

THE TOWNHOMES AT WESTERN

AMENDED DECLARATION OF

COVENANTS, CONDITIONS, AND RESTRICTIONS

EL PASO COUNTY, COLORADO

TABLE OF CONTENTS

ARTICLE 1 GENERAL.....	2
1.1. PURPOSES OF DECLARATION.....	2
1.2. APPLICABILITY OF COLORADO COMMON INTEREST OWNERSHIP ACT.....	2
1.3. CREATION OF THE COMMUNITY.....	2
1.4. NAME; TYPE OF COMMON INTEREST COMMUNITY.....	2
1.5. DIVISION OF PROPERTY.....	2
1.6. EXHIBITS.....	2
ARTICLE 2 DEFINITIONS.....	3
2.1. “ACT”.....	3
2.2. “ANNUAL ASSESSMENT”.....	3
2.3. “APPLICANT”.....	3
2.4. “ASSESSMENT”.....	3
2.5. “ASSOCIATION PROPERTIES”.....	3
2.6. “ASSOCIATION”.....	3
2.7. “BOARD”.....	3
2.8. “BMP AGREEMENT”.....	4
2.9. “BYLAWS”.....	4
2.10. “CLAIM”.....	4
2.11. “COMMON ELEMENTS”.....	4
2.12. “COMMON EXPENSES”.....	4
2.13. “DECLARANT”.....	5
2.14. “DECLARATION”.....	5
2.15. “DELINQUENT ACCOUNTS”.....	5
2.16. “DESIGN GUIDELINES”.....	5
2.17. “DESIGN PROCEDURE”.....	5
2.18. “DWELLING”.....	5
2.19. “EV CHARGING SYSTEM”.....	5
2.20. “FIRST MORTGAGE”.....	5
2.21. “FIRST MORTGAGEE”.....	5
2.22. “FHA”.....	5
2.23. “FHLMC”.....	5
2.24. “FNMA”.....	5
2.25. “GENERAL COMMON ELEMENTS”.....	5
2.26. “GNMA”.....	6
2.27. “GOVERNING DOCUMENTS”.....	6
2.28. “HUD”.....	6
2.29. “IMPROVEMENTS”.....	6
2.30. “LIMITED ASSESSMENT”.....	6
2.31. “LIMITED COMMON ELEMENT”.....	6
2.32. “LIMITED COMMON ELEMENT EXPENSE”.....	6
2.33. “LOT”.....	6
2.34. “LOT OWNER”.....	7
2.35. “MAINTENANCE AREA”.....	7
2.36. “MEMBER”.....	7
2.37. “MORTGAGE”.....	7
2.38. “MAINTENANCE FUNDS”.....	7
2.39. “MORTGAGEE”.....	8
2.40. “PERIOD OF DECLARANT CONTROL”.....	8
2.41. “PERIOD OF DECLARANT RESERVED RIGHTS”.....	8
2.42. “PERSON”.....	8
2.43. “PLAT”.....	8
2.44. “PRIORITY LIEN”.....	8

2.45.	“PROJECT”	8
2.46.	“PROPERTY”	8
2.47.	“PROTECTED PARTY”	8
2.48.	“RECORD”	8
2.49.	“RELATED USER”	8
2.50.	“RENEWABLE ENERGY GENERATION DEVICE”	9
2.51.	“RULES AND REGULATIONS”	9
2.52.	“TOWNHOME”	9
2.53.	“VA”	9
2.54.	“USER FEES”	9
ARTICLE 3 ASSOCIATION FUNCTION, MEMBERSHIP, AND VOTING RIGHTS		9
3.1.	FUNCTION OF ASSOCIATION	9
3.2.	BOARD OF DIRECTORS.....	10
3.3.	MEMBERSHIP.....	10
3.4.	PERIOD OF DECLARANT CONTROL.....	10
3.5.	VOTING.....	11
3.6.	NUMBER OF VOTES	12
3.7.	MEETINGS OF MEMBERS	12
ARTICLE 4 DUTIES AND POWERS OF ASSOCIATION.....		12
4.1.	GENERAL DUTIES AND POWERS OF ASSOCIATION.....	12
4.2.	DUTY TO ACCEPT PROPERTY AND FACILITIES TRANSFERRED BY DECLARANT.....	12
4.3.	POWER AND DUTY TO MANAGE AND CARE FOR ASSOCIATION PROPERTIES.....	13
4.4.	POWER TO PAY TAXES.....	13
4.5.	POWER TO MAINTAIN CASUALTY INSURANCE.....	13
4.6.	POWER TO MAINTAIN LIABILITY INSURANCE.....	13
4.7.	GENERAL PROVISIONS RESPECTING INSURANCE	13
4.8.	FIDELITY BONDS.....	14
4.9.	OTHER INSURANCE AND BONDS	14
4.10.	DUTY TO DETERMINE AMOUNT OF ASSESSMENTS.....	14
4.11.	POWER TO LEVY AND COLLECT ASSESSMENTS AND FEES	14
4.12.	ASSOCIATION BOOKS AND RECORDS	14
4.13.	POWER TO ACQUIRE PROPERTY AND CONSTRUCT IMPROVEMENTS.....	15
4.14.	POWER TO ADOPT RULES AND REGULATIONS.....	15
4.15.	POWER TO ENFORCE DECLARATION AND RULES AND REGULATIONS	16
4.16.	POWER TO GRANT EASEMENTS	16
4.17.	POWER TO CONVEY AND DEDICATE PROPERTY TO GOVERNMENT AGENCIES	16
4.18.	POWER TO BORROW MONEY AND MORTGAGE PROPERTY	16
4.19.	POWER TO MERGE OR CONSOLIDATE.....	17
4.20.	POWER TO ENGAGE EMPLOYEES, AGENTS, AND CONSULTANTS.....	17
4.21.	GENERAL CORPORATE POWERS; LIMITATIONS.....	17
4.22.	POWERS PROVIDED BY LAW	17
4.23.	LOT OWNERS INSURANCE.....	17
4.24.	IMPLIED RIGHTS; BOARD AUTHORITY	18
4.25.	GOVERNMENTAL INTERESTS.....	18
4.26.	INDEMNIFICATION.....	18
4.27.	DEDICATION OF MAINTENANCE AREAS.....	19
4.28.	SECURITY	19
ARTICLE 5 ASSOCIATION PROPERTIES		19
5.1.	MEMBER’S RIGHTS OF USE AND ENJOYMENT GENERALLY	19
5.2.	RIGHT OF ASSOCIATION TO REGULATE USE	19
5.3.	NO PARTITION OF ASSOCIATION PROPERTIES	19
5.4.	LIABILITY OF LOT OWNERS FOR DAMAGE BY MEMBER	19
5.5.	ASSOCIATION DUTIES IF DAMAGE	20
5.6.	ASSOCIATION POWERS IN THE EVENT OF CONDEMNATION.....	20
5.7.	TITLE TO ASSOCIATION PROPERTIES ON DISSOLUTION OF ASSOCIATION.....	20

ARTICLE 6 DECLARANT’S RIGHTS AND RESERVATIONS	21
6.1. DECLARANT RESERVED RIGHTS AND RESERVATIONS.....	21
6.2. DECLARANT’S RIGHT TO APPOINT BOARD	21
6.3. SELECTION OF OFFICERS; DATE FOR TAKING OFFICE.....	21
6.4. REQUIREMENTS FOR TURNOVER OF DECLARANT CONTROL.....	21
6.5. INFORMATION TO LOT OWNERS AFTER TURNOVER OF DECLARANT CONTROL.....	21
6.6. RIGHT TO CONSTRUCT ADDITIONAL IMPROVEMENTS ON ASSOCIATION PROPERTIES	22
6.7. RIGHT OF CONVERSION	22
6.8. CREATION AND CONVERSION OF COMMON ELEMENTS	22
6.9. SUBDIVISION AND REPLATTING.....	23
6.10. EXERCISE OF DEVELOPMENT RIGHTS.....	23
6.11. COMMON ELEMENTS	23
6.12. PLAT AMENDMENTS.....	24
6.13. DECLARANT’S RIGHT TO USE ASSOCIATION PROPERTIES IN MARKETING OF PROPERTY	24
6.14. DECLARANT’S RIGHTS TO COMPLETE DEVELOPMENT OF PROPERTY	24
6.15. DECLARANT’S APPROVAL OF CONVEYANCES OR CHANGES IN USE OF ASSOCIATION PROPERTIES	25
6.16. DECLARANT’S RIGHTS TO GRANT AND CREATE EASEMENTS.....	25
6.17. DECLARANT’S RIGHTS TO CONVEY PROPERTY TO ASSOCIATION	26
ARTICLE 7 EASEMENTS AND RELATED RIGHTS	26
7.1. EASEMENTS AND RELATED RIGHTS.....	26
7.2. DELEGATION OF USE.....	28
7.3. NON-DEDICATION OF EASEMENT.....	28
7.4. RECORDED EASEMENTS.....	28
ARTICLE 8 COVENANT FOR ASSESSMENTS.....	28
8.1. CREATION OF THE OBLIGATION FOR ASSESSMENTS.....	28
8.2. LIEN FOR ASSESSMENTS.....	29
8.3. PURPOSE OF ASSESSMENTS	29
8.4. ANNUAL ASSESSMENTS.....	29
8.5. LIMIT ON ANNUAL ASSESSMENTS.....	30
8.6. SPECIAL ASSESSMENTS	31
8.7. SUPPLEMENTAL ASSESSMENTS	31
8.8. LIMITED ASSESSMENTS	32
8.9. RATE OF ASSESSMENT.....	32
8.10. ASSESSMENT PROCEDURE	32
8.11. BUDGET AND REVIEW OR AUDIT	33
8.12. PAYMENT OF ASSESSMENT.....	34
8.13. INTEREST	34
8.14. LATE FEES	35
8.15. RETURN CHECK CHARGES.....	35
8.16. FAILURE TO SET ASSESSMENT.....	35
8.17. CERTIFICATE OF PAYMENT.....	35
8.18. WORKING CAPITAL	35
8.19. COLLECTION OF UNPAID ASSESSMENTS.....	36
8.20. SUBORDINATION OF THE LIEN TO MORTGAGES.....	36
8.21. NOTICE TO MORTGAGEE AND INSPECTION OF BOOKS	37
8.22. EXEMPT PROPERTY	37
8.23. ADDITIONAL COLLECTION REMEDIES.....	37
8.24. REMEDIES TO ENFORCE ASSESSMENTS.....	38
8.25. LAWSUIT TO ENFORCE ASSESSMENTS.....	38
8.26. LIEN TO ENFORCE ASSESSMENTS.....	38
8.27. HOMESTEAD	39
8.28. ESTOPPEL CERTIFICATES	39
8.29. NO OFFSETS.....	39
8.30. USER FEES	39
8.31. OTHER FEES.....	40

ARTICLE 9 MAINTENANCE	40
9.1. ASSOCIATION MAINTENANCE.....	40
9.2. WILLFUL OR NEGLIGENT DAMAGE.....	41
9.3. ACCESS AT REASONABLE HOURS.....	41
9.4. LOT OWNER MAINTENANCE.....	42
9.5. PARTY WALLS	42
9.6. MANAGEMENT AGREEMENTS AND OTHER CONTRACTS	43
ARTICLE 10 ARCHITECTURAL REVIEW.....	44
10.1. REVIEW BY BOARD	44
10.2. SUBMISSION OF PLANS	44
10.3. DECLARANT EXEMPTED	44
10.4. DESIGN GUIDELINES; DESIGN PROCEDURES.....	44
10.5. BOARD REVIEW PROCEDURES	45
10.6. PROSECUTION OF WORK AFTER APPROVAL.....	46
10.7. NOTICE OF COMPLETION.....	47
10.8. INSPECTION OF WORK.....	47
10.9. NOTICE OF NONCOMPLIANCE	47
10.10. APPEAL TO BOARD OF DIRECTORS; FINDING OF NONCOMPLIANCE.....	47
10.11. CORRECTION OF NONCOMPLIANCE	47
10.12. NO IMPLIED WAIVER OR ESTOPPEL	48
10.13. ESTOPPEL CERTIFICATES	48
10.14. CONSTRUCTION PERIOD EXCEPTION.....	48
10.15. EXCLUSIONS.....	49
ARTICLE 11 RESTRICTIONS	49
11.1. GENERAL PLAN.....	49
11.2. LEASES.....	49
11.3. RESIDENTIAL USE.....	49
11.4. ANIMALS	49
11.5. STRUCTURES.....	50
11.6. MISCELLANEOUS STRUCTURES.....	50
11.7. LOTS TO BE MAINTAINED	50
11.8. LOTS NOT TO BE SUBDIVIDED	51
11.9. NO NOXIOUS OR OFFENSIVE ACTIVITY	51
11.10. NO HAZARDOUS ACTIVITIES.....	51
11.11. NO ANNOYING LIGHT, SOUNDS OR ODORS	51
11.12. RESTRICTIONS ON PARKING AND STORAGE	51
11.13. ANTENNA, UTILITIES AND TRANSMITTERS	52
11.14. RENEWABLE ENERGY GENERATION DEVICES	52
11.15. EV CHARGING STATIONS.....	53
11.16. SIGNAGE; FLAGS	53
11.17. CLOTHESLINES AND STORAGE.....	54
11.18. NO UNSIGHTLINESS	54
11.19. WEEDS.....	54
11.20. GARBAGE AND REFUSE DISPOSAL	54
11.21. REPAIR.....	54
11.22. COMPLIANCE WITH INSURANCE REQUIREMENTS	55
11.23. STORAGE OF GASOLINE AND EXPLOSIVES, ETC.....	55
11.24. TANKS	55
11.25. UNDERGROUND ELECTRIC LINES.....	55
11.26. USE OF THE PROPERTY	55
11.27. APPLICATION OF RESTRICTIONS.....	55
11.28. SALES AND CONSTRUCTION FACILITIES AND ACTIVITIES OF DECLARANT	55
11.29. RELEASES, DISCLAIMERS, AND INDEMNITIES	56
ARTICLE 12 INSURANCE	61
12.1. COMMON INSURANCE	61

12.2.	ANNUAL REVIEW	63
12.3.	FORM OF ISSUANCE	63
12.4.	LOT OWNER'S PERSONAL PROPERTY AND LIABILITY INSURANCE.....	65
ARTICLE 13	DAMAGE, DESTRUCTION, CONDEMNATION AND MERGER	66
13.1.	ATTORNEY-IN-FACT.....	66
13.2.	DAMAGE OR DESTRUCTION OF MAINTENANCE AREA	66
13.3.	DAMAGE TO OR DESTRUCTION OF TOWNHOMES.....	67
13.4.	CONDEMNATION	68
13.5.	REPAIR AND RECONSTRUCTION	68
13.6.	EXCESS INSURANCE PROCEEDS	68
13.7.	NOTICE OF LOSS TO FIRST MORTGAGEES.....	69
13.8.	MERGER.....	69
ARTICLE 14	ADDITIONAL RESTRICTIONS.....	69
14.1.	RESTRICTIONS UPON ASSOCIATION AND LOT OWNERS.....	69
14.2.	IMPLIED APPROVAL BY MORTGAGEE.....	70
ARTICLE 15	DISPUTE RESOLUTION.....	71
15.1.	INTENT AND APPLICABILITY	71
15.2.	DEFINITIONS APPLICABLE TO THIS ARTICLE.....	71
15.3.	APPROVAL REQUIRED FOR ASSOCIATION ACTIONS	72
15.4.	NOTICE AND QUORUM FOR ASSOCIATION ACTION	72
15.5.	REQUIRED FORM OF PROXY OR BALLOT	73
15.6.	EXCLUSIONS FROM "CLAIM"	73
15.7.	RIGHT TO INSPECT.....	74
15.8.	MANDATORY PROCEDURES	74
15.9.	LIABILITY FOR FAILURE OF ASSOCIATION TO MAINTAIN AN ACTION	77
ARTICLE 16	GENERAL PROVISIONS	77
16.1.	ACCEPTANCE OF PROVISIONS OF ALL DOCUMENTS	77
16.2.	NOTICES.....	77
16.3.	ENFORCEMENT.....	78
16.4.	NON-WAIVER	78
16.5.	CUMULATIVE.....	78
16.6.	SEVERABILITY	78
16.7.	CONFLICTS OF PROVISIONS	78
16.8.	DURATION.....	78
16.9.	AMENDMENTS BY DECLARANT.....	79
16.10.	AMENDMENT OF DECLARATION BY MEMBERS	79
16.11.	REQUIRED CONSENT OF DECLARANT.....	80
16.12.	REGISTRATION BY LOT OWNER OF MAILING ADDRESS.....	80
16.13.	ASSIGNMENT OF DECLARANT'S RIGHTS	80
16.14.	NUMBER AND GENDER	80
16.15.	CAPTIONS	81
16.16.	GOVERNING LAW	81
16.17.	DECLARANT RESERVED RIGHTS.....	81
16.18.	AMENDMENT OF ARTICLES AND BYLAWS.....	82
16.19.	SPECIAL RIGHTS OF FIRST MORTGAGEES.....	83
16.20.	FIRST MORTGAGEE EXEMPTION FROM RIGHTS OF FIRST REFUSAL	83
16.21.	PRIORITY OF FIRST MORTGAGE OVER ASSESSMENTS.....	83
16.22.	FIRST MORTGAGEE RIGHT TO PAY TAXES AND INSURANCE PREMIUMS	83
16.23.	AMENDMENT REQUIRED BY GOVERNMENT MORTGAGE AGENCIES.....	83
16.24.	HUD OR VA APPROVAL.....	84
16.25.	BOARD TO RESOLVE AMBIGUITIES	84
16.26.	DECLARANT'S RIGHT TO AMEND PRIOR TO SALE.....	84

**AMENDED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
THE TOWNHOMES AT WESTERN**

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE TOWNHOMES AT WESTERN (“**Declaration**”), located in El Paso County, State of Colorado, is made this ____ day of June 2024, by **J. Elliott Homes, Inc.**, a Colorado corporation (hereinafter called “**Declarant**”) for itself, its successors and assigns. Unless specifically defined otherwise, all capitalized terms used herein shall have the meaning given to such terms in ARTICLE 2 below.

RECITALS

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

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

WHEREAS, Declarant caused the initial Declaration of Covenants, Conditions, and Restrictions of the Townhomes at Western to be executed as of June 15, 2024, and recorded in the real property records of the office of the Clerk and Recorder of the county of El Paso, State of Colorado at reception number 224028037 (the “**Initial Declaration**”); and

WHEREAS, Declarant desires to amend the Initial Declaration prior to the sale of any Townhome Lots, pursuant to Section 16.26 of the Initial Declaration by executing and recording this Declaration.

DECLARATION

NOW, THEREFORE, Declarant, for itself and its successors and assigns, hereby declares that all of the Property, as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be constitute a planned community and shall be owned, held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the covenants, conditions, restrictions, reservations, easements, uses, limitations, obligations, easements, equitable servitudes, and other provisions set forth in this Declaration in furtherance of, and the same shall constitute, a general plan for the subdivision, ownership, improvement, sale, use, and occupancy of the Property and to enhance the value, desirability, and attractiveness of the Property. This Declaration shall run with the land and be binding on and inure to the benefit of all parties

having any right, title or interest in the Property, any Lot, or any part thereof, their heirs, successors, and assigns.

ARTICLE 1 GENERAL

1.1. **Purposes of Declaration.** This Declaration is executed: (a) in furtherance of a common and general plan for the Property, (b) to protect and enhance the quality, value, aesthetics, desirability and attractiveness of the Property, (c) to provide for an Association as a vehicle to hold, own, maintain, care for, and manage Association Properties, including the Common Elements, (d) to define the duties, powers, and rights of the Association, (e) to define certain duties, powers, and rights of Lot Owners, (f) to administer and enforce the provisions of this Declaration, the Bylaws, and Rules and Regulations, and (g) to take other appropriate actions to enhance the quality of the Property and consistent with the terms of this Declaration.

1.2. **Applicability of Colorado Common Interest Ownership Act.** The Property is a planned community under the Act. The maximum number of Lots within the Property will not exceed 52.

1.3. **Creation of the Community.** Upon Recording of this Declaration and the Plat, the Property shall be a “planned community” pursuant to the Act.

1.4. **Name; Type of Common Interest Community.** The name of the common interest community created by this Declaration is “The Townhomes at Western”.

1.5. **Division of Property.** Pursuant to the Act and subject to Sections 6.8, 6.9, 6.10, and 6.11, the Property is divided into Lots identified and legally described on the Plat. The Lots are designated for separate ownership.

1.6. **BMP Agreement.** The Association and Declarant have entered into the BMP Agreement with the County of El Paso, State of Colorado, by and through the Board of County Commissioners of El Paso County, Colorado. The BMP Agreement touches and concerns every Lot.

1.7. **Exhibits.** The following exhibits are attached to and are, by this reference, incorporated as part of this Declaration:

EXHIBIT A	Legal description of the Property
EXHIBIT B	Easements and Other Matters Affecting the Property

ARTICLE 2
DEFINITIONS

The terms used herein shall have the meanings stated herein:

2.1. “**Act**” shall mean the Colorado Common Interest Ownership Act, as provided in C.R.S. §38-33.3-101, *et seq.*, as the same may be from time to time amended.

2.2. “**Annual Assessment**” shall mean assessments levied on all Lots subject to assessment under Section 8.2 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.2, 8.4, 8.6 and 8.7.

2.3. “**Applicant**” shall have the meaning provided in Section 10.2.

2.4. “**Assessment**” shall mean an Annual Assessment, Special Assessment, or Supplemental Assessment.

