

ROBERT C. "BOB" BALINK El Paso County, CO

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Upon recording, please return to:  
LottnerRubinFishmanBrown+Saul, P.C.  
63317th Street, Suite 2700  
Denver, CO 80202  
Attn: Scott A. Ross

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE TOWNES AT KETTLE CREEK**

**Indexing Note:** Please index in the grantee's index under  
"Townes at Kettle Creek Owners Association, Inc.," and in the  
Grantor's index under "Ashton Denver Residential, LLC"

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE TOWNES AT KETTLE CREEK**

ASHTON DENVER RESIDENTIAL, LLC, a Nevada limited liability company (the "Declarant"), as the owner of certain real property located in El Paso County, Colorado, and more particularly described on Exhibit A, attached hereto and incorporated herein by this reference or to be included thereon as a result of annexation of additional land as provided herein (the "Properties"), which Properties consist of eighty-two (82) individual Lots to be sold, and related Common Property and Common Property Improvements as set forth on Plat(s) recorded or to be recorded, hereby makes the following grants, submissions, and declarations:

**RECITALS**

Declarant desires to provide for the preservation and enhancement of property values, and opportunities in the Properties, contributing to the personal and general health, safety and welfare of residents and for the maintenance of the Common Property and Improvements, and to this end desires to create a planned community under the authority of and in compliance with the, and for that purpose, Declarant desires to subject the Properties, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Properties and each Owner thereof.

**DECLARATION**

NOW, THEREFORE, Declarant declares that the Properties and such additions as may hereafter be made are and shall be held, transferred, sold, conveyed and occupied subject to the following uniform covenants, conditions, restrictions, easements, charges and liens which shall run with the real property and be binding on all persons having or acquiring any right, title or interest in the Properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner and his successors in interest, and The Townes at Kettle Creek Owners Association, and its successors in interest.

**I. DEFINITIONS**

The following terms shall have the following meanings when used, unless the context otherwise requires:

1.1 Act. "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, as amended from time to time.

1.2 Agencies. "Agencies" mean the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FIHLMC), the Department of Housing and Urban Development, including the Federal Housing Administration (HUD), the Veterans Administration (VA) or any other governmental or quasigovernmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

1.3 Allocated Interests. "Allocated Interests" means the share of Assessments and votes in the Association allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lot within the Community from time to time.

1.4 Annexable Property. "Annexable Property" shall mean that certain real property described on Exhibit C attached hereto and incorporated herein by this reference.

1.5 Assessment. "Assessment" means annual Assessments and special Assessments, which are provided for in this Declaration, and additionally includes late charges, fines, fees, interest, costs, expenses, reasonable attorneys' fees, and any other charges, which are provided for in this Declaration.

1.6 Association. "Association" shall mean and refer to The Townes at Kettle Creek Owners Association, Inc., a Colorado non-profit corporation, its successors and assigns.

1.7 Board of Directors. "Board of Directors" or "Board" shall mean and include the governing body of the Association as provided in this Declaration, the Articles of Incorporation and the Bylaws thereof.

1.8 Builder. "Builder" shall mean an Owner other than Declarant that acquires a portion of the Properties from Declarant and which is designated in writing by Declarant as a Builder.

1.9 Building. "Building" shall mean and include any building constructed on the Properties.

1.10 Common Property. "Common Property" shall mean and refer to the real property described as Common Property in Exhibit B and any additions thereto pursuant to Article XIV hereof, together with all Common Property Improvements thereon and rights appurtenant thereto, and all personal property used in connection therewith. The Common Property may generally include open space, certain private streets, entry signs and features, retaining walls, drives and access easements, sidewalks, fences, greenbelt areas, and any recreational amenities described in this Declaration or the Plat or Map. Common Property shall also include any additional Common Property included in the Community as a result of annexation of any land as provided in Article XIV.

1.11 Common Property Improvements. "Common Property Improvements" shall mean and refer to any and all improvements located in, under, or upon the Common Property, as originally

developed and constructed by Declarant or as later added by the Association, which Common Property Improvements may include entryways, greenbelts, open space and non-dedicated and private roadways, all as may be located upon the Common Property described herein.

1.12 Common Expense. "Common Expense" shall mean and refer to:

1.12.1 Expenses of administration, operation or management, repair, maintenance or replacement of the Common Property of the Community;

1.12.2 Expenses declared Common Expenses by the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association;

1.12.3 All sums lawfully assessed against the Lots by the Board of Directors of the Association;

1.12.4 Expenses determined to be Common Expenses by the Association;

1.12.5 Expenses as are provided in any management agreement applicable to the Properties; and

1.12.6 Expenses incurred in the maintenance of any property over which the Association has a license and/or maintenance agreement with public agencies, authorities or utilities, including, but not limited to the City of Colorado Springs, Colorado.

1.12.7 Expenses incurred in the maintenance of any easements granted to the Association or for the benefit of the Community, including without limitation, drainage, utility and access easements.

1.13 Community. "Community" shall mean and refer to that certain real property described on Exhibit A, and any additions thereto pursuant to Article XIV hereof (any additions shall not be considered part of the Community until the procedures set forth in Article XIV have been completed). The Community shall be a "planned community" for purposes of the Act as the Act exists on the date on which this Declaration is recorded in the records of the Office of the Clerk and Recorder of El Paso County, Colorado.

