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El Paso County Clerk & Recorder: Index in Grantee Indexes under Lincoln Commons Townhomes and Lincoln Commons Homeowners Association, and under Grantor as Lincoln Commons, LLC, a Colorado limited liability company

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

LINCOLN COMMONS TOWNHOMES

THIS DECLARATION, made and entered as of the date shown below, by **Lincoln Commons, LLC**, a Colorado limited liability company (hereinafter called "**Declarant**") for itself, its successors and assigns.

WITNESSETH:

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.

NOW, THEREFORE, the Declarant hereby declares that all of the Property, as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns. The Declarant further declares that pursuant to C.R.S. § 38-33.3-116, the Project shall not be subject to the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101 et seq.) and any amendments, repeals or modifications of that Act (hereinafter called "**CCIOA**"), except that the Project shall be subject only to C.R.S. §§ 38-33.3-105, 38-33.3-106 and 38-33.3-107.

**ARTICLE 1
DEFINITIONS**

The terms used herein shall have the meanings stated herein:

1.1. "**Association**" shall mean and refer to Lincoln Commons Homeowners Association, a Colorado Non-Profit 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 "unit owners association" as defined by CCIOA, but shall only be subject to C.R.S. §§ 38-33.3-105, 38-33.3-106, 38-33.3-107 as provided by C.R.S. § 38-33.3-116.

1.2. "**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.

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

1.4. "**Property**" shall mean and refer to that certain real property described on Exhibit A attached hereto and incorporated herein by this reference, together with all appurtenances thereto and all improvements now or hereafter thereon and shall include any real property which is hereafter annexed to the Project pursuant to ARTICLE 11 hereof.

1.5. "**Lot**" shall mean and refer to any of the lots shown on any recorded plat of the Property, together with all appurtenances thereto and improvements now or hereafter thereon, and any Lot which is located on any real property, if any, which is hereafter annexed to the Project pursuant to ARTICLE 11 hereof. The boundaries of any Lot may be relocated pursuant to this Declaration. The boundaries of the Lots shall be shown on any recorded plat of the Property which shall be incorporated herein by this reference.

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

1.7. "**Declarant**" shall mean and refer to Lincoln Commons, LLC, a Colorado limited liability company, its agents, employees, contractors, successors and assigns to whom he expressly transfers all or any part of its rights as Declarant hereunder. The "**Period of Declarant Reserved Rights**" means 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.

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

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

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

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

1.12. “**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 11 hereof. The Project shall be a “common interest community” and “planned community” under the CCIOA; provided however, the Project shall be exempt from the provisions of CCIOA as provided by C.R.S. § 38-33.3-116 except for C.R.S. §§ 38-33.3-105, 38-33.3-106 and 38-33.3-107.

1.13. “**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 be 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 5 of this Declaration. The Project does not contain any common area or common elements to be owned by the Association or Owners in common; instead, the Maintenance Area shall be owned by each Owner as to that Owner’s Lot but subject to easements for Association maintenance and other purposes set forth in this Declaration.

1.14. “**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 11 hereof.

1.15. “**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.

ARTICLE 2 EASEMENTS AND RELATED RIGHTS

2.1. Easements and Related Rights.

(a) Utility Easements. Notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Property for the purpose of installing, maintaining, repairing and replacing any utilities or related services, including 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 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.

(b) Association Easement. A non-exclusive easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the 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 Owners, contractors, and others pursuant to rules adopted by the Board.

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

(d) Common Wall Easement. Each Owner, his agents and contractors, are granted a non-exclusive easement for the purpose of maintenance, construction, reconstruction and repair, in, over, under and upon adjacent Lots and in and upon adjacent Townhomes for purposes of common wall repair or maintenance, in accordance with Section 5.5, upon reasonable notice to the Owners thereof. Any damage occasioned to the adjacent Lot or improvements, including the dwelling unit, thereon in exercising said easement shall be the responsibility of the Owner whose negligence or wrongful acts or omissions cause such damage.

(e) 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 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.

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

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

2.2. **Delegation of Use.** Any 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 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.

2.3. **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 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 Owners, as more fully provided in this Declaration.

2.4. **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 3 MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership.** The following shall be members of the Association: the Declarant (so long as the Declarant owns a Lot) and every Owner of a Lot 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-Owners shall share the privileges of such membership, subject to reasonable regulation by the Board of Directors, and all such co-Owners shall be jointly and severally obligated to perform the obligations and responsibilities of an 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.

3.2. **Declarant Reserved Rights.** The Association shall have one class of voting membership who shall be the Owners Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint the Board of Directors and to control the Association during the Period of Declarant Reserved Rights. Upon the termination of the Period of Declarant Rights, the Owners shall elect a Board of at least three members, at least a majority of whom must be Owners. The Board shall elect the officers. These Board members and officers shall take office upon termination of the Period of Declarant Reserved Rights.