2.5. “**Association Properties**” shall mean all real and personal property, if any, including all Common Elements and all Improvements on Common Elements, (a) which are now or hereafter owned by the Association, (b) with respect to which the Association holds an easement, license or right of possession for the use, care, or maintenance, (c) which the Association has a right or obligation to maintain, (d) which are held for the common use and enjoyment of the Members of the Association or for other purposes permitted by this Declaration, or (e) which are otherwise identified in this Declaration as Association Properties or are otherwise identified as Association Properties as provided below. Without limiting the foregoing, the Association Properties shall include any properties which are part of the Property and which are designated as Association Properties by Declarant in the manner permitted hereby; and any out-lots or tracts owned by El Paso County but required by El Paso County to be maintained by the Association pursuant to the Plat.

2.6. “**Association**” shall mean and refer to The Townhomes at Western Homeowners Association, a Colorado nonprofit corporation, which has been or shall be organized under the laws of the State of Colorado prior to the conveyance of the first Lot in the Project, its successors and assigns. The Association shall be a “Lot owners association” as defined by the Act.

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

2.8. “**BMP Agreement**” shall mean that certain Private Detention Basin / Stormwater Quality Best Management Practice Maintenance Agreement and Easement dated , 2024, made between El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado, Declarant, and Association, a copy of which is attached hereto as *Exhibit C*, and incorporated herein by reference.

2.9. “**Bylaws**” shall mean the Bylaws of the Association.

2.10. “**Claim**” means any claim, grievance or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (i) the interpretation, application or enforcement of any of the Governing Documents or the rights, obligations and duties of any Party under any of the Governing Documents; (ii) the design or construction of improvements; (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party. A Claim may be brought by lawsuit, counterclaim, cross-claim, mediation, arbitration, or in any other manner.

2.11. “**Common Elements**” shall mean any portion of the Property owned or maintained by the Association pursuant to this Declaration for the benefit, use, or enjoyment of the Lot Owners, which shall be designated as either General Common Elements or Limited Common Elements, including, but not limited to, the open space tracts owned by the Association as specified on the Plat, and easements for the use and benefit of the Lot Owners. Common Elements do not include the Lots, except to the extent of easements reserved thereon for the benefit of the Association and except to the extent, if any, owned by the Association and used by the Association as Common Elements. Common Elements described as Improvements located on or to be located on or within public rights-of-way shall, for the purposes of this Declaration, be deemed to be owned by the Association, even if such Improvements are, by operation or requirement of law, actually owned by El Paso County or another public entity.

2.12. “**Common Expenses**” shall mean the actual and estimated costs, expenses, and financial liabilities incurred or anticipated to be incurred by the Association for the general benefit of all Lots, including, without limitation, all costs of operating, managing, maintaining, replacing, or restoring the General Common Elements, the Association’s personal property taxes, taxes on the General Common Elements to the extent payable by the Association, general administrative costs of the Association including any reserve the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Declarant Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by the Members of the Association representing a majority thereof, excluding the Declarant. Common Expenses shall not include Limited Common Element

Expenses or costs or expenses funded by or payable through the levying of Specific Assessments.

2.13. “**Declarant**” shall mean and refer to J. Elliott Homes, Inc., a Colorado corporation, its agents, employees, contractors, successors and assigns to whom Declarant expressly transfers all or any part of its rights as Declarant hereunder.

2.14. “**Declaration**” means this Declaration as it may be amended or supplemented from time to time as herein provided, which shall be indexed in the grantee’s index in the name of the Project and the Association and in the grantor’s index in the name of the Declarant executing the Declaration.

2.15. “**Delinquent Accounts**” shall have the meaning provided in Section 8.19.

2.16. “**Design Guidelines**” shall mean the architectural guidelines adopted by the Board pursuant to Section 10.4 and applicable to all Lots within the Property.

2.17. “**Design Procedure**” shall mean the architectural procedures adopted by the Board pursuant to Section 10.4 and applicable to all Lots within the Property.

2.18. “**Dwelling**” shall mean an Improvement constructed on a Lot for use as a residence.

2.19. “**EV Charging System**” shall mean a level 1 or level 2 electric vehicle charging system as defined in Section 38-12-601(6), C.R.S.

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

2.21. “**First Mortgagee**” shall mean a Mortgagee whose encumbrance is a First Mortgage.

2.22. “**FHA**” shall have the meaning provided in Section 16.23.

2.23. “**FHLMC**” shall have the meaning provided in Section 16.23.

2.24. “**FNMA**” shall have the meaning provided in Section 16.23.

2.25. “**General Common Elements**” shall mean the Common Elements that are for the benefit, use, or enjoyment of all of the Owners, subject to the terms and conditions of this Declaration. Additional General Common Elements may be created by Declarant pursuant to ARTICLE 6.

2.26. “**GNMA**” shall have the meaning provided in Section 16.23.

2.27. “**Governing Documents**” shall mean this Declaration, the Articles of Incorporation, the Bylaws and any Rules and Regulations of the Association.

2.28. “**HUD**” shall have the meaning provided in Section 16.23.

2.29. “**Improvements**” shall mean and refer to all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, concrete, paving, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, mailboxes, exterior tanks, solar equipment, satellite dishes, and exterior air conditioning and water softener fixtures, and any alterations, changes, or modifications to the foregoing. “Improvements” shall also mean an excavation or fill the volume of which exceeds two cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot. “Improvements” shall also mean any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture.

2.30. “**Limited Assessment**” shall mean an Assessment levied in accordance with Section 8.8 to fund the Limited Common Elements Expenses.

2.31. “**Limited Common Element**” and “**Limited Common Elements**” shall mean any Common Element or Areas that are for the benefit, use, or enjoyment of less than all of the Lot Owners, subject to the terms of this Declaration. The allocation of any Limited Common Element among particular Lots may be altered or relocated pursuant to Section 208 of the Act, provided that such reallocation receives the prior written approval of Board and, during the Period of Declarant Control, the Declarant. Limited Common Elements may be created by Declarant pursuant to ARTICLE 6.

2.32. “**Limited Common Element Expense**” shall mean all costs, expenses, and financial liabilities incurred by the Association in operating, maintaining, managing, repairing, restoring, replacing, and, to the extent payable by the Association, paying taxes on, the Limited Common Elements.

2.33. “**Lot**” shall mean a physical portion of the common interest community which is designated for separate ownership or occupancy and the boundaries of which are shown on any recorded plat of the Property, together with all appurtenances thereto and improvements now or hereafter thereon, and any Lot which is located on any real property,

if any, which is hereafter annexed to the Project pursuant to ARTICLE 16 hereof. This term shall have the same meaning as “unit” under the Act. The boundaries of any Lot may be relocated pursuant to the Act. The boundaries of the Lot shall be shown on any recorded plat of the Property which shall be incorporated herein by this reference. A Lot may be described by identifying its lot number followed by the words, “The Townhomes at Western” and the filing number.

2.34. “**Lot Owner**” means any person, corporation, partnership, association, contract sellers or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Lots and shall include the purchaser under any executory land sales contract wherein the Administrator of Veterans Affairs is seller, whether recorded or not, and whether owned by said Administrator or its assigns. The term “Lot Owner” shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Lot Owner but shall not refer to any Mortgagee as herein defined, or other person or entity having an ownership interest in any Lot merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. This term shall have the same meaning as “unit owner” under the Act.

2.35. “**Maintenance Area**” shall mean and refer to that area located upon the Lot, if any, which shall be maintained by the Association. In general, the Maintenance Area shall include any Dwelling’s common roof, exterior siding, gutters, and downspouts (but not frame, foundation, or windows), and those parts of any Lot located outside of the exterior building surfaces of a Townhome, including without limitation, any common landscaping and sidewalk located at the front of the Lots, together with the Improvements related to such area. The Maintenance Area shall be repaired, improved, maintained, and regulated by the Association as provided in ARTICLE 9 of this Declaration.

2.36. “**Member**” shall mean and refer to every Lot Owner who holds membership in the Association or, following termination of the Project, to all former Owners entitled to distributions of proceeds hereunder, if any, or their heirs, personal representatives, successors or assigns.

2.37. “**Mortgage**” means and refers to any mortgage, deed of trust, or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk and Recorder of the county in which the Property is located, and by which a Lot or any part thereof is encumbered.

2.38. “**Maintenance Funds**” shall mean the accounts into which the Board shall deposit monies paid to the Association and from which disbursements shall be made in the performance of the functions of the Association pursuant to ARTICLE 4 or ARTICLE 8.

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

2.40. “**Period of Declarant Control**” shall have the meaning provided in Section 3.4.

2.41. “**Period of Declarant Reserved Rights**” shall mean that period which commences with the Recording of this Declaration and continues as permitted by C.R.S. § 38-33.3-303(5)(a)(I), or any successor statute; provided, however, the Declarant may terminate the Period of Declarant Reserved Rights (and the rights and duties related thereto) at any time by recording a notice of termination in the real property records of El Paso County, Colorado.

2.42. “**Person**” shall mean a natural person, a corporation, a partnership, or any other entity.

2.43. “**Plat**” shall mean Townhomes at Western, located in the Southeast Quarter of Section 35, Township 14 South, Range 66 West of the 6th P.M., in the City of Colorado Springs, El Paso County, Colorado.

2.44. “**Priority Lien**” shall have the meaning provided in Section 8.26.

2.45. “**Project**” means all of the Property, together with rights and easements related thereto, and improvements located on the Property and all rights, easements and appurtenances belonging thereto, and shall include any real property which is hereafter annexed to the Project pursuant to ARTICLE 16 hereof. The Project shall be a “common interest community” and “planned community” under the Act; provided however, the Project shall be exempt from the provisions of Act as provided by C.R.S. § 38-33.3-116 except for C.R.S. §§ 38-33.3-105, 38-33.3-106 and 38-33.3-107.

2.46. “**Property**” shall mean and refer to that certain real property described on *Exhibit A* attached hereto and incorporated herein by this reference, together with all appurtenances thereto and all improvements now or hereafter thereon and shall include any real property which is hereafter annexed to the Project in accordance with the Act.

2.47. “**Protected Party**” shall have the meaning provided in Section 11.29.

2.48. “**Record**” or “**Recorded**” or “**Recording**” shall mean the filing for record of any document in the real estate records of the office of the Clerk and Recorder for El Paso County.

2.49. “**Related User**” shall mean any Person who: (a) resides with a Lot Owner within the Lot, (b) is a guest or invitee of a Lot Owner, or (c) is an occupant, tenant or

contract purchaser of a Lot, and any family member, guest, invitee or cohabitant of any such person.

2.50. “**Renewable Energy Generation Device**” shall mean only: a solar energy device, as defined in section 38-32.5-100.3, C.R.S.; a wind-electric generator that meets the interconnection standards established in rules promulgated by the public utilities commission pursuant to section 40-2-124, C.R.S., or other device as may from time to time be defined and included in the protections provided by section 38-30-168 C.R.S. References herein to the “Renewable Energy Generation Device” shall also include any accessory component, ancillary device, or system element, such as inverters.

2.51. “**Rules and Regulations**” shall mean any instruments, however denominated, including policies and procedures, which are adopted by the Association for the regulation and management of the Property, including any amendment to those instruments.

2.52. “**Townhome**” shall mean the residential dwelling improvement constructed and located upon a Lot and shall include any Townhome which is hereafter annexed to the Project pursuant to ARTICLE 16 hereof.

2.53. “**VA**” shall have the meaning provided in Section 16.23.

2.54. “**User Fees**” shall have the meaning provided in Section 8.30.

ARTICLE 3

ASSOCIATION FUNCTION, MEMBERSHIP, AND VOTING RIGHTS

3.1. **Function of Association.** The Association has been or will be formed as a Colorado nonprofit corporation under the Colorado Revised Nonprofit Corporation Act. The Association has been or shall be organized prior to the date the first Lot located in the Property is conveyed to a Lot Owner other than the Declarant. The Association shall be the entity responsible for management, maintenance, operation and control of the Association Properties within the Property. As more specifically set forth hereinafter, the Association shall have a Board of Directors which, except as provided herein, in the Articles of Incorporation, or in the Bylaws, shall be elected by the Members. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable Rules and Regulations regulating use of the Property as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles of Incorporation, and Colorado law.

3.2. **Board of Directors.** The affairs of the Association shall be managed by the Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

3.3. **Membership.** The following shall be members of the Association: the Declarant (so long as the Declarant owns a Lot) and every Lot Owner which is subject to assessment hereunder; provided, however, that there shall be only one membership per Lot. If a Lot is owned by more than one person or entity, all co-Lot Owners shall share the privileges of such membership, subject to reasonable regulation by the Board of Directors, and all such co-Lot Owners shall be jointly and severally obligated to perform the obligations and responsibilities of a Lot Owner. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. Members shall have one equal vote for each Lot in which they hold the interest required for membership; provided, however, there shall be only one vote per Lot and no vote shall be exercised for any property which is exempt from assessment by virtue of any provision of this Declaration. Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint a Board of Directors and to operate the Association until the Period of Declarant Reserved Rights is terminated, and the Association shall not begin to function through its other Members until such time, unless the Declarant otherwise consents in writing.

3.4. **Period of Declarant Control.** The Association shall have one class of voting membership who shall be the Lot Owners. Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint the Board and to control the Association during the Period of Declarant Control. During the Period of Declarant Control, the Declarant, or persons designated by Declarant, subject to certain limitations as hereinafter set forth or as may be set forth in the Colorado Common Interest Ownership Act, may appoint and remove the majority of the officers and Members of the Board. The Period of Declarant Control shall terminate no later than sixty (60) days following the earliest of one of these events:

- (1) The actual conveyance of seventy-five percent (75%) of the Lots that may have been created to Lot Owners other than Declarant;
- (2) Two years after Declarant has last conveyed a Lot in the ordinary course of business; or

- (3) Two years after the right to add new Lots was last exercised.

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

3.4.1. Notwithstanding the foregoing, not later than 60 days after conveyance of twenty-five percent (25%) of the Lots to Lot Owners other than Declarant, at least one Member and not less than twenty-five percent (25%) of the Members of the Board shall be elected by Lot Owners other than the Declarant. Not later than 60 days after conveyance of fifty percent (50%) of the Lots to Lot Owners other than the Declarant, not less than thirty-three and one-third percent (33 1/3%) of the Members of the Board must be elected by Lot Owners other than the Declarant.

3.4.2. Not later than the termination of any Period of Declarant Control, the Lot Owners shall elect a Board of at least three Members, at least a majority of whom must be Lot Owners other than the Declarant or designated representatives of Lot Owners other than the Declarant. The Board shall elect the officers. These Board Members and officers shall take office upon election.

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

3.4.4. Within sixty days after the Lot Owners other than Declarant elect a majority of the Members of the Board, the Declarant shall deliver to the Association all property and items described by Section 303(9) of the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-303 (9), Colorado Revised Statutes.

3.5. **Voting.** Each Member shall have the right to cast the votes for the Lots owned by such Member except that, in the event any Lot is owned by more than one (1) Member, any Member who is a Lot Owner of that Lot and is present to vote at any meeting may cast the votes for such Lot, if more than one (1) Member who is a Lot Owner of that Lot is present at a meeting, the vote for such Lot shall be cast as such Members shall agree or, in the absence of agreement, each Member who is a Lot Owner of such Lot shall be entitled to cast the portion of the vote for such Lot equal to such Lot Owner's fractional ownership interest in such Lot. For purposes of this Section, if a Lot is owned by more than one (1) Lot Owner and the deed conveying the Lot Owners' interest does not specify

otherwise, each Lot Owner shall be deemed to own a fractional interest in such Lot equal to a fraction where the numerator is 1 and the denominator is the number of Lot Owners with an ownership interest in such Lot.

3.6. **Number of Votes.** Each Lot shall have one (1) vote.

3.7. **Meetings of Members.** The Bylaws shall provide for the manner, time, place, conduct, and voting procedures for meetings of Members.

ARTICLE 4 DUTIES AND POWERS OF ASSOCIATION

4.1. **General Duties and Powers of Association.** The Association will be formed to further the common interests of the Members. The Association, acting through the Board or Persons to whom the Board has from time to time temporarily delegated such powers in any given instance, shall have the duties and powers hereinafter set forth and, in general, subject to the limitations set forth in this Declaration, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve, and enhance the common interests of the Members, to maintain, improve, and enhance Association Properties and to improve and enhance the attractiveness, aesthetics, and desirability of the Property.

4.2. **Duty to Accept Property and Facilities Transferred by Declarant.** The Association shall accept title to all Association Properties and other real property from time to time transferred to the Association, including any Improvements thereon, and personal property transferred to the Association by Declarant, and equipment related thereto, together with the responsibility to perform any and all Administrative Functions and maintenance associated therewith; provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests from time to time transferred to the Association by Declarant may include without limitation fee simple title, easements, leasehold interests, contractual rights, or licenses to use. Any real property or interest in real property transferred to the Association by Declarant shall be within the boundaries of the Property. Any property or interest in property from time to time transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board, be transferred to the Association free and clear of all monetary liens (other than the lien of taxes and assessments not yet due and payable) but shall be subject to the terms of this Declaration. Except as otherwise specifically approved by resolution of the Board, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

4.3. **Power and Duty to Manage and Care for Association Properties.** The Association shall have the power and duty, except as otherwise set forth herein, to manage, operate, care for, maintain, and repair all Association Properties, to keep the same in a good, attractive and desirable condition for the use and enjoyment of the Members consistent with this Declaration, and to satisfy its obligations with respect to Association Properties under the Plat or any document executed in connection with obtaining El Paso County's approval of the Plat.

4.4. **Power to Pay Taxes.** The Association shall have the power to pay all taxes and assessments levied upon the Association Properties and all taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments by appropriate legal proceedings.

4.5. **Power to Maintain Casualty Insurance.** The Association shall keep all insurable Improvements on the Maintenance Area insured against loss or damage by fire for the replacement cost thereof with such terms as the Board shall from time to time determine and shall have the power to obtain and keep in full force and effect such other casualty insurance on the Association Properties in such amounts used with such terms as the Board shall from time to time determine. The Association shall maintain all such insurance required by the Act.

4.6. **Power to Maintain Liability Insurance.** The Association shall have the power to obtain and keep in full force and effect general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Association Properties with such limits and terms as the Board shall from time to time determine. The Association shall maintain all such insurance required by the Act. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations of the Association pursuant to this Declaration. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured by the Association to maintain such continuous coverage.

4.7. **General Provisions Respecting Insurance.** Insurance obtained by the Association may contain such deductible provisions as the Board may determine and as shall be consistent with the Act. The Association may carry any other type of insurance it considers appropriate in amounts it deems appropriate, to insure the interests of the Association, including but not limited to liability insurance on behalf of any member of the Board, or any officer or employee of the Association. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Lot Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. During the Period of Declarant Control, at Declarant's request, insurance obtained by the Association shall, to the extent reasonably possible and provided Declarant reimburses the Association for any additional premium payable on account

thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. Insurance may be provided under blanket policies covering the Association Properties and property of Declarant.

4.8. **Fidelity Bonds.** The Association may obtain and keep in force a fidelity bond or bonds for any Person handling funds of the Association. The Board may request any Person employed as an independent contractor by the Association for the purpose of managing the Association Properties to obtain and maintain fidelity insurance in an amount determined by the Board.

4.9. **Other Insurance and Bonds.** The Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity, or other bonds as the Association shall deem necessary or desirable.

4.10. **Duty to Determine Amount of Assessments.** The Association shall determine the amount of Annual Assessments, Special Assessments, and Supplemental Assessments as provided in Sections 8.4, 8.5, 8.6, and 8.7 of this Declaration.

4.11. **Power to Levy and Collect Assessments and Fees.** The Association may levy and collect Assessments and User Fees as provided in this Declaration, including, without limitation assessments for the Association's compliance with its obligations under the BMP Agreement.

4.12. **Association Books and Records.**

4.12.1. The Association's books and records shall be subject to an audit or a review as further provided in this Declaration and the Act. Except as otherwise provided in Subsection 4.12.2 below, or as specified by Section 38-33.3-317 of the Act, the Association shall make reasonably available for inspection and copying by Lot Owners, Mortgagees, and insurers or guarantors of any Mortgage, current copies of all of the Governing Documents, financial documents and all other documents described in Section 38-33.3-317 of the Act. The Person(s) accessing and/or copying such documents shall pay all costs associated therewith. "Reasonably available" shall mean available during normal business hours, upon prior notice of at least ten (10) business days, or at the next regularly scheduled meeting if such meeting occurs within thirty (30) days after the request.

4.12.2. Notwithstanding this Section 4.12, a membership list or any part thereof may not be obtained or used by any Person for any purpose unrelated to a Lot Owner's interest as a Lot Owner without the consent of the Board. Without limiting the generality of the foregoing, without the consent of the Board, a membership list or any part thereof may not be: (a) used to solicit money or property unless such money or property will

be used solely to solicit the votes of the Lot Owners in an election to be held by the Association; (b) used for any commercial purpose; or (c) sold to or purchased by any Person.

4.12.3. The information described in this Section 4.12 shall be provided to the Lot Owners by the Association either by (a) posting such information on an internet website with notice of the URL for such website delivered to the Lot Owners by electronic mail or first-class mail; (b) placing such information on a literature table or in a binder in the Association's main office; (c) mail or personal delivery; or (d) such other method as may be permitted under the Act. In the event the Act is amended to remove, modify, or otherwise revise the requirements under Section 4.12 of this Declaration, Section 4.12 shall be deemed amended to require only that which is required pursuant to the Act, as amended.

4.13. **Power to Acquire Property and Construct Improvements.** The Association may acquire property or interests in property for the common benefit of Lot Owners including Improvements and personal property. The Association may construct Improvements on property and may demolish existing Improvements.

