborhood Documents, and to exercise self-help under Section 7.4. Any member of the Board and its duly authorized agents and designees, and all emergency personnel in the performance of their duties, may exercise such right of entry. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6. Easement to Inspect and Right to Correct.

Declarant reserves for itself, the Builders, and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Neighborhood, including Units, and a perpetual, nonexclusive easement of access throughout the Neighborhood to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

11.7. Landscaping and Signage Easements.

Declarant and its designees and the Association shall have perpetual, nonexclusive easements exercisable by their respective employees, agents, and contractors over areas within five feet of the rights-of-way of streets within the Neighborhood for the purpose of installation, maintenance, repair, and replacement of lot bollards, neighborhood entrance monuments, signs (including, without

limitation, marketing signs), fences, lighting, irrigation systems, and landscaping within the easement area. Nothing herein shall obligate Declarant or the Association to exercise such easements or to construct or install any of the foregoing. No fences, structures, driveways, plantings, or any other objects, temporary or permanent, shall be permitted in such easement areas without the prior written approval of Declarant during the Development and Sale Period and the Association thereafter, other than those installed by Declarant or its designees.

No person shall interfere with the exercise of this easement by Declarant, its designees, or the Association, by removing, defacing, or otherwise vandalizing any signs (temporary or permanent) or other improvements placed within such easement area by Declarant, its designees, or the Association, or otherwise. Declarant, its designees and the Association, respectively, may remove signs or other improvements which they have placed on the easement area.

11.8 Easements for Stormwater Drainage and Runoff.

Each portion of the Neighborhood is hereby burdened with a perpetual, non-exclusive easement for the benefit of each other portion of the Neighborhood for the discharge of stormwater into those Surface Water Management System Facilities constructed on the benefited property or in rights-of-way adjacent to the benefited property and for the flow of stormwater through those Surface Water Management System Facilities located on the burdened property.

11.9 Easements for Storm Water Collection, Retention, and Irrigation Systems.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement to enter upon any portion of the property within the Neighborhood, including Units, to: (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for collecting and retaining storm water; and (c) maintain such areas in a manner consistent with the Neighborhood-Wide Standard. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly return any property damaged as a result of such exercise to substantially the same condition as the property existed prior to the exercise of the easement.

Article XII Limited Common Areas

Declarant may: (a) designate as Limited Common Area any alley or open space adjacent to Units which Declarant intends to serve or primarily benefit less than all Units; and (b) assign such Limited Common Area for the exclusive use or primary benefit of Owners and occupants of such Units as Declarant may designate by Supplemental Declaration or other amendment to this Declaration. All costs associated with ownership, maintenance, repair, replacement, management, operation and insurance of a Limited Common Area shall be a Limited Common Expense allocated among the Owners of Units to which the Limited Common Area is assigned. Declarant may exercise this right at any time during the Development and Sale Period. Any Limited Common Area which has been assigned pursuant to this Section may not be reassigned without the consent of the Owners of all Units to which the Limited Common Area is assigned and proposed to be reassigned.

Article XIII Party Walls and Other Shared Structures

13.1. General Rules of Law to Apply.

Each wall, fence, driveway or similar structure built as a part of the original construction on the Units that serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV. The right of any Owner to contribution from any other Owner under this Article is appurtenant to the Unit and shall pass to, benefit, and bind each Owner's successors-in-title.

13.2. Maintenance; Damage and Destruction.

Except to the extent that a party structure is designated Limited Common Area or responsibility for maintenance or repair is otherwise assigned to or assumed by the Association pursuant to this Declaration, any applicable Supplemental Declaration, or written agreement:

(a) the Owners of the Units separated by a party structure shall each be responsible for maintaining that side of the structure facing such Owner's Unit; and

(b) except as otherwise provided in subsection (c), to the extent that any necessary repair or replacement of a party structure affects both sides of the structure, it shall be the joint responsibility of the Owners of both Units and either Owner may perform the necessary maintenance or repair and, within 30 days after receipt of written evidence of the total cost incurred, the other Owner shall reimburse the Owner who has incurred such cost for one half of the reasonable cost he or she has incurred in performing such maintenance or repair; and

(c) if maintenance or repairs to a party structure are necessitated by the conduct of the Owners, occupants or guests of only one of the Units which share such party structure, then the Owner of such Unit shall be responsible for the entire cost of the necessary maintenance or repairs and costs of lodging for the occupants of the other Unit, if displaced in order to complete such repairs.

In the event that any Owner installs, constructs, or erects a fence on the common boundary line such Owner's Unit and an adjacent Unit, and the owner of the adjacent Unit thereafter attaches another section of fence to it or otherwise makes use of such fence for the purpose of enclosing all or a portion of the adjacent Unit, then such fence shall become a party fence for the purpose of each Owner's responsibility for contributing to the maintenance, repair, and replacement of such fence. However, nothing herein shall confer any ownership interest in or right to remove any such fence on the Owner of the adjacent Unit.

In the event that either Owner fails to provide necessary maintenance or repairs to a party structure within 10 days after the date of written notice from the Association advising of the need

for such maintenance or repairs, the Association shall have the right to provide the necessary maintenance or repairs and assess the costs incurred against the responsible Owner(s) and his (or their) Unit(s).

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.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE NEIGHBORHOOD

Each Owner and occupant of a Unit is expected to use good faith efforts to resolve disputes amicably, seek positive relationships within the community and with our neighbors, and respect the rights of others who have an interest in the Northbay at Woodmoor Townhomes.

Article XIV Dispute Resolution and Limitation on Litigation

14.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, any Builder, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Neighborhood without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to:

(i) any Claim described in Section 14.1(b)(i) and, instead, to submit such Claim to the alternative dispute resolution procedures set forth in Section 14.2(a) and (b) and, if not resolved through negotiation, then binding arbitration in accordance with subsection (e), as the sole method of resolving such dispute; or

(ii) any Claim described in any other clause of Section 14.1(b) without first submitting such Claim to the alternative dispute resolution procedures set forth in Section 14.2(a) and (b) and, if not resolved through negotiation, then mediation in accordance with subsection (d) in a good faith effort to resolve such Claim prior to filing suit in any court.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to:

(i) alleged defects in design or construction of improvements within the Neighborhood or failure to perform any obligation under any express or implied warranty relating to construction within the Neighborhood;

(ii) the interpretation, application, or enforcement of the Neighborhood Documents; or

(iii) the rights, obligations, and duties of any Bound Party under the Neighborhood Documents;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner; and

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of Neighborhood standards); and

(iii) any suit which does not include Declarant, any Builder, or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Neighborhood Documents; and

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

Notwithstanding anything to the contrary herein, in the event of a conflict between this Article and any written contract between a Builder and Owner which provides for binding arbitration of disputes, such contract shall control.

14.2. Dispute Resolution Procedures.

(a) **Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice of Claim**") to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises); and

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice of Claim, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved a Claim subject to mediation under Section 14.1(a)(ii) through negotiation within 30 days of the date of the Notice of Claim (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with Judicial Arbitrator Group, Inc. of Denver Colorado, or if such entity is unable or unwilling to assist, another independent agency providing dispute resolution services in the Colorado Springs, Colorado area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate, except as otherwise provided in subsection (e). Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) **Final and Binding Arbitration.** If the parties have not resolved a Claim subject to binding arbitration under Section 14.1(a)(i) through negotiation within 30 days of the date of the Notice of Claim (or within such other period as the parties may agree upon), then unless all parties agree in writing to waive this requirement, the Claimant may not initiate a lawsuit relating to such Claim but shall have 30 additional days to submit the matter to binding arbitration in accordance with the Colorado Uniform Arbitration Act, 13 C.R.S. § 13-22-201, *et seq.*, and the Rules of Arbitration attached as Exhibit "G" to this Declaration, or the Claim shall be deemed abandoned, and the Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent(s) from any liability to Persons not a party to the foregoing proceedings.