1.14 Declarant. "Declarant" shall mean and include Ashton Denver Residential, LLC, a Nevada limited liability company, its successors and assigns, and any other Person(s) acting in concert, to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds), and who:

1.14.1 As part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Lot not previously disposed of to a purchaser; or

1.14.2 Reserves or succeeds to any Special Declarant Right.

1.15 Declarant Control Period. "Declarant Control Period" means the period of time ending on the date that is ten (10) years after the date on which the Declaration is recorded in the records of the Clerk and Recorder of El Paso County, Colorado; provided that the Declarant Control Period shall end earlier on the first to occur of any of the following events: (A) upon the date sixty (60) days after the date on which Declarant has conveyed seventy-five percent (75%) of the Maximum Number of Lots to purchasers other than Declarant or a successor Declarant; (B) upon the date two (2) years after the date of Declarant's last conveyance of a Lot in the ordinary course of business; (C) upon the date two (2) years after the date on which any right to add new Lots to the Community was last exercised by Declarant; or (D) on a date certain set forth in a written notice from Declarant to the Secretary of the Association of its intent to terminate this reserved right as of such date; provided, however, that in the event there is more than one Declarant, such notice must be signed by all such Declarants.

1.16 Declaration. "Declaration" shall mean and refer to this instrument and any amendment or supplement thereto, recorded in the records of the Office of the Clerk and Recorder of El Paso County, Colorado.

1.17 Development Rights. "Development Rights" means the following rights or combination of rights hereby reserved by the Declarant, as such Development Rights may be further described in this Declaration, to:

1.17.1 add real estate to this Community, as provided in Section 14.2 of this Declaration;

1.17.2 subdivide or replat Lots, as provided in Section 14.2 of this Declaration; or

1.17.3 withdraw real estate from this Community, as provided in Section 14.2 of this Declaration.

1.18 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Office of the Clerk and Recorder of El Paso County, Colorado, encumbering any Lot having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgage" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an officer of the United States of America, is the seller, whether or not such contract is recorded, and whether such contract is owned by the Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of El Paso County, Colorado show the Administrator as having the record title to the Lot.

1.19 First Mortgagee. "First Mortgagee" shall mean and include the holder or beneficiary of any recorded First Mortgage.

1.20 Improvement. "Improvement" shall mean and refer to any improvement constructed on a Lot, including, but not limited to any Residence, Building, garage, out-building, structure, fixture, landscaping, site grading, driveway, sidewalk, drainage channel, culvert, roadway, fence,

wall, deck, patio, shed, swimming pool, or pond, located on any part of the Community or Properties, including, but not limited to, buildings, structures or fixtures located on the Properties or any Lot prior to the recording and effective dates of this Declaration.

1.21 Licensed Property. "Licensed Property" shall mean and include any property owned by a governmental unit or entity which is maintained by the Association and used by the Owners pursuant to a license agreement with a governmental unit or entity, including but not limited to City of Colorado Springs, Colorado.

1.22 Lot. "Lot" shall mean and refer to any separately numbered plot of land shown on the Plat, with the exception of the Common Property and any public streets, but together with any appurtenances thereto or Improvements thereon. A Lot shall be a unit" in the Community for purposes of the Act.

1.23 Lot Improvement. "Lot Improvement" shall mean and refer to any Improvements located upon a Lot in addition to a Residence, as above defined, as such Improvements were originally installed by the Declarant or later approved for installation by the Association and intended for use in connection with the ownership of such Lot.

1.24 Master Declaration. "Master Declaration" shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for Bison Ridge at Kettle Creek Filing No. 1 recorded January 6, 2005, under Reception No. 205002588 of the records of the Office of the Clerk and Recorder of El Paso County, Colorado, as amended and supplemented from time to time.

1.25 Master Association. "Master Association" shall mean and refer to Kettle Creek Homeowners Association, Inc., the homeowners association created pursuant to the Master Declaration.

1.26 Maximum Number of Lots. "Maximum Number of Lots" shall mean the maximum number of Lots which Declarant may create in the Community by originally including such Lots within the Declaration or by subsequently annexing such Lots into the Community according to the provisions of Article XIV. The Maximum Number of Lots shall be eighty-two (82) unless the Maximum Number of Lots is changed by an amendment to this Declaration in accordance with Section 4.6.

1.27 Member. "Member" shall mean and refer to those persons entitled to membership in the Association. "Member" and "Owner" (as hereinafter defined) may be used interchangeably herein, unless the context provides otherwise.

1.28 Mortgage. "Mortgage" shall mean and include any recorded mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

1.29 Mortgagee. "Mortgagee" shall mean and include a beneficiary under a Mortgage.

1.30 Owner. "Owner" shall mean and include any person or entity, including the Declarant, at any time owning a Lot. The term "Owner" shall not refer to any Mortgagee as herein

defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.31 Party Wall. "Party Wall" means any wall which is part of the original construction of the structures located on Lots as such wall(s) may be repaired or reconstructed from time to time, is placed on or immediately adjacent to a Lot's lot line, and separates two (2) or more structures as a common wall. "Party Wall" includes any two walls which meet the foregoing criteria and which are separated by a small amount of air space.

1.32 Person. "Person" means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado, or any combination thereof.

1.33 Plat. "Plat" shall mean and refer to the final plat of The Townes at Kettle Creek, recorded or to be recorded in the real property records of the Office of the Clerk and Recorder of El Paso County, Colorado, as the same may be amended from time to time.

1.34 Residence. "Residence" shall mean and refer to the Improvements located upon any Lot built for single family occupancy as a residence which are constructed on or after the date on which this Declaration is effective within the meaning of the Act.