4.14. **Power to Adopt Rules and Regulations.** The Association may adopt Rules and Regulations concerning the following: (a) collection of unpaid Assessments; (b) handling of conflicts of interest involving the Board; (c) conduct of Association meetings; (d) enforcement of this Declaration and the Rules and Regulations, including notice and hearing procedures and the schedule of fines; (e) inspection and copying of Association records by Lot Owners; (f) investment of reserve funds; (g) procedures for the adoption and amendment of policies, procedures, and Rules and Regulations; and (h) procedures for addressing disputes arising between the Association and Lot Owners. The Association may adopt, amend, repeal, and enforce Rules and Regulations, including regulations regarding all parking within the Maintenance Areas, as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Property, including Lots. Any such Rules and Regulations shall be effective only upon adoption by resolution of the Board. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Member at the address for notices to Members as elsewhere provided in this Declaration or the Bylaws, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

4.15. **Power to Enforce Declaration and Rules and Regulations.** The Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one (1) or more of the following means: (a) by entry upon any Lot or Townhome within the Property, without liability to the Lot Owner thereof, for the purpose of enforcement or causing compliance with this Declaration or the Rules and Regulations, including, in connection with the violation of any parking regulations, towing or causing to be towed illegally or improperly parked vehicles within the Property in accordance with Colorado law, (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise, (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations, (d) by suspension of the voting rights of a Member during and for up to sixty (60) days following the cure of any breach by such Member or a Related User of this Declaration or the Rules and Regulations, and (e) by uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, assessed against any Member or Related User for breach of this Declaration or the Rules and Regulations by such Member or Related User.

4.16. **Power to Grant Easements.** The Association shall have the power to grant access, utility, drainage, water facility, and other such easements in, on, over, or under Association Properties.

4.17. **Power to Convey and Dedicate Property to Government Agencies.** The Association shall have the power to grant, convey, dedicate, or transfer any Association Properties or facilities to any public, governmental, or quasi-governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate. Any such transfer during the Period of Declarant Reserved Rights, shall, in addition to the approval of Members owning at least sixty seven percent (67%) of the Lots (exclusive of the Lots owned by the Declarant) determined as provided in Section 3.5, require the approval of Declarant.

4.18. **Power to Borrow Money and Mortgage Property.** The Association shall have the power to borrow money and, with the approval of Members owning at least sixty-seven percent (67%) of the Lots (exclusive of the Lots owned by Declarant), determined as provided in Section 3.5, to encumber Association Properties as security for such borrowing, subject to provisions elsewhere contained in this Declaration with respect to required approvals and consents to such action.

4.19. **Power to Merge or Consolidate.** The Association shall have the power to merge or consolidate with another association with the approval of Members owning at least sixty-seven percent (67%) of the Lots (exclusive of the Lots owned by Declarant), determined as provided in Section 3.5, and, if during the Period of Declarant Reserved Rights, the approval of Declarant. Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration, together with the covenants, conditions, and restrictions established upon any other property as one plan.

4.20. **Power to Engage Employees, Agents, and Consultants.** The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, management, and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

4.21. **General Corporate Powers; Limitations.** The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Revised Nonprofit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required, or permitted to be done under this Declaration or the Articles of Incorporation or Bylaws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration and the Articles of Incorporation or Bylaws.

4.22. **Powers Provided by Law.** In addition to the above-referenced powers, except as may be limited by this Declaration, the Articles of Incorporation, or the Bylaws, the Association shall have full power to take and perform any and all actions which may be lawfully taken by the Association under the Colorado Revised Nonprofit Corporation Act. Notwithstanding the foregoing or any other provision of this Declaration, the Articles or Bylaws, the Association may institute, defend, or intervene in litigation or administrative proceeding on behalf of itself on matters affecting the Property, but not on behalf of any Lot Owner on matters affecting the Property.

4.23. **Lot Owners Insurance.** By virtue of taking title to a Lot, each Lot Owner covenants and agrees with all other Lot Owners and with the Association to carry blanket “all-risk” property insurance on its Lot(s) and structures thereon providing full replacement

cost coverage less a reasonable deductible. Each Lot Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot, such Lot Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with ARTICLE 9 of this Declaration. Alternatively, the Lot Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition. The Lot Owner shall pay any costs which are not covered by insurance proceeds incurred in complying with such obligations.

4.24. **Implied Rights; Board Authority.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, Articles of Incorporation, or by law, all rights and powers of the Association may be exercised by the Board or any duly authorized executive committee, officer, agent, or employee without a vote of the membership.

4.25. **Governmental Interests.** During the Period of Declarant Reserved Rights, the Declarant may designate sites within the Property for fire, police, utility facilities, public schools and parks, and other public facilities. The sites may include Maintenance Areas.

4.26. **Indemnification.** The Association shall indemnify every officer, director, and committee member against all expenses, including attorney fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. Any right to indemnification provided for herein 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 director and officers' liability insurance to fund this obligation, if such insurance is reasonably available. Any indemnification or right of indemnification of directors and officers of the Association as provided by this Declaration, the Articles or the Bylaws shall continue as to a person who has ceased to be a director or officer of the Association and shall inure to the benefit of the director's or officer's estate, heirs, personal representatives, executors, and administrators. Any repeal or modification of any provision

of this Declaration, the Articles or Bylaws of the Association permitting or requiring indemnification of director's, officer's and committee members shall be prospective only, and shall not adversely affect any limitation on the personal liability of a current or former director, officer or committee member of the Association for acts or omissions prior to such repeal or modification.

4.27. **Dedication of Maintenance Areas.** The Association may dedicate portions of the Maintenance Areas to the County, or to any other local, state, or federal governmental entity, subject to such approval as may be required by this Declaration and the Act.

4.28. **Security.** The Association shall not be obligated to maintain or support any security activities within the Property. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS RELATED USERS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS RESULTING FROM ACTS OF THIRD PARTIES.

ARTICLE 5 ASSOCIATION PROPERTIES

5.1. **Member's Rights of Use and Enjoyment Generally.** Unless otherwise provided in this Declaration, all Members and Related Users may use the Association Properties in which the Member's Lot is located.

5.2. **Right of Association to Regulate Use.** The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members and, to the extent within the power of the Association, the public to further enhance the overall rights of use and enjoyment of all Members.

5.3. **No Partition of Association Properties.** No Lot Owner shall have the right to partition or seek partition of the Association Properties, or any part thereof.

5.4. **Liability of Lot Owners for Damage by Member.** Each Member shall be liable to the Association for any damage to Association Properties and for any cost, expense or liability incurred by the Association to the extent not covered by insurance, which may be sustained by reason of the negligent conduct or intentional misconduct of such Member or

any Related User and for any violation by such Member or any such Related User of this Declaration or any Rule and Regulation adopted by the Association, including any increase in insurance premiums directly attributable to any such damage or any such violation.

5.5. **Association Duties if Damage.** In the event of damage to Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Association Properties, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Association Properties by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment. Repair, reconstruction, or replacement of Association Properties shall be done under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, improvement, and operation of other Association Properties.

5.6. **Association Powers in the Event of Condemnation.** If any Association Properties or interests therein are taken under exercise of the power of eminent domain or by purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Lot Owners or other Persons therein. Any award or funds received by the Association shall be held by the Association in the Maintenance Funds as determined by the Board, as a reserve for future maintenance, repair, reconstruction, or replacement of Association Properties or may be used for Improvements or additions to or operation of Association Properties. No Lot Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

5.7. **Title to Association Properties on Dissolution of Association.** In the event of dissolution of the Association, the Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental, or quasi-governmental agency or organization, or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the common benefit of Lot Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible, the

Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be allocated to the Lots and distributed to the Members in accordance with their prorated share of the total Annual Assessments.

ARTICLE 6 DECLARANT'S RIGHTS AND RESERVATIONS

6.1. **Declarant Reserved Rights and Reservations.** During the Period of Declarant Reserved Rights, Declarant shall have, and Declarant hereby retains, and reserves, the rights and reservations hereinafter set forth in this ARTICLE 6, and in Sections 4.17, 4.19, 4.25, 10.4, 10.7, 10.15, 16.9, 16.10, 16.11, and 16.17 (collectively, "**Declarant Reserved Rights**"). These Declarant Reserved Rights shall be deemed excepted from and reserved in each conveyance of property by Declarant to the Association and in each deed or other instrument by which any property within the Property is conveyed by Declarant whether or not specifically stated therein. The Declarant Reserved Rights shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other subsequent amendment.

6.2. **Declarant's Right to Appoint Board.** During the Period of Declarant Control, Declarant shall have the right to appoint the members of the Board; provided none of the events triggering a termination of the Period of Declarant Control, as described in Section 3.4, have occurred. During the Period of Declarant Control, the Articles of Incorporation and Bylaws and any amendment to either of them shall not be effective unless and until approved in writing by the Declarant.

6.3. **Selection of Officers; Date for Taking Office.** The Board shall elect the officers. The members of the Board and officers shall take office upon election.

6.4. **Requirements for Turnover of Declarant Control.** Within sixty (60) days after the Lot Owners other than the Declarant elect a majority of the members of the Board, the Declarant shall deliver to the Association the property of the Lot Owners that is specified under Section 38-33.3-303(9) of the Act.

6.5. **Information to Lot Owners after Turnover of Declarant Control.**

6.5.1. On or before the date that is ninety (90) days after the end of the Period of Declarant Control (and on or before the date that is ninety (90) days after a change of the Association's address, designated agent, or management company), the Association shall make available the information specified in Section 38-33.3-209.4(1) of the Act for review by the Lot Owners on reasonable notice.

6.5.2. On or before the date that is ninety (90) days after the end of the Period of Declarant Control (and on or before the date that is ninety (90) days after the end of each fiscal year of the Association thereafter), the Association shall make available the information specified in Section 38-33.3-209.4(2) of the Act for review by the Lot Owners on reasonable notice.

6.5.3. The information described in this Section 6.5 shall be provided to the Lot Owners by the Association either by (a) posting such information on an internet website with notice of the URL for such website delivered to the Lot Owners by electronic mail or first-class mail; (b) placing such information on a literature table or in a binder in the Association's main office; (c) mail or personal delivery; or (d) such other method as may be permitted under the Act.

6.6. **Right to Construct Additional Improvements on Association Properties.** During the Period of Declarant Reserved Rights, Declarant shall have and hereby reserves the right, but shall not be obligated to, convey Association Properties to the Association and construct additional Improvements on Association Properties, including all General Common Elements and Limited Common Elements, at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Lot Owners. Declarant may convey or transfer such Improvements to the Association if Declarant has elected to construct such Improvements. The Association shall be obligated to accept title to, care for, and maintain the same as Association Properties as elsewhere provided in this Declaration. Association Properties and Improvements conveyed by Declarant to the Association shall be conveyed free and clear of any Mortgage or lien (other than a lien for any tax or assessment not yet due and payable) arising by reason of Declarant's promise or failure to pay any monetary obligation of Declarant.

6.7. **Right of Conversion.** During the Period of Declarant Reserved Rights, Declarant shall have and hereby reserves the unilateral right to convert any Lot or other portion of the Property owned by Declarant into General Common Elements or Limited Common Elements, so long as the pertinent Lot or portion of the Property is owned by Declarant or by a Lot Owner who has agreed to the conversion with Declarant. In addition, during the Period of Declarant Reserved Rights, Declarant reserves the unilateral right to convert any General Common Element into Limited Common Elements and to allocate such Limited Common Elements among particular Lots as Declarant, in its discretion, deems appropriate.

6.8. **Creation and Conversion of Common Elements.** During the Period of Declarant Reserved Rights, Declarant reserves the right to establish, create and convert General Common Elements and Limited Common Elements as provided in Section 6.11.

6.9. **Subdivision and Replatting.** During the Period of Declarant Reserved Rights, Declarant reserves the unilateral right to subdivide into additional Lots, change the boundary line of or replat any Lots or other portions of the Property owned by Declarant. In the event that any Lot is subdivided into two or more Lots, or two or more Lots are combined into fewer Lots, pursuant to the provisions of this Section 6.9 and Section 6.10 of this Declaration, the Voting Lots of such Lots shall be reallocated among the resulting Lots, with such resulting change in the Common Allocation for such Lots being deemed to occur automatically without any further action by the Association or Declarant.

6.10. **Exercise of Development Rights.** Declarant shall exercise any development rights reserved by Declarant, by preparing, executing, and recording a supplemental declaration amending the Declaration as necessary to effectuate the exercise of such Development Right, which Supplemental Declaration shall be accompanied by any amendment or supplement to the Plat required by the Act. If Declarant, by exercising any development right, creates any new Common Elements, then the supplemental declaration shall describe such newly created Common Elements and, in the case of newly created Limited Common Elements, designate the Lot or Lots to which such Limited Common Elements are allocated. Except as expressly provided to the contrary in this Declaration, Declarant's exercise of any development right shall not require the consent of any other Lot Owner. The requirements set forth in this Section may be satisfied by the Recording of a subsidiary declaration, or an amendment or supplement thereto, containing the information required under this Section 6.10.

6.11. **Common Elements.**

6.11.1. **Generally.** Declarant shall be responsible for completing the construction of any Improvements that Declarant determines will be located on or that will constitute such Common Elements, including, without limitation, landscaping, monuments, signage, recreation facilities, drainage facilities, sidewalks, fences, walls, and plantings. Declarant will convey those Common Elements to be owned by the Association (whether in fee simple or as an easement) to the Association by bargain and sale deed upon substantial completion of the Improvements to be located thereon. Common Elements that comprise Improvements located on or within public rights-of-way shall automatically become the property of the Association upon Declarant's substantial completion of such Improvements.

6.11.2. **Conversions.** For the duration of the Period of Declarant Reserved Rights, Declarant reserves the unilateral right to convert any Lot or other portion of the Property owned by Declarant into General Common Elements or Limited Common Elements, so long as the pertinent Lot or portion of the Property is owned by Declarant or by an Owner who has agreed to the conversion with Declarant. In addition, for the duration of the Period of Declarant Reserved Rights, Declarant reserves the unilateral right to convert any General Common Elements into Limited Common Elements and to allocate such

Limited Common Elements among particular Lots as Declarant, in its discretion, deems appropriate.

6.11.3. Association's Obligation. The Association shall accept any grant, conveyance, or dedication to it of any Common Elements made by Declarant pursuant to this Declaration.

6.12. **Plat Amendments.** Declarant reserves the right to amend the Plat as it applies specifically to any Lot or other portion of the Property owned by Declarant or owned by another Lot Owner with such Lot Owner's consent. By taking title, each Lot Owner covenants and agrees to furnish cooperation (including any consent or joinder as required by the City of Colorado Springs, or El Paso County) in connection with and not object to such proposed amendment so long as the amendment is sought in a manner that complies with the procedures prescribed in the County's zoning ordinance. No Lot Owner required to cooperate with a proposed amendment to the Plat pursuant to this Section shall be required to incur any costs or expenses in connection with such cooperation.

6.13. **Declarant's Right to Use Association Properties in Marketing of Property.** During the Period of Declarant Reserved Rights, until Townhomes have been constructed on all of the Lots and all of the Lots have been sold by Declarant to Lot Owners for the purpose of occupancy of the Townhomes thereon, Declarant shall have and hereby reserves the right to reasonable use of the Association Properties and of services offered by the Association in connection with the promotion and marketing of the Property. Without limiting the generality of the foregoing, during the Period of Declarant Reserved Rights, until Townhomes have been constructed on all of the Lots and all of the Lots have been sold by Declarant to Lot Owners for the purpose of occupancy of the Townhomes thereon, Declarant may erect and maintain on any part of the Association Properties such signs, temporary buildings, and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development, and marketing of real property within the Property; may use vehicles and equipment on Association Properties for promotional purposes; may permit prospective purchasers of property within the boundaries of the Property who are not Lot Owners or Members of the Association to use Association Properties at reasonable times and in reasonable numbers; and may refer to the Association Properties and to the Association and services offered by the Association in connection with the development, promotion, and marketing of property within the boundaries of the Property. Declarant shall pay any costs and expenses arising from its use of Association Properties in accordance with this Section 6.13.

6.14. **Declarant's Rights to Complete Development of Property.** No provision of this Declaration shall be construed to prevent or limit Declarant's rights during the Period of Declarant Reserved Rights to complete development of property within the boundaries of the Property or elect not to complete development of any part of the Property; to develop

Association Properties or to construct Improvements to Property thereon, whether or not required by the Plat or any other requirements imposed by the County in connection with the approval of the Plat; to construct or alter Improvements on any property owned by Declarant within the Property, to maintain model homes and offices for construction, sales purposes, or similar facilities on any property owned by Declarant within the Property; or to post signs or do any other act or thing incidental to development, construction, promotion, marketing, or sales of property within the boundaries of the Property. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals during the Period of Declarant Reserved Rights to: (a) excavate, cut, fill, or grade any property owned by Declarant or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant, (b) use any structure on any property owned by Declarant as a construction office, model home, or real estate sales office in connection with the sale of any property within the boundaries of the Property, (c) store construction materials, supplies, equipment, tools, waste or other items on property within the Property that is owned by Declarant, (d) require Declarant to seek or obtain the approval of the Board for any such activity or Improvement to Property on any property owned by Declarant; or (e) to develop Association Properties or to construct Improvements to Property thereon, whether or not required by the County in connection with the approval of the Plat, or to seek or obtain the approval of the Board for any such activity or Improvement to Property. Nothing in this Declaration shall limit or impair the reserved rights of Declarant as elsewhere provided in this Declaration.

6.15. **Declarant's Approval of Conveyances or Changes in Use of Association Properties.** During the Period of Declarant Reserved Rights, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change, or alter the use of Association Properties, mortgage Association Properties, or use Association Properties other than solely for the benefit of Members or as specifically allowed hereunder.

6.16. **Declarant's Rights to Grant and Create Easements.** During the Period of Declarant Reserved Rights, until Townhomes have been constructed on all of the Lots and all of the Lots have been sold by Declarant to Lot Owners for the purpose of occupancy of the Townhomes thereon, Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements for access, utilities, drainage, water, and other purposes incident to development and sale of the Property located in, on, under, over, and across: (a) Association Properties, (b) the five (5) feet of each Lot adjoining each of the exterior boundaries of such Lot, and (c) the portions of the Property affected by the easements reserved on the Recorded plats for the Property. Declarant may, at any time during the Period of Declarant Reserved Rights, grant or create temporary or permanent easements on Lots owned by Declarant. Within these easements, including any easements previously granted under the Declaration, unless the consent of the holder of such easement rights is obtained, no structure, planting or other improvements or material shall be placed

or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot and all improvements in it shall be maintained continuously by the Lot Owner of the Lot on which said easement is located, except for those improvements for which a public authority or private utility company is responsible.

6.17. **Declarant's Rights to Convey Property to Association.** During the Period of Declarant Reserved Rights, Declarant shall have and hereby reserves the right, but shall not be obligated to, convey real property and Improvements thereon to the Association at any time and from time to time in accordance with this Declaration.

ARTICLE 7 EASEMENTS AND RELATED RIGHTS

7.1. Easements and Related Rights.

7.1.1. **Tract A Easement.** Each Lot Owner, his or her agents and guests, and service providers are hereby granted a perpetual non-exclusive easement over, across, and through Tract A as depicted on the Plat, including, without limitation any and all private drives located within Tract A.

7.1.2. **Utility Easements.** Notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Property for the purpose of installing, maintaining, repairing and replacing any utilities or related services, including but not limited to any gas, electric, water or sewer line, mains or laterals, any telephone and cable television lines, any heating or cooling installations, any master television antenna system, or for other public purposes consistent with the intended use of the Property under this Declaration. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary pipes, wires, poles and other equipment, and the right to enter into agreements relating to such utility service and easements; all of which shall be binding upon the Association and the Lot Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Property without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Property, including, but not limited to, any easements granted in the recorded subdivision map. The rights reserved herein for Declarant shall pass to the Association upon the termination of the Period of Declarant Reserved Rights, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the Association and be assumed by it in place of the Declarant.

7.1.3. Association Easement. A non-exclusive easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Maintenance Area and any Lot, as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration or otherwise, including without limitation, any maintenance required or permitted hereunder, any access or uses described in this Declaration, and any maintenance, repair or replacement of any facilities on the Maintenance Area. The Association may authorize use of this easement by Lot Owners, contractors, and others pursuant to rules adopted by the Board.

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

7.1.5. Common Wall Easement. Each Lot Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction, and repair, in, over, under, and upon adjacent Lots and in and upon adjacent Townhomes for purposes of common wall repair or maintenance, in accordance with Section 9.5, upon reasonable notice to the Lot Owners thereof. Any damage occasioned to the adjacent Lot or improvements, including the dwelling Lot, thereon in exercising said easement shall be the responsibility of the Lot Owner whose negligence or wrongful acts or omissions cause such damage.

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

7.1.7. Easement for Foundations. Lot Owners of adjoining Lots shall have mutual easements of horizontal and vertical support for the foundations on which adjacent walls of their improvements rest, and similar easements for support from the Maintenance Area, and for the benefit of the Maintenance Area shall also exist.

7.1.8. Easement for Ingress and Egress. Subject to the provisions of this Declaration, each Lot Owner, his agents, and guests are hereby granted a perpetual non-exclusive easement over any streets, roadways, driveways, and sidewalks, which are located upon the Maintenance Area, for the purpose of pedestrian ingress to and egress from such Lot Owner's Lot.

7.2. Delegation of Use. Any Lot Owner may delegate his right of enjoyment to the easements described in this Declaration to the members of his family, his tenants, his guests, or contract purchasers who reside on his Lot. Each Lot Owner shall, to the extent permitted by law, be liable for any damage done to the Maintenance Area by his family, tenants, guests, or contract purchasers and for any breach of the Association's rules and regulations by such persons.

7.3. Non-Dedication of Easement. Declarant, in recording this Declaration, has designated certain easements and areas of land as Maintenance Area intended for the common use and enjoyment of Lot Owners for recreation and other related activities. Those easements and Maintenance Area are not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Lot Owners, as more fully provided in this Declaration.

7.4. Recorded Easements. The Property, and all portions thereof, shall be subject to all recorded licenses and easements including without limitation any as shown on any plat affecting the Property.