This subsection (e) is an agreement of the Bound Parties to arbitrate all Claims described in Section 14.1(a)(i) except as otherwise provided herein and shall be subject to specific enforcement under the laws of the State of Colorado. The arbitration award ("Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under Colorado law. If any party fails to comply with such Award, then any other party may file suit or initiate administrative proceedings to enforce such Award without the need to again comply with the procedures set forth in this Section 14.2. In such event, the party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

14.3. Proceedings by Association.

(a) **Membership Approval.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial, administrative, or arbitration proceeding, other than proceedings described in subsection (b) hereof, unless first approved by the written consent of Owners entitled to cast at least 67% of the total votes in the Association after full written disclosure to each Owner of:

- (i) the nature of the action and the relief sought;
- (ii) the projected fees and expenses of such action, including attorneys' fees, professional service and expert witness fees, and other costs which the Association expects to incur directly or for which it may be liable if it is not the prevailing party;
- (iii) the manner in which the Association proposes to fund such fees and expenses, including any proposed increase in assessments, special assessments, use of reserve funds, and/or borrowing;
- (iv) the anticipated duration of such action and likelihood of success; and
- (v) the potential impact on the ability to obtain financing or refinancing of Unit mortgages during the pendency of such action; and
- (vi) the potential impact on value and marketability of Units during the pendency of such action and thereafter.

(a) **Exceptions.** Section 14.3(a) shall not apply to actions or proceedings:

- (i) initiated during the Declarant Control Period; or
- (ii) initiated to enforce the provisions of the Neighborhood Documents, including collection of assessments and foreclosure of liens; or

(iii) initiated to challenge ad valorem taxation or condemnation proceedings;
or

(iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract entered into by the Association for services or supplies; or

(v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

(b) ***Limitation on Association Action.*** Notwithstanding anything to the contrary herein, the Association shall not expend assessment funds to initiate, pursue, or support proceedings on behalf of any Owner or group of Owners for breach of contract or other individual claims such Owners may assert arising out of the purchase of their Units or express or implied warranties in connection with the same.

Article XV Mortgagee Provisions

15.1. Rights of Mortgagees.

(a) An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates) shall be entitled to:

(i) examine the books and records of the Association during business hours in accordance with the inspection provisions set forth in the By-Laws;

(ii) obtain a statement from the Association as to the status of payment of assessments and other charges owed for the Unit to which its Mortgage relates; and

(iii) obtain a certificate of insurance evidencing the insurance coverage maintained by the Association pursuant to this Declaration.

(b) Any Mortgagee or group of Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges against the Common Area which are in default and may pay any overdue premiums on hazard insurance policies required to be carried by the Association, and the Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

15.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.3. Identification of Mortgage Holders.

Upon request, each Owner shall furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Article XVI Community Association

16.1. Role of Community Association.

The Community Association has been established as a unifying entity for the planned unit development of which Northbay at Woodmoor Townhomes is a part. The Community Association is responsible for maintaining and operating certain property and facilities that are shared by or benefit the Neighborhood and other property owners within Woodmoor pursuant to the Community Documents.

16.2. Membership in Community Association.

Each Owner shall be a member of the Community Association and shall fulfill the responsibilities and be entitled to exercise the privileges of membership under the articles of incorporation and bylaws of the Community Association, in addition to such Owner's responsibilities as a Member of the Association under the Neighborhood Documents. The Association shall cooperate with the Community Association and its other members in upholding the Community-Wide Standard, as defined in the Community Documents, within Woodmoor. Each Owner shall be subject to and pay assessments levied by the Community Association pursuant to the Community Documents in addition to assessments levied by the Association under this Declaration.

PART SEVEN: CHANGES IN THE NEIGHBORHOOD

Communities such as Northbay at Woodmoor Townhomes are dynamic and need the ability to monitor and adapt to changes in circumstances, technology, needs and desires, and applicable law over time.

Article XVII Changes in Ownership of Units

17.1. Notice of Transfer.

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the

date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

17.2. Administrative Transfer Fee.

The Association may charge an "**Administrative Transfer Fee**" on transfer of title to each Unit to cover the administrative expenses associated with updating the Association's records. Any such Administrative Transfer Fee shall be reasonably determined by the Board to cover its costs, including, but not limited to, any fees charged for updating records by a management company retained by the Association.

Article XVIII Changes in Common Area

18.1. Condemnation.

If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award. Any condemnation award shall be payable to the Association and shall be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, during the Development and Sale Period, and Owners entitled to cast at least 67% of the total votes in the Association (and if the taking involves Limited Common Area, Owners of all Units to which such Limited Common Area is assigned) shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply as if the condemnation proceeds were insurance proceeds; and

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as if proceeds from the sale of Common Area pursuant to Section 18.3.

18.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action seeking the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration, subject to such approval as may be required under Section 18.3.

18.3. Mortgaging, Conveyance or Dedication of Common Area.

The Association may dedicate portions of the Common Area to the County, or to any other local, state, or federal governmental or quasi-governmental entity, or may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Owners entitled to cast at least 67% of the total votes in the Association and, during the Development and Sale Period, Declarant; or

(b) if Limited Common Area, upon written agreement of all Owners of Units to which the Limited Common Area is assigned.

The proceeds from the sale or financing of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or financing of Limited Common Area shall be disbursed as provided by the agreement authorizing such sale or security interest.

No sale or encumbrance of Common Area may deprive any Unit of rights of access or support.

Article XIX Amendment of Declaration

19.1. Approvals Required.

(a) In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may unilaterally amend this Declaration for any purpose other than those purposes set forth in subsection (c)(i), and for any purposes set forth in subsection (c)(i) to the extent expressly permitted or required by the Act; provided, any amendment by Declarant pursuant to this Section shall not materially adversely affect the title to any Unit unless the Owner of such Unit shall consent in writing. Declarant may amend this Declaration at any time: (i) to correct clerical, typographical errors, or technical errors as permitted by the Act at C.R.S. § 38-33.3-205(4); (ii) to satisfy the requirements, standards, or guidelines of recognized secondary mortgage markets, as permitted by the Act at C.R.S. § 38-33.3-205(5); (iii) as appropriate to exercise any right reserved to Declarant under Section 9.1 or Section 10.1; and (iv) otherwise as authorized by the Act.

(b) Except as otherwise specifically provided in this Section 19.1 and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners entitled to cast at least 67% of the total votes in the Association, and during the Development and Sale Period, the written consent of Declarant.

(c) Notwithstanding the above:

(a) except as expressly permitted or required by the Act, any amendment which would create or expand "special declarant rights," as defined in the Act, increase the number of Units beyond the maximum number specified in Section 9.1, change the boundaries of any Unit other than in accordance with the procedures set forth in the Act, or change the method of determining the votes or the proportional share of liability for Association expenses allocated to any Unit, shall require the affirmative vote or written consent, or any combination thereof, of Owners of Units to which at least 67% of the total votes held by Owners other than Declarant are allocated and, during the Development and Sale Period, Declarant's written consent;

(b) the percentage of votes necessary to amend a specific clause of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause;

(c) no amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant (or the assignee of such right or privilege);

(d) no amendment which alters the rights or responsibilities of the Association or the Owners with respect to the Community Association shall be effective without the prior written consent of the Community Association; and

(e) no amendment may modify Article XIV or Exhibit "G" without the written consent of Declarant and each Builder, whether before or after the Development and Sale Period.

19.2. Validity and Effective Date.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

19.3. Amendment of Exhibits.

Exhibits "A," "B," "F," and "G" attached to this Declaration are incorporated by this reference, and amendment of such exhibits shall be governed by this Article. Exhibit "C" is incorporated by this reference and may be amended pursuant to Section 3.2 or this Article. Exhibits "D" and "E" are attached for informational purposes only and may be amended as provided therein.

Article XX Termination of Declaration

This Declaration may be terminated only upon recording a termination agreement signed by the then Owners of at least 80% of the Units and compliance with the procedures set forth in the Act at C.R.S. § 38-33.3-218. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

[continued on next page]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

DECLARANT: THE COVE TOWNHOMES, LLC, a Colorado limited liability company

BY: JM Weston Homes LLC., a Colorado limited liability company, its Manager

By: _____

Name: John W. Bissett

Its: President

STATE OF COLORADO

COUNTY OF EL PASO

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by John W. Bissett as President of JM Weston Homes LLC, a Colorado limited liability company, Manager of Northbay Townhomes, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____.