ARTICLE 4
COVENANT FOR ASSESSMENTS

4.1. **Creation of the Obligation for Assessments.** Subject to the provisions of this Declaration, each 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 and which shall be both a personal obligation of the Owner and a lien against his Lot as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their Lot. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by non-use of the 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 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.

4.2. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the welfare of the 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.

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

- (a) expenses of management of the Association and its activities;
- (b) taxes and special assessments upon the Association's operations or property;
- (c) premiums for all insurance which the Association is required or permitted to maintain and any other expenses connected with such insurance;
- (d) water and other common utility and sewer service charges 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;
- (e) landscaping and care of the Maintenance Area, except as provided herein, and any facilities or improvement thereon;

- (f) such repairs and maintenance which are the responsibility of the Association;
- (g) wages for Association employees;
- (h) legal and accounting fees for the Association;
- (i) any deficit remaining from a previous assessment year;
- (j) a working capital fund;
- (k) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of those elements of common property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments, rather than by special assessments;
- (l) the creation of reasonable contingency reserves for any applicable insurance deductibles; and
- (m) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration.

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

4.4. **Limit on Annual Assessments.**

(a) The annual assessments 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 Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Board does not require approval from the Owners, and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by Owners of two-thirds (2/3) of the Lots, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Owners. The budget should include the expenses set forth in Section 4.3 hereof. Unless included in the current or past approved budgets, the Association shall have no obligation for any expense, including without limitation,

any maintenance, repair, replacement or restoration of any item or the provision of any service.

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

4.5. **Special Assessments.** In addition to the annual assessment authorized above, the Association may levy, in any assessment year, special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, or any shortfall in the Association's funding of its operations.

4.6. **Procedure for Assessment Under Section 4.5.** Any assessment under Section 4.5 shall require the vote, pursuant to a meeting described below, of Owners of Lots to which at least sixty-seven percent (67%) of the votes 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 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 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.

4.7. **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.

4.8. **Assessment Procedure.**

(a) **Annual Assessments.** No later than thirty (30) days before the beginning of each annual assessment period, the Board of Directors of the Association shall set the total annual assessment based upon advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. That annual assessment shall be payable in monthly installments on the first day of each successive month, unless the Board otherwise directs. The Association shall cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual assessment. The first annual assessment upon the Lots hereunder shall commence upon the first day of the first month following conveyance of the

first Lot from the Declarant to an 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 Owner, unless and until a Townhome has been fully completed on that Lot, but upon full completion of the residential dwelling unit, 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 the Expansion Property, which is subsequently annexed to the Project pursuant to ARTICLE 11 hereof, shall commence upon the recording of the documents required under Section 11.13(k) of this Declaration.

(b) Special Assessments and Other Sums. Special assessments and other sums imposed hereunder shall be due and payable on the date specified by the Board in written notice to each Owner, but such date shall not be less than ten (10) days after such notice is sent. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of an Owner, his 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 Owner and his Lot and shall be enforceable as provided herein; any such assessment shall not require any vote of the Members.

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

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

4.10. Effect of Nonpayment of Assessments; Remedies of the Association.

(a) General. Any assessments which are not paid when due shall be delinquent. If any assessment is not paid when due, the Association may impose a late charge/administrative fee not to exceed the amount set forth in the Association's rules and regulations. Any assessment not paid within thirty (30) days after the due date thereof shall bear

interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot, and/or may suspend the delinquent Owner's right to vote and the right to use any facilities within the Maintenance Area for any period during which any assessment against his Lot remains unpaid. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the expenses, late charges, and costs of the action.

(b) Lien. Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Lot, including without limitation, with interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge of not to exceed the amount set forth in the Association's rules and regulations, court costs and all other collection costs, and reasonable attorney's fees, shall be a charge on the land and shall be a perpetual continuing lien, from and after the levy or assessment thereof, in favor of the Association, upon the Lot against which each such assessment, charge, fee or other sum is made, and such lien and assessment shall constitute an independent, affirmative covenant, payable without set-off or deduction. The Association's acceptance of any partial payment shall not waive, affect or impair its right to full payment of any assessment or sum. The Board may, in its discretion, apply any payment first to interest, the late charge, any costs or fees, and then to the assessment payment first due. The Board may enforce such lien by filing with the Clerk and Recorder of the county in which the Property is located a statement of lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of delinquent assessments then owing. The lien statement may be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof may be mailed to the Owner of the Lot, at the address of the Lot or at such other address as the Association may then have in its records for the Owner of the Lot. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorney's fees, administrative charges and interest have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may proceed to the foreclosure of mortgages under the statutes of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the Owner personally liable therefore or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums which are not fully paid when due. Any recorded lien may be released by recording a Release of Lien executed by an officer or authorized agent of the Association. Recording of this Declaration constitutes recorded notice and perfection of the Association's lien for assessments, and notwithstanding any other provision of this Declaration, no further recordation of any claim of lien for assessments is required.