1.35 Special Declarant Rights. "Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, and signs advertising the Community and sale of Lots; to use easements through the Common Property for the purpose of making Improvements within the Community or within real estate which may be added to the Community, and to grant or create easements for access, utilities, drainage, water and other purposes incidental to development and sale of the Community located in or across Lots owned by Declarant or Common Elements, provided that such easements do not create a permanent, unreasonable interference with the rights of any Owners at the time such easement is created; to merge or consolidate a Community of the same form of ownership; to appoint or remove any officer of the Association or any Board of Directors member during the Declarant Control Period; to allocate any of the Common Property or portions thereof as Limited Common Property for the use of a particular Lot or limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Lots, and to allocate such Limited Common Property among particular Lots; or to perform any other right of the Declarant set forth in this Declaration. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically at such time as Declarant no longer owns any portion of the Property described on attached Exhibits A and C. Such rights shall terminate automatically on the earlier of the following events: (a) conveyance of the last Lot by Declarant to an Owner other than Declarant; or (b) ten (10) years from the date of recordation of this Declaration; except that such rights shall not terminate automatically with respect to the appointment of officers and directors, which may only be exercised in accordance with Article VI hereof.

1.36 Supplementary Declaration. "Supplementary Declaration" shall mean any declaration of covenants, conditions, and restrictions which may be recorded on a portion of the Property which is in addition to this Declaration and contains covenants, conditions, and restrictions, in addition to those set forth herein applicable only to that portion of the Community.

1.37 The Townes at Kettle Creek. "Townes" or "Townes at Kettle Creek" shall mean the Community as defined in Section 1.13.

## **II. PROPERTY RIGHTS**

2.1 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Property and any Licensed Property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

2.1.1 The right of the Association to suspend the voting rights and right to use of any Common Property and Common Property Improvements by a Member for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any and each infraction of its published Rules and Regulations;

2.1.2 The right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument approved by sixty-seven percent (67%) of the Members agreeing to such dedication or transfer has been recorded. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection;

2.1.3 The right of the Association, in accordance with this Declaration and its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Property or Licensed Property, or the existing Common Property Improvements, and in aid thereof, to mortgage or encumber the Common Property, and the rights of such Mortgagee in the Common Property shall be subordinate to the rights of the Owners hereunder;

2.1.4 The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations, and obligations contained in this Declaration;

2.1.5 The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure;

2.1.6 The right of the Association to promulgate, amend, repeal, re-enact and publish rules and regulations with which each Member shall strictly comply, including, but not limited to, the right of the Association to regulate and/or restrict vehicular parking and Improvements;

2.1.7 The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way,



for the use of real property or Improvements by Owners, other persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

2.1.8 The right of the Association to close or limit the use of the Common Property while maintaining, repairing and making replacements in the Common Property.

2.2 Limited Common Property. Limited Common Property shall mean those parts of the Common Property which are either limited to and reserved for the exclusive use of the Owner(s) of a particular Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Units. The Limited Common Property shall be used in connection with the applicable Lot(s) to the exclusion of the use thereof by the other Owners, except by invitation. No reference to any Limited Common Property need be made in any instrument of conveyance, encumbrance or other instrument. Subject to the terms and provisions of this Declaration, every Owner shall have the right to use and enjoy the Limited Common Property appurtenant to his or her Lot, and such right shall be exclusive except as to those other Owners with a right to use such Limited Common Property. To the extent that a driveway exclusively serves the garage of a Residence constructed on a Lot, any portion of the driveway which is located upon the Common Property shall be Limited Common Property of such Lot. To the extent that a set of steps and connecting walkway exclusively serves a Lot and the Residence constructed thereon, any portion of the steps and connecting walkway which is located upon the Common Property shall be Limited Common Property of such Lot.

2.3 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Property, Licensed Property, and Common Property Improvements to the members of his family, his tenants, invitees, or contract purchasers who reside on the Properties.

2.4 Common Property Use. The Common Property and Common Property Improvements described in Sections 1.10 and 1.11 of this Declaration and any licenses obtained by the Association for use of publicly-owned properties are reserved for the common use and enjoyment of the Owners for pedestrian and bicycle traffic, and other such uses common to all the Owners as determined by the Association, pursuant to the covenants, provisions, and restrictions contained herein, or as further defined in the Association Bylaws and any Rules and Regulations promulgated by the Association.

### **III. EASEMENTS**

3.1 Easements for Encroachments. If any portion of the Common Property or Common Property Improvements thereon now or hereafter encroaches upon any Lot, or if any Lot or Lot Improvements thereon now or hereafter encroaches upon any other Lot or upon any portion of the Common Property, as a result of the construction of the Buildings or other Improvements, or if any such encroachments shall occur hereafter as a result of settling or shifting of any Building or other Improvements or for any other reason, a valid easement shall be deemed to exist for the encroachment and for the maintenance of the same so long as the Building or other Improvements shall exist. In the event any Residence, Lot Improvement, or adjoining Common Property Improvement, shall be partially or totally destroyed or taken as a result of condemnation or eminent

domain proceedings and then rebuilt at the same location, encroachments due to this rebuilding shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the Building or other Improvements shall stand. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Lot.

3.1.1 Porch Encroachment Easement. The original construction of all or a portion of the Residences includes a front portion which may encroach upon the adjoining Lot. To the extent that a front porch as part of the original construction of a Residence on a Lot, or as hereafter reconstructed in the identical location as the original front porch, encroaches upon an adjoining Lot, a valid easement shall be deemed to exist for the encroachment and for the maintenance of the same so long as the front porch Improvements shall exist or are reconstructed in their original location. The foregoing front porch encroachments shall not be construed to be encumbrances affecting the marketability of title to any Lot.

3.2 Maintenance Easement. An easement is hereby granted to the Association, to be exercised by its officers, directors, agents, employees and contractors upon, across, in, over and under the Lots (except the Residences thereon) and the Common Property 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 as required by the City pursuant to the Plat, including but not limited to the right to maintain any sidewalks, landscaping, private streets and drives, fire lane signs within public or private roads or rights-of-way. The Association is hereby granted the right to create easements upon, across, in over and under the Common Property for installing, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electricity, master television antenna system, cable television, irrigation, storm sewer and drainage, if any; provided that such easements are reasonably necessary for the ongoing development and operation of the Community.