[SEAL]

Notary Public

EXHIBIT "A"

Land Initially Submitted

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in the Southeast quarter of Section 11, Township 11 South, Range 67 West, of the 6th P.M., El Paso County, Colorado, and being more particularly identified as on that certain plat entitled _____ recorded on _____, 2018 at Reception No. _____ in the Public Records of El Paso County, Colorado, as such plat may be revised and amended from time to time.

EXHIBIT "B"
Initial Rules

The following rules shall apply to all of the Neighborhood until such time as they are amended, modified, repealed or limited pursuant to Article III of the Declaration, in addition to the use restrictions contained Section 3.1 of this Declaration and in the Community Documents and the rules of the Community Association.

1. Restricted Activities. The following activities are prohibited within the Neighborhood unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of vehicles on streets within the Neighborhood, and parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages except temporarily during loading and unloading; provided, visitors may park in designated on-street parking spaces for the duration of such guest's visit, not to exceed 72 hours without prior approval of the Board, and construction, service, and delivery vehicles may park on the street for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. For purposes of this provision, "commercial vehicles" shall be defined as trucks or vans with commercial writing on their exteriors or vehicles primarily used or designed for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, but shall not include passenger cars with identifying decals or painted lettering not exceeding a total area of one square foot in size or official vehicles owned by governmental or quasi-governmental bodies; and

(b) Raising, breeding or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit provided they are not kept or raised for any commercial purpose; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law. Dogs that are heard barking for 10 continuous minutes or longer in any 30 minute period shall be deemed a nuisance. The Owner shall be responsible for paying for any damage caused by pets kept in its Unit; and

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates an unreasonable level of noise or other conditions which tend, in the Board's judgment, to unreasonably disturb the peace or threaten the safety of the occupants of other Units (this paragraph shall not preclude normal and customary use of power tools, lawn mowers, and other yard maintenance equipment); and

(d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation; and

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit; and

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units; and

(g) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit; and

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes; and

(i) Use and discharge of firecrackers and other fireworks; and

(j) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Neighborhood, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff; and

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers which must either be stored in an enclosed garage or another enclosure approved pursuant to Article IV except on the day garbage is collected; and

(l) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge; and

(m) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article IV; and

(n) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent; and

(o) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and recorded, except that

Declarant and Builders, with Declarant's written consent, shall be permitted to subdivide or replat Units which they own; and

(p) Conversion of any garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article IV, or use of any garage for storage or other purposes which preclude its use for parking of that number of vehicles for which it was originally designed, except that a Builder may use the garage for a sales office; and

(q) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to property which they own; and

(r) Any yard sale, garage sale, moving sale, rummage sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a Neighborhood-wide basis; and

(s) Propagation, growing, sale, or distribution of marijuana for any purpose;

(t) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; landscaping; walls, dog runs, animal pens, or fences of any kind; and satellite dishes and antennas, except that:

(i) an antenna that is one meter or less in diameter and designed to receive direct broadcast satellite services, including direct-to-home satellite services, or to receive or transmit fixed wireless signals via satellite; or

(ii) an antenna that is one meter or less in diameter or diagonal measurement and designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "**Permitted Antennas**") shall be permitted on Units without prior approval, provided they are installed in compliance with such requirements as to location and screening as may be set forth in the Architectural Guidelines in order to minimize obtrusiveness as viewed from streets and adjacent property, consistent with the Federal Communications Commission's Over-the-Air Reception Devices rule, 47 C.F.R. 1.4000 adopted pursuant to the Telecommunications Act of 1996, as amended from time to time.

2. Prohibited Conditions. The following shall be prohibited in the Neighborhood:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Neighborhood; and

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair; and

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from ground or surface waters within the Neighborhood, except that Declarant, its designees, and the Association shall have the right to draw water from such sources, subject to such approval as may be required by any local, state, or federal regulatory or permitting authorities as may have jurisdiction over such matters.

EXHIBIT "C"

Articles of Incorporation of Northbay at Woodmoor Townhome Association

[see attached]

ARTICLES OF INCORPORATION
OF
THE COVE AT WOODMOOR TOWNHOME
ASSOCIATION

The undersigned incorporator, for the purpose of forming a nonprofit corporation under the Colorado Revised Nonprofit Corporation Act ("**Act**"), adopts the following Articles of Incorporation for Northbay At Woodmoor Townhome Association:

Article 1. Name. The name of the corporation is Northbay At Woodmoor Townhome Association. ("**Association**").

Article 2. Duration. The Association shall have perpetual duration.

Article 3. Purposes and Powers. The Association does not contemplate pecuniary gain or profit, direct or indirect, to its members.

(a) In way of explanation and not of limitation, the purposes for which it is formed are:

(i) to be and constitute the Association to which reference is made in the Declaration of Covenants, Conditions and Restrictions for Northbay at Woodmoor Townhomes, as it may be amended from time to time (the "**Declaration**"), recorded or to be recorded by Northbay Townhomes, LLC, a Colorado limited liability company ("**Declarant**"), in the Office of Clerk and Recorder of El Paso County, Colorado, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the By-Laws of the Association, as they may be amended from time to time ("**By-Laws**"), and as provided by the Colorado Common Interest Ownership Act and Colorado law; and

(ii) to provide an entity for the furtherance of the interests of owners of the real property subject to the Declaration (the "**Neighborhood**").

(b) In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Declaration or By-Laws, may be exercised by the Association's board of directors ("**Board**"):

(i) all of the powers conferred upon nonprofit corporations by common law and the statutes of the State of Colorado in effect from time to time;

(ii) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the By-Laws, the Declaration, or Colorado law, including, without limitation, the following:

(A) to fix and to collect assessments and other charges to be levied against the Units or Owners, as provided in the Declaration;

(B) to manage, control, operate, maintain, repair, and improve property subjected to the Declaration or any other property for which the Association by rule, regulation, Declaration, or contract has a right or duty to provide such services;

(C) to enforce covenants, conditions, and restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or By-Laws;

(D) to engage in activities which will actively foster, promote, and advance the common interests of all owners of property subject to the Declaration;

(E) to buy or otherwise acquire, sell, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association, subject to the limitations of the Declaration and Colorado law;

(F) to borrow or lend money for any purpose, subject to the limitations of the By-Laws;

(G) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(H) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals;

(I) to amend such provisions of the Declaration or By-Laws as the Board is authorized to amend pursuant to the Colorado Common Interest Ownership Act;

(J) to provide any and all supplemental services to the Neighborhood as the Board may determine necessary or appropriate; and

(K) to construct, maintain, and manage roads, utilities, water systems, and trails.

(c) The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article 3 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article 3.

Article 4. Membership. The Association shall be a membership corporation without certificates or shares of stock. Each Person who is the record owner of a Unit shall be a member and shall be entitled to vote as set forth in the Declaration and the By-Laws.

Article 5. Board of Directors. The business and affairs of the Association shall be conducted, managed, and controlled by a board consisting of three directors as provided in the By-Laws of the Association. The initial board shall consist of three directors. The names and addresses of the members of the initial board, who shall hold office until their successors are elected and have qualified, or until their resignation or removal, are as follows:

John W. Bissett	430 Beacon Lite Road, Suite 115, Monument, CO 80132
_____	430 Beacon Lite Road, Suite 115, Monument, CO 80132
_____	430 Beacon Lite Road, Suite 115, Monument, CO 80132

The method of election, removal, and filling of vacancies on the board and the term of office of directors shall be as set forth in the By-Laws.

Article 6. Indemnification of Directors. To the extent consistent with the Act, as it exists on the date hereof or as it may hereafter be amended, the Association shall indemnify its officers and directors as provided in the By-Laws and the Act. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

Article 7. Merger, Consolidation and Dissolution. The Association may merge, consolidate, or dissolve only in accordance with the procedures set forth in the Act, as it may be amended from time to time. Additionally, merger, consolidation, or dissolution shall require the approval of Persons entitled to cast at least 75% of the total votes in the Association, and the consent of Declarant during the Declarant Control Period.