ARTICLE 8 COVENANT FOR ASSESSMENTS

8.1. Creation of the Obligation for Assessments. Subject to the provisions of this Declaration, each Lot Owner, for each Lot owned within the Property, by acceptance of a deed therefore or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fees, fines and other sums which are described in this Declaration, including, without limitation, any amounts due and owing with respect to the Association's obligations under the BMP Agreement, and which shall be both a personal obligation of the Lot Owner and a lien against his or her Lot as provided herein. Each Lot Owner shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees, and other sums attributable to them and/or their Lot. The

personal obligation for delinquent assessments and sums shall not pass to a Lot Owner's successors in title or interest unless expressly assumed by them. No Lot Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by non-use of the Maintenance Area or the facilities contained therein, by abandonment or leasing of his Lot, or by asserting any claims, defenses or other matters against the Association, the Declarant or any other person or entity. In addition to the foregoing assessments, charges, fees and other sums, each Lot Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot, as well as all charges for separately metered utilities servicing his Lot. The charges for any utilities which are master metered, if any, shall be included in the annual common expense assessments levied by the Association.

8.2. **Lien for Assessments.** Each Lot shall be subject to a lien for the Assessments (together with interest, late fees, costs of collection, and attorneys' fees on or accrued with respect thereto) as provided in this Declaration and in the Act. The lien may be claimed and enforced in accordance with the provisions of this Declaration and in the Act. The Assessments against each Lot and each portion of each Assessment (together with interest, late fees, costs of collection, and attorneys' fees on or accrued with respect thereto) shall be the personal, joint and several obligation of the Lot Owners of the Lot at the time each Assessment or portion thereof becomes payable. Each Lot Owner, by acceptance of its interest in any Lot, agrees to pay to the Association the Assessments as to that Lot and as otherwise provided herein, together with interest, late fees, costs of collection, and attorneys' fees as provided herein. Assessments may consist of Annual Assessments, Special Assessments, and Supplemental Assessments.

8.3. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the welfare of the Lot Owners and to fulfill the purpose and duties of the Association, including without limitation, the improvement and maintenance of the Lots and the Maintenance Area as more specifically provided herein.

8.4. **Annual Assessments.** The annual assessment shall specifically include, but shall not be limited to the following:

8.4.1. Expenses of management of the Association and its activities;

8.4.2. Taxes and special assessments upon the Association's operations or property;

8.4.3. Premiums for all insurance which the Association is required or permitted to maintain and any other expenses connected with such insurance;

8.4.4. Water and other common utility and sewer service charges if billed in common by the Colorado Springs Utilities Department and any other common expenses,

including without limitation, any common trash collection and snow removal if approved by the Board;

8.4.5. Landscaping and care of the Maintenance Area, except as provided herein, and any facilities or improvement thereon;

8.4.6. Such repairs and maintenance which are the responsibility of the Association;

8.4.7. Wages for Association employees;

8.4.8. Legal and accounting fees for the Association;

8.4.9. Any deficit remaining from a previous assessment year;

8.4.10. A working capital fund;

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

8.4.12. The creation of reasonable contingency reserves for any applicable insurance deductibles; and

8.4.13. Any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Lot Owners under or by reason of this Declaration.

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

8.5. **Limit on Annual Assessments.**

8.5.1. The annual assessments should be based upon an annual budget adopted by the following procedure: The Board should mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Lot Owners and shall set a date for a meeting of the Lot Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall give notice to the Lot Owners of the meeting as allowed for in the

Bylaws. The budget proposed by the Board does not require approval from the Lot Owners, and it will be deemed approved by the Lot Owners in the absence of a veto at the noticed meeting by Lot Owners of two-thirds (2/3) of the Lots, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Lot Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Lot Owners. The budget should include the expenses set forth in Section 8.4 hereof. Unless included in the current or past approved budgets, the Association shall have no obligation for any expense, including without limitation, any maintenance, repair, replacement or restoration of any item or the provision of any service.

8.5.2. Any surplus funds of the Association remaining after the payment of or provision for the Association's expenses and any prepayment of or provision of reserves shall be applied as the Board in its sole discretion determined appropriate; the Board is not required to credit or pay any surplus to the Lot Owners.

8.6. **Special Assessments.** In addition to the annual assessment authorized above, the Association may levy, in any assessment year, special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, or any shortfall in the Association's funding of its operations. Any assessment under this Section 0 shall require the vote, pursuant to a meeting described below, of Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose. Written notice of any meeting called for the purpose of taking such action shall be sent to all Lot Owners not fewer than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Lot Owners or of proxies entitled to cast sixty percent (60%) of all the votes of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.7. **Supplemental Assessments.** If the sums provided for Assessments prove or at any time are anticipated to be inadequate for any reason, including nonpayment of any Lot Owner's Assessment, the Board may, from time to time, levy a supplemental Assessment. Such supplemental Assessments shall be allocated among the Lots in the same manner Assessments are allocated. Written notice of any supplemental Assessment shall be sent to every Lot Owner subject thereto not less than thirty (30) days prior to the date such supplemental Assessment becomes payable.

8.8. **Limited Assessments.**

8.8.1. Generally. Each Lot that is allocated any Limited Common Elements is subject to, and the Lot Owner of such Lot is liable for, Limited Assessments for such Lot's allocated share (as determined in Section 8.8.2), of the Limited Common Element Expenses that are attributable to the Limited Common Elements allocated to such Lot. The Association shall set the Limited Assessments for each fiscal year at a level that is reasonably expected to produce income for the Association over such fiscal year equal to the Limited Common Element Expenses set forth in the budget adopted by the Board and ratified by the Owners.

8.8.2. Allocation. Each Lot subject to Limited Assessments is allocated a percentage share of the Limited Common Element Expenses attributable to the Limited Common Elements allocated to such Lot.

8.8.3. Adjustment and Reconciliation. The Board shall adjust and reconcile the Limited Assessments in the same manner as provided in the Common Assessments.

8.9. **Rate of Assessment.** Assessments shall be applicable to all Lots following their annexation to the Project, including those owned by the Declarant. Except as provided herein, both annual and special assessments shall be set and allocated amongst all Lots in such amounts as the Board of Directors determine to be sufficient to meet the expected needs of the Association; provided, however, that the percentages and amounts of any assessment shall be allocated equally among the Lots because the Declarant in its sole discretion has determined that the square footage of each of the Townhomes is approximately equal.

8.10. **Assessment Procedure.**

8.10.1. Annual Assessments. No later than thirty (30) days before the beginning of each annual assessment period, the Board of Directors of the Association shall set the total annual assessment based upon advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. That annual assessment shall be payable in monthly installments on the first day of each successive month, unless the Board otherwise directs. The Association shall cause to be prepared, delivered, or mailed to each Lot Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual assessment. The first annual assessment upon the Lots hereunder shall commence upon the first day of the first month following conveyance of the first Lot from the Declarant to a Lot Owner who occupies that Lot, it shall be adjusted according to the number of months remaining in the calendar year; provided however, notwithstanding any contrary provision of this Declaration, the Articles of Incorporation or the Bylaws, the annual and special

assessments hereunder shall not commence upon any Lot, whether owned by the Declarant or any other Lot Owner, unless and until a Townhome has been fully completed on that Lot, but upon full completion of the residential dwelling Lot, which shall be evidenced by a final inspection by the Regional Building Department and the installation of carpeting within the Townhome. The annual assessment upon any Lot in any part of any real property, which is subsequently annexed to the Project pursuant to ARTICLE 16 hereof, shall commence upon the recording of the documents required under Section 16.17.11 of this Declaration.

8.10.2. Special Assessments and Other Sums. Special assessments and other sums imposed hereunder shall be due and payable on the date specified by the Board in written notice to each Lot Owner, but such date shall not be less than ten (10) days after such notice is sent. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of a Lot Owner, his family, tenants or guests, or any breach by any of such parties of any of the provisions of this Declaration, the Association's Bylaws or the Association's rules and regulations, or other sum imposed by the Board, and the same is not paid for by insurance, the cost thereof shall be deemed to be an additional assessment against such Lot Owner and his Lot and shall be enforceable as provided herein; any such assessment shall not require any vote of the Members.

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

8.11. **Budget and Review or Audit.**

8.11.1. Within ninety (90) days after adoption of any proposed budget for the Property, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board shall give notice to the Lot Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board does not require approval from the Lot Owners and it will be deemed approved by the Lot Owners in the absence of a veto at the noticed meeting by sixty-seven percent (67%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last approved by the Board and not vetoed by the Lot Owners must be continued until such time as a subsequent budget proposed by the Board is not vetoed by the Lot Owners.

8.11.2. At the discretion of the Board or as required pursuant to Sections 8.11.2 or 8.11.2.1(ii) below, the Association's books and records shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, by an independent and qualified Person selected by the Board. Such Person need not be a certified public accountant except in the case of an audit. A Person selected to conduct a review shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study. The audit or review report shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principles or the cash or tax basis of accounting.

8.11.2.1. An audit shall be required only when both of the following conditions are met:

(i) The Association has annual revenues or expenditures of at least two hundred fifty thousand dollars (\$250,000); and

(ii) An audit is requested by the Lot Owners of at least one-third (1/3) of the Lots represented by the Association.

(iii) A review shall be required only when requested by the Lot Owners of at least one-third (1/3) of the Lots represented by the Association.

(iv) Copies of an audit or review under this Section 8.11.2 shall be made available upon request to any Lot Owner beginning no later than thirty (30) days after its completion.

8.11.3. In the event the Act is amended to remove, modify, or otherwise revise the requirements under Section 8.11 of this Declaration, Section 8.11 shall be deemed amended to require only that which is required pursuant to the Act, as amended.

8.12. **Payment of Assessment.** Unless otherwise provided by the Board as to any Annual Assessment, Annual Assessments shall be due and payable in advance to the Association by the assessed Member during the calendar year in equal monthly installments, on or before the first day of each month of each calendar year, or in such other manner and on such other dates as the Board may designate in its sole and absolute discretion.

8.13. **Interest.** The Association may impose interest from the date due on the amount owed for each Lot Owner who fails to timely pay any Assessment.

8.14. **Late Fees.** The Association may impose a late fee each month that all or any portion of the installment of the annual Assessment is past due and delinquent. Such late fees shall be imposed in accordance with the Act.

8.15. **Return Check Charges.** In addition to any and all charges imposed under the Declaration, the Association may assess a fee against the Lot Owner in the event any check or other instrument attributable to or payable for the benefit of such Lot Owner is not honored by the bank or is returned by the bank for any reason whatsoever, including but not limited to insufficient funds.

8.16. **Failure to Set Assessment.** If the Board fails to levy an Assessment for any year, the Assessment set for the prior year shall continue in effect for such year until revised by the Board in accordance with this Declaration. The failure by the Board to levy an Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year. No abatement of the Annual Assessment or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to Association Properties or the Lots or from any action taken to comply with any law or any determination of the Board or for any other reason.

8.17. **Certificate of Payment.** The Association should furnish to a Lot Owner or such Lot Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Lot Owner's Lot. Upon payment of such fees as requested by the Association's rules, the statement should be furnished within fourteen calendar days after receipt of the request and is binding on the Association, the Board, and every Lot Owner.

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

8.19. **Collection of Unpaid Assessments.** The association shall adopt a written policy for the collection of any delinquent amounts owing the Association (“**Delinquent Accounts**”) that complies with the Act and all applicable state and federal laws (“**Collections Policy**”). Pursuant to the provisions of C.R.S. 38-33.3-209.5, C.R.S. 38-33.3-316, and C.R.S. 38-33.3-316.3, the Collections Policy shall include, at a minimum, the following:

- (a) Due dates for Assessments;
- (b) Interest rate for Delinquent Accounts;
- (c) Late fees for Delinquent Accounts;
- (d) Return check charges;
- (e) Application of payments;
- (f) Information on availability and terms for payment plans;
- (g) Collection process for Delinquent Accounts;
- (h) Notice requirements for Delinquent Accounts;
- (i) Procedure for referring Delinquent Accounts to attorney or other entity for collection.

This Collections Policy may be amended from time to time as determined by the Board or as required by law.

8.20. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent assessment was due, except to the extent of six (6) months’ assessments prior to the filing of any foreclosure by a First Mortgagee or the Association. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that sale or transfer of any Lot pursuant to foreclosure of any such mortgage or any such executory land sales contract, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract shall extinguish the lien of assessment charges which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including without limitation any deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract. No such sale, transfer, foreclosure, or any above described proceeding in lieu or in cancellation thereof, shall relieve any Lot from liability for any assessment charges becoming due after such acquisition of title, nor from the

lien thereof, nor the personal liability of the Lot Owner of such Lot for assessments due during the period of his ownership, nor from the obligation of the First Mortgagee to pay six (6) months of assessments upon the Lot for the period beginning the filing of any foreclosure upon the Lot.

8.21. **Notice to Mortgagee and Inspection of Books.** Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Lot Owner of any obligation under this Declaration and/or the Bylaws of the Association, which is not cured within sixty (60) days after the Board has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall make available to Lot Owners and Mortgagees current copies of the Declaration, Bylaws, other rules concerning the Project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. If the Project contains less than fifty (50) Lots, the holders of fifty-one percent (51%) or more of First Mortgagees shall be entitled to have an audited financial statement prepared at their expense if one is not otherwise available; said financial statement shall be furnished within a reasonable time following such request. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. The Association shall keep financial records sufficiently detailed to enable the Association to provide the information regarding assessments described in this Declaration.

8.22. **Exempt Property.** The following Property subject to this Declaration shall be exempt from the assessments created herein: all Property dedicated to and accepted by local public authority.

8.23. **Additional Collection Remedies.**

8.23.1. Any Lot Owner who fails to pay the Association any sum owed to it shall be deemed to assign any rental from his/her Townhome to pay delinquent Assessments, and the tenant in any rental Townhome in the Association shall, upon written notice from the Association, pay the rents to the Association to pay delinquent sums and expenses including any delinquent annual or special Assessment owed by the Lot Owner of the rental Townhome, and all payments made by the tenant to the Association shall reduce the tenant's obligation to make monthly rental payments to the Lot Owner under the lease by the same amount. Despite such payments, the Association shall not be obligated to perform or incur any obligation under the lease. If the tenant fails to comply with the Association's written notice and to make the payments required, the Lot Owner and tenant

shall be subject to all rights and remedies described in this Declaration and the Association's rules, including that the Association shall have an absolute right to obtain a court appointed receiver to manage the Townhome and apply the rents to pay delinquent Assessments.

8.23.2. The Association may also assign its assessment lien against the delinquent property to a third-party assignee, without recourse or warranty of any kind. The assignee shall assume all responsibility for the enforcement of the assigned lien, and the Association shall not be liable for any actions of said assignee. Assignments shall apply only to Assessments that are owed to the Association prior to the assignment, and shall not assign, release or supersede any claims or lien which the Association may have for Assessments accruing after said date. If an assignee does not pay any Assessments levied after the assignment, the assigned assessment lien shall be subordinate to any future assessment by the Association, and the assignee may not take any actions that would hinder the Association's right or ability to collect those unpaid future Assessments.

8.24. **Remedies to Enforce Assessments.** Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Lot Owner or Lot Owners (who shall be jointly and severally liable therefor) of the Lot against which the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Annual, Special, or Supplemental, the Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien in accordance with the Act, as hereinafter provided. In the event of a default in the payment of any Assessment or other amount due hereunder or breach of any other provision hereunder, the Association, in addition to any remedies hereunder, shall have all remedies available under law.

8.25. **Lawsuit to Enforce Assessments.** The Board may bring suit at law to enforce any Assessment obligation, in compliance with the Act and the Collections Policy. Any judgment rendered in such action shall include any late fees, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Lot Owner.

8.26. **Lien to Enforce Assessments.** All Assessments against a Lot (including late fees, interest, cost of collection, and attorneys' fees) shall constitute a lien on such Lot superior to all other liens and encumbrances, except the following (the "**Priority Liens**"): (a) liens and encumbrances Recorded before the Recording of the Declaration, (b) tax and special assessment liens in favor of any assessing governmental or quasi-governmental authority, and (c) all sums unpaid under the Mortgage encumbering the Lot that has first lien priority over any other First Mortgage if the First Mortgage was Recorded before the date on which the assessment sought to be enforced became delinquent. Except as set forth in Sections 8.26 and 16.21 hereof or pursuant to Section 38-33.3-316 of the Act, sale, foreclosure or transfer of any Lot shall not affect the Assessment lien. This Section 8.26

does not affect the priority of mechanics' or materialmen's liens or the priority of liens or assessments made by the Association. In order to assert any such lien, the Association shall be required to Record a written notice setting forth the amount of such unpaid Assessments, the name of the Lot Owner of the Lot, and the identification of the Lot. Such notice shall be signed by one member of the Board, an officer of the Association, or an agent appointed by the Board and shall be Recorded. Such notice shall not be required to be in any particular form. Such lien may be enforced by foreclosure on the defaulting Lot Owner's Lot by the Association in the same manner as a mortgage on real property and shall encumber all rents and profits issuing from the Lot, which lien on rents and profits shall be subordinate only to the matters described in subparagraphs (a), (b), and (c) above. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the Lot.

8.27. **Homestead.** The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien. The Association's lien for assessments under this Declaration is superior to all other liens and encumbrances, including without limitation, statutory liens for mechanics or materials men or income taxes and other taxes to the extent permitted by law and/or statute, but excluding the lien for First Mortgages as set forth in Section 8.20 hereof.

8.28. **Estoppel Certificates.** Upon the written request of any Member and any Person with, or intending to acquire, any right, title, or interest in the Lot of such Member, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Lot Owner thereof, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

8.29. **No Offsets.** All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration.

8.30. **User Fees.** The Association may assess fees ("User Fees") charged to Members who use or derive special benefit from services provided by the Association and which are not used or which do not generally benefit all of the Members. Unpaid User Fees may be enforced in any other manner reasonably determined by the Association.

8.31. **Other Fees.** The Association may impose other fees from time to time in uniform amounts for providing routine services to Lot Owners and Members. Examples of such fees are transfer fees (for changing the names of the Lot Owners of a Lot or Members with respect to a Lot upon the sale or other transfer of a Lot), handling fees (for accepting the contribution to the working capital of the Association from a new Lot Owner of a Lot and refunding the working capital contribution of the transferring Lot Owner), and fees for providing estoppel certificates, confirmations of the status of payment of Assessments, User Fees, and other fees to an existing or prospective purchaser or Mortgagee.

ARTICLE 9 MAINTENANCE

9.1. **Association Maintenance.** The Association shall provide such maintenance and repair as follows:

9.1.1. The Association shall maintain, repair, restore, replace, regulate and otherwise operate: The Maintenance Area, which may include, by illustration and not limitation, any common landscaping and the concrete of the sidewalk located at the front of the Lots (excluding snow removal), and shrubs, trees, and sprinkler systems, together with the Improvements related to such Area, except for sidewalks and other Improvement which are the Lot Owner's responsibility. Notwithstanding any provision hereof, the Board may determine that any repair, maintenance, replacement, and improvements related to any Maintenance Area are the responsibility of the Lot Owner thereof and shall be performed at the expense of that Lot Owner and the Board may, in its sole discretion, adopt rules and regulations regulating, controlling, and determining all maintenance of the Maintenance Areas, and the Townhomes. The Maintenance Area shall only include any of the foregoing items which are installed by the Declarant or the Association and are located upon a Lot but outside of the exterior of the Townhome. The Board may, in its discretion, provide insurance coverage and other services to the Maintenance Area. Lot Owners shall not alter, expand, change, or modify the Maintenance Area in any manner nor construct any Improvement or item thereon, without the prior written approval of the Board. The Board may, in its discretion, regulate the use, maintenance and expenses of the Maintenance Areas, by rule or otherwise, and may provide insurance and other services to such areas at the expense of the Lot Owners thereof or the Association as determined by the Board. Easements are hereby reserved and granted over, under, above and through the Maintenance Area and for the purposes set forth in this Declaration.

9.1.2. The Association shall maintain any common landscaping (*e.g.*, mowing and fertilizing). Such maintenance shall include where necessary the removal or replacement of improperly functioning landscaping, drainage, or sprinkler system elements and shall also include preventing ponding and regrading and resurfacing where necessary to provide for adequate drainage and preventing Lot Owners from installing landscaping or using water on

the Lots in such a way as to endanger the structural integrity or the stability of any of the landscaping, drainage or sprinkler systems, the Townhome or the other improvements upon the Lots or Maintenance Area. The Association shall indemnify the Declarant as to any breach of this provision.

9.1.3. The Association shall repair and maintenance of water and sewer lines, fixtures, and equipment outside of the exterior walls of the Townhome, unless caused by misuse or negligent or willful damage by any Lot Owner, his family, guests, tenants, contractors, or invitees.

9.1.4. The Association shall repair and replacement of any buildings or Improvements upon the Lot insofar as the Association receives insurance proceeds or makes a special assessment to accomplish such repair or replacement.

9.1.5. During the Period of Declarant Control, Declarant and the Association shall each have the obligation, at the Association's expense, to regularly and routinely inspect, clean, and maintain the detention basin/BMP(s) required by, and in accordance with, the BMP Agreement. Upon expiration of the Period of Declarant Control, the Association shall have the sole obligation, at the Association's expense, to regularly and routinely inspect, clean, maintain, and repair the detention basin/BMP(s) required by, and in accordance with, the BMP Agreement. The Association shall indemnify the Declarant as to any breach of this provision.

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

9.2. **Willful or Negligent Damage.** In the event that the need for maintenance or repair described in Section 9.1 of this Article is caused, in the sole discretionary determination of the Board, through the willful or negligent acts or omissions of any Lot Owner, his family, guests, tenants, contractors, or invitees, or other persons or parties acting with the consent of any of the foregoing, including without limitation any pets or animals of those persons or parties, the cost of such maintenance shall be the personal obligation of such Lot Owner, which shall be added to and become part of the assessment to which the Lot of such Lot Owner is subject and shall become a lien against such Lot Owner's Lot as provided in this Declaration.