3.3 Easements for Drainage and Utilities. Easements and right-of-way for the installation and maintenance of utilities, drainage facilities, public or private improvements and access thereto are reserved as shown on the recorded Plats affecting the Lots and any amendments to such Plats or as established by any other instrument of record. Declarant creates and reserves to itself until the expiration of the period of Special Declarant Rights, and thereafter to the Association, a blanket non-exclusive easement upon, over and across the Common Property for the construction, operation, maintenance, repair and replacement of utilities, drainage and facilities therefor and other appurtenances thereto.

3.4 Easement for Unannexed Property. The Declarant hereby reserves, for the use and benefit of the Annexable Property described on Exhibit C, a non-exclusive, perpetual easement and right of way for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, sidewalks, accessways and Common Property, now or hereafter constructed, erected, installed or located in or on the Community for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities Improvements that may now or hereafter serve the Annexable Property or any portion thereof described on Exhibit C (herein collectively the "Annexable Area Easement"). By virtue of this Annexable Area Easement, the Declarant generally intends to provide for pedestrian and vehicular access and for utilities services to those portion(s) of the Annexable Property which have not been

included, from time to time, in the Community. Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Property, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Property at such time as both of the following have occurred with respect to such portion of the Annexable Property: annexation of such portion of the Annexable Property to this Declaration pursuant to the aforesaid Section; and expiration of the Declarant's right to withdraw such portion of the Annexable Property from this Declaration.

3.5 Sidewalks. Sidewalks may be constructed throughout the Community along and adjacent to or connecting the Common Property and streets within the Community for the purpose of access in and through the Community. To the extent sidewalks are constructed upon any Lot along and adjacent to or connecting the Common Property and the streets, there is hereby established a right of access, ingress and egress in and through the Community over and across that portion of the Lot adjacent to the Common Property which is occupied and used for the sidewalk as such sidewalk is initially constructed by the Declarant, together with the right to inspect, maintain, repair, and replace such sidewalks. The Association shall provide for the maintenance of such sidewalks as set forth elsewhere in this Declaration.

3.6 Emergency Easement. An easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Common Property and all Lots in the Community in the performance of their duties.

#### IV. THE ASSOCIATION

4.1 The Association. The Association has been or will be formed as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act. The administration of the Community shall be governed by this Declaration and the Articles of Incorporation and Bylaws of the Association.

4.2 Membership. An Owner of a Lot shall automatically become a Member of the Association and shall remain a Member for the period of the Owner's Lot ownership. If title to a Lot is held by more than one person, the membership related to that Lot shall be shared by all such persons in the same proportion of interests and by the same type of tenancy in which the title of the Lot is held. An Owner shall be entitled to one membership for each Lot owned. Each membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of the Lot. No Member shall be entitled to a preemptive right or option to purchase any Lot. No person or entity other than an Owner may be a Member of the Association, but the rights of membership may be assigned to a Mortgagee as further security for loans secured by a Mortgage of a Lot.

4.3 Voting Rights; Declarant Control.

4.3.1 Voting Rights. The Owners shall comprise the only class of membership in the Association. All Owners shall be entitled to one (1) vote for each Lot owned on any matter on which voting by the Owners is permitted or required by this Declaration, the Articles of Incorporation or Bylaws of the Association. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among

themselves determine in accordance with the Bylaws, but in no event shall they cast more than one (1) vote with respect to any Lot.

4.3.2 Declarant Control. Declarant shall be entitled, only during the Declarant Control Period, to appoint the members of the Board of Directors of the Association as provided in Section 4.4.2. Notwithstanding the foregoing and during the Declarant Control Period only, the Owners other than Declarant shall be entitled to elect at least one (1) member but not more than one-third (1/3) of the members of the Board of Directors, upon the happening of the following events:

4.3.2.1 At a meeting of the Association called for this purpose within sixty (60) days after the date on which Declarant has conveyed twenty-five percent (25%) of the Maximum Number of Lots to purchasers other than Declarant or a successor Declarant, the Owners other than Declarant shall be entitled to elect at least one (1) member but not more than twenty-five percent (25%) of the members of the Board of Directors, whichever is greater.

4.3.2.2 At a meeting of the Association called for this purpose within sixty (60) days after the date on which Declarant has conveyed fifty percent (50%) of the Maximum Number of Lots to purchasers other than Declarant or a successor Declarant, the Owners other than Declarant shall be entitled to elect at least one (1) member but not more than one-third (1/3) of the members of the Board of Directors, whichever is greater.

4.3.3 At a meeting called for this purpose which shall be held no later than the expiration of the Declarant Control Period, the Owners shall elect the Board of Directors of the Association which shall be comprised of at least three (3) members, at least a majority of whom shall be Owners other than Declarant or designated representatives of Owners other than Declarant.

#### 4.4 Board of Directors.

4.4.1 The Association shall be managed by its Board of Directors which shall consist of at least three (3) directors. The Board of Directors shall be elected by a vote of the Owners in annual meetings or special meetings of the Association, at which a quorum is present, called for that purpose according to the Articles of Incorporation and Bylaws of the Association. The Board of Directors shall have such powers and duties and shall serve for such terms of office as are set forth in the Articles of Incorporation and Bylaws of the Association.

4.4.2 Notwithstanding the foregoing voting rights of the Owners, Declarant hereby reserves the right to appoint the Board of Directors of the Association during the Declarant Control Period; PROVIDED, HOWEVER, Declarant shall not be entitled to vote for any members of the Board of Directors in any election held pursuant to Section 4.3.2 above. All Directors appointed by Declarant shall resign prior to the meeting of Members described in Section 4.3.3.