Article 8. Amendments. These Articles may be amended only in accordance with the procedures set forth in the Act, as it may be amended from time to time. Unless otherwise required by the Act, the Board may adopt amendments to these Articles for the sole purpose of complying with the requirements of any governmental or quasi-governmental entity or institutional lender authorized to fund, insure or guarantee mortgages on individual Units, and no Member shall be entitled to vote on any amendment to these Articles of Incorporation for such purpose. In all other situations, these Articles may be amended only upon: (a) a resolution duly adopted by the

EXHIBIT "E"

By-Laws of Northbay At Woodmoor Townhome Association

[see attached]

BY-LAWS
OF
THE COVE AT WOODMOOR TOWNHOME ASSOCIATION

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BY-LAWS
OF
THE COVE AT WOODMOOR TOWNHOME ASSOCIATION

Article I Name, Principal Office, Purposes, and Definitions

1.1. Name.

The name of the corporation is Northbay At Woodmoor Townhome Association (the "Association").

1.2. Principal Office.

The principal office of the Association shall be located in El Paso County, Colorado. The Association may have such other offices, either within or outside Colorado, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Purposes.

The Association has been formed:

(a) to be and constitute the "Association" as defined in the Declaration of Covenants, Conditions and Restrictions for Northbay at Woodmoor Townhomes, recorded or to be recorded by Northbay Townhomes, LLC, a Colorado limited liability company ("**Declarant**"), in the Office of Clerk and Recorder of El Paso County, Colorado (as it may be amended and supplemented from time to time, the "**Declaration**"); and

(b) to provide an entity for the furtherance of the interests of owners of the real property subject to the Declaration (the "**Neighborhood**").

(c) to perform all duties of the Association and to exercise all rights and powers of the Association as specified in the Declaration, in these By-Laws of Northbay At Woodmoor Townhome Association (as they may be amended from time to time, the "**By-Laws**"), and as provided in the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended (the "**Act**") and the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7- 121-101, *et seq.*, as it may be amended (the "**Nonprofit Act**").

1.4. Definitions.

Unless otherwise specified, the words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration, unless the context indicates otherwise. The term "**majority**," as used in these By-

Laws, means those votes, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Article II Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Association shall be a membership corporation without certificates or shares of stock. The Association shall have one class of membership consisting of the Owner of each Unit, as described in the Declaration, except that Declarant shall be deemed to hold a separate class of membership to the extent necessary to exercise any right specifically granted to Declarant under the Declaration or these By-Laws. Each Owner of a Unit subject to the Declaration shall automatically be a Member of the Association and shall remain a Member so long as such Member continues to be an Owner of a Unit. Such membership shall automatically terminate upon the member ceasing to be an Owner of a Unit, but otherwise may not be resigned. Additional provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2. Membership Meetings.

(a) General. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate. Membership meetings may be conducted electronically (*i.e.*, via the Internet, intranet, or teleconference) if, and to the extent, permitted by law. The first meeting of the Association, whether a regular or a special meeting, shall be held within one year after the Association's incorporation.

(b) Annual Meetings. Annual meetings of the Members shall be held on such day and at such time of day as is fixed by the Board and specified in the notice of meeting. The annual meetings shall be held to transact such business that properly comes before the meeting. The Board may schedule other regular meetings to occur between annual meetings on such periodic basis as the Board may deem appropriate.

(c) Special Meetings. The President may call special meetings of the membership. In addition, it shall be the duty of the President to call a special meeting of the membership if so directed by resolution of the Board or upon a written petition signed by Members representing at least 10% of the total votes in the Association. If the President does not give notice of a special meeting as provided in Section 2.3(a) within 30 days after the date written demand is delivered to the Association's Secretary, any Member signing the demand may set the time and place of the special meeting and give notice pursuant to Section 2.3(a).

2.3. Notice of Meetings; Waiver of Notice.

(a) At least 10 but not more than 50 days before any meeting of the Members, the President, the Secretary, or the officers or other persons calling a meeting of the Members shall deliver or cause to be delivered to each Member a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including the general nature of any proposed amendment to the Declaration or By-Laws, any proposed budget changes, and any

proposal to remove a director. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 9.5 or otherwise permitted by Colorado law. In addition, the notice of any meeting of the Members shall be physically posted in a conspicuous place, to the extent that such posting is feasible and practicable, shall be posted on the Association's website, if any, and shall be transmitted by electronic mail to all Members who so request and who furnish the Association with their electronic mail addresses.

(b) Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.4. Quorum.

Except as otherwise provided in these By-Laws or the Declaration, the presence of persons entitled to cast at least 20% of the total votes in the Association shall constitute a quorum at all meetings of the Association membership. If any meeting cannot be held because a quorum is not present, the quorum requirement for any subsequent attempt to convene such meeting shall be one-half (1/2) of the previous quorum requirement. A meeting may be conducted through the use of any means of communication by which all persons participating in the meeting may hear each other during the meeting. A Member participating in a meeting by such means is deemed to be present in person at the meeting.

2.5. Adjournment of Meetings.

If any meeting of the Members cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the meeting when originally called, or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of Members leaving less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.6. Conduct of Meetings.

The President or a Board-approved designee shall preside over all meetings of the Association. The Secretary shall be responsible for the taking of minutes of the meetings and recording in a minute book all resolutions adopted and all other transactions occurring at such meetings. Members shall have the right to attend all membership meetings and to speak at any meeting with reference to all items opened for discussion or included on the agenda. A Member shall have the right to speak for at least three minutes on any item of business properly brought before a meeting of the membership, provided that the Member submits a written request to speak to the Secretary prior to the meeting. The Board may adopt written reasonable rules governing the frequency, duration, and other manner of Member statements consistent with this Section.

2.7. Voting.

The voting rights of the Members set forth in the Declaration are specifically incorporated by this reference. To the extent permitted by Colorado law, a membership vote on any matter may be conducted at a meeting or by ballot cast by mail, facsimile transmission, electronic transmission, or a secure web-based voting system, or any combination of those methods, or by written consent as provided in Section 2.9. The Board shall establish procedures to provide reasonable assurance that the person casting the vote is the Member or the Member's proxy appointed pursuant to Section 2.8.

Votes shall be conducted by secret ballot: (i) for contested positions on the Board; and (ii) in the discretion of the Board or upon petition of persons entitled to cast 20% of the votes represented at a meeting at which a quorum has been achieved, for any other matter on which Members are entitled to vote. Ballots shall be counted by a neutral third party or by a committee comprised of Members who are selected or appointed at an open meeting, in a fair manner, by the President or other person presiding during that portion of the meeting. The committee members shall not be Board members and, in the case of a contested election for a Board position, shall not be candidates. The results of a vote taken by secret ballot shall be reported without reference to the names, addresses, or other identifying information of Members participating in such vote.

2.8. Proxies.

Members may vote in person or by proxy, subject to the limitations of Colorado law and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing, shall state the time, date, and place of the meeting for which it is given, shall identify the Unit(s) for which it is given, shall be signed and dated by the Member or the Member's duly authorized attorney-in-fact, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Unit for which it was given, (b) the Secretary's receipt of written notice of revocation of the proxy

or of the death or judicially declared incompetence of a Member who is a natural person, or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place.

2.9. Action Without a Meeting.

Whenever the Declaration, the Articles, or Colorado law require or permit that a particular action be approved at a meeting of the Members, such action may be approved without a meeting in accordance with either subsection (a) or (b):

(a) all Members entitled to vote thereon unanimously consent to such action by signing and dating one or more written consents describing and specifically authorizing the proposed action and delivering such consent to the Association within 60 days of the earliest dated consent, such consents to be filed with the minutes of the meetings of the membership; or

(b) the Association delivers to every Member entitled to vote on the matter a written ballot which describes each proposed action and provides an opportunity to vote for or against each proposed action, and the total 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 votes cast in favor of the proposed action 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. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; state the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting a ballot to reach an informed decision on the matter.