9.3. **Access at Reasonable Hours.** For the purpose of performing the maintenance referred to in Section 9.1 of this Article and inspections related thereto, the Board of Directors of the Association, through its duly authorized agents, contractors or employees shall have the right, after reasonable notice to the Lot Owner or occupants thereof and during regular business hours, to enter upon any Lot and improvements

thereon, and such entry shall not be deemed a trespass. In emergency situations, the Board of Directors or its agents, contractors or employees may enter without notice at any time, but the Lot Owner or other occupants thereof shall be notified as soon as reasonably possible thereafter. In performing repairs or maintenance authorized under this Article, the Association shall not be liable for any loss, cost or damage caused by its action, except on account of its gross negligence or willful misconduct.

9.4. **Lot Owner Maintenance.** Except as provided in Section 9.1, the Lot Owner shall be responsible for all other maintenance, repairs, replacements and Improvements on that Lot Owner's Lot, including without limitation, maintenance of his Townhome, and related Improvements, any fixtures, furnishings, furniture, personal property, equipment and appliances located thereon. All utilities (including water and sewer lines), fixtures and equipment serving a Townhome shall be maintained and kept in repair by the Lot Owner thereof, commencing at a point where such utility lines, pipes, wires, conduits or system enter the exterior walls of such Townhomes; any of the foregoing (including water and sewer lines) located outside of such exterior walls shall be maintained and repaired by the Association, unless repaired or maintained by the service provider. A Lot Owner shall do no act nor any work that will impair any easement or utility service, nor do any act nor allow any condition to exist which will adversely affect the use and enjoyment of the other Lots or the provision of utility services to such Lots. No Lot Owner shall, in whole or in part, change the landscaping adjacent to or upon his Lot by the addition or removal of any items thereon, including fences, without the prior written approval of the Board. If Lot Owner fails to fulfill his responsibilities under this Section, the Board, at its option, may take such action as it deems appropriate, including without limitation performing the Lot Owner's obligations, after ten (10) days' notice to such Lot Owner, except in emergencies, and any costs resulting therefrom shall be an assessment against such Lot Owner and his Lot and shall be due and payable by the Lot Owner thereof.

9.5. **Party Walls.**

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

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

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

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

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

9.5.6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 9.5, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by a Lot Owner, the Board of Directors of the Association shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorneys' fees.

9.6. **Management Agreements and Other Contracts.** The Association may enter into agreements for professional management of the Association's business. Each Lot Owner shall be bound by the terms and conditions of any management agreement entered into by the Association. Any agreement for professional management of the Association's business shall provide for termination by either party with or without cause and without payment of a termination fee upon thirty (30) days' prior written notice, and shall have a maximum term of one (1) year. Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declarant or other developer controls the Association shall terminate absolutely, in any event, not later than thirty (30) days after termination of the Period of Declarant Reserved Rights. Furthermore, any contracts and leases during the Period of Declarant Reserved Rights shall be subject to C.R.S. § 38-33.3-305. If professional management has been previously in effect after being required by any holder, insurer or guarantor of a First Mortgage at that time or later, any decision to terminate professional management and to establish self-management by the Association shall require the prior consent of sixty-seven percent (67%) of the First Mortgagees (based upon one [1] vote for each First Mortgage held) and vote or agreement of Lot Owners to which at least sixty-seven percent (67%) of

the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose.

ARTICLE 10

ARCHITECTURAL REVIEW

10.1. **Review by Board.** After the purchase of a Lot from the Declarant, no changes, additions or modifications shall be made to any Townhome or Lot or Maintenance Area; no Improvement shall be constructed or maintained upon the Property; no alterations, restraining, repainting to the exterior of a Townhome or Lot shall be made; no landscaping performed; and no Lot Owner shall enclose, by means of screens or otherwise any balcony, porch or patio, unless such Improvements shall have been submitted to and approved by the Board.

10.2. **Submission of Plans.** Prior to commencement of work to accomplish any proposed Improvement to any Townhome or Lot or Maintenance Area, the party proposing to make such Improvement to any Townhome or Lot or Maintenance Area (“**Applicant**”) shall submit to the Board, if applicable, complete plans, specifications, and lot plans therefore, showing the exterior design, height, square footage, building materials and color scheme thereof, the location of the structure plotted horizontally and vertically, the location and size of driveways, the general plan of landscaping, fencing, walls and windbreaks, and the grading plan shall have been submitted to and approved in writing by the Board, and a copy of such plans and specifications as finally approved shall be deposited with the Board.

10.3. **Declarant Exempted.** The provisions of this Article shall not apply in any way or manner whatsoever to the Declarant or any Lot owned by Declarant.

10.4. **Design Guidelines; Design Procedures.**

10.4.1. **Design Guidelines.** The Board may, from time to time, issue, revise, and reissue guidelines (the “**Design Guidelines**”) to be applicable to all subsequent Improvements to any Townhome or Lot or Maintenance Area. The Design Guidelines may specify substantive standards for styles of architecture, colors, and features which are required to be followed for submissions to the Board for approval of proposed Improvements to any Townhome or Lot or Maintenance Area, appropriate landscaping materials and any additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to any Townhome or Lot or Maintenance Area. During the Period of Declarant Reserved Rights, any revision or amendment and restatement of the Design Guidelines shall be subject to the approval of the Declarant.

10.4.2. **Design Procedures.** The Board may, from time to time, issue, revise, and reissue standards or rules (“**Design Procedures**”) relating to the procedures, materials to be submitted, and fees in connection with the approval of any proposed Improvement to

any Townhome or Lot or Maintenance Area. The Design Procedures may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. The Design Procedures may provide for the waiver, until such provision is revised, of the requirement for approval of certain Improvements to any Townhome or Lot or Maintenance Area or provide for the exemption, until such provision is revised, of certain Improvements to any Townhome or Lot or Maintenance Area from the requirement for approval, if the Board determines for the time being that such approval may not be reasonably required to carry out the purposes of this Declaration.

10.4.3. Design Review Fee. The Board may, in the Design Procedures, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to any Townhome or Lot or Maintenance Area. The Board shall provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to any Townhome or Lot or Maintenance Area in accordance with a schedule of fees adopted by the Board or that the fee shall be determined in any other reasonable manner, such as based upon the cost to the Association of the evaluation and response to the application.

10.5. **Board Review Procedures.**

10.5.1. Decision of Board. The Board shall approve or disapprove all plans and requests within sixty (60) days after requests have been submitted. In the event the Board fails to take action within sixty (60) days after plans have been received by the Board, approval will not be required, and this Article will be deemed to have been fully complied with. A majority vote of the members of the Board is required for approval or disapproval of proposed Improvements. The Board shall maintain written records of all applications submitted to it and of all action taken.

10.5.2. Criteria for Approval. In approving or disapproving the plans submitted to it, the Board shall take into consideration the design, style and construction of the proposed Improvements or alteration, its location upon the Property, the harmony of its design, architecture, and location with the terrain and surrounding neighborhood, and shall determine whether such proposed Improvement or alteration is consistent with the general terrain, the architecture of other buildings located upon the Property subject to this Declaration, and whether or not the construction or alteration of said building will adversely affect or decrease the value of other Lots and/or dwellings because of its design, location, height, or type of material used in construction. The Board may make reasonable requirements of the Lot Owner, including the submission of additional plans, to ensure conformance of such building or alteration when erected with these restrictions and covenants and with the plans submitted and approved. All construction or alterations performed on any Lot or the Maintenance Area will conform to the approved plans and

specifications. The Board may require such changes as may be necessary to conform to the general purposes as herein expressed. The Board shall be responsible for enforcing compliance of the approved plans with these covenants and restrictions.

10.5.3. Variances. The Board shall have authority to grant variances from the provisions of this ARTICLE 10 in cases of conditions wherein the strict enforcement of these restrictions would result in unusual hardship. The Board shall be the sole and exclusive judge of whether or not said hardship exists, subject to an appeal under Section 10.5.5 below. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular Lot, the particular Improvement to any Townhome or Lot or Maintenance Area covered by the variance, and the particular provision hereof or of the Design Guidelines, covered by the variance, nor shall the granting of a variance affect in any way the Lot Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

10.5.4. Decision in Writing. Whenever the Board disapproves of any proposed plans or specifications, it shall state in writing its reason for such disapproval in general terms so that the objections can be met by alterations acceptable to the Board. The decision of the Board shall be delivered to the Applicant by any of the methods described in Section 16.2.

10.5.5. Appeal. It is the intent of this Declaration that the Board shall exercise broad discretionary powers hereunder, provided however, any decision by the Board may be appealed to the Board within thirty (30) days of such decision; any decision which is not appealed within that time or any decision by the Board shall be final and conclusive. The Board shall resolve all questions and interpretation and this Declaration shall be interpreted in accordance with its general purpose and intent as herein expressed.

10.6. **Prosecution of Work after Approval**. After approval of any proposed Improvement to any Townhome or Lot or Maintenance Area, the proposed Improvement to any Townhome or Lot or Maintenance Area shall be accomplished promptly and diligently and in complete conformity with the description of the proposed Improvement to any Townhome or Lot or Maintenance Area and any other materials submitted to the Board in connection with the proposed Improvement to any Townhome or Lot or Maintenance Area and with any conditions imposed by the Board. If the Improvement to any Townhome or Lot or Maintenance Area is not completed within twelve (12) months after the date of approval, the approval granted shall automatically lapse.

10.7. **Notice of Completion.** Upon completion of the Improvement to any Townhome or Lot or Maintenance Area, the Applicant shall give written “Notice of Completion” to the Board; provided that the requirement of such notice shall be waived if the Applicant is the Declarant. Unless such notice is waived as or in the manner provided in this Section 10.7, until the date of receipt of such Notice of Completion, the Board shall not be deemed to have notice of completion of such Improvement to any Townhome or Lot or Maintenance Area.

10.8. **Inspection of Work.** The Board or its duly authorized representative shall have the right to inspect any Improvement to any Townhome or Lot or Maintenance Area prior to or after completion; provided that the right of inspection shall terminate thirty (30) days after the Board has received a Notice of Completion from Applicant and the Board has been provided access to inspect the Improvement to any Townhome or Lot or Maintenance Area.

10.9. **Notice of Noncompliance.** If, as a result of inspections or otherwise, the Board determines that any Improvement to any Townhome or Lot or Maintenance Area has been made without obtaining the approval of the Board or was not made in complete conformity with the description and materials furnished to, and any conditions imposed by, the Board or was not completed within the time periods specified in Section 10.6, the Board shall notify the Applicant in writing of the noncompliance (the “**Notice of Noncompliance**”), which shall be given, in any event, within thirty (30) days after the Board receives a Notice of Completion from the Applicant. The Notice of Noncompliance shall specify the particulars of the noncompliance and such action to be taken to remedy the noncompliance, which may include demolition of the Improvement to any Townhome or Lot or Maintenance Area or remodeling of the Improvement to any Townhome or Lot or Maintenance Area to comply with the plans for such Improvement to any Townhome or Lot or Maintenance Area, if any, approved by the Board.

10.10. **Appeal to Board of Directors; Finding of Noncompliance.** If the Board gives any Notice of Noncompliance, the Applicant may appeal to the Board by giving written notice of such appeal to the Board within thirty (30) days after receipt of the Notice of Noncompliance by the Applicant. The Board shall hear the matter in accordance with the provisions of the Bylaws, and the Board shall decide whether or not there has been such noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If, after a Notice of Noncompliance, the Applicant fails to submit a timely appeal to the Board or fails to commence diligently to remedy such noncompliance, the Applicant shall lose the right to an appeal and the original Notice of Noncompliance will become final.

10.11. **Correction of Noncompliance.** The Applicant shall remedy the noncompliance within thirty (30) days after notification thereof by the Board, or, if a timely

appeal to the Board was submitted by the Applicant, within a period of not more than forty-five (45) days from the date of receipt by the Applicant of the ruling of the Board requiring the Applicant to remedy the noncompliance. If the Applicant does not comply with the Board ruling within such period, the Board may, at its option, record a Notice of Noncompliance against the real property on which the noncompliance exists, may enter upon such property and remove the noncomplying Improvement to any Townhome or Lot or Maintenance Area, and/or may otherwise remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred therewith. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration. The Applicant and Lot Owner of the Lot shall have no claim for damages or otherwise on account of the entry upon the property and removal of the noncomplying Improvement to any Townhome or Lot or Maintenance Area.

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

10.13. **Estoppel Certificates.** The Board shall, upon the reasonable request of any interested Person (and the payment of any fee established by the Board therefor) and after confirming any necessary facts with the Board, furnish a certificate with respect to the approval or disapproval of any Improvement to any Townhome or Lot or Maintenance Area or with respect to whether any Improvement to any Townhome or Lot or Maintenance Area was made in compliance herewith. Any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

10.14. **Construction Period Exception.** During the course of actual construction of any permitted structure or Improvement to any Townhome or Lot or Maintenance Area, so long as construction is being prosecuted with reasonable diligence, the Board may temporarily suspend the provisions contained in this Declaration as to the Lot upon which the construction is taking place to the extent determined by the Board to be necessary to permit such construction to proceed in a reasonable manner. Any such temporary suspension may be revoked by the Board upon its determination that construction is not being diligently prosecuted. No such temporary suspension shall permit anything to be done which will result in a violation of any of the provisions of this Declaration upon completion of construction or shall permit anything to be done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property within the Property.

10.15. **Exclusions.** Any Lot Owner may remodel, paint, or redecorate the interior of the private dwelling on such Lot Owner's Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a private dwelling in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

ARTICLE 11 RESTRICTIONS

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

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

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

11.4. **Animals.** No horses, dogs, cats, snakes, insects, birds, reptiles, cattle, sheep, goats, pigs, rabbits, poultry or other animals of any description shall be kept or maintained on any Lot, except that, if specifically permitted by the Board's rules and regulations or written consent, any Lot Owner may keep a reasonable number of bona fide household pets,

so long as such pets comply with the Board's rules and regulations, are not kept for commercial purposes, do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and are kept in compliance with all existing applicable local ordinances and any rules and regulations of the Association. A Lot Owner, family member, tenant or guest is responsible for any damage caused by his pet and shall be obligated to clean up after his pet while it is on the Property. If permitted, dogs shall be kept on leash and attended by their owners when present in the Maintenance Area. The Board may institute such rules as it deems advisable for the control of pets, including, without limitation, prohibitions, and restrictions, and may impose such fines as are necessary in its sole discretion to enforce such rules and this Declaration.

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

11.6. **Miscellaneous Structures.** Except as permitted in writing by the Board or pursuant to its rules, no advertising or signs of any character shall be erected, placed, permitted or maintained on any Lot or within any Townhome other than a name plate of the occupant and a street number; except that the Declarant shall be permitted to use signs such as will not unreasonably interfere with Lot Owners' use of the Maintenance Area until all Lots are sold by the Declarant. All types of refrigerating, cooling, or heating apparatus shall be concealed, except as installed by the Declarant.

11.7. **Lots to be Maintained.** Except as provided in Section 9.1 or otherwise in this Declaration, each Lot Owner shall maintain and replace that owner's Townhome and Lot to meet the standards imposed by this Declaration and the Rules. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so that same are visible from any neighboring Lot or street, except as necessary during the period of construction by Declarant. No condition shall be permitted within any Townhome, balcony, porch, patio or deck which is visible from other Townhomes or the Maintenance Area and which is inconsistent with the design integrity of the Project as determined by the Board in its sole discretion; such

conditions include, but are not limited to, window treatments, draperies, shades and hangings, and articles on balconies, porches, patios, decks or Maintenance Area or visible through a window.

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

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

11.10. **No Hazardous Activities.** No activities shall be conducted on the Property and on improvements constructed on the Property which are or might be unsafe or hazardous to any person or property or might cause the cancellation or diminution of insurance or an increase in insurance premiums.

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

11.12. **Restrictions on Parking and Storage.**

11.12.1. To the fullest extent allowable under Colorado law, no abandoned vehicles shall be stored or parked upon any Lot. In the event that the Board shall determine in its sole discretion that a vehicle is an abandoned vehicle, then a written notice describing the vehicle will be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or will be conspicuously placed on the unused vehicle (if the owner thereof cannot be reasonably ascertained), and if the unused vehicle is not removed within seventy-two (72) hours thereafter, the Board shall have the right to remove the vehicle at the sole expense of the owner thereof. For the purpose of this Section, an "abandoned vehicle" is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, house trailer or other similar vehicle which has not been driven under its own propulsion, or has not been moved for a period of five (5) days or longer.

11.12.2. The Board of Directors may make rules and restrictions regarding parking and vehicular traffic on the Property consistent with Colorado law, and the Board may also designate any parking spaces as solely for the use of visitors or others, unless such spaces have been previously assigned by Declarant to a Lot Owner. Neither Lot Owners, tenants, nor family members shall park in the asphalted guest parking, nor in front of the Townhome's garage. Any vehicle or other item which is parked in violation of any rules or restrictions shall be subject to removal by the Board or its agents, in accordance with the Act, at the expense of the owner of such vehicle.

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

11.13. **Antenna, Utilities and Transmitters.** The Board may adopt Rules and Regulations, consistent with applicable state or federal laws and regulations, regarding the installation of satellite dishes, exterior aerials, antennas of any kind, and any wind-electric generator. The Association may not effectively prohibit renewable energy generation devices or the installation or use of any energy efficient measures, provided that the Association may adopt reasonable aesthetic Rules and Regulations concerning dimensions, placement or external appearance of such devices or measures.

11.14. **Renewable Energy Generation Devices.** No Lot Owner shall install or integrate any nontraditional energy device other than a Renewable Energy Generation Device as defined herein, and as provided by Section 38-30-168, C.R.S. No Lot Owner shall place a Renewable Energy Generation Device on any limited common area or general common element of a common interest community unless specifically authorized by the Board to do so. Prior to the installation or integration of any Renewable Energy Generation Device, the Lot Owner must: (i) submit an application to the Association; and (ii) execute and deliver to the Association a Renewable Energy Generation Device Agreement, each in a form provided by the Board, and in accordance with the Association's rules and regulations regarding Renewable Energy Generation Devices. Lot Owner shall be liable for and shall indemnify the Association or any of its members from and against all claims, demands, damages, liabilities, or other losses, in any way related to or arising from the location, installation, use, or existence of the Renewable Energy Generation Device. Making alterations by installing third-party devices to a roof or other Improvements frequently voids existing warranties from manufacturers and installers as to the portion of the Improvement where such alteration was made and may necessitate amendments or riders to property insurance policies. Therefore, any Lot Owner installing a Renewable Energy Generation Device shall assume liability for and shall indemnify the Association or any of its members from and against any maintenance, repair, or replacement cost incurred by the Association or any of its members that would have been covered under any applicable insurance policy or warranty for installation or materials but for the fact that such Lot Owner or Renewable

Energy Generation Device created an exclusion to or voided in whole or in part, any insurance policy or warranty. In no event shall the Renewable Energy Generation Device, wherever located, become an Association maintenance obligation. Lot Owner may be required to disable, remove, reinstall, or relocate the Renewable Energy Generation Device, at Lot Owner's expense, and shall otherwise bear the cost of prompt and adequate access to any property not owned or maintained by Lot Owner, including but not limited to neighboring property, Maintenance Areas, or limited or general common elements, as applicable. *E.g.*, Lot Owner may be required to remove a Renewable Energy Generation Device to provide access for roof repair and to reinstall the Renewable Energy Generation Device after repairs are complete, at Lot Owner's expense.

11.15. **EV Charging Stations.** Lot Owner may install an EV Charging Station, at Lot Owner's expense, in accordance with Section 38-12-601, C.R.S. If the EV Charging Station is installed on any limited common area or general common element of a common interest community: (i) Lot Owner shall be liable for and shall indemnify the Association or any of its members from and against all claims, demands, damages, liabilities, or other losses, in any way related to or arising from the location, installation, use, or existence of the EV Charging Station; and (ii) Lot Owner may be required to disable, remove, reinstall, or relocate the EV Charging Station, at Lot Owner's expense, and shall otherwise bear the cost of prompt and adequate access to any property not owned or maintained by Lot Owner, including but not limited to neighboring property, Maintenance Areas, or limited or general common elements, as applicable. In no event shall the EV Charging Station, wherever located, become an Association maintenance obligation.

11.16. **Signage; Flags.** No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Property so as to be evident to public view, except signs as may be approved in writing by the Board. One two-sided sign advertising a Lot for sale or for lease may be placed on such Lot; provided, however, that standards relating to dimensions, color, style, and location of such sign shall be determined from time to time by the Board; provided, however, no signs advertising a Lot for sale or for lease may be placed on the exterior of a Lot or within any yard or landscaped area for such Lot during the development, construction, and sales period for the Property; such signs may be placed on the inside of a window of the Townhome within such Lot. Notwithstanding the foregoing, during the Period of Declarant Reserved Rights, Declarant shall be permitted to place one-sided or two-sided signs on any Lots which it owns or in the Common Elements to advertise the Lots during the development, construction, and sales period. The Lot Owner or occupants of a Lot may display political signs within the boundaries of a Lot or in the window of a Lot (as defined under Section 38-33.3-106.5(1)(c)(III) of the Act) during the period that begins forty-five (45) days prior to an election and ends seven (7) days after an election, provided that such signs are no larger than the smaller of (a) the size of political signs allowed by local ordinance, or (b) 36 inches by 48 inches. Notwithstanding anything to the contrary herein, the Lot Owner or occupants of a Lot may display the

American flag, service flags and political signs in conformance with C.R.S. § 38-33.3-106.5, and subject to the Rules and Regulations adopted by the Committee or the Board from time to time.