4.4.3 Notwithstanding any provision to the contrary in this Declaration, the Owners other than Declarant shall be entitled to remove any member of the Board of Directors, other than any Director appointed by Declarant, by the affirmative vote of sixty-seven percent (67%) of the Owners other than Declarant without the prior written approval of the First Mortgagees.

4.5 Transfer. Except as otherwise expressly stated herein, any of the rights, interests and obligations of the Association set forth or reserved herein may not be transferred or assigned to any other person or entity. No such transfer or assignment shall relieve the Association of any of the obligations set forth herein. No such transfer or assignment shall revoke or change any of the rights or obligations of any Owners as set forth herein.

4.6 Powers. The Association shall be granted all of the powers described in C.R.S. § 38-33.3-302, including but not limited to all powers necessary to govern, manage, maintain, repair, administer, and regulate the Community and to perform all of the duties required of the Association. Notwithstanding the preceding sentence, unless sixty-seven percent (67%) of the First Mortgagees, who have registered pursuant to Section 17.8 below (based upon one (1) vote for each Lot subject to a First Mortgage owned or held), have given their prior written approval as provided in Section 17.9 below, and the Owners to which sixty-seven percent (67%) of the votes in the Association are allocated have given their prior written approval, the Association shall not be empowered or entitled to:

4.6.1 By act or omission, seek to abandon or terminate the Community or dissolve the Association;

4.6.2 Partition or subdivide any Lot;

4.6.3 Annex any additional land into the Community by means of an amendment to this Declaration and the procedure set forth in Article XIV hereof;

4.6.4 By act or omission, seek to abandon, partition or subdivide, the Common Property or any Common Property Improvements thereon;

4.6.5 Use hazard insurance proceeds for loss to the Common Property Improvements for other than the repair, replacement, or reconstruction of such Common Property Improvements;

4.6.6 Merge or consolidate with another project or association, except for such provisions as may otherwise be provided herein relating to the annexation of additional lands to the Properties;

4.6.7 Except as may result from the exercise of the annexation provisions in this Declaration, change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

4.6.8 Change the voting rights or the extent of rights and easements of each Owner in and to the Common Property and Common Property Improvements thereon;

4.6.9 By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or exterior appearance of Residences, or the maintenance or upkeep of the Common Property; or

4.6.10 Fail to maintain fire and extended coverage on insurable Common Property Improvements on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs).

Notwithstanding the foregoing provisions in this Section, unless sixty-seven percent (67%) of the First Mortgagees who have registered pursuant to Section 17.8 (based upon one vote for each Lot subject to a First Mortgage owned or held) have given their approval as provided in Section 17.9, and the Owners to which eighty percent (80%) of the votes in the Association are allocated have been given their prior written approval, the Association shall not be empowered or entitled to abandon, mortgage, encumber, sell or transfer the Common Property or any Common Property Improvements thereon (provided that the granting of easements for utilities, including cable television, or for other public purposes consistent with the intended uses of such Common Property by the Association shall not be deemed a transfer).

4.7 Examination of Books and Records. All Owners, First Mortgagees and insurers or guarantors of a First Mortgage of a Lot in the Community shall, upon request, be entitled to inspect and obtain copies of the books and records of the Association to the extent provided in the Act and in the Association's Bylaws.

4.8 Turnover. Within sixty (60) days after the Owners other than Declarant elect a majority of the Board of Directors, Declarant shall deliver to the Association those items of property described in C.R.S. § 38-33.3-303(9) which are then in existence and in Declarant's custody or control.

## **V. CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

### **5.1 Common Property.**

5.1.1 The Association, subject to the rights of Owners with respect to their individual Lots, shall be responsible for the exclusive management and control of the Common Property and Common Property Improvements (including furnishings and equipment related thereto), and shall maintain and keep the same in good, clean, attractive and sanitary condition. The Association shall have an easement over, under and through the Lots (except the Residences thereon) to maintain, repair and replace any fencing and landscaping on the Lots for which the Association has the obligation to maintain, repair or replace.

5.1.2 The Association may, upon acceptable license and maintenance agreements with public agencies, utilities, or jurisdictions, assume responsibility for maintaining any sidewalks, fences, landscaping improvements and other improvements within rights-of-way and other properties owned by such public agencies, on property owned by such public agencies, utilities, or jurisdictions, including, but not limited to the City of Colorado Springs. The cost of such management operation, maintenance, and repair by the Association shall be a Common Expense and shall be borne as provided in Article VI.

5.1.3 The Common Property is intended for the common use and enjoyment of Owners for access, recreation and other related activities, as provided in this Declaration and other

applicable documents. The Common Property owned by the Association is not dedicated hereby for use by the general public.

5.1.4 The Association shall accept title to any Common Property, including Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant to the Association are planned to consist only of fee simple title to Common Property to be located in the property described on Exhibit B and/or the Annexable Property and/or easements.

5.1.5 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Community, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Community or the enforcement of this Declaration. The Association may arrange with others to furnish lighting, heating, water, trash collection, snow removal, building and grounds maintenance, sewer service, firewood, and other services as appropriate to the Community. During the Declarant Control Period, any contracts or leases entered into shall contain a right of termination, without cause, which is exercisable without penalty at any time after transfer of control, upon not more than thirty (30) days prior written notice to the other party thereto; however, such right of termination need not be present in those contracts and leases wherein the subject matter is an essential service and where long term contracts are required. The cost of such services shall be borne as a Common Expense.