Action taken pursuant to this Section 2.9 shall have the same force and effect as a vote of the Members at a meeting. The record date for determining the Members entitled to take action by written consent shall be the date the first consent is signed and the record date for determining the Members entitled to vote by written ballot shall be the date of mailing or, if delivered by means other than U.S. Mail, the date of delivery, of the ballots. Any written consent may be revoked in writing provided the revocation is received by the Association prior to the date that the Association receives the required number of consents to authorize the proposed action. A written ballot may not be revoked.

Nothing in this Section shall authorize action without the approval of such persons or entities whose approval is specifically required for such action under the Neighborhood Documents.

Article III Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications.

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one vote. Except with respect to directors appointed by Declarant, directors shall be Owners or residents. A "**resident**" shall be any natural person 18 years of age or older whose principal residence is a Unit within the Neighborhood. No more than one eligible person from any Unit may serve on the Board at any time. If an Owner is not a natural person, any officer, director, or partner, or any other representative designated in writing by the Owner shall be eligible to serve as a director unless the Owner otherwise specifies by written notice to the Association; however, no Member may have more than one such representative serving on the Board at a time, except in the case of directors appointed by Declarant.

3.2. Number of Directors.

The Board shall consist of three directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office.

(a) Initial Board. The initial Board shall consist of three directors appointed by Declarant, who shall serve until their successors are appointed or elected as provided in this Section 3.3.

(b) Directors During Declarant Control Period. Except as otherwise provided in this Section 3.3(b), Declarant shall be entitled to determine the number of directors (subject to Section 3.2) and to appoint, remove and replace the members of the Board in its sole discretion until termination of the Declarant Control Period. During such period, the Members shall be entitled to elect a minority of the total number of directors according to the following schedule:

(i) Not later than 60 days after the time that Persons other than Declarant own 25% of the maximum number of Units authorized by the Declaration, or whenever Declarant earlier determines, the President shall call for an election by which the Members other than Declarant shall be entitled to elect 25% of the total number of directors. Declarant may continue to appoint the remaining directors. The director(s) elected by the Members shall not be subject to removal by Declarant and shall be elected for a term of two years or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) Not later than 60 days after the time that Members other than Declarant own 50% of the maximum number of Units authorized by the Declaration, or whenever Declarant earlier determines, the President shall call for an election by which the Members other than

Declarant shall be entitled to elect one-third of the total number of directors. Declarant may continue to appoint the remaining directors. The director(s) elected by the Members shall not be subject to removal by Declarant and shall be elected for a term of two years or until the happening of the event described in subsection (c)(i) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c)(i) below, successors shall be elected for a like term.

(c) Directors After the Declarant Control Period.

(i) After termination of the Declarant Control Period, the President shall call for an election by which the Members shall be entitled to elect three directors. At such election, the individual receiving the highest number of votes shall serve a term of three years, the individual receiving the second highest number of votes shall each serve a term of two years and the individual who receives the third highest number of votes shall serve a term of one year.

(ii) Upon expiration of the term of office of each director described in Article III, Section 3.3(c)(i), each subsequent director elected by the Members shall serve a term of three years. Directors elected by the Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

3.4. Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors by the Members, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every eligible person who has an interest in serving as a director may file as a candidate for any director position to be filled by such election.

The Board also may appoint a Nominating Committee to make nominations for election to the Board. A Nominating Committee, if appointed, shall consist of a chairperson, who shall be a Board member, and three or more Members (or representatives of any Member which is not an individual). Any Nominating Committee shall serve a term of one year or until its successors are appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee, if appointed, shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates.

Nominations shall also be permitted from the floor at the meeting at which any election is held or by write-in on any ballot.

(b) Election Procedures. For each election, voting shall be by ballot cast in accordance with Section 2.7. Each Member may cast all vote(s) assigned to its Unit(s) for each position to be filled by such election. Cumulative voting shall be permitted. That number of candidates equal to the number of positions to be filled by such election receiving the greatest number of votes shall be elected.

3.5. Removal of Directors and Vacancies.

a) Recall. Any director elected by the Members may be removed, with or without cause, by a vote of 67% of all Members present or represented by proxy at any meeting of the Members at which a quorum is present. A successor may be elected or appointed at such meeting to fill the vacancy.

Any director elected by the Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

Declarant shall be entitled to remove and replace any director appointed by Declarant.

b) Vacancies. Except as provided below, in the event of the death, disability, or resignation of a director elected by Member votes, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term.

During the Declarant Control Period, Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by Declarant.

B. Meetings.

3.6. Organizational Meetings.

The first meeting of the Board shall be held within 30 days following each annual meeting of the membership.

3.7. Regular Meetings.

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.8. Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, or other electronic mail, messaging or communication device, with printed confirmation of successful transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or mailing or physical address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Except for emergency meetings, notice of the time and place of any Board meeting shall be given to the membership at least 48 hours in advance of the meeting by posting in a conspicuous place within the Neighborhood and posting on the Association's website, if any, and shall be transmitted electronically to those Members who have requested notices by electronic transmission and provided their electronic mail addresses.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Telephonic Participation in Meetings.

Members of the Board or any committee that the Board appoints may participate in a meeting of the Board or committee by conference telephone, video conference, or similar communications equipment, provided all persons participating in the meeting can hear each other simultaneously. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

3.11. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a

quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of some directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

3.12. Conduct of Meetings.

The President shall preside over all meetings of the Board and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings, including the vote or abstention of each director present at the Board meeting on any matter put to a vote of the directors.

3.13. Open Meetings; Executive Session.

(a) All meetings of the Board must be open to all Members and to any person designated by a Member as the Member's representative, except that the Board may hold an executive or closed-door session **and** restrict attendance to directors and such other persons as the Board may designate during a regular or specially announced meeting or a part thereof to discuss any matter enumerated in this subsection (a). The general subject of any matter to be discussed in executive session shall be announced in the open meeting prior to convening in executive session and shall be limited to:

(i) matters pertaining to employees of the Association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the Association;

(ii) consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(iii) investigative proceedings concerning possible or actual criminal misconduct;

(iv) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

(v) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;

(vi) review of or discussion relating to any written or oral communication from legal counsel; and

(vii) such other matters as may specifically be authorized by the Act at C.R.S. § 38-33.3-308.

The minutes of any Board meeting during which an executive session was held shall so state and shall describe the general subject matter of such executive session.

(b) If Members entitled to cast at least 20% of the total votes in the Association petition the Board in writing to address a particular item of business at a Board meeting, the Board shall place the petitioned item of business on its agenda at its next regular Board meeting or at a special meeting of the Board to be held within 60 days after the receipt of the petition.

(c) At any Board meeting required to be open to the Members under subsection (a), Members shall be permitted to speak on any issue under discussion before that issue is put to a Board vote. The Board may place reasonable time restrictions on persons speaking during the meeting. If more than one person desires to address an issue and there are opposing views, the Board shall permit a reasonable number of persons to speak on each side of the issue.

3.14. Action Without a Formal Meeting.

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.15. Powers.

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Neighborhood Documents and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Neighborhood Documents or Colorado law require to be done and exercised exclusively by the membership. Board determinations as to the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable.

3.16. Duties.

Duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses and any Limited Common Expenses; and

(b) levying and collecting such assessments from the Owners and adopting a collections policy as required by C.R.S. § 38-33.3-316.3; and

- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Neighborhood-Wide Standard; and
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties; and
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's best judgment, in depositories other than banks; and
- (f) making and amending Rules in accordance with the Declaration; and
- (g) opening bank accounts on behalf of the Association and designating the signatories required; and
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws; and
- (i) enforcing by legal means the provisions of the Neighborhood Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration; and
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate; and
- (k) paying the cost of all services rendered to the Association; and
- (l) keeping books with detailed accounts of the Association's receipts and expenditures; and
- (m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Neighborhood Documents and all other books, records, and financial statements of the Association as provided in Section 9.4; and
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Neighborhood; and
- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Colorado law, the Articles and these By-Laws; and

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

Article IV Officers

4.1. Officers.

Officers of the Association shall be a President, Vice President, Secretary, and Treasurer, all of whom shall be elected from among the Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. One person may hold two or more offices, except that the offices of President and Secretary shall be held by different persons.