(c) Authority. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien

on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of foreclosure.

4.11. **Working Capital.** The Association shall require an Owner who purchases a Lot from Declarant to pay to the Association an amount equal to two (2) times the amount of the estimated monthly assessment which sum shall be held by the Association as and for working capital. Such sum shall not be refundable to such Owner but shall be placed in a segregated account for use by the Board to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Furthermore, payment of such sum shall not relieve an Owner from making the regular payment of assessments as the same become due. Upon termination of the Period of Declarant 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.

4.12. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent assessment was due, except 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 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.

4.13. **Notice to Mortgagee and Inspection of Books.** Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under this Declaration and/or the Bylaws of the Association, which is not cured within sixty (60) days after the Board has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall make available to Owners and Mortgagees current copies of the

Declaration, Bylaws, other rules concerning the Project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. 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.

4.14. **Homestead.** The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien. The Association's lien for assessments under this Declaration is superior to all other liens and encumbrances, including 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 4.12 hereof.

4.15. **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.

4.16. **Additional Collection Remedies.**

(a) Any 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 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 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 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.

(b) 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.

ARTICLE 5 MAINTENANCE

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

(a) 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 but not 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 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 Owner thereof and shall be performed at the expense of that 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 of Directors may, in its discretion, provide insurance coverage and other services to the Maintenance Area. 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 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.

(b) The Association shall maintain any common landscaping (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 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.

(c) 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 Owner, his family, guests, tenants, contractors, or invitees.

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

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

5.2. **Willful or Negligent Damage.** In the event that the need for maintenance or repair described in Section 5.1 of this Article is caused, in the sole discretionary determination of the Board of Directors, through the willful or negligent acts or omissions of any Owner, his family, guests, tenants, contractors, or invitees, or other persons or parties acting with the consent of any of the foregoing, including without limitation any pets or animals of those persons or parties, the cost of such maintenance shall be the personal obligation of such Owner, shall be added to and become part of the assessment to which the Lot of such Owner is subject and shall become a lien against such Owner's Lot as provided in this Declaration.

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

5.4. **Owner Maintenance.** Except as provided in Section 5.1, the Owner shall be responsible for all other maintenance, repairs, replacements and Improvements on that 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 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. An Owner shall do no act nor any work that will impair any easement or utility service, nor do any act nor allow any condition to exist which will adversely affect the use and enjoyment of the other Lots or the provision of utility services to such Lots. No Owner shall, in whole or in part, change the landscaping adjacent to or upon his Lot by the addition or removal of any items thereon, including fences, without the prior written approval of the Board. If 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 Owner's obligations, after ten (10) days' notice to such Owner, except in emergencies, and any costs resulting therefrom shall be an assessment against such Owner and his Lot and shall be due and payable by the Owner thereof.

5.5. Party Walls.

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

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

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

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

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

(f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 5.5, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written

request therefore by an Owner, the Board of Directors of the Association shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorneys' fees.

5.6. **Management Agreements and Other Contracts.** The Association may enter into agreements for professional management of the Association's business. Each Owner shall be bound by the terms and conditions of any management agreement entered into by the Association. Any agreement for professional management of the Association's business shall provide for termination by either party with or without cause and without payment of a termination fee upon thirty (30) days' prior written notice, and shall have a maximum term of one (1) year. Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declarant or other developer controls the Association shall terminate absolutely, in any event, not later than thirty (30) days after termination of the Period of Declarant 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 Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose.

ARTICLE 6 ARCHITECTURAL REVIEW

6.1. **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 Owner shall enclose, by means of screens or otherwise any balcony, porch or patio, unless the following, if applicable, shall have been submitted to and approved by the Board: complete plans, specifications, and lot plans 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. The provisions of this Article shall not apply in any way or manner whatsoever to the Declarant or any Lot owned by Declarant.

6.2. **Procedures.**

(a) 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. 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 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.

(b) The Board shall have authority to grant variances from the provisions of this ARTICLE 6 in cases of conditions wherein the strict enforcement of these restrictions would result in unusual hardship. The Board shall be the sole and exclusive judge of whether or not said hardship exists, subject to an appeal under Section 6.2(e) below.

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

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

(e) It is the intent of this Declaration that the Board shall exercise broad discretionary powers hereunder, 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.

ARTICLE 7 RESTRICTIONS

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

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

7.3. **Residential Use.** Each Lot shall be occupied and used as a private dwelling for the 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, an 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.