5.1.6 Professional Management. The Association may obtain and pay for services of a professional "Management Contractor" to manage its affairs, or any part thereof, to the extent it deems advisable, whether such services are in lieu of, or supplemental to, the services described under Section 5.2 above. Any management contracts entered into by the Association with respect to such professional management of the Properties, and any contracts that such professional management shall enter into on behalf of the Association, may not be for a term exceeding one (1) year, and must contain a provision allowing the Association to cancel the contract with or without cause, and without a payment of a termination fee or penalty, upon thirty (30) days' prior written notice. Further, and in connection with the Association's right to contract for management and personnel, whether on-site or off-site in nature, the Association shall have the right to limit the use of portions of the Common Property for purposes of maintenance and storage facilities, management office facilities, management housing facilities to the extent allowable, and other such purposes as deemed desirable and necessary by the Association for the purposes of management and maintenance of the Properties. The Management Contractor shall be an independent contractor and neither the Management Contractor, nor any of its employees, shall be considered as employees of the Association.

5.1.7 Identity of Board of Directors. From time to time, but not less than annually, the Association shall mail to each Owner a notice containing the names and addresses of the members of the Board of Directors, and the Management Contractor, if there is one.

## 5.2 Exterior Maintenance.

5.2.1 The Association shall be responsible for the management, control, maintenance, repair, replacement and improvement of the following: (i) Common Property; (ii) Common Property Improvements; (iii) any property owned by the Association, including facilities, furnishings and equipment related thereto; (iv) exterior sidewalks and driveways, including snow removal therefrom; (v) fire lane signs installed in the Community; (vi) the Building exteriors including the roofs, gutters and soffits, the exterior wall surfaces, but not including windows, window screens, garage doors, pedestrian doors, and door and window hardware, except for the painting or staining of such door and window frames; (vii) fences; and (viii) other maintenance, repair and replacement undertaken by the Association as deemed appropriate by the Board of Directors. The Association shall keep those portions of the Community that it is required to maintain in good, clean, attractive and sanitary condition, order and repair.

5.2.2 All exterior landscaping on portions of a Lot not improved with the Residence, driveway, walkways, patios or decks (referred to as the unimproved area of a Lot) shall be maintained by the Association; provided, however, that this obligation shall not apply to any Lots owned by Declarant or a Builder and held for sale. The landscaping shall include an adequate underground sprinkler system which shall be installed at the time of initial landscaping. No trees or other landscape material shall be permitted to cause sight distance problems with vehicles entering the adjoining street from driveways or nearby intersections. All disputes regarding sight distance shall be governed by the City of Colorado Springs' sight distance table, which shall be conclusive and binding on all parties. The landscaping of each Lot having once been installed shall be maintained in a neat, attractive, slightly and well-kept condition, which shall include keeping mowing, trimming, adequate watering, replacement of dead, diseased or unsightly materials, and removal of debris. The Association shall have the sole right to determine when and how such landscaping maintenance, repair and/or replacement is performed, and individual Owners shall not have any right to change the timing or manner of such maintenance, repair and/or replacement with respect to their Lot. The Association may, by Board action and in its sole discretion, discontinue providing any landscape maintenance, repair or replacement service in which case each Lot Owner may be required to maintain the landscape on such Owner's Lot at such Owner's sole cost and expense.

5.2.3 The Association shall be responsible for maintenance, repair and replacement of any drainage structure or facilities and other public Improvements as required by the local governmental entity as a condition of development of the Community or any part thereof, and of any other property or Improvements that the Board of Directors may elect on behalf of the Association, unless such Improvements have been dedicated to and accepted by a local governmental entity for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized by law to be performed and accepted by a special district or other municipal or quasi-municipal entity.



5.2.4 Each Owner shall be responsible for exclusive maintenance, repair and replacement of the following components of the Owner's Lot and Residence: (i) all fixtures, equipment and utilities installed or located within the interior of an Owner's Residence and all utility service lines providing exclusive service to an Owner's Lot; (ii) garage door, garage door opener, windows, window screens, pedestrian doors, and door and window hardware (except painting or staining of exterior door and window frames); (iii) all equipment (such as exterior mounted HVAC equipment) providing exclusive service thereto or therefor and any service lines from such equipment to the Unit, including, without limitation, all utility, heating, plumbing, air conditioning and domestic hot water equipment and appurtenances (excluding any landscaping irrigation system). Each Owner shall also keep the foregoing in good condition, order and repair.

5.2.5 The cost of maintenance performed by the Association shall be borne as a Common Expense, and the Association shall collect as assessments, and expend, funds for the costs of the maintenance, repair and replacement to be performed by the Association under this Section.

5.2.6 Notwithstanding anything to the contrary contained in this Declaration, none of the responsibilities of the Association for management, control, maintenance, repair, replacement and improvement of the Common Property, Common Improvements thereon, or any portion of a Lot shall give rise to any interest of the Association in any Lot or the quality of any Improvements therein or thereon, nor any right by the Association to pursue any claims against the Declarant, any member thereof, or any other Person, for negligence, breach of express or implied warranties, or any other matters, with respect to any such Improvements or the construction thereof.

5.2.7 Except as otherwise provided in this Declaration, the Owner of each Lot shall be solely responsible for maintaining, repairing and replacing the Owner's Residence and Lot and the Improvements therein or appurtenant thereto.

5.2.8 The Association and each Owner, and their agents and contractors, are hereby granted an easement for the purpose of maintenance and repair of the Owner's Lot on, over, across, under and through any adjacent Lot except the Residence thereon upon reasonable notice to the Owner thereof. Any damage occurring to such adjacent Lot or the Improvements thereon in performing such repairs or maintenance shall be the responsibility of the party performing or authorizing such repairs or maintenance.