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3. Resignation, Removal and Filling of Vacancies.

(a) Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

(b) The Board may remove any officer whenever in its judgment the best interests of the Association will be served.

(c) The Board may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Article V Committees

5.1. General.

Except to the extent that the Declaration grants exclusive authority over certain matters to Declarant, the Board may appoint such committees as it deems appropriate to perform such tasks

and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Any committee meeting at which a final decision will be made with respect to expenditure of Association funds shall be open to Members to the same extent as meetings of the Board under Section 3.13.

5.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of three Members, who shall not be officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director or employee of the Association. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article VIII of these By-Laws. If the Board does not appoint a Covenants Committee, then the Board shall serve as the Covenants Committee under Article VIII.

Article VI Standards of Conduct; Liability and Indemnification

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Neighborhood Documents.

Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the Association and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. In discharging their duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by: (i) an officer or employee of the Association whom the director or officer reasonably believes to be reliable and competent in the matters presented; (ii) legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within such person's professional or expert competence; and (iii) a committee of the Board of which the director is not a member, if the director reasonably believes the committee merits confidence; unless the director or officer has knowledge concerning the matter in question that makes such reliance unwarranted.

6.2. Liability.

A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Section 6.1.

6.3. Indemnification.

Subject to the limitations of Colorado law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under the Colorado Revised Nonprofit Corporation Act; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in the Colorado Revised Nonprofit Corporation Act, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.5. Conflicts of Interest.

A director, officer, employee or managing agent of the Association shall promptly disclose in writing to the Board any direct or indirect interest such person may have in any contract, transaction, action, or arrangement being considered by the Board. A person shall be deemed to have a direct or indirect interest if such person, any related person, or any entity in which such person has a financial interest or employment relationship, would be a party to such contract,

transaction, action, or arrangement. An interested director may be counted in determining the presence of a quorum at a meeting of the Board and may be present and participate in any discussion prior to a vote being taken on the proposed contract, transaction, action or arrangement, but his or her vote shall not be counted on such matter. The existence of a conflict of interest shall not be grounds for setting aside any Board action on such matter provided that (i) the material facts as to the interested person's relationship are disclosed or known to the directors entitled to vote thereon, and the action is specifically authorized, approved, or ratified in good faith by a vote of a majority of the disinterested directors, even though less than a quorum; or (ii) the contract, transaction, or arrangement is fair as to the Association.

Nothing herein shall be construed to prohibit directors appointed by Declarant from being employed by or having a financial interest in Declarant or its affiliates or preclude the Board from transacting business with Declarant on terms that are fair to the Association.

The Board may adopt additional policies and procedures for addressing conflicts of interest consistent with this Section.

Article VII Management and Accounting

7.1. Compensation of Directors and Officers.

Directors and officers shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total votes in the Association at a regular or special meeting of the Association. Any director or officer may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies furnished to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association, provided that such director's or officer's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding any interested director.

7.2. Right of Declarant to Disapprove Actions.

No action, policy, or program which, in the sole judgment of Declarant, would tend to impair rights of Declarant or any Builder under the Declaration or these By-Laws, or interfere with development or construction of any portion of the Neighborhood, or diminish the level of services being provided by the Association shall become effective or be implemented until and unless the requirements of subsection (a) have been met, and then subject to Declarant's right of disapproval set forth in subsection (b).

(a) During the Development and Sale Period, the President or Secretary shall cause Declarant to be given written notice of all meetings, any communications to directors requesting written consent to action in lieu of a meeting, and all actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Notices of meetings and communication requesting written consent to action shall be given to Declarant at the same

time and in the same manner as given to directors. Notices of meetings shall set forth with reasonable particularity the agenda to be followed at such meeting. Notice of all actions approved at meetings shall be given to Declarant within 7 days after the meeting at which approved.

Declarant shall be given the opportunity at any meeting of the Association, Board, or any committee to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which, in the sole judgment of Declarant, would tend to impair rights of Declarant or any Builder under the Declaration or these By-Laws, or interfere with development or construction of any portion of the Neighborhood, or diminish the level of services being provided by the Association.

(b) Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove any action, policy, or program approved by the Board at any time within 10 days following the later of: (i) receipt of written notice of such action, policy or program; or (ii) the meeting at which such action, policy or program was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action, policy, or program. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

7.3. Managing Agent.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. Declarant or its affiliate may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Declarant Control Period unless such contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Declarant Control Period upon not more than 90 days' written notice.

No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall

benefit the Association. Any financial or other interest that the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.

7.4. Accounts and Reports.

(a) The following accounting standards shall be followed unless the Board by resolution specifically determines otherwise:

- (i) cash or tax basis of accounting, as defined by generally accepted accounting principles, shall be employed; and
- (ii) accounting and controls should conform to generally accepted accounting principles; and
- (iii) cash accounts of the Association shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

- (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis; and
- (ii) a statement reflecting all cash receipts and disbursements for the preceding period; and
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format; and
- (iv) a balance sheet as of the last day of the preceding period; and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution).

(c) Within 90 days after the first election of directors following termination of the Declarant Control Period, and within 90 days after the close of each fiscal year thereafter, the following items, and such other information as required by C.R.S. § 38-33.3-209.4, shall be made available for Members' review in accordance with C.R.S. § 38-33.3-209.4(3):

- (i) a financial statement containing at least: (A) a balance sheet, including any amounts held in reserve for the immediately preceding fiscal year; (B) an operating (income) statement; and (C) a statement of changes in financial position for the fiscal year. Except as otherwise required by C.R.S. § 38-33.3-303, such financial statement shall be prepared by an

independent and qualified person on an audited, reviewed, or compiled basis, as the Board determines;

(ii) the operating budget for the current fiscal year, the current assessment rate, and any special assessment for the current fiscal year;

(iii) the name of the Association's designated agent or management company, if any, together with the agent's or management company's license number if the agent or management company is subject to licensure under Part 10 of Article 61 of Title 12, C.R.S.

(iv) a list of all Association insurance policies including a statement of the insurer's name, policy limits, policy deductibles, additional named insureds and expiration date for each policy;

(v) a copy of the By-Laws, the Articles of Incorporation and the Association's rules and regulations;

(vi) minutes of all Association and Board meetings for the previous fiscal year, except for Board meetings in executive session; and

(vi) the Association's governance policies required under C.R.S. § 38-33.3-209.5.

7.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year. No Mortgage lien shall be placed on any portion of the Common Area without prior approval as required under Article XVIII of the Declaration.

7.6. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions, subject to the right to terminate certain contracts entered into during the Declarant Control Period as provided in the Act at C.R.S. § 38-33.3-305. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with other owners or residents' associations in the Community; provided, any common management agreement shall require the consent of a majority of the total number of directors on the Board.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

7.8. Annual Registration.

The Association shall register annually with the director of the Colorado Division of Real Estate as required by the Act at C.R.S. § 38-33.3-401.

Article VIII Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Neighborhood Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice setting forth: (a) the nature of the alleged violation; (b) the proposed sanction to be imposed; (c) a period of not less than 14 days within which the alleged violator may present a written request for a hearing to the Covenants Committee appointed pursuant to Article V; and (d) that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within 14 days of the notice.

The alleged violator shall respond to the notice of the alleged violation in writing within such 14-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction.

Prior to the effectiveness of sanctions imposed pursuant to this Article VIII, proof of proper notice shall be placed in the minutes of the Covenants Committee. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing.

If a hearing is requested within the allotted 14-day period, the hearing shall be held before the Covenants Committee. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Covenants Committee shall contain a written statement of the results of the hearing (i.e., the decision of the Committee) and the sanction, if any, to be imposed.

If a timely request for a hearing is not made, the Covenants Committee may, by a majority vote of its members, impose the sanction stated in the notice; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 14-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

8.3. Appeal.

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the hearing date.

Article IX Miscellaneous

9.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Colorado law or the Neighborhood Documents.

9.3. Conflicts.

If there are conflicts between the Neighborhood Documents and the provisions of Colorado law, the provisions of Colorado law shall control. Conflicts between or among these By-Laws and other Neighborhood Documents shall be resolved as set forth in the provisions of the Declaration addressing conflicts among the Governing Documents, which provisions are incorporated herein by this reference.