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

11.18. **No Unsightliness.** All unsightly conditions, structures, facilities, equipment, including, but not limited to, snow removal equipment and garden or maintenance equipment, and objects shall be enclosed within a structure or appropriately screened from view, except when in actual use.

11.19. **Weeds.** Each Lot Owner shall keep those portions of the landscaping on such Lot Owner's Lot for which the Lot Owner is responsible for maintaining free from brush or other growth, trash or other items which are unsightly or cause undue danger of fire, and shall be kept mowed during growing seasons so that no weeds, brush, grasses or growth on any Lot exceed six (6) inches in height at any time. During the Period of Declarant Reserved Rights, Declarant shall be exempt from this Section 11.19 provided Declarant complies with applicable law related to weed regulation.

11.20. **Garbage and Refuse Disposal.** The Association may arrange for common garbage pickup as part of the common expenses or may require Lot Owners to use a common trash company. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, on the Maintenance Area, or on any Lots unless placed in a Lot Owner maintained, appropriate, clean container suitably located, solely for the purpose of garbage pickup. All trash and refuse containers, except when placed as noted above the sole purpose of garbage pickup, will be kept inside the Townhomes. The burning of trash in outside incinerators, barbecue pits or the like is prohibited, it being intended that all refuse, trash, garbage and the like shall be hauled from the Property.

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

11.22. **Compliance with Insurance Requirements.** Except as may be approved in writing by the Board, nothing shall be done or kept on property within the Property which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association. No Lot Owner shall cause or permit a situation or condition to exist on that Lot Owner's Lot which causes or might reasonably cause the insurance rates for neighboring Lots to be increased beyond those that would be applicable absent such situation or condition.

11.23. **Storage of Gasoline and Explosives, Etc.** No Lot shall be used for storage of explosives, gasoline, or other volatile and/or incendiary materials or devices. Gasoline or fuel, or other chemicals or solvents such as paint thinner, motor oil, and cleaning chemicals may be maintained on an incidental basis on a Lot in an aggregate amount not to exceed five (5) gallons.

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

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

11.26. **Use of the Property.** No use shall be made of the Property which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Property. The use of the Property shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

11.27. **Application of Restrictions.** All provisions of this Declaration and of any Association Rules and Regulations shall also apply to all occupants, tenants, guests and invitees of any Lot. Any Lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the Bylaws and the Rules and Regulations of the Association. Immediately upon execution of any lease, the Lot Owner of such leased Lot must provide the Association with a copy of such lease along with the name and address for the tenant under such lease and the contact address for such Lot Owner.

11.28. **Sales and Construction Facilities and Activities of Declarant.** Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractor and shall be permitted to maintain during the period of any

construction on and sale of the Lots, upon such portion of the Maintenance Area as Declarant may choose, such uses and facilities as may be reasonably required, convenient or incidental to the construction, sale or rental of Lots, to the construction of sidewalks, driveways, fences, decks, patios and related improvements, and to the development of the Project, including without limitation, storage of equipment and vehicles, a business office, use of a Lot, or even a clubhouse if applicable, for a sales office, storage area, construction yards, signs of any size and type, model Townhomes, sales offices, construction office, parking areas and lighting and temporary parking facilities for all prospective tenants or purchasers of Lots; the Declarant may promptly remove any of the above items if Declarant ceases to be a Lot Owner. The Declarant and its contractors may maintain such management offices, signs, model Lots, construction offices, trailers and sales offices in such numbers, size and locations, as they may determine in their reasonable discretion from time to time. In addition, The Declarant shall have the right to execute or record or both any writing or document necessary or advisable to confirm, implement or transfer the rights reserved in this Declaration or granted by law or statute; the rights set forth in this Section shall terminate upon the earlier of the time period provided by C.R.S. § 38-33.3-303(5)(a)(I), or any successor statute, or as otherwise provided herein.

11.29. RELEASES, DISCLAIMERS, AND INDEMNITIES.

11.29.1. ANY ACTION, DISPUTE, CLAIM OR CONTROVERSY BETWEEN ANY PERSON OR ENTITY, INCLUDING WITHOUT LIMITATION, ANY OWNER AND/OR THE ASSOCIATION, AND ANY PROTECTED PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT CONCERNING AN INDIVIDUAL UNIT OR THE COMMON ELEMENTS SHALL BE RESOLVED EXCLUSIVELY BY BINDING ARBITRATION AS SET FORTH HEREIN AND SHALL INCLUDE ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH ANY CONDITION OF A UNIT OR THE LOT OR MAINTENANCE AREA OR IMPROVEMENTS, THIS DECLARATION, AND ANY RELATED AGREEMENTS OR INSTRUMENTS AND ANY TRANSACTION CONTEMPLATED HEREBY. SUCH DISPUTES SHALL BE RESOLVED EXCLUSIVELY BY BINDING ARBITRATION BEFORE A SINGLE ARBITRATOR IN ACCORDANCE WITH TITLE 9 OF THE U.S. CODE, COLORADO UNIFORM ARBITRATION ACT, C.R.S. § 13-22-201, ET SEQ., AND THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). IN THE EVENT OF ANY INCONSISTENCY BETWEEN SUCH RULES AND THESE ARBITRATION PROVISIONS, THESE PROVISIONS SHALL SUPERSEDE SUCH RULES. ALL STATUTES OF LIMITATIONS THAT WOULD OTHERWISE BE APPLICABLE SHALL APPLY TO ANY ARBITRATION PROCEEDING UNDER THIS SECTION. THE PARTIES SHALL BE ENTITLED TO CONDUCT DISCOVERY AS IF THE DISPUTE WERE PENDING IN A COURT OF LAW IN THE STATE OF COLORADO. IN ANY ARBITRATION PROCEEDING

SUBJECT TO THESE PROVISIONS, THE ARBITRATOR IS EMPOWERED TO DECIDE PRE-HEARING MOTIONS THAT ARE SUBSTANTIALLY SIMILAR TO PRE-HEARING MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY ADJUDICATION. JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. EXCEPT AS OTHERWISE PROVIDED, THE ARBITRATOR SELECTED UNDER THIS SECTION SHALL BE KNOWLEDGEABLE IN THE SUBJECT MATTER OF THE DISPUTE. THE ARBITRATOR SHALL BE SELECTED THROUGH PANELS OF QUALIFIED JUDGES MAINTAINED BY THE DENVER, COLORADO OFFICE OF THE AAA. ALL SUCH ARBITRATION SHALL BE HELD IN COLORADO SPRINGS, COLORADO, AND VENUE SHALL BE PROPER IN THE DISTRICT COURT FOR EL PASO COUNTY, COLORADO. THIS ARBITRATION PROVISION SHALL RUN WITH THE LAND AND SHALL BIND ALL SUCCESSORS AND ASSIGNS.

11.29.2. LOT OWNERS ACKNOWLEDGE AND UNDERSTAND THAT CERTAIN PHYSICAL AND/OR ENVIRONMENTAL CONDITIONS, INCLUDING BUT NOT LIMITED TO, MOLD, LEAD, ASBESTOS, RADON GAS, OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES, MAY AFFECT THIS PROJECT AND THAT ANY PROTECTED PARTY DOES NOT WARRANT AND DISCLAIMS ANY LIABILITY FOR ANY EXISTING OR FUTURE SOIL, ECOLOGICAL OR ENVIRONMENTAL CONDITIONS AFFECTING THE PROJECT. LOT OWNERS ACKNOWLEDGE THAT NO ENVIRONMENTAL REPORTS WERE GIVEN TO THEM BUT THAT THEY HAD BEEN ADVISED AND GIVEN A FULL OPPORTUNITY TO INSPECT THE PROJECT AND OBTAIN ANY PROFESSIONAL INSPECTION IF THEY SO DESIRED. BY ACCEPTANCE OF A DEED TO A LOT, EACH LOT OWNER ACCEPTS THE PHYSICAL AND/OR ENVIRONMENTAL CONDITION OF THE PROJECT AND ACKNOWLEDGES A FULL, ADEQUATE OPPORTUNITY TO CONDUCT ANY INSPECTIONS THEREOF AND RELEASES AND INDEMNIFIES THE PROTECTED PARTIES FROM ANY FAILURE TO UNDERTAKE SUCH INSPECTIONS. IN ADDITION, LOT OWNERS UNDERSTAND THAT THE SOIL IN THE COLORADO AREA CONTAINS CLAY AND OTHER SUBSTANCES WHICH MAY CAUSE IT TO SWELL WHEN WET AND SO CAN CAUSE EARTH MOVEMENT AROUND A BUILDING'S FOUNDATION. LOT OWNERS, FOR THEMSELVES, THEIR HEIRS, SUCCESSORS, ASSIGNS AND THEIR ASSOCIATION, WAIVE AND RELEASE THE PROTECTED PARTIES FROM ALL CLAIMS, LIABILITIES, LAWSUITS AND OTHER MATTERS ARISING FROM OR RELATED TO ANY PHYSICAL AND/OR ENVIRONMENTAL CONDITION AT THE PROJECT.

11.29.3. THE ASSOCIATION SHALL MAINTAIN THE LANDSCAPING, DRAINAGE, AND SPRINKLER SYSTEMS UPON THE PROPERTY IN SUCH A FASHION THAT THE SOIL SURROUNDING THE

FOUNDATIONS OF THE BUILDINGS AND OTHER IMPROVEMENTS SHALL NOT BECOME SO IMPREGNATED WITH WATER THAT THEY CAUSE EXPANSION OF OR SHIFTING OF THE SOILS SUPPORTING THE IMPROVEMENTS OR OTHER DAMAGE TO THE IMPROVEMENTS AND DO NOT IMPEDE THE PROPER FUNCTIONING OF THE DRAINAGE, LANDSCAPING, OR SPRINKLER SYSTEMS AS ORIGINALLY INSTALLED. SUCH MAINTENANCE SHALL INCLUDE, WHERE NECESSARY THE REMOVAL OR REPLACEMENT OF IMPROPERLY FUNCTIONING LANDSCAPING, DRAINAGE, OR SPRINKLER SYSTEM ELEMENTS AND SHALL ALSO INCLUDE REGRADING AND RESURFACING WHERE NECESSARY TO PROVIDE FOR ADEQUATE DRAINAGE AND TO PREVENT ANY PONDING; NO CHANGES IN LANDSCAPING SHALL BE MADE IN SUCH A WAY AS TO ENDANGER THE STRUCTURAL INTEGRITY OR THE STABILITY OF ANY OF THE LANDSCAPING, DRAINAGE OR SPRINKLER SYSTEMS, OR THE OTHER IMPROVEMENTS UPON THE PROPERTY. THE ASSOCIATION SHALL INDEMNIFY ANY PROTECTED PARTY FROM ANY LIABILITY, CLAIMS AND EXPENSES, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES, RESULTING FROM ANY BREACH OF THIS SECTION.

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

11.29.5. FIBERGLASS INSULATION (ALSO KNOWN AS GLASS WOOL) IS COMMONLY USED FOR INSULATION OF HOMES. FIBERGLASS IN VARIOUS THICKNESSES AND VALUES IS USED IN THE AREAS OF WALLS, FLOOR TO CEILING ASSEMBLIES AND CEILING TO ROOF ASSEMBLIES OF HOMES TO PREVENT MOVEMENT OF HEAT AND TO REDUCE NOISE. THE

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PRODUCED A REPORT THAT LISTS GLASS WOOL AS A SUBSTANCE “WHICH MAY BE REASONABLY ANTICIPATED TO BE A CARCINOGEN”, BUT THAT REPORT MERELY IDENTITIES SUBSTANCES SELECTED FOR FURTHER STUDY BECAUSE OF POTENTIAL RISK. THE LISTING OF A SUBSTANCE IN THE REPORT IS NOT AN ASSESSMENT THAT THERE IS CASUAL CONNECTION BETWEEN GLASS WOOL AND ILLNESS. THE LOT OWNERS AND THE ASSOCIATION ACKNOWLEDGE THAT FIBERGLASS IS USED IN THE WALL AND FLOOR TO CEILING ASSEMBLIES, AND WAIVE ANY CLAIMS AGAINST ANY PROTECTED PARTIES ARISING AS A RESULT OF THE USE OF FIBERGLASS INSULATION, AND AGREES TO HOLD PROTECTED PARTIES HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM THE EXISTENCE OF FIBERGLASS INSULATION IN THE TOWNHOME OR THE PROJECT.

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

11.29.7. THE LOT OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT THE PROTECTED PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE REGARDING THE PROJECT (ALL OF WHICH ARE HEREBY DISCLAIMED BY THE PROTECTED PARTIES), INCLUDING WITHOUT LIMITATION ANY AS TO THE FITNESS, WORKMANLIKE CONSTRUCTION, SAFETY, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, OR HABITABILITY OF THE LOT, THE PROJECT, OR THE MAINTENANCE AREA

OR IMPROVEMENTS RELATED THERETO OR ANY ELECTRICAL, PLUMBING, HEATING, GAS, WATER, SEWER, STRUCTURAL COMPONENTS, OR OTHER MECHANICAL OR UTILITY SYSTEMS OR COMPONENTS OR APPLIANCES OR FIXTURES RELATED THERETO. THE LOT OWNERS AND THE ASSOCIATION ACCEPT THE FOREGOING DISCLAIMER OF WARRANTIES AND WAIVE, RELEASE AND INDEMNIFY THE PROTECTED PARTY FROM ALL CLAIMS RELATED THERETO, AND ANY EXPENSES AND ATTORNEYS FEES INCURRED BY ANY PROTECTED PARTY, TOGETHER WITH ANY CLAIMS FOR BODILY INJURY, PROPERTY DAMAGE AND INCIDENTAL OR CONSEQUENTIAL DAMAGES MADE BY ANY PERSON OR PARTY.

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

11.29.9. ANY ACTION, DISPUTE, CLAIM OR CONTROVERSY BETWEEN ANY PERSON OR ENTITY, INCLUDING WITHOUT LIMITATION, ANY LOT OWNER AND/OR THE ASSOCIATION, AND ANY PROTECTED PARTY, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT CONCERNING AN INDIVIDUAL LOT OR THE COMMON ELEMENTS SHALL BE RESOLVED SOLELY IN ACCORDANCE WITH ARTICLE 15 OF THIS DECLARATION.

11.29.10. THE RELEASES, DISCLAIMERS AND PROVISIONS OF THIS SECTION 11.29 MAY BE MODIFIED OR CHANGED ONLY BY TO THE EXTENT THAT THE DECLARANT EXECUTES AND DELIVERS A WRITTEN AMENDMENT, MODIFICATION OR CHANGE TO ANY LOT OWNER, AND NO OTHER AMENDMENT, MODIFICATION, OR CHANGE OF THIS SECTION AND/OR THE DECLARANT'S RIGHTS UNDER THIS DECLARATION SHALL BE VALID OR ENFORCED WITHOUT THE DECLARANT'S PRIOR WRITTEN CONSENT.

ARTICLE 12 INSURANCE

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

12.1.1. Property. Property insurance on the Maintenance Areas and common areas maintained by the Association for broad form covered causes of loss.

12.1.2. Public Liability. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements and Maintenance Areas and deemed sufficient in the judgment of the Board but not less than any amount specified herein, insuring the Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Lot Owner and Board member. The Lot Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Maintenance Area or any Limited Common Element allocated to such Lot. The insurance shall cover claims of one or more insured parties against other insured parties. Such insurance shall be in such amounts as the Board may from time to time determine, but not in an amount less than \$1,000,000.00 per occurrence covering claims for personal injury, bodily injury and/or for property damage. To the extent reasonably obtainable, coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance or other use of the Maintenance Area and Limited Common Elements and the Townhomes by the Association, its officers, directors, agents, employees, representatives and the Lot Owners, off-premises employee coverage, water damage liability, contractual liability, bailee's liability for property of others, and any legal liability that results from lawsuits related to employment contracts to which the Association is a party.

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

12.1.4. Fidelity Insurance. The Association shall purchase, in an amount equal to the maximum amount of funds in the Association's custody at any one time, but not less than the greater of the sum of three months' assessments on the entire Project, plus reserves, blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association's directors, managers, including without limitation, any person employed as an independent contractor for the purpose of managing the Association and any employee thereof, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Lot Owners, provided however, any managing agent which handles funds for the Association should be covered by its own fidelity insurance policy, which must provide the same coverage required of the Association. Such policy shall also cover destruction or disappearance of money or securities and forgery. Such policy shall cover any person or entity handling funds of the Association, including but not limited to, employees of the professional manager which should also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and as obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

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

12.1.6. Hazard Insurance. The Association shall obtain and maintain a blanket, "all-risk," all-inclusive form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition, and water damage endorsements, insuring all the Townhomes located upon the Project, and all insurable improvements located on the General Common Elements and Limited Common Elements, including fixtures, machinery, equipment, and supplies maintained for the service of the Common Elements. Such insurance shall at all times represent One Hundred Percent (100%) of the current replacement cost based on the most recent appraisal of all Townhomes and all insurable improvements in the Common Elements; provided, however, that the current replacement cost shall not include values for land, foundation, excavation, and other items normally excluded therefrom and shall be without deduction for depreciation and with no provision for coinsurance.

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

12.1.8. Other Insurance. In addition, the Board of Directors may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Project.

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

12.2. Annual Review. At least annually and prior to obtaining any insurance policy required under Section 12.1 of this Article, the Board shall obtain an estimate of the full replacement value of all Maintenance Area Improvements including landscaping and underground facilities, without deduction for depreciation, for the purpose of determining the amount of insurance required under that Section. The amount of such insurance shall be shown in the Association’s annual report. Upon written challenge by the Lot Owners of twenty percent (20%) or more Lots that the Association’s estimate of maximum replacement value is too low, the Association will secure a certified appraisal of replacement value prepared by a Maintenance Area Improvements appraiser and will conform the hazard insurance to the value indicated by that appraisal to the extent such insurance is reasonably obtainable and financially feasible as determined by the Board in its discretion. In any event, each Lot Owner is responsible for the adequacy and maintenance of the insurance coverage carried for the protection of himself or his Lot.

12.3. Form of Issuance.

12.3.1. All insurance shall be carried in blanket policy form, shall name the Association (pursuant to Section 13.1) as the insured, as trustee and attorney-in fact pursuant to ARTICLE 13 hereof, and shall provide that the proceeds shall be paid to the Association for the benefit of and in trust for the Association, the Lot Owners and their First Mortgagees, as their interests may appear, shall additionally insure and identify the interest of each Lot Owner and the First Mortgagee, and shall provide a standard, non-contributory mortgage clause in favor of each First Mortgagee which has given the Association notice of

its lien. Each Lot Owner shall be an insured person under such policy with respect to liability arising out of such Lot Owner's interest in the Maintenance Area.

12.3.2. To the extent possible, all insurance policies shall:

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

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

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

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

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

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

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

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

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

12.3.2.3. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and as are consistent with the requirements of First Mortgagees and any secondary lenders purchasing First Mortgages. The deductible for an individual Townhome should not exceed One Thousand Dollars (\$1,000.00) unless a greater deductible is allowed by secondary lenders or otherwise determined by the Board. Any loss falling within the deductible portion of the policy should be borne by the Association, except as otherwise provided in this Declaration or otherwise determined by the Board.

12.3.2.4. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Lot Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Lot Owner a pro rata share of any deductible paid by the Association.

12.4. **Lot Owner's Personal Property and Liability Insurance.** An insurance policy issued to the Association does not obviate the need for Lot Owners to obtain insurance for their own benefit. Each Lot Owner shall be solely responsible, at his expense, and subject to the Association's Rules which may further define and establish insurance duties and coverages, for all insurance covering all loss or damage to any and all fixtures, appliances, furniture, furnishings or other personal property supplied, maintained or installed by the Lot Owner and covering liability for injury, death or damage occurring within his Lot. Such insurance shall contain waivers of subrogation and shall be so written that the insurance obtained by the Association shall not be affected or diminished thereby. The Association shall have no responsibility regarding the obtaining or continuation of any such insurance. If at any time of loss under any policy which is in the name of the Association there is other insurance in the name of any Lot Owner and such Lot Owner's policy covers

the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance.

ARTICLE 13

DAMAGE, DESTRUCTION, CONDEMNATION AND MERGER

13.1. **Attorney-in-Fact.** All of the Lot Owners and First Mortgagees irrevocably constitute and appoint the Association as insurance trustee under C.R.S. § 38-33.3-313(5) and (9) and under this Declaration and as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Property in the event of their destruction, damage, condemnation, or liquidation of all or a part of the Project or from the termination of the Project, including without limitation the repair, replacement and improvement of any buildings, fixtures, improvements and service equipment located on the Property (but excluding any furniture, furnishings or other personal property installed by the Lot Owners). Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Lot Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of a Lot Owner which is necessary and appropriate to exercise the powers herein granted and to represent the Lot Owners in any proceedings, negotiations, settlements or agreements. The proceeds of any insurance collected shall be payable to the Association, for the benefit of the Association, the Lot Owners and their First Mortgagees as their interests appear, for the purpose of repair, restoration, reconstruction or replacement as provided in this Declaration. In the event that the Association is dissolved or becomes defunct, a meeting of the Lot Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact to deal with the Project upon its destruction, damage, or condemnation shall be appointed. Said appointment must be approved by vote or agreement of Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and at least sixty-seven percent (67%) of the First Mortgagees. Notwithstanding any contrary provision of this Declaration, the Association's Articles of Incorporation and Bylaws, no Lot Owner or any other party shall have priority over any rights of the First Mortgagee of the Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of any Project common property.

13.2. **Damage or Destruction of Maintenance Area.** Any portion of the Project for which insurance is required under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association as provided by the Declaration.

13.3. **Damage to or Destruction of Townhomes.**

13.3.1. In the event of damage to or destruction of a Townhome due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and restoration of the improvements. The annual assessments set forth in Article this Declaration shall not be abated during the period of insurance adjustments and repair and reconstruction.