5.3 Maintenance, Repair and Replacement Obligations. If any exterior Improvement which must be approved by the Architectural Review Committee has been added, changed, altered or modified by or for the Owner or occupant of the Lot on which such Improvement is located or appurtenant, then such Improvement shall be maintained, repaired and replaced by such Owner to the extent of the addition, change, alteration or modification. If such Improvement is newly constructed, erected, placed, planted, applied or installed upon the Lot by the Owner or occupant thereof, then the entirety of such Improvement shall be maintained, repaired and replaced by the Owner of the Lot on which such Improvement is located at such Owner's cost and expense. However, the Board of Directors may at any time, by resolution, elect to have the Association provide such maintenance, repair or replacement, provided that any such resolution shall be subject to being repealed, revoked, modified, changed or altered, at any time, from time to time, by the Board.

5.4 Rights of Action. The Association and any Owner shall have an appropriate right of action at law or in equity against any person or other Owner to enjoin the violation of any of the provisions of this Declaration or with decisions of the Association made pursuant to this Declaration and for failure to comply with the provisions of this Declaration or with decisions of the Association made pursuant to this Declaration; and any Owner shall have similar rights of action against the Association. Any remedies granted to the Association in this Declaration shall be in addition to any remedies otherwise available to it at law or in equity.

## VI. ASSESSMENTS

6.1 Obligation. All Owners (including Declarant) shall be obligated to pay the estimated assessments imposed by the Board of Directors to meet Common Expenses and the costs and expenses of maintenance, operation and management of the Community, the Association, and the various functions and duties of the Association. The Board may establish any reasonable system for collection periodically of Assessments, in advance or arrears as deemed desirable. Annual Assessment shall be payable monthly in advance on the first day of each month or at such other interval as may be established by the Board of Directors. Assessments payable monthly shall be considered delinquent after the 15<sup>th</sup> day of each month. In the event a Lot is sold to a non-Declarant purchaser during the year, the annual Assessment shall be prorated to the closing date and paid at closing, together with the working capital deposit required by Section 6.20 hereof.

### 6.2 Rate of Assessments.

6.2.1 Annual and special Assessments shall be sufficient to meet the expected needs of the Association and shall be apportioned among the Lots in accordance with their Allocated Interests. The annual Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles.

6.2.2 During the Declarant Control Period, the Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall be treated as an advance against Assessments then or thereafter due from the Declarant; provided, however, that any such advances which have not been credited against Assessments due from the Declarant at the time the Declarant Control Period terminates shall then be repaid by the Association to the Declarant, without interest, to the extent that the Association has funds in excess of its working capital funds, reserve funds, and operating expenses to date for the calendar year in which the Declarant Control Period terminates; and provided further, however, that any of such advances which are not repaid to the Declarant shall continue to constitute advances against Assessments then or thereafter due from the Declarant until automatic termination of the Special Declarant Rights as provided in Section 1.35 of this Declaration. If the Declarant elects in its discretion to pay any amounts as provided in this subsection, Declarant shall not, under any circumstances, be obligated to continue payment or funding of any such amount(s) in the future.

6.3 Initial Annual Assessment. Until the effective date of an Association budget ratified by the Members with a different amount for the annual Assessments, as provided above, the amount of the annual Assessment against each Lot shall not exceed Two Hundred Dollars (\$200.00) per

month, exclusive of any amounts due to the Master Association, any district and/or any other Person or entity.

6.4 Date of Commencement of Annual Assessments. Annual Assessments shall commence at such time as the Board of Directors may determine in its discretion. After any annual Assessment has been made by the Association, annual Assessments shall initially not be greater than the amount set forth in Section 6.3 of this Declaration, and thereafter shall be based on a budget adopted by the Association as provided in this Declaration. A budget shall be so adopted by the Association no less frequently than annually. The annual Assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time, provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

6.5 Time for Payment of Assessments. Assessments payable monthly shall be due and payable on the first day of each month and shall be delinquent after the 15<sup>th</sup> days of each month. Assessments payable on another periodic basis shall be due and payable as determined by the Board or otherwise on the date specified in a written notice specifying the amount of the assessment and the number, amount and due date of any installments thereof. The Association shall mail such notice to each Owner at his registered address at least annually with respect to annual Assessments and at least thirty (30) days before the due date of any special Assessment. Each Assessment shall bear interest at the rate of twenty-one percent (21%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date, and there shall be a service charge, in an amount determined by the Board from time to time, for each installment of Assessment payment that is delinquent. Failure of the Association to give timely notice of any Assessment as provided herein shall not affect the liability of the Owner of any Lot for such assessment, but the date when payment shall become due in such case shall be deferred to a date fifteen (15) days after the due date indicated in the properly sent notice. The Association may elect to have the annual Assessments paid monthly, or on such periodic basis deemed desirable by the Association; a default in the payment of any installment of the annual Assessment shall additionally give the Association the right to accelerate the remaining amount of annual Assessment as immediately due and payable, as further referenced hereinafter. All payments made to the Association shall be applied as follows in order of priority: 1. Late Fees; 2. Interest; 3. Legal Fees for Collection; 4. Assessment Fines (if applicable); 5. Assessments in Arrears; 6. Assessment for the Current Month. This priority list is included to notify the Owners that if an Owner's assessments, fees and charges are in arrears, an Owner cannot apply payments towards current assessments to avoid monthly Late Fees until any past due balance is paid in full.

6.6 Special Assessments for Capital Improvements. In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, a special Assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital Improvement upon any portion of real property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any deficit of the Association. Any such special

Assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration. A meeting of the Members called for the purpose of considering the establishment of a special Assessment shall be held in conformance with Section 6.7 and Section 6.8 of this Declaration. Notwithstanding the foregoing, special Assessments levied during the Declarant Control Period may not be used for the purpose of constructing capital Improvements.

6.7 Notice and Quorum for Special Assessments. Notice of any meeting called for the purpose of taking any action authorized under Section 6.6 of this Declaration shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of the Association votes 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.