9.4. Books and Records.

(a) Official Records. The Association shall maintain within the state of Colorado each of the following items, when applicable, which shall constitute the official records of the Association:

(i) detailed records of receipts and expenditures affecting the operation and administration of the Association;

(ii) records of claims for construction defects and amounts received pursuant to settlement of those claims;

(iii) minutes of all meetings of the Members and Board, a record of all actions taken by the Members or Board without a meeting, and a record of all actions taken by any committee of the Board;

(iv) written communications among, and the votes cast by, directors that are directly related to any action taken by the Board without a meeting;

(v) the names of all Members, the address of their respective Units, and the physical mailing address at which the Association communicates with each of them, and the number of votes which they are entitled to cast;

(vi) current copies of the Neighborhood Documents, as amended, the Association's Rules, responsible governance policies adopted pursuant to C.R.S. § 38-33.3-209.5, and other policies adopted by the Board;

(vii) financial statements for the past three years and tax returns for the past seven years, to the extent available;

(viii) a list of the names, electronic mail addresses, and physical mailing addresses of the Association's current directors and officers;

(ix) the Association's most recent annual report delivered to the secretary of state, if any;

(x) financial records sufficiently detailed to enable the Association to comply with the requirements of the Act relating to provision of statements of unpaid assessments;

(xi) the Association's most recent reserve study, if any;

(xii) current written contracts to which the Association is a party and contracts for work performed for the Association within the immediately preceding two years;

(xiii) records of approvals and denials of applications for architectural approval from Members;

(xiv) ballots, proxies, and other records related to voting by Members for one year after the election, action, or vote to which they relate;

(xv) Board resolutions relating to the characteristics, qualifications, rights, limitations, and obligations of Members; and

(xvi) all written communications to the membership as a whole within the past three years.

(b) Inspection by Members and Mortgagees. Except to the extent that the Act at C.R.S. § 38-33.3-317 permits such books and records to be withheld, the Association shall make the official records available for inspection and copying by any Member, any holder, insurer or

guarantor of a first Mortgage on a Unit, or the duly appointed representative of any of the foregoing, within 10 days after receipt of a written request. The Board shall provide for such inspection to take place at the Association's office or at such other place within a reasonable distance of the Neighborhood as the Board shall designate. The Board may adopt reasonable written policies consistent with C.R.S. § 38-33.3-317(2) governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require any statement or demonstration of a proper purpose for the inspection. The Association may impose a reasonable charge to cover the costs of providing copies of the official records. Association records and the information contained within those records shall not be used for any commercial purpose.

Notwithstanding the above, the following Association records shall not be made available for inspection or copying:

- (i) personnel, salary, or medical records of specific individuals; or
- (ii) personal identification and account information of Members, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers,

(c) Inspection by Directors. Except as restricted by law, every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

(d) Turnover Upon Termination of Declarant Control Period. Within 90 days after termination of the Declarant Control Period, Declarant shall deliver to the Association, at Declarant's expense, any of the Association's official records and other items required by C.R.S. § 38-33.3-303(9) which are not already in the possession of the Association's managing agent.

9.5. Notices.

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Declaration or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by telephone facsimile or electronic mail with written confirmation of transmission.

(b) Delivery Address. Notices shall be deemed given when delivered or sent to the intended recipient as follows:

- (i) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, telephone facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to Declarant, at the principal address of Declarant as it appears on the Secretary of State's records, or at such other address as Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery;

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment.

During the Declarant Control Period, Declarant may unilaterally amend these By-Laws. Otherwise, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total votes in the Association, and during the Development and Sale Period, the consent of Declarant. Notwithstanding the above:

(i) if any provision of these By-Laws requires a specific vote of the Members to authorize a specific action, the percentage of votes necessary to amend such clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause;

(ii) no amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant (or the assignee of such right or privilege);

(iii) no amendment which alters the rights or responsibilities of the Association or the Owners with respect to the Community Association shall be effective without the prior written consent of the Community Association.

Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Northbay At Woodmoor Townhome Association, a Colorado nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of the Association, as duly adopted by resolution of the Board of Directors thereof on the ____ day of _____, 2018.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this ____ day of _____, 2018.

_____[SEAL]
Secretary

EXHIBIT "F"

Additional Easements and Licenses

EXHIBIT "G"

Rules of Arbitration

1. Initiation of Proceeding. The Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("**Arbitration Notice**"). Unless otherwise agreed in writing by the Claimant and Respondent(s), the arbitration proceeding (hereafter, "**Proceeding**") shall be limited to issues relating to the Claim(s) as to which a Notice of Claim was given under Article XIV of the Declaration and shall not be combined with any other issues or Claims. The Proceeding shall be conducted through the Judicial Arbitrator Group, Inc. of Denver, Colorado, or if such entity is unable to assist, the closest regional office of the American Arbitration Association or another entity which provides mediation services using retired judges as arbitrators (the "**ADR Entity**"). The Proceeding (and any additional proceedings after the Arbitrator issues a final award as contemplated hereby) shall be conducted in accordance with these Rules, other provisions of the Declaration, the Colorado Uniform Arbitration Act of 1975, C.R.S. § 13-22-201, *et seq.* (the "**Arbitration Act**"), and any other portions of the Colorado Rules of Civil Procedure which may be applicable. To the extent of any conflict among any of the foregoing, the one first mentioned above shall control.

2. Selection of Arbitrator. The Claimant shall provide a copy of the Arbitration Notice to the ADR Entity with a request that it select five potential arbitrators, each of whom shall be a retired judge to the extent that retired judges are available and willing to serve, and notify both parties in writing of their names and addresses. Within 21 days after the date of notice of the names of the five prospective arbitrators, the parties shall meet at a mutually agreeable time and place to select the arbitrator. If no such time and place is agreed to by the parties, the time shall be on the 10th day following the date of such notice or, if such day is not a regular business day in the Denver metropolitan area, on the next regular business day, at ten o'clock in the morning, local time, at the offices of the ADR Entity. At such meeting, the parties shall, by mutual agreement, select one arbitrator for the Proceeding (the "**Arbitrator**") from the list of prospective arbitrators provided by the ADR Entity, or, if the parties do not agree on a single Arbitrator, the Claimant shall eliminate one of the five persons from the list; then the Respondent shall eliminate two of the remaining persons on the list; then the Claimant shall eliminate one of the remaining two persons. The last remaining person on the list shall be the Arbitrator. The parties shall immediately execute a notice to the ADR Entity, advising of the selection of the Arbitrator, which shall in turn promptly give notice advising the parties and the Arbitrator of such selection. If the person selected as the Arbitrator does not qualify (because of a conflict, inability to act, or other reason), the process set forth above shall be repeated.

3. Within 15 days after the date of the ADR Entity's notice to the Arbitrator, the Claimant shall provide the Respondent(s) and the Arbitrator with a detailed statement of the Claim, describing with specificity any alleged construction defects and their location.

EXHIBIT "G"

Rules of Arbitration (continued)

4. Within 30 days after the date of the ADR Entity's notice to the Arbitrator, the Arbitrator shall notify the parties of a date and time for the hearing, which shall be not less than 60 days nor more than 120 days after notice to the Arbitrator, and the location of hearing, which shall be within 90 miles of the Neighborhood.

5. The parties shall be entitled to limited discovery as follows:

(a) *Detailed Statement of Claims.* Each Respondent (and its professional consultants) shall be granted reasonable access to the affected property in order to conduct inspections and tests as it deems appropriate and to take samples therefrom, upon reasonable advance notice to the Claimant.

(b) *Depositions of Parties.* Each party may conduct depositions of not more than two representatives of the other party and one deposition of each witness who will be called to testify on behalf of the other party at the Hearing. Each party shall provide the others with a list of all witnesses such party intends to call at least 30 days prior to the Hearing, except that any expert witness shall be identified at least 45 days prior to the Hearing and shall be accompanied by an expert disclosure in compliance with Colo. R. Civ. P. 26(a)(2)(B). Depositions shall be conducted in accordance with the Colorado Rules of Civil Procedure and shall pertain only to the Claim. Each deposition shall be limited to no more than 4 hours, except that the deposition of any expert witness may extend for up to 8 hours.