13.3.2. If the insurance proceeds are insufficient to repair and reconstruct any or all of the damaged or destroyed Townhomes, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made only against the Lot Owners of the damaged or destroyed Townhomes and their Lots. Such special assessment shall be made by the Board without a vote of the Lot Owners and shall be a debt of each such Lot Owner and a lien on his Lot and may be enforced and collected as is provided in this Declaration. The Association shall have full authority, right and power as attorney-in-fact to cause the repair, replacement or reconstruction of the improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of a Lot Owner to pay the assessment.

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

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

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Maintenance Area, the award made for such taking shall be paid to the Association and after the approval described below, the award shall be applied toward the repair and restoration of the Maintenance Area, the Association shall arrange for the same and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that seventy-five percent (75%) or more of the Lot Owners and at least fifty-one percent (51%) of First Mortgagees do not duly and promptly approve the repair and restoration of such Maintenance Area, the Association shall disburse the net proceeds of such award jointly to the Lot Owners and their respective First Mortgagees to the extent such Maintenance Area is located upon such Lot Owner's Lot.

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

13.6. **Excess Insurance Proceeds.** With the prior written approval of sixty-seven percent (67%) of the First Mortgagees (based on one (1) vote for each First Mortgage held) and by vote or agreement of Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, any insurance proceeds remaining after any repairs or reconstructions are completed shall be paid to each Lot Owner and his First Mortgagee

jointly at the rate of one equal share per Lot. Without such approval, any excess insurance proceeds shall be placed in the Association's reserves.

13.7. **Notice of Loss to First Mortgagees.** Provided that a First Mortgagee has, in writing, requested the following information with respect to a Lot upon which said First Mortgagee holds the First Mortgage and has furnished the Association with the address to which said First Mortgagee wants the information sent, then in the event that there shall be any damage to or destruction of: (a) any improvement on the Lot on which such First Mortgagee holds the First Mortgage which shall be in excess of Five Thousand Dollars (\$5,000.00) and/or (b) the Maintenance Area which shall be in excess of Five Thousand Dollars (\$5,000.00), or in the event of the condemnation of any part of the Maintenance Area as described in Section 13.4 of this Article in excess of Five Thousand Dollars (\$5,000.00), then timely written notice of any such damage, destruction or condemnation shall be given by the Association to such First Mortgagee. Notwithstanding any provision to the contrary, no provision of this Declaration or of any other document relating to the Property shall be deemed to give a Lot Owner or any other party priority over the rights of a First Mortgagee in the case of a distribution to a Lot Owner of insurance proceeds or condemnation awards for loss to or taking of Lots or Maintenance Area, or both.

13.8. **Merger.** The Association may merge with one or more homeowners' association in the surrounding area on such terms and conditions as may be agreed to by vote or agreement of Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and by sixty-seven percent (67%) of all First Mortgagees. The surviving entity in any such merger or affiliation shall be the Association for purposes of this Declaration.

ARTICLE 14 ADDITIONAL RESTRICTIONS

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

14.1.1. by act or omission, seek to abandon or terminate this Declaration or any scheme or architectural control, or enforcement thereof, as set forth in this Declaration, regarding the architectural design, exterior appearance, or exterior maintenance of the Lots, improvements thereon, or the Maintenance Area, or the maintenance of the Maintenance

Area, party walls or common fences and roads, or the upkeep of lawns and plantings in the Project; or

14.1.2. fail to maintain full current replacement cost fire and extended insurance coverage on the Lots and including the Maintenance Area, and such other insurance as is required under this Declaration; or

14.1.3. use hazard insurance proceeds for loss to the improvements for other than repair, replacement or reconstruction of such improvements as herein provided; or

14.1.4. change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner; or

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

14.1.6. notwithstanding any provision hereof or otherwise, threaten, file, or pursue any lawsuit and/or arbitration against any Protected Party as defined in Section 11.29 hereof, including without limitation, the Declarant, its agents, employees, shareholders, contractors, brokers, successors, assigns or any person or party related to them or any prior owner of the Property, for any claim, demand, liability, obligation or matter whatsoever regarding any construction matter and/or defect, any environmental matter, any physical condition, any condition affecting the value or use, and any other matters related to any of the foregoing in connection with the Property, the Lots, the Lots and/or the Maintenance Areas.

14.2. **Implied Approval by Mortgagee.** Any matter requiring Mortgagee approval will be assumed when that Mortgagee fails to submit a response to any written proposal for an amendment within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Any First Mortgagee shall be given notice of any proposed action requiring its consent, if the

First Mortgagor has sent a written request to the Association, stating both its name and address and the Lot number or address of the Lot on which it has (or insures or guarantees) the Mortgage.

ARTICLE 15 DISPUTE RESOLUTION

15.1. Intent and Applicability.

15.1.1. Each Party (as defined below) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Party shall, and hereby covenants and agrees to, submit all Claims (as defined below) to binding arbitration in accordance with the procedures set forth in this Article as their sole and exclusive remedy, and not to a court of law.

15.1.2. By acceptance of a deed for a Lot, each Lot Owner agrees to abide by the terms of this Article.

15.1.3. No Claim (as defined below) may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

15.2. **Definitions Applicable to this Article.** For purposes of this ARTICLE 15 only, the following terms shall have the meaning set forth in this Section.

15.2.1. “**Claimant**” means any party having or asserting a Claim.

15.2.2. “**Claim**” means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including, without limitation, those arising out of or related to: (i) the interpretation, application, or enforcement of any of the Governing Documents or the rights, obligations, and duties of any Party under any of the Governing Documents; (ii) the design or construction of improvements; and (iii) any statements, representations, promises, warranties (express or implied), or other communications made by or on behalf of any Party. A Claim may be brought by lawsuit, counterclaim, cross-claim, mediation, arbitration, or in any other manner.

15.2.3. “**AAA**” means the American Arbitration Association.

15.2.4. “**Party**” means each of the following: Declarant, its owners, officers, directors, shareholders, partners, members, employees, and agents; the Association, 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.

15.2.5. “**Respondent**” means any Party against who a Claimant asserts a Claim.

15.2.6. “**Termination of Mediation**” means a period of time expiring forty-five (45) days after a mediator has been agreed upon by the parties (however, a mediator shall be selected no later than thirty (30) days after the Claimant has given notice to the Respondent of the Claim and if the Claimant and Responded are unable to agree on a mediator, one shall be chosen by AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent), and upon the expiration of which the Claimant and Respondent have not settled the Claim.

15.3. **Approval Required for Association Actions.** The approval of sixty-seven percent (67%) of the votes cast by Members voting in person or by proxy at a meeting duly called for this specific purpose at which a quorum is present (with the “quorum” in such cases to be set as provided in Section 15.4), must be obtained before the Association shall have power to institute action on any Claim or incur legal fees or expert costs in excess of Five Thousand Dollars (\$5,000.00) related to such Claim pursuant to this Article, or to make any counterclaim or cross-claim in any lawsuit with respect to any Claim brought against the Association. Such approval must be obtained in accordance with the requirements of Section 15.4. In addition to the foregoing, the Association shall seek to obtain the approval of sixty-seven percent (67%) of the Mortgagees by written vote or proxy by written notice sent as provided in Section 16.2 or to the address specified in the applicable Mortgage.

15.4. **Notice and Quorum for Association Action.** Written notice of any meeting of Members which includes a vote pursuant to Section 15.3 shall be sent to all Members not less than thirty (30) days nor more than fifty days (50) in advance of the meeting. Such written notice, or if the vote is to be by written ballot then such written ballot, shall include the following information:

15.4.1. A statement regarding the nature of the Claim. Such statement shall include the name(s) of the proposed Claimant(s) and Respondent(s), the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; and

15.4.2. A good-faith estimate of the costs and fees, including court costs and other costs, the fees of consultants, expert witnesses, and attorneys, reasonably anticipated to be incurred by or for the Association in prosecuting the Claim, with such estimate prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

15.4.3. A good-faith estimate of the manner in which any monies reasonably anticipated to be recovered from the Claim will be distributed or paid to consultants, expert

witnesses, the Association, its attorney(s), and any others, prepared by the primary attorney the Board proposes to have prosecute the Claim on its behalf; and

15.4.4. A good faith estimate of the projected time frame for resolution of the Claim; and

15.4.5. All terms and provisions of the agreement between the Association and the attorney(s) the Board proposes to have prosecute the Claim.

The presence of Members or of proxies, or if by ballot then receipt by the Association of written ballots, entitled to cast sixty-seven percent (67%) of all of the Association votes, shall constitute a quorum at any meeting at which the Members vote on approval of any Claim the Association wishes to bring.

15.5. **Required Form of Proxy or Ballot.** Each written proxy, and each ballot, which purports to vote on, or authorize a vote on, approval of the Association bringing a Claim shall contain the following statement with respect to any vote approving the Association to bring a Claim:

With full knowledge and understanding that my annual Assessments may be increased by the costs and fees associated with the proposed Claim, I/we APPROVE the authority of the Association to bring such Claim.

15.6. **Exclusions from “Claim”.** Unless specifically exempted by this Article, all Claims between any of the Parties shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all Parties thereto otherwise agree in writing, “Claim” does not include any of the following, and the same shall not be subject to the provisions of this Article:

15.6.1. Any action by the Association to enforce any provision of Article 8 of this Declaration;

15.6.2. Any action by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the Association or court may deem necessary in order to enforce any of the provisions of ARTICLE 9, ARTICLE 10, or ARTICLE 11 of this Declaration;

15.6.3. Any action between or among Lot Owners, which does not include Declarant, or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

15.6.4. Any action in which any indispensable party is not a Party, as defined in this Article.

15.7. **Right to Inspect.** Prior to any Party commencing any proceeding against another Party, including but not limited to an alleged defect of any Improvement, the Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Members, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or to otherwise correct the alleged defect; provided, however, any correction to, or redesign of, an Improvement shall be made upon terms and conditions reasonably acceptable to all affected Parties. In the exercise of the inspection rights contained herein, the inspecting Party shall:

15.7.1. Be careful to avoid unreasonable intrusion upon, or harm, damage or costs to the affected Party including using its best efforts to avoid causing any damage to, or interference with, any Improvements to the subject property;

15.7.2. Minimize any disruption or inconvenience to any Person who occupies the subject property;

15.7.3. Remove daily all debris caused by the inspection and located on the subject property; and

15.7.4. In a reasonable and timely manner, at the sole cost and expense of the inspecting Party, promptly remove all equipment and materials from the subject property and repair and replace all damage, and restore the subject property to the condition of the subject property as of the date of the inspection unless the subject property is to be immediately repaired.

The inspecting Party shall not permit any lien, claim or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the subject property. The inspecting Party shall indemnify, defend, and hold harmless the affected Owners and their tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorneys' fees, resulting from any breach of this Section by the inspecting Party.

15.8. **Mandatory Procedures.**

15.8.1. **Good Faith Negotiations.** The Parties shall make every reasonable effort to meet in person and confer for the purposes of resolving the Claim by good faith negotiation. Any Party may be represented by attorneys and independent consultants to assist such Party in negotiations and to attend meetings.

15.8.2. Notice. Prior to proceeding with any claim against a Respondent, each Claimant shall give a notice to each Respondent, which notice shall state plainly and concisely:

15.8.2.1. the nature of the Claim, including all Persons involved and Respondent's role in the Claim;

15.8.2.2. the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

15.8.2.3. the specific relief and/or proposed remedy sought.

15.8.3. Mediation.

15.8.3.1. If the Parties do not resolve the Claim through negotiations within thirty days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of AAA, as appropriate.

15.8.3.2. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

15.8.3.3. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator shall issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

15.8.3.4. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

15.8.3.5. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 15.8.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 15.8 of this Declaration. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one noncomplying Party, from all

such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

15.8.4. Binding Arbitration.

15.8.4.1. Subject to Section 15.8.3.1 above, upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration before a single arbitrator in accordance with Title 9 of the U.S. Code, Colorado Uniform Arbitration Act, C.R.S. § 13-22-201, *et seq.*, and the Commercial Arbitration Rules of the AAA. In the event of any inconsistency between such rules and this ARTICLE 15, this ARTICLE 15 shall supersede such rules. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this ARTICLE 15. The arbitrator selected under this ARTICLE 15 shall be knowledgeable in the subject matter of the dispute. The arbitrator shall be selected through panels of qualified judges maintained by the Denver, Colorado office of the AAA. All such arbitration shall be held in Colorado Springs, Colorado, and venue shall be proper in the District Court for El Paso County, Colorado. The arbitration provisions of this ARTICLE 15 shall run with the land and shall bind all successors and assigns.

15.8.4.2. In any arbitration proceeding:

- (i) the Parties shall be entitled to conduct discovery as if the dispute were pending in a court of law in Colorado district court; and
- (ii) the arbitrator is empowered to decide pre-hearing motions that are substantially similar to pre-trial motions to dismiss and motions for summary adjudication.

15.8.4.3. Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial and on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

15.8.4.4. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all Parties to the Claim.

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

ARTICLE 16 GENERAL PROVISIONS

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

16.2. **Notices.** Any notice permitted or required to be given under this Declaration or under the Bylaws, including any notice by the Association to any Member or Lot Owner and any notice by any Member or Lot Owner to another Member or Lot Owner required by this Declaration or the Bylaws, shall, unless otherwise specified in this Declaration or in the Bylaws, be in writing and may be given either personally, by regular mail, certified mail, registered mail, local or national commercial courier or delivery service, successful and confirmed facsimile transmission, or by any other means that is then commonly in use in the United States as a means of giving important notices and which is designated by the Board of Directors as an appropriate means for giving notices hereunder. All notices given by regular mail shall be deemed to have been received on the third business day after being mailed and all other notices shall be deemed to have been received on the date actually delivered unless the Board of Directors shall adopt a universally applicable rule as to any specific method of giving notices, in which case such rule shall be applicable to all notices given by such method. All notices shall be to any Person at the address given by such Person to the Association for the purpose of service of such notice or to the Lot of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association; provided that all such notices shall be at addresses located in the United States and no more than two (2) Persons and addresses (other than the First Mortgagee) may be designated as being entitled to notices with respect to any Lot. If directions for notice are given to the Association that are inconsistent with the foregoing, the Association may ignore such directions.

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

16.4. **Non-Waiver.** Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of any such provision. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law or in equity and may be exercised concurrently, independently, or successively without effect or impairment upon one another.

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

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

16.7. **Conflicts of Provisions.** In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

16.8. **Duration.** Each and every provision of this Declaration shall be binding upon each and every Lot Owner, his heirs, successors, assigns and personal representative

and shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as is otherwise provided herein, this Declaration shall not be revoked or terminated unless all of the Lot Owners and all of the First Mortgagees agree to such termination or revocation by an instrument duly recorded and such termination and revocation shall comply with C.R.S. § 38-33.3-218.

16.9. **Amendments by Declarant.**

16.9.1. **Amendments Before Conveyances.** Until the first Lot subject to this Declaration is conveyed by Declarant to the first Lot Owner (other than Declarant), any of the provisions contained in the Declaration may be amended or terminated by Declarant by the Recordation of an amendment, executed by Declarant, setting forth such amendment or termination.

16.9.2. **Technical Amendments.** Declarant further reserves and is granted the right and power at any time during the Declarant Control Period to make and Record technical amendments of the Declaration, and the Articles of Incorporation and Bylaws of the Association. Such amendments shall be permitted for the purposes of correcting spelling, grammar, dates, cross references, or typographical errors or as may otherwise be required to clarify the meaning of any provision of any and all such documents. No such amendment shall be permitted to make any substantive change in the provisions of this Declaration.

16.9.3. **Amendments for Exercise of Reserved Rights.** During the Period of Declarant Reserved Rights, the Declarant may make amendments to this Declaration as necessary and as required by applicable law in connection with the exercise of any rights reserved by the Declarant under this Declaration.

16.10. **Amendment of Declaration by Members.** Except as otherwise provided in this Declaration, and subject to the provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision of this Declaration, including, without limitation, any covenant, condition, restriction, or equitable servitude contained in this Declaration, may be amended or repealed at any time and from time to time by the Recording of a written statement of amendment or repeal executed by the Lot Owners of at least sixty-seven percent (67%) of the Lots or by the vote of Members owning at least sixty-seven percent (67%) of the Lots at duly constituted meetings of the Members and the Recording of a certificate of such vote of amendment or repeal executed on behalf of the Association by the President of the Association or any member of the Board. The amendment or repeal shall be effective on Recording of such instrument or on such later date as is specifically stated in such instrument. No such instrument shall be required to be in any particular form.

16.11. **Required Consent of Declarant.** Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provisions of this Declaration during the Period of Declarant Reserved Rights shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate upon termination of the Period of Declarant Reserved Rights, except that the requirement for Declarant consent shall not terminate with respect to any amendment or repeal that operates or is effective to remove, revoke, limit, condition, or modify any right or privilege of the Declarant hereunder, including without limitation of Sections 4.26, 11.29, 16.9, 16.11, and ARTICLE 6, and ARTICLE 15 of this Declaration, which provisions are both covenants and contractual in nature and may not be unilaterally amended by the Lot Owners to affect or alter the Declarant rights and privileges or the contractual agreement without the written consent of the Declarant or the assignee of such right or privilege. Each amendment to this Declaration enacted by the vote or agreement of Lot Owners shall be applicable only to disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred after the date of recording of such amendment in the County, and no such amendment shall be applied retroactively (i) to any disputes, issues, controversies, circumstances, events, claims or causes of action that arose out of acts, omissions, events or other circumstances that occurred before the date of recording of such amendment in the County, or (ii) to impair the rights or obligations of any Person, including Declarant, as originally set forth in this Declaration.

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

16.13. **Assignment of Declarant's Rights.** The Declarant may assign its rights and authority hereunder, in whole or in part, by express written assignment, duly recorded, and upon such assignment, the Declarant shall be released from any duty, liability or obligation.

16.14. **Number and Gender.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

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

16.16. **Governing Law.** This Declaration of Covenants, Conditions and Restrictions shall be governed by, and construed in accordance with, the statutes and laws of the State of Colorado.

16.17. **Declarant Reserved Rights.** In addition and supplement of all rights reserved by the Declarant under this Declaration, the Declarant reserves the following development rights and other Declarant Reserved Rights during the Period of Declarant Reserved Rights for the period provided by C.R.S. § 38-33.3-303(5)(a)(I), or any successor statute:

16.17.1. The right to complete or make improvements indicated on the plats or maps, or otherwise necessary or desirable to complete construction of the Project and related Improvements;

16.17.2. The right to maintain signs, sales offices, management offices and models on Lots or on the Maintenance Area;

16.17.3. The right to install, assign and/or maintain signs on the Property and to advertise the Project;

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

16.17.5. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Lot Owners within the Project.

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

16.17.7. The right to appoint or remove any officer of the Association or any director of the Association during the Period of Declarant Reserved Rights.

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

16.17.9. The right to amend any plat for the Property in connection with the exercise of any reserved rights or other rights.

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

16.17.11. The right to expand the Project, without approval of the Lot Owners or Mortgagees, to include additional real property and improvements. Such expansion may be accomplished by recording a supplement or supplements to this Declaration with the Clerk and Recorder of El Paso County, Colorado, containing a legal description of the real property thereby annexed and any additional provisions deemed appropriate by Declarant, which may annex the property in phases, but shall not be liable or obligated to annex any property. Upon annexation, the additional property and the owners thereof shall be bound by this Declaration, the Association's Articles of Incorporation, Bylaws, and any additional provisions in the annexation supplement. By accepting a deed to any Lot or a Mortgage, each Lot Owner and Mortgagee grants Declarant a right to expand the Project and consents to such annexation expanding the Project and will not oppose or hinder Declarant's right to expand and annex additional real property and improvements or to develop adjoining properties and improvements. Declarant also reserves the right to deed open spaces or facilities to the Association or governmental entities and to create and extend any trail easement or any other easements to and upon any real property annexed to the Project. Declarant reserves the unilateral right to create additional Lots, General Common Elements, and Limited Common Elements within and from such annexed property as deemed appropriate by Declarant in its sole and complete discretion.

16.17.12. The right to establish, create, and convert General Common Elements and Limited Common Elements as provided in Section 6.8 and Section 6.11.

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

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

16.18. **Amendment of Articles and Bylaws.** The Articles of Incorporation and Bylaws may be amended in accordance with the provisions set forth in such instruments or,

in the absence of such provisions, in accordance with applicable provisions of the Colorado Revised Nonprofit Corporation Act.

16.19. **Special Rights of First Mortgagees.** The First Mortgagee as to any Lot in the Property, upon filing a written request therefor with the Association, shall be entitled to: (a) written notice from the Association of any default by the Mortgagor of such Lot in the performance of the Mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default; and (b) examine the books and records of the Association during normal business hours.

16.20. **First Mortgagee Exemption from Rights of First Refusal.** Any First Mortgagee who obtains title to any Lot pursuant to the remedies provided in the Mortgage held by such First Mortgagee or pursuant to any foreclosure of Mortgage or by deed or assignment in lieu of foreclosure shall be exempt from any right of first refusal if any such right of first refusal is ever contained in this Declaration or any Supplemental Declaration.

16.21. **Priority of First Mortgage over Assessments.** Subject to Section 38-33.3-316 of the Act, the First Mortgagee as to any Lot who obtains title to such Lot pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such holder acquires title to such Lot.