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

7.5. **Structures.** All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property, and no subsequent buildings or structures other than townhome buildings joined together by a common exterior, roof and foundation, shall be constructed. No sheds, temporary house, trailer, tent, garage or outbuilding shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its

being fully completed in accordance with approved plans, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however, that the foregoing shall not apply to the Declarant. The work of constructing, altering, or remodeling any structure on any part of any Lot shall be prosecuted diligently from the commencement thereof until the completion thereof.

7.6. **Miscellaneous Structures.** Except as permitted in writing by the Board or pursuant to its rules, no advertising or signs of any character shall be erected, placed, permitted or maintained on any Lot or within any Townhome other than a name plate of the occupant and a street number; except that the Declarant shall be permitted to use signs such as will not unreasonably interfere with Owners' use of the 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.

7.7. **Lots to be Maintained.** Except as provided in Section 5.1 or otherwise in this Declaration, each Owner shall maintain and replace that owner's Townhome 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.

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

7.9. **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No 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.

7.10. **No Hazardous Activities.** No activities shall be conducted on the Property and on improvements constructed on the Property which are or might be unsafe or hazardous to any person or property or might cause the cancellation or diminution of insurance or an increase in insurance premiums. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Property and no open fires shall be lighted or permitted on the

Property except in a contained barbecue unit while attended and in use for cooking purposes to the extent allowed by applicable fire code, or within a safe and well-designed interior fireplace or except such campfire or picnic fires in an area designated for such by the Association. Pursuant to the applicable fire code, all outdoor grilling on charcoal grills must be ten feet away from the building to prevent open fire near the structure. This code mandates that no grilling will be allowed on the townhome patios. Gas grills do not have the ten feet requirement but must have propane tanks less than two (2) pounds to be allowed.

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

7.12. **Restrictions on Parking and Storage.**

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

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

(c) The Board of Directors may make rules and restrictions regarding parking and vehicular traffic on the Property, and the Board may also designate any parking spaces as solely for the use of visitors or others, unless such spaces have been previously assigned by Declarant to an Owner, and the Board may require that all Owners park their vehicles in their garages, rather than in driveways, streets or other parts of the Property. Neither Owners, tenants,

nor family members shall park in the asphalted guest parking, nor in front of the Townhome's garage. Neither Owners, tenants, guests, family, nor other invitees shall park within or obstruct any prohibited area, including without limitation any fire lane. Any vehicle or other item which is parked in violation of any rules or restrictions shall be subject to immediate removal by the Board or its agents at the expense of the owner of such vehicle.

(d) The 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.

7.13. **Clotheslines and Storage.** Outside clotheslines or basketball hoops and backboards, whether on buildings or free-standing, carports, patio covers or similar structures, and wood piles and storage areas shall not be allowed unless approved by the 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.

7.14. **Garbage and Refuse Disposal.** The Association may arrange for common garbage pickup as part of the common expenses or may require 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 an 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.

7.15. **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.

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

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

removed upon completion of construction and which shall be subject to Declarant's prior written approval.

7.18. **Detention Ponds.** El Paso County shall not maintain any detention pond or basin created for onsite detention or water quality purposes unless responsibility for such maintenance has been accepted by El Paso County through the appropriate process. If such responsibility is not accepted by El Paso County, it remains with the property owners or their agents.

(a) Acceptance of maintenance responsibility by El Paso County for detention ponds or basins will only be considered when the following criteria are met:

1. the detention pond or basin must be identified in a master drainage plan as a public facility serving more than a single property owner as a critical feature for the public drainage system for the attenuation of flood events incorporating the water quality features meeting the requirement of the ECM and DCM Vol 2;
2. the detention pond or basin must be included within a dedicated public easement or tract in which El Paso County has been identified as the agent responsible for maintenance;
3. the detention pond or basin must have a storage volume in excess of fifteen (15) acre feet; and
4. any structure must meet the jurisdictional dam requirements as stated by the Colorado State Dam Safety Inspector.

(b) Detention basin maintenance agreements and easements must be approved in conjunction with El Paso County acceptance of maintenance responsibilities. Such documents shall clearly define the responsibilities of both El Paso County and private property owners or private entities related to long-term maintenance. Such documents shall also provide that in the event that property owners fail to fulfill their maintenance obligations, El Paso County may perform the required work and then seek to recover its costs.

7.19. **Use of the Property.**

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

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

7.20. **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 an Owner. The Declarant and its contractors may maintain such management offices, signs, model units, construction offices, trailers and sales offices in such numbers, size and locations, as they may determine in their 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.