(c) *Production of Documents from Parties.* Claimant and Respondent may each submit no more than 4 requests for the production of documents from the other side. All such requests for production of documents shall pertain only to the Claim. Responsive documents shall be served within 15 days of the date of service. Except as otherwise provided herein, requests for production of documents shall be governed by the Colorado Rules of Civil Procedure.

(d) *Discovery from Third-Party Fact Witnesses.* The parties may request that third-party fact witnesses produce documents relevant to the dispute pursuant to a Subpoena to be issued by the Arbitrator; provided, however, that all such Subpoenas for production of documents shall pertain only to the Claim. Each party shall be limited to no more than two third-party subpoenas.

(e) *Identification of Witnesses for Hearing.* At least 30 days prior to the Hearing, the parties shall identify all of the witnesses that they intend to present at the Hearing and present a summary of the testimony expected to be provided by each witness.

EXHIBIT "G"

Rules of Arbitration (continued)

(f) *Identification of Exhibits for Hearing.* At least 15 days prior to the Hearing, the parties shall identify, and provide copies of, all of the exhibits that they intend to offer at the Hearing.

In the event of any dispute regarding discovery, the Arbitrator shall resolve such dispute promptly upon the request of either party in a telephone or face-to-face hearing at the time and place specified by the Arbitrator. In the event of a discovery dispute, the Arbitrator may order any sanctions which a District Judge could enter under the Colorado Rules of Civil Procedure as then in effect and shall, at least, order any party found not to be cooperating, found to be causing delays, or found to be using discovery for purposes of harassment to pay the Arbitrator's fee for time spent in resolving such discovery dispute and reimburse the other party for attorneys' fees and costs incurred in connection with, or resulting from, such discovery dispute.

6. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

7. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

8. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

9. No official stenographic or other records will be made of the Hearing or any other stage of the Proceeding. Each party shall be free to have such records made as it determines. Neither party shall be entitled to make any submission after the Hearing.

10. Within 10 days after the end of the Hearing, the Arbitrator shall notify both parties in writing of his award relating to the issues presented by the Proceeding (the "**Substantive Award**"). The Arbitrator shall not award punitive, exemplary, treble, or any similar damages or penalties. The Substantive Award shall not include a determination of the Prevailing Party, which shall be determined in accordance with the following paragraph. Copies of the Substantive Award, executed by the Arbitrator, shall be forwarded by the Arbitrator to the Claimant, to Respondent(s), to the ADR Entity, and otherwise as may be required by the required by the Uniform Arbitration Act.

EXHIBIT "G"

Rules of Arbitration (continued)

11. At any time prior to the commencement of the Hearing, either party may make a written offer to the other of the corrections, restorations, cost reimbursements for corrections already made, and other considerations which it is willing to make (in the case of Respondent(s)) or which it is willing to accept (in the case of the Claimant) to resolve the issues giving rise to the Proceeding. To be considered for purposes hereof, any such offer shall be titled or identified as "Confidential Offer to Resolve Dispute." If the other party does not accept such offer, the Arbitrator shall determine a "Prevailing Party" in the following manner. If the Substantive Award is not substantially more favorable to the offeree than the offer, the offeror shall be the Prevailing Party. If the Substantive Award is substantially more favorable to the offeree than the offer, the offeree shall be the Prevailing Party. If more than one such offer is made, the determination of the Prevailing Party shall be based on that offer delivered closest to, but before, the third (3rd) business day before the commencement of the Hearing. If both the Claimant and Respondent(s) make an offer and the Claimant would be the Prevailing Party as to one offer and Respondent(s) would be the Prevailing Party as to the other offer, the Arbitrator shall determine that there is no Prevailing Party. If neither party makes an offer and a substantial award is made in favor of the Claimant in the Substantive Award, the Claimant shall be the Prevailing Party. If neither party makes an offer and no award is made in favor of the Claimant in the Substantive Award or an award is made in favor of the Claimant in the Substantive Award that is not substantial, Respondent(s) shall be the Prevailing Party. Whether an award is substantial or is substantially better than an offer shall be determined by comparing the relative magnitudes of each thereof or, if not made with reference to an offer, shall be determined by comparing the relative magnitude of the award made in the Substantive Award to the substantive relief requested. The notices containing offers made under this section shall not be introduced into evidence or otherwise disclosed to the Arbitrator until after the Arbitrator has issued the Substantive Award.

12. Any party who seeks to obtain reimbursement of its attorneys' fees and costs as the Prevailing Party, shall, within 14 days after the receipt of its copy of the Substantive Award, file a notice with the Arbitrator, and forward a copy to the other party, requesting that it be designated Prevailing Party and requesting that its attorneys' fees and costs be awarded. Any such request shall include: (i) a copy of the offer on which its claim of entitlement to designation as Prevailing Party is based; (ii) an itemization of (A) attorney hours spent on a daily basis (which shall also show, on a daily basis, a description of the services performed), (B) normal hourly rates, and (C) total fees for attorney services (which shall be based only on such normal hourly rates and time spent), all reimbursable attorney disbursements, and all reimbursable costs of the Proceeding (such as AAA fees); and (iii) the certificate of the lawyer for the submitting party certifying that the hours shown and descriptions of services are accurate and that the hourly rates stated are the normal hourly rates charged by such lawyer. Failure to make such a submission within such period shall be a waiver of the right to recover attorneys' fees and costs.

EXHIBIT "G"

Rules of Arbitration (continued)

If a request for attorneys' fees and costs is made, the other party may object by written notice to any portions or all thereof within 14 days after receiving such copy. Such written notice shall specify the grounds for such objection (which may include the objection that the seeking party is not the Prevailing Party and the parts or all of the fees or disbursements to which such party objects and any other appropriate objection) and shall be given to the Arbitrator and the requesting party. If the other party does not give notice objecting in such time, the Arbitrator shall determine that the requesting party is the Prevailing Party and order the other party to pay the attorneys' fees and disbursements of the Prevailing Party as so requested. If the other party objects, or if both parties submit requests, the Arbitrator shall schedule a hearing as promptly as reasonably possible. At the end of such hearing, the Arbitrator shall resolve the respective claims and objections of the parties, determine the Prevailing Party, if any, and order the other party to pay the Prevailing Party's reasonable attorneys' fees and reimbursable disbursements (including the fees of the AAA and of the Arbitrator already paid by the Prevailing Party) in the amount determined by the Arbitrator in accordance herewith. If there is no Prevailing Party, each party shall pay its own attorneys' fees and costs.

13. The Arbitrator's fees and expenses shall be determined in accordance with the rules of the ADR Entity. If there is no Prevailing Party, the Arbitrator's fees and other costs of the Proceeding shall be paid equally by the parties. Otherwise, the Arbitrator's fees and all costs of the Proceeding (including the fees of the ADR Entity) shall be paid by the party which is not the Prevailing Party, and any portion thereof already paid by the Prevailing Party shall be reimbursed by the other party.

14. The Arbitrator shall issue a final award ("**Final Award**") which shall incorporate the Substantive Award and any decisions made by the Arbitrator as to the Prevailing Party and payment of attorneys' fees and costs. The Final Award shall, as provided in the Arbitration Act, be held adjudicated, settled, and not open for review, either directly or indirectly, and may be used for any purpose contemplated by the Arbitration Act, including without limitation the entry of a judgment thereon; provided, if the Final Award includes any award that the Arbitrator is not hereby authorized to make, the Final Award shall, to that extent only, be void and unenforceable. If the Arbitrator orders Respondent(s) to perform work, the Arbitrator shall retain jurisdiction of the Proceeding in order to resolve any disputes that may arise about the performance of such work. Any such retention of jurisdiction shall be set forth in the Final Award, which shall otherwise be final. If jurisdiction of the Proceeding is so retained, either party may, by motion to the Arbitrator, present any issue that may thereafter arise in connection with such retention of jurisdiction.