16.22. **First Mortgagee Right to Pay Taxes and Insurance Premiums.** Any First Mortgagee or any such First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may or have become a charge against any of the Association Properties and may pay any overdue premiums on hazard insurance policies for any Association Properties, and the First Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

16.23. **Amendment Required by Government Mortgage Agencies.** Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine, during the Period of Declarant Reserved Rights that any amendments to this Declaration or to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future Mortgages to be acceptable to any Government Mortgage Agencies, such amendments may be made solely by Declarant. "**Government Mortgage Agencies**" shall mean the FHA, the VA, the FHLMC, the GNMA, the FNMA, or any other governmental or quasi-governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities. "**FHA**" shall mean the Federal Housing Administration of the United States Department of Housing and Urban Development

(“**HUD**”), including such department or agency of the United States Government as shall succeed to the FHA in insuring notes secured by mortgages and deeds of trust on residential real estate. “**VA**” shall mean the Veterans Administration of the United States of America, including such department or agency of the United States Government as shall succeed to the VA in its present function of issuing guarantees with respect to notes secured by Mortgages on residential Lots. “**FHLMC**” shall mean the Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title III of the Emergency Home Finance Act of 1970, including any successor thereto. “**FNMA**” shall mean the Federal National Mortgage Association, a governmental-sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successor thereto. “**GNMA**” shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successor thereto. Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Lot Owners or First Mortgagees. Each such amendment shall be made, if at all, by Declarant prior to termination of the Period of Declarant Reserved Rights and each such amendment shall be subject to the written approval of the VA or FHA.

16.24. **HUD or VA Approval.** During the Period of Declarant Reserved Rights, the following actions shall require the prior approval of HUD, the FHA or the VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee on one or more Mortgages encumbering a Lot: (a) annexation of additional real property into the Association (other than Lots), (b) amendment of this Declaration or material amendment of the Articles of Incorporation or Bylaws of the Association, (c) termination of the Property, or (d) merger or consolidation of the Association.

16.25. **Board to Resolve Ambiguities.** If any doubt or question shall arise (except as to the Declarant’s rights and/or duties hereunder) concerning the true intent or meaning of any of this Declaration, except as to Sections 3.4, 11.28, 11.29, and 16.17, the Articles of Incorporation, the Bylaws or the rules and regulations, the Board of Directors of the Association shall, by resolution, determine the proper construction of the provision in question and such resolution shall fix and establish the meaning, effect and application of the provision. The Board’s decision shall be final, conclusive and binding on all parties, except for gross negligence and willful misconduct and except as to Sections 3.4, 11.28, 11.29, and 16.17.

16.26. **Declarant’s Right To Amend Prior to Sale.** All sections contained in this document can be amended by the Declarant at any time prior to the sale of Townhome Lots.

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

LOT 1, CIMARRON SOUTHEAST FILING NO. 2C, COUNTY OF EL PASO, STATE
OF COLORADO

EXHIBIT B

EASEMENTS, LICENSES, AND OTHER MATTERS AFFECTING THE PROPERTY

1. Any facts, rights, interests, or claims which are not shown by the Public Records, but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
2. Easements, or claims of easements, not shown by the Public Records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct land survey and inspection of the Land would disclose, and which are not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown in the Public Records.
5. Any and all unpaid taxes, assessments and unredeemed tax sales.
6. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof.
7. Any water rights, claims of title to water, in, on or under the Land.
8. 2024 taxes and assessments not yet due or payable.
9. Existing leases and tenancies, if any.
10. Any increase or decrease in the area of the land and any adverse claim to any portion of the land which has been created or caused by accretion or reliction, whether natural or artificial; and the effect of the gain or loss of area by accretion or reliction upon the marketability of the title of the land.
11. Rights and reservations as contained in Patent of the United States recorded August 02, 1875 in Book K at page 551.
12. Right of way as granted to Colorado Telephone Co., in instrument recorded March 03, 1905, in Book 358 at page 565 and as conveyed to the Mountain States Telephone and Telegraph Company in instrument recorded August 5, 1911 in Book 482 at page 190. NOTE: Quitclaim Deed in connection with said right of way recorded May 18, 1966 in Book 2132 at page 73.
13. Terms, conditions, provisions, burdens, obligations, and easements as set forth and granted in Right of Way and Easement recorded August 14, 1958 in Book 1695 at page 525. NOTE: Quitclaim Deed in connection with said Right of Way and Easement recorded October 07, 1968 in Book 2257 at page 455.

14. The effect of include of subject property in the Cimarron Sanitation District, N/K/A Cherokee Metropolitan District, as evidenced by instrument recorded April 30, 1964, in Book 2009 at page 177 and instrument recorded May 27, 1992 in Book 5983 at page 83. Notice and Ratification of Conveyance of Title Recorded June 18, 2013, under Reception No. 213079083.
15. Terms, Conditions, Provisions, Burdens, Obligations and Easements as set forth and granted in Grant of Right of Way and Easement recorded September 16, 1969 in Book 2310 at page 48.
16. The effect of inclusion of subject property in the Cimarron Hills Fire Protection District, as evidenced by instrument recorded December 13, 1972, under Reception NO. 941974.
17. Easements, conditions, covenants, restrictions, reservations and notes on the Plat of Cimarron Southeast Filing No. 2C recorded December 12, 1978 under Reception No. 504046 in Plat Book H3 at page 89.
18. Water rights, terms, conditions, provisions, burdens and obligations of the Findings and Ruling of Referee and Decree of Water Court recorded December 01, 2008, under Reception No. 208127656.
19. The rights, duties, and obligations of the BMP Agreement.

EXHIBIT C

**PRIVATE DETENTION BASIN / STORMWATER QUALITY
BEST MANAGEMENT PRACTICE
MAINTENANCE AGREEMENT AND EASEMENT**

[Attach]

**PRIVATE DETENTION BASIN /
STORMWATER QUALITY BEST MANAGEMENT PRACTICE
MAINTENANCE AGREEMENT AND EASEMENT**

This PRIVATE DETENTION BASIN / STORMWATER QUALITY BEST MANAGEMENT PRACTICE MAINTENANCE AGREEMENT AND EASEMENT (Agreement) is made by and between EL PASO COUNTY by and through THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO (Board or County) and J. Elliott Homes, Inc., a Colorado corporation (Developer) and The Townhomes at Western Homeowners Association (Association), a Colorado nonprofit corporation. The above may occasionally be referred to herein singularly as “Party” and collectively as “Parties.”

Recitals

A. WHEREAS, Developer is the owner of certain real estate (the Property) in El Paso County, Colorado, which Property is legally described in Exhibit A attached hereto and incorporated herein by this reference; and

B. WHEREAS, Developer desires to develop on the Property a Subdivision to be known as Townhomes at Western; and

C. WHEREAS, the development of this Property will substantially increase the volume of water runoff and will decrease the quality of the stormwater runoff from the Property, and, therefore, it is in the best interest of public health, safety and welfare for the County to condition approval of this land use on Developer’s promise to construct adequate drainage, water runoff control facilities, and stormwater quality structural Best Management Practices (“BMPs”) for the land use; and

D. WHEREAS, Chapter 8, Section 8.4.5 of the El Paso County Land Development Code, as periodically amended, promulgated pursuant to Section 30-28-133(1), Colorado Revised Statutes (C.R.S.), requires the County to condition approval of all subdivisions on a developer’s promise to so construct adequate drainage, water runoff control facilities, and BMPs in subdivisions; and

E. WHEREAS, the Drainage Criteria Manual, Volume 2, as amended by Appendix I of the El Paso County Engineering Criteria Manual (ECM), as each may be periodically amended, promulgated pursuant to the County’s Colorado Discharge Permit System General Permit (MS4 Permit) as required by Phase II of the National Pollutant Discharge Elimination System (NPDES), which MS4 Permit requires that the County take measures to protect the quality of stormwater from sediment and other contaminants, requires subdividers, developers, landowners, and owners of facilities located in the County’s rights-of-way or easements to provide adequate permanent stormwater quality BMPs with new development or significant redevelopment; and

F. WHEREAS, Section 2.9 of the El Paso County Drainage Criteria Manual provides for a developer’s promise to maintain a subdivision’s drainage facilities in the event the County does not assume such responsibility; and

G. WHEREAS, developers in El Paso County have historically chosen water runoff detention basins as a means to provide adequate drainage and water runoff control in subdivisions, which basins,

while effective, are less expensive for developers to construct than other methods of providing drainage and water runoff control; and

H. WHEREAS, Developer desires to construct for the Subdivision one (1) detention basin/stormwater quality BMP(s) (“detention basin/BMP(s)”) as the means for providing adequate drainage and stormwater runoff control and to meet requirements of the County’s MS4 Permit, and to operate, clean, maintain and repair such detention basin/BMP(s); and

I. WHEREAS, Developer desires to construct the detention basin/BMP(s) on property that will be platted as Tract A, Townhomes at Western, as indicated on the final plat of the subdivision, and as set forth on Exhibit B attached hereto; and

J. WHEREAS, Developer shall be charged with the duty of constructing the detention basin/BMP(s) and the Association shall be charged in the Subdivision’s Covenants with the duties of operating, maintaining and repairing all common areas and common structures within the Subdivision, including the detention basin/BMP(s) on the property described in Exhibit B; and

K. WHEREAS, it is the County’s experience that subdivision developers and homeowners’ associations historically have not properly cleaned and otherwise not properly maintained and repaired these detention basins/BMPs, and that these detention basins/BMPs, when not so properly cleaned, maintained, and repaired, threaten the public health, safety and welfare; and

L. WHEREAS, the County, in order to protect the public health, safety and welfare, has historically expended valuable and limited public resources to so properly clean, maintain, and repair these detention basins/BMPs when developers and homeowners’ associations have failed in their responsibilities, and therefore, the County desires the means to recover its costs incurred in the event the burden falls on the County to so clean, maintain and repair the detention basin/BMP(s) serving this Subdivision due to the Developer’s or the Association’s failure to meet its obligations to do the same; and

M. WHEREAS, the County conditions approval of this Subdivision on the Developer’s promise to so construct the detention basin/BMP(s), and further conditions approval on the Owner’s promise to reimburse the County in the event the burden falls upon the County to so clean, maintain and/or repair the detention basin/BMP(s) serving this Subdivision; and

N. WHEREAS, the County could condition subdivision approval on the Developer’s promise to construct a different and more expensive drainage, water runoff control system and BMPs than those proposed herein, which more expensive system would not create the possibility of the burden of cleaning, maintenance and repair expenses falling on the County; however, the County is willing to forego such right upon the performance of Developer’s and the Association’s promises contained herein; and

O. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions approval of this land use upon the Developer’s grant herein of a perpetual Easement over the Property for the purpose of allowing the County to periodically access, inspect, and, when so necessary, to clean, maintain and/or repair the detention basin/BMP(s); and

P. WHEREAS, given that the Association could potentially avoid liability hereunder by dissolving and reforming as a different entity, and given the difficulties inherent in collecting an unsecured promise, the County, in order to secure performance of the promises contained herein, conditions approval

of this Subdivision upon the Developer's creation, by and through this Agreement, of a covenant running with the land upon each and every lot in the Subdivision.

Agreement

NOW, THEREFORE, in consideration of the mutual Promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The Parties incorporate the Recitals above into this Agreement.
2. Covenants Running with the Land and Pro Rata Liability upon Individual Lot Owners: Developer and the Association agree that this entire Agreement and the performance thereof shall become a covenant running with the land, which land is legally described in Exhibit A attached hereto, and that this entire Agreement and the performance thereof shall be binding upon themselves, their respective successors and assigns, including individual lot owners within the Subdivision.

However, any liability imposed under this Agreement against an individual lot owner shall not be joint and several with the Developer and the Association, but shall be prorated on a per-lot basis as determined by the following formula and illustration: each individual lot owner(s) shall be liable for no more than the total monetary amount of liability multiplied by a fraction in which the numerator is the number of lots in the Subdivision owned by a particular lot owner, and the denominator is the total number of lots in the Subdivision. As to any lot(s) owned by more than one person or entity, the liability among co-owners shall be joint and several for the pro rata obligation of that lot. The application of this Paragraph is best illustrated by the following example. Assume the following parameters: total liability is \$10,000; total number of lots in the Subdivision is 100; Lot 1 is owned by persons A and B; person B also owns Lot 2. Liability is as follows: the Developer, \$10,000; the Association, \$10,000; Lot 1 is \$100.00, joint and several as to A and B, Lot 2 is \$100.00 owed solely by B. Thus person A's total liability is \$100.00 and person B's is \$200.00. Applying the principle that the County cannot collect more than it is owed, and assuming that the County cannot collect anything from the Developer and the Association, if the County collected the whole \$200.00 from B, then it could not collect the \$100.00 from A. Likewise, if the County collected the \$100.00 from A, then it could only collect \$100.00 from B.

3. Construction: Developer shall construct on that portion of the Property described in Exhibit B attached hereto and incorporated herein by this reference, one (1) detention basin/BMP(s). Developer shall not commence construction of the detention basin/BMP(s) until the El Paso County Planning and Community Development Department (PCD) has approved in writing the plans and specifications for the detention basin/BMP(s) and this Agreement has been signed by all Parties and returned to the PCD. Developer shall complete construction of the detention basin/BMP(s) in substantial compliance with the County-approved plans and specifications for the detention basin/BMP(s). Failure to meet these requirements shall be a material breach of this Agreement and shall entitle the County to pursue any remedies available to it at law or in equity to enforce the same. Construction of the detention basin/BMP(s) shall be substantially completed within one (1) year (defined as 365 days), which one-year period will commence to run on the date the approved plat of this Subdivision is recorded in the records of the El Paso County Clerk and Recorder. In cases where a subdivision is not required, the one-year period will commence to run on the date the Erosion and Stormwater Quality Control Permit (ESQCP) is issued. Rough grading of the detention basin/BMP(s) must be completed and inspected by the El Paso County Planning and Community Development Department prior to commencing road construction.

In the event construction is not substantially completed within the one (1) year period, then the County may exercise its discretion to complete the project and shall have the right to seek reimbursement from the Developer and its successors and assigns, for its actual costs and expenses incurred in the process of completing construction. The term actual costs and expenses shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tool and equipment costs, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal counsel in order to enforce the Provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same.

4. Maintenance: The Developer and the Association agree for themselves, their respective successors and assigns, including individual lot owners within the Subdivision, that they will regularly and routinely inspect, clean and maintain the detention basin/BMP(s), and otherwise keep the same in good repair, all at their own cost and expense. No trees or shrubs that will impair the structural integrity of the detention basin/BMP(s) shall be planted or allowed to grow on the detention basin/BMP(s).

5. Creation of Easement: Developer and the Association hereby grant the County a nonexclusive perpetual easement upon and across that portion of the Property described in Exhibit B. The purpose of the easement is to allow the County to access, inspect, clean, repair and maintain the detention basin/BMP(s); however, the creation of the easement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basin/BMP(s).

6. County's Rights and Obligations: Any time the County determines, in the sole exercise of its discretion, that the detention basin/BMP(s) is not properly cleaned, maintained and/or otherwise kept in good repair, the County shall give reasonable notice to the Developer, the Association and their respective successors and assigns, including the individual lot owners within the Subdivision, that the detention basin/BMP(s) needs to be cleaned, maintained and/or otherwise repaired. The notice shall provide a reasonable time to correct the problem(s). Should the responsible parties fail to correct the specified problem(s), the County may enter upon the Property to so correct the specified problem(s). Notice shall be effective to the above by the County's deposit of the same into the regular United States mail, postage pre-paid. Notwithstanding the foregoing, this Agreement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the detention basin/BMP(s).

7. Reimbursement of County's Costs / Covenant Running With the Land: The Developer and the Association agree and covenant, for themselves, their respective successors and assigns, including individual lot owners within the Subdivision, that they will reimburse the County for its costs and expenses incurred in the process of completing construction of, cleaning, maintaining, and/or repairing the detention basin/BMP(s) pursuant to the provisions of this Agreement; however, the obligation and liability of the Developer hereunder shall only continue until such time as the Developer transfers the entire management and operation of the Association to the individual lot owners within the Subdivision. Notwithstanding the previous sentence, the Association and the individual lot owners within the Subdivision shall always remain obligated and liable hereunder, and as per the provisions of Paragraph Two (2) above.

The term "actual costs and expenses" shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to correct the matter. In the event the County initiates any litigation or engages the services of legal

counsel in order to enforce the provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney's fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same. The scope of liability therefor of the Developer, the Association, and the individual lot owners shall be as set forth in Paragraph Two (2) above.

8. Contingencies of Land Use/Land Disturbance Approval: Developer's and the Association's execution of this Agreement is a condition of subdivision approval. Additional conditions of this Agreement include, but are not limited to, the following:

a. The County's receipt of a copy of the Articles of Incorporation for the Association, as filed with the Colorado Secretary of State; receipt of the Certificate of Incorporation or other comparable proof for the same from the Colorado Secretary of State; a copy of the Bylaws of the Association; a copy of the organizational minutes or other appropriate document of the Association, properly executed and attested, establishing that the Association has adopted this Agreement as an obligation of the Association; and

b. A copy of the Covenants of the Subdivision establishing that the Association is obligated to inspect, clean, maintain, and repair the detention basin/BMP(s); that the Association has adopted this Agreement as an obligation of the Association; and that a funding mechanism is in place whereby individual lot owners within the Subdivision pay a regular fee to the Association for, among other matters, the inspection, cleaning, maintenance, and repair of the detention basin/BMP(s); and

c. A copy of the Covenants of the Subdivision establishing that this Agreement is incorporated into the Covenants, and that such Agreement touches and concerns each and every lot within the Subdivision.

The County shall have the right, in the sole exercise of its discretion, to approve or disapprove any documentation submitted to it under the conditions of this Paragraph, including but not limited to, any separate agreement or amendment, if applicable, identifying any specific maintenance responsibilities not addressed herein. The County's rejection of any documentation submitted hereunder shall mean that the appropriate condition of this Agreement has not been fulfilled.

9. Distribution to Lot Purchasers: Upon the initial sale of any lot within the Subdivision, prior to closing on such sale, the Developer shall give a copy of this Agreement to the potential Buyer.

10. Agreement Monitored by El Paso County Planning and Community Development Department and/or El Paso County Department of Public Works: Any and all actions and decisions to be made hereunder by the County shall be made by the Director of the El Paso County Planning and Community Development Department and/or the Director of the El Paso County Department of Public Works. Accordingly, any and all documents, submissions, plan approvals, inspections, etc. shall be submitted to and shall be made by the Director of the Planning and Community Development Department and/or the Director of the El Paso County Department of Public Works.

11. Indemnification and Hold Harmless: To the extent authorized by law, Developer and the Association agree, for themselves, their respective successors and assigns, including the individual lot owners in the Subdivision, that they will indemnify, defend, and hold the County harmless from any and all loss, costs, damage, injury, liability, claim, lien, demand, action and causes of action whatsoever, whether at law or in equity, arising from or related to their respective intentional or negligent acts, errors or omissions or that of their agents, officers, servants, employees, invitees and licensees in the construction, operation, inspection, cleaning (including analyzing and disposing of any solid or hazardous wastes as defined by State and/or Federal environmental laws and regulations), maintenance, and repair of the detention basin/BMP(s), and such obligation arising under this Paragraph shall be joint and several.

Nothing in this Paragraph shall be deemed to waive or otherwise limit the defense available to the County pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, et seq. C.R.S., or as otherwise provided by law. However, the obligation and liability of the Developer hereunder shall only continue until such time as the Developer transfers the entire management and operation of the Association to the individual lot owners within the Subdivision.

12. Severability: In the event any Court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.

13. Third Parties: This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceeding against either the County, the Developer, the Association, or their respective successors and assigns, including any individual lot owners in the Subdivision, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

14. Solid Waste or Hazardous Materials: Should any refuse from the detention basin/BMP(s) be suspected or identified as solid waste or petroleum products, hazardous substances or hazardous materials (collectively referred to herein as “hazardous materials”), the Developer and the Association shall take all necessary and proper steps to characterize the solid waste or hazardous materials and properly dispose of it in accordance with applicable State and/or Federal environmental laws and regulations, including, but not limited to, the following: Solid Wastes Disposal Sites and Facilities Acts, §§ 30-20-100.5 – 30-20-119, C.R.S., Colorado Regulations Pertaining to Solid Waste Disposal Sites and Facilities, 6 C.C.R. 1007-2, et seq., Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, and Federal Solid Waste Regulations 40 CFR Ch. I. The County shall not be responsible or liable for identifying, characterizing, cleaning up, or disposing of such solid waste or hazardous materials . Notwithstanding the previous sentence, should any refuse cleaned up and disposed of by the County be determined to be solid waste or hazardous materials, the Developer and the Association, but not the County, shall be responsible and liable as the owner, generator, and/or transporter of said solid waste or hazardous materials.

15. Applicable Law and Venue: The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement, except that Federal law may be applicable regarding solid waste or hazardous materials. Venue shall be in the El Paso County District Court.

IN WITNESS WHEREOF, the Parties affix their signatures below.

Executed this _____ day of _____, 20____, by:

J. Elliott Homes, Inc.

By: _____

Jordon Guinane, President

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Jordon Guinane, President, J. Elliott Homes, Inc.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Executed this _____ day of _____, 20____, by:

THE TOWNHOMES AT WESTERN HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation.

By: _____

_____, President

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, President, THE TOWNHOMES AT WESTERN HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Executed this _____ day of _____, 2024, by:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Meggan Herington, Executive Director
Planning and Community Development
Authorized signatory pursuant to LDC

The foregoing instrument was acknowledged before me this _____ day of _____,
2024, by Meggan Herington as Executive Director of El Paso County Planning and Community
Development Department.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Approved as to Content and Form:

Assistant County Attorney

EXHIBIT "A"

PROPERTY DESCRIPTION:

LOT 1, CIMARRON SOUTHEAST FILING NO. 2C, AS RECORDED IN PLAT BOOK H-3 AT
PAGE 89 OF THE RECORDS OF EL PASO COUNTY

CONTAINING A CALCULATED AREA OF 7.118 ACRES, MORE OR LESS.

EXHIBIT "B"

EASEMENT DESCRIPTION:

TRACT A, TOWNHOMES AT WESTERN, A TOWNHOME PLAT ON LOT 1, CIMARRON
SOUTHEAST FILING NO. 2C