7.21. **RELEASES, DISCLAIMERS AND INDEMNITIES.**

A. THE PROVISIONS OF THIS SECTION 7.21 SHALL APPLY TO ANY "PROTECTED PARTY" WHICH IS DEFINED AS ANY PERSON OR PARTY, 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, AGAINST WHOM IS ASSERTED ANY CLAIM, DEMAND, LIABILITY, OBLIGATION OR MATTER WHATSOEVER REGARDING THE CONSTRUCTION, PHYSICAL CONDITION, VALUE, ASSESSMENTS, RESERVES, ASSOCIATION, AND ANY OTHER MATTERS RELATED THERETO IN CONNECTION WITH THE PROJECT.

B. OWNERS ACKNOWLEDGE AND UNDERSTAND THAT CERTAIN PHYSICAL AND/OR ENVIRONMENTAL CONDITIONS, INCLUDING 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. 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 UNIT, EACH 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, OWNERS UNDERSTAND THAT THE SOIL IN THE COLORADO AREA CONTAINS CLAY AND OTHER SUBSTANCES WHICH MAY CAUSE IT TO SWELL WHEN WET AND SO CAN CAUSE EARTH MOVEMENT AROUND A BUILDING'S FOUNDATION. OWNERS, FOR THEMSELVES, THEIR HEIRS, SUCCESSORS, ASSIGNS AND THEIR ASSOCIATION, WAIVE AND RELEASE THE PROTECTED PARTIES FROM ALL CLAIMS, LIABILITIES, LAWSUITS AND OTHER MATTERS ARISING FROM OR RELATED TO ANY PHYSICAL AND/OR ENVIRONMENTAL CONDITION AT THE PROJECT.

C. 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.

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

HARMLESS FROM ANY CLAIMS OR LIABILITY AGAINST ANY PROTECTED PARTY WITH RESPECT TO RADON GAS AND RELATED MATTERS.

E. FIBERGLASS INSULATION (ALSO KNOWN AS GLASS WOOL) IS COMMONLY USED FOR INSULATION OF HOMES. FIBERGLASS IN VARIOUS THICKNESSES AND VALUES IS USED IN THE AREAS OF WALLS, FLOOR TO CEILING ASSEMBLIES AND CEILING TO ROOF ASSEMBLIES OF HOMES TO PREVENT MOVEMENT OF HEAT AND TO REDUCE NOISE. THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES PRODUCED A REPORT THAT LISTS GLASS WOOL AS A SUBSTANCE "WHICH MAY BE REASONABLY ANTICIPATED TO BE A CARCINOGEN", BUT THAT REPORT MERELY 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 OWNERS AND THE ASSOCIATION ACKNOWLEDGE THAT FIBERGLASS IS USED IN THE WALL AND FLOOR TO CEILING ASSEMBLIES, AND WAIVE ANY CLAIMS AGAINST THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, ARISING AS A RESULT OF THE USE OF FIBERGLASS INSULATION, AND AGREES TO HOLD DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS HARMLESS FROM ANY CLAIM OR LIABILITY RESULTING FROM THE EXISTENCE OF FIBERGLASS INSULATION IN THE TOWNHOME OR THE PROJECT.

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

G. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT THE PROTECTED PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE REGARDING THE PROJECT (ALL OF WHICH ARE HEREBY DISCLAIMED BY THE PROTECTED PARTIES), INCLUDING WITHOUT LIMITATION ANY AS TO THE

FITNESS, WORKMANLIKE CONSTRUCTION, SAFETY, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, OR HABITABILITY OF THE UNIT, 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 OWNERS AND THE ASSOCIATION ACCEPT THE FOREGOING DISCLAIMER OF WARRANTIES AND WAIVE, RELEASE AND INDEMNIFY THE PROTECTED PARTY FROM ALL CLAIMS RELATED THERETO, AND ANY EXPENSES AND ATTORNEYS FEES INCURRED BY ANY PROTECTED PARTY, TOGETHER WITH ANY CLAIMS FOR BODILY INJURY, PROPERTY DAMAGE AND INCIDENTAL OR CONSEQUENTIAL DAMAGES MADE BY ANY PERSON OR PARTY.

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

I. ANY ACTION, DISPUTE, CLAIM OR CONTROVERSY BETWEEN ANY PERSON OR ENTITY, INCLUDING 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 MAY BE SUBMITTED BY ANY PROTECTED PARTY, AT ITS OPTION, TO BE RESOLVED BY BINDING ARBITRATION AS SET FORTH IN THIS SECTION AND SHALL INCLUDE ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH ANY CONDITION OF A UNIT OR THE LOT OR MAINTENANCE AREA OR IMPROVEMENTS, THIS DECLARATION, AND ANY RELATED AGREEMENTS OR INSTRUMENTS AND ANY TRANSACTION CONTEMPLATED HEREBY. IF SO SUBMITTED, SUCH DISPUTES SHALL BE RESOLVED BY BINDING ARBITRATION BEFORE A SINGLE ARBITRATOR IN ACCORDANCE WITH TITLE 9 OF THE U.S. CODE, COLORADO UNIFORM

ARBITRATION ACT, C.R.S. § 13-22-201, ET SEQ., AND THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (“AAA”). IN THE EVENT OF ANY INCONSISTENCY BETWEEN SUCH RULES AND THESE ARBITRATION PROVISIONS, THESE PROVISIONS SHALL SUPERSEDE SUCH RULES. ALL STATUES OF LIMITATIONS THAT WOULD OTHERWISE BE APPLICABLE SHALL APPLY TO ANY ARBITRATION PROCEEDING UNDER THIS SECTION. THE PARTIES SHALL BE ENTITLED TO CONDUCT DISCOVERY AS IF THE DISPUTE WERE PENDING IN A COURT OF LAW IN THE STATE OF COLORADO. IN ANY ARBITRATION PROCEEDING SUBJECT TO THESE PROVISIONS, THE ARBITRATOR IS EMPOWERED TO DECIDE PRE-HEARING MOTIONS THAT ARE SUBSTANTIALLY SIMILAR TO PRE-HEARING MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY ADJUDICATION. JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. EXCEPT AS OTHERWISE PROVIDED, THE ARBITRATOR SELECTED UNDER THIS SECTION SHALL BE KNOWLEDGEABLE IN THE SUBJECT MATTER OF THE DISPUTE. THE ARBITRATOR SHALL BE SELECTED THROUGH PANELS OF QUALIFIED JUDGES MAINTAINED BY THE DENVER, COLORADO OFFICE OF THE AAA. ALL SUCH ARBITRATION SHALL BE HELD IN COLORADO SPRINGS, COLORADO, AND VENUE SHALL BE PROPER IN THE DISTRICT COURT FOR EL PASO COUNTY, COLORADO.

J. THE RELEASES, DISCLAIMERS AND PROVISIONS OF THIS SECTION 7.21 MAY BE MODIFIED OR CHANGED ONLY BY TO THE EXTENT THAT THE DECLARANT EXECUTES AND DELIVERS A WRITTEN AMENDMENT, MODIFICATION OR CHANGE TO ANY OWNER, AND NO OTHER AMENDMENT, MODIFICATION, OR CHANGE OF THIS SECTION AND/OR THE DECLARANT’S RIGHTS UNDER THIS DECLARATION SHALL BE VALID OR ENFORCED WITHOUT THE DECLARANT’S PRIOR WRITTEN CONSENT.

ARTICLE 8 INSURANCE

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

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

(b) **Public Liability.** Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the 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 an Owner and Board member. The Owners

shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Maintenance Area. The insurance shall cover claims of one or more insured parties against other insured parties. Such insurance shall be in such amounts as the Board of Directors of the Association may from time to time determine, but not in an amount less than \$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 the Townhomes by the Association, its officers, directors, agents, employees, representatives and the Owners, off-premises employee coverage, water damage liability, contractual liability, bailee's liability for property of others, and any legal liability that results from lawsuits related to employment contracts to which the Association is a party.

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

(d) Fidelity Insurance. The Association shall purchase, in an amount equal to the maximum amount of funds in the Association's custody at any one time, but not less than the greater of 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 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.

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

(f) Flood. If the Property is located in an area identified by the Secretary of Housing and Urban Development or the Director of the Federal Emergency Management Agency as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Property in

an amount which is the lesser of the maximum amount of insurance available under the Act or one hundred percent (100%) of the current replacement cost of all buildings and other insurable common and individual property owned in common by the Lot Owners and located within the Property.

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

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

8.2. Annual Review. At least annually and prior to obtaining any insurance policy required under Section 8.1 of this Article, the Board of Directors shall obtain an estimate of the full replacement value of all 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 Owners of twenty percent (20%) or more Lots that the Association's estimate of maximum replacement value is too low, the Association will secure a certified appraisal of replacement value prepared by an M.A.I. appraiser and will conform the hazard insurance to the value indicated by that appraisal to the extent such insurance is reasonably obtainable and financially feasible as determined by the Board in its discretion. In any event, each Owner of a Lot is responsible for the adequacy and maintenance of the insurance coverage carried for the protection of himself or his Lot.

8.3. Form of Issuance.

(a) All insurance shall be carried in blanket policy form, shall name the Association (pursuant to Section 9.1) as the insured, as trustee and attorney-in fact pursuant to ARTICLE 9 hereof, and shall provide that the proceeds shall be paid to the Association for the benefit of and in trust for the Association, the Owners and their First Mortgagees, as their interests may appear, shall additionally insure and identify the interest of each Owner and the First Mortgagee, and shall provide a standard, non-contributory mortgage clause in favor of each First Mortgagee which has given the Association notice of its lien. Each Owner shall be an insured person under such policy with respect to liability arising out of such Owner's interest in the Maintenance Area.

(b) 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 Owners and members of their households;

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

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

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

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

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

(viii) provide that no assessments 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.

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

(d) Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and as are consistent with the requirements of First Mortgagees and any secondary lenders purchasing First Mortgages. The

deductible for an individual Townhome should not exceed 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.

(e) 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 Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association.

8.4. **Owner's Personal Property and Liability Insurance.** An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Each Owner shall be solely responsible, at his 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 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 Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance.

ARTICLE 9 DAMAGE, DESTRUCTION, CONDEMNATION AND MERGER

9.1. **Attorney-in-Fact.** All of the Owners and First Mortgagees irrevocably constitute and appoint the Association as insurance trustee under C.R.S. § 38-33.3-313(5) and (9) and under this Declaration and as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Property in the event of their destruction, damage, condemnation, or liquidation of all or a part of the Project or from the termination of the Project, including 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 Owners). Title to any Lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary or its other duly authorized officers and agents,

shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted and to represent the Owners in any proceedings, negotiations, settlements or agreements. The proceeds of any insurance collected shall be payable to the Association, for the benefit of the Association, the Owners and their First Mortgagees as their interests appear, for the purpose of repair, restoration, reconstruction or replacement as provided in this Declaration. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact to deal with the Project upon its destruction, damage, or condemnation shall be appointed. Said appointment must be approved by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, and at least sixty-seven percent (67%) of the First Mortgagees. Notwithstanding any contrary provision of this Declaration, the Association's Articles of Incorporation and Bylaws, no Owner or any other party shall have priority over any rights of the First Mortgagee of the Lot pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Project common property.

9.2. **Damage 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.

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

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

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

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

9.4. **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 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 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 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 Owners and their respective First Mortgagees to the extent such Maintenance Area is located upon such Owner's Lot.

9.5. **Repair and Reconstruction.** Unless otherwise agreed by sixty-seven percent (67%) of the First Mortgagees (based on one (1) vote for each First Mortgagee held) and by vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that

purpose, any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and with the original plans and specifications, and shall restore any Townhome or other improvement partially condemned or damaged by an insurable hazard to substantially the same condition in which it existed prior to such condemnation or damage.

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

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

9.8. **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 Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are attached, who are voting in person or by proxy at a meeting duly called for that purpose, 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 10 ADDITIONAL RESTRICTIONS

10.1. **Restrictions Upon Association and Owners.** Unless at least sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each First Mortgage held) and the Owners (other than Declarant) by vote or agreement of Owners of Lots 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 Owners shall be empowered or entitled to do any of the following:

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

(b) 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

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

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

(e) 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 an Owner's right to sell or transfer his or her Lot; a decision by the Association to establish self-management when professional management had been required previously by this Declaration or by a First Mortgage holder; restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration; any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or any provisions that expressly benefit First Mortgage holders, insurers, or guarantors; or

(f) notwithstanding any provision hereof or otherwise, threaten, file or pursue any lawsuit and/or arbitration against any Protected Party as defined in Section 7.21 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 Units and/or the Maintenance Areas.

10.2. **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 11 GENERAL PROVISIONS

11.1. **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 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 Owners shall obey and perform any protective or other covenants recorded against the Property prior to the recording of this Declaration.

11.2. **Enforcement.** The Board, the Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board or by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board may make such rules 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 Owners and other parties subject thereto shall strictly comply therewith. The Board shall have the sole discretion and authority to interpret this Declaration or the Bylaws and to resolve any dispute as to the interpretation thereof; the Board's interpretation shall be final, conclusive and binding on all persons and parties. In addition to all other remedies, the Board of Directors shall have the right, after notice and an opportunity of hearing, to impose upon any Owner reasonable fines for any breach by that Owner of the provisions of this Declaration, the Bylaws and/or the Association's rules and 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.

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

11.4. **Cumulative.** Each of these covenants is cumulative and independent and is to be construed without reference to any other provision dealing with the same subject matter or

imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

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

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

11.7. **Duration and Amendment.** Each and every provision of this Declaration shall be binding upon each and every 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 Owners and all of the First Mortgagees agree to such termination or revocation by an instrument duly recorded and such termination and revocation shall comply with C.R.S. § 38-33.3-218. This Declaration may be amended or modified by agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are attached and not less than sixty-seven (67%) of the First Mortgagees; provided, however, (a) that any Section in this Declaration which requires a particular percentage of Owners and/or Mortgagees may be amended only by written consent of that percentage of those parties, (b) that notwithstanding any provision of this Declaration, this Section, Sections 3.2, 7.20, 7.21, 11.13, and any other section or provision requiring Declarant's consent or providing particular rights or privileges to Declarant may only be amended with the prior written consent of the Declarant so long as the Declarant owns any Lot or real property in the Property or such longer period as allowed by law or statute, but not less than the period provided in C.R.S. § 38-33.3-303(5)(a)(I), or any successor statute; (c) that this Section may be amended by an instrument signed by Owners owning not less than ninety percent (90%) of the Lots, and one hundred percent (100%) of the First Mortgagees who have given the Association notice of their lien, and (d) that the Declarant hereby reserves the right, for the period set forth in Section 11.13 hereof, but without the vote of the Owners or First Mortgagees, to make such amendments to this Declaration, the Articles of Incorporation, the Bylaws, and/or Rules as may be necessary or desirable to exercise any right of Declarant under this Declaration or as may be necessary to correct typographical errors or to make clarifications or to comply with the requirements, standards or guidelines of recognized secondary mortgage market or as may be approved in writing by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Department of Veterans Affairs so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Property, and each Owner and Mortgagee by accepting a deed, Mortgage or other instrument affecting a Lot appoints Declarant as his attorney-in-fact for purposes of executing in said Owner's and/or Mortgagee's name and recording any such amendments to this Declaration, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a

Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments. The consent of any junior Mortgagee shall not be required under the provisions of this Article. In determining whether the appropriate percentage of First Mortgagee approval is obtained, each First Mortgagee shall have one (1) vote for each First Mortgage owned. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the county in which the Property is located, and an amendment must be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of each person executing the amendment. The amendment shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility of the persons or parties as set forth in C.R.S. § 38-33.3-217(6). The Association shall notify any First Mortgagee who has requested notice in writing of any proposed action under this Declaration which would require the consent of a specified percentage of First Mortgagees.

11.8. **Registration by Owner of Mailing Address.** Each 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 an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. 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.

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

11.10. **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.

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

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

11.13. **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 special Declarant 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:

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

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

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

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

(e) The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including 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 Owners within the Project.

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

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

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

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

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

(k) The right to expand the Project, without approval of the 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 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.

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

Notwithstanding any 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).

11.14. **Board to Resolve Ambiguities.** If any doubt or question shall arise (except as to the Declarant's rights and/or duties hereunder) concerning the true intent or meaning of any of this Declaration, except as to Sections 3.2, 7.20, 7.21, and 11.13, 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 3.2, 7.20, 7.21, and 11.13.

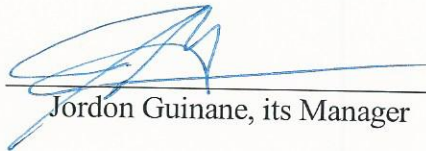
All sections contained in this document can be amended by the Declarant at any time prior to the sale of Townhome units.

[Signature on Following Page]

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal as of this 31st day of March, 2016.

DECLARANT:

LINCOLN COMMONS, LLC,
a Colorado limited liability company

By: 
Jordon Guinane, its Manager

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

The foregoing instrument was acknowledged before me this 31st day of March, 2016, by **Jordon Guinane**, as manager of **Lincoln Commons, LLC**, a Colorado limited liability company.

WITNESS my hand and official seal.

(S E A L)


Notary Public

My commission expires: August 23, 2016

KATRINA RUFF
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20124055066
MY COMMISSION EXPIRES AUGUST 23, 2016

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

That portion of the Southeast Quarter of the Southeast Quarter of Section 2 in Township 15 South, Range 66 West of the 6th P.M., described as follows:

Commencing at the Northwest corner of the Southeast quarter of the Southeast quarter of said Section 2; thence Easterly on the North line thereof 30.00 feet to intersect a line parallel with and 30.00 feet Easterly of the West line of said Southeast quarter of the Southeast quarter of Section 2; thence Southerly on said parallel line 30.00 feet to the Point of Beginning of the Tract to be described hereby; thence Easterly on a line parallel with and 30.00 feet Southerly of said North line 356.26 feet to intersect the Northerly extension of the Westerly line of Lincoln Plaza Subdivision No. 2 as recorded on December 8, 2004 at Reception No. 204201004; thence Southerly on said Westerly line as extended a distance of 734.75 feet to intersect the Westerly extension of the North line of that certain Tract conveyed to School District No. 3 by Warranty Deed recorded in Book 1737 at Page 55 of the records of El Paso County, Colorado, under Reception No. 108303; thence Westerly on said Westerly extension 356.26 feet to intersect said line parallel with and 30.00 feet Easterly of said West line of the Southeast quarter of the Southeast quarter of Section 2; thence Northerly on said parallel line 733.62 feet To the Point of Beginning, County of El Paso, State of Colorado.