6.8 Budget.

6.8.1 At least sixty (60) days prior to levying any annual or special Assessment, the Board of Directors shall adopt a proposed budget of the estimated cash requirements for that Assessment. Within thirty (30) days after the proposed budget is adopted, the Secretary of the Association (on behalf of the Board of Directors) shall cause to be delivered to each Owner at his or its registered address, by regular United States mail, first-class postage prepaid, the following: (i) a summary of the proposed budget, (ii) a statement of the amount of the Assessment per Lot and the number and amount of any installments thereof, and (iii) a notice of a meeting of the Association which shall specify (a) that the purpose or one of the purposes of the meeting is to allow the Owners to consider the proposed budget, and (b) the date, place and time of the meeting. The meeting shall be held not less than fourteen (14), nor more than sixty (60) days after the date on which the notice is mailed to the Owners.

6.8.2 At the meeting held pursuant to this Section 6.8, the proposed budget shall be submitted to the Owners. The proposed budget does not require approval from Owners and is deemed approved by the Owners in the absence of a veto at the meeting by the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, whether or not a quorum is present. In the event that the proposed budget for any annual Assessment 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. If the proposed budget is vetoed, the Board of Directors shall propose a subsequent budget within thirty (30) days after the date of the meeting and submit that proposed budget to the Owners in the manner set forth above for the originally proposed budget.

6.9 Assessment Lien.

6.9.1 The Association has a statutory lien on a Lot for Assessments levied against that Lot or the Owner thereof. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments, each

installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

6.9.2 Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the Assessment for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

6.10 Priority of Association Lien.

6.10.1 A lien under this Article is prior to all other liens and encumbrances on a Lot except:

6.10.1.1 Liens and encumbrances recorded before the recordation of the Declaration;

6.10.1.2 A First Mortgage on the Lot which was recorded before the date on which the amount(s) due to the Association became delinquent; and

6.10.1.3 Liens for real estate taxes and other governmental assessments or charges against the Lot.

6.10.2 A lien under this Section is also prior to the Mortgages described in the preceding subsection 6.10.1.2 to the extent, if any, provided in the Act.

6.10.3 This Section does not affect the priority of mechanic's or materialmen's liens or the priority of liens for other assessments made by the Association.

6.10.4 The Association's lien on a Lot for Assessments shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Association lien.

6.11 Personal Obligation. The amount of any assessment chargeable against any Lot shall be a personal and individual debt of the Owner thereof. No Owner may become exempt from liability for the assessment by abandonment or waiver of the use or enjoyment of any of the Common Property or Common Property Improvements. The Association may bring suit to recover a money judgment for unpaid Assessments plus interest, costs and expenses, including attorney's fees, without foreclosing or waiving the Assessment lien provided herein.

6.12 Amounts Due under the Master Declaration. The Association shall have the authority, but not the duty, at any time from time to time, to collect, remit and/or pay to the Master Association any amounts that may at any time be due from any Owner(s) to the Master Association

under the Master Declaration (regardless of whether or not such amounts were collected by the Association from all Owner(s)). Such amounts referred to in the preceding sentence shall be in addition to the annual Assessments, special Assessments, plus service charges, interest, costs and attorney's fees, and service charges or other amounts that may at any time be due to or payable by the Association under any other provisions of this Declaration.

6.13 Assessments for Services to Fewer Than All Lots. The Association may, at any time from time to time, provide services to less than all of the Lot(s) in the Community. If such services are not funded by the Association's annual or special Assessments, then such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Lots for which such service is to be provided, with such agreement to include a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such services, and which amounts shall include overhead expenses of the Association. Services which may be provided by the Association pursuant to this Section (and which are not to be provided to all of the Lots) may include, without limitation, (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions to or for such Lot(s); (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for Owners.

6.14 Notice to First Mortgagee. If requested in writing, the Association shall report to the First Mortgagee of a Lot any default hereunder or unpaid assessments remaining in default or unpaid or uncured for longer than sixty (60) days.

6.15 Statement of Status of Assessment Payment. The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee 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 Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or Mortgagee or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

6.16 Personal Liability of Purchaser For Assessments. A purchaser of a Lot shall not be personally liable for unpaid assessments against the Lot up to the time of conveyance to that purchaser.

6.17 First Mortgagee--Foreclosure--Liability for Unpaid Assessments. Each First Mortgagee of a Lot within the Community who obtains title to the Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrue prior to six (6) months before the time such First Mortgagee or purchaser at a foreclosure sale

obtains title to the Lot, but shall not relieve the First Mortgagee or purchaser from liability for, or lien from, any Assessments made thereafter. Any unpaid Assessment, which was rendered uncollectible by the effect of this Section, may be reallocated and assessed to all Lots as a Common Expense.

6.18 Association's Right of Acceleration upon Default. In addition to the other remedies provided for the Association upon the default of an Owner in the payment of an annual Assessment, special Assessment, or any installment thereof, and in the event an Owner shall default in the payment of any installment of an annual or special Assessment, then the Association shall have the right to declare immediately due and owing the total amount of such annual or special Assessment as remains outstanding at the time of such installment default. This right of acceleration in the event of default in the payment of any installment of Assessments shall apply whether the Association pursues the obligation personally against the Owner or through foreclosure of the Owner's Lot, as provided above.

6.19 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Assessments, and any prepayment of or provision for reserves, shall be retained by the Association and need not be paid to the Owners or credited to them to reduce their future Assessments.

6.20 Working Capital Fund. The Association shall require the first Owner (other than the Declarant) of any Lot who purchases that Lot from the Declarant or a Builder to make a non-refundable contribution to the Association in an amount equal to six (6) times the then current monthly installment of the annual Assessment (regardless of whether or not Assessments have commenced as provided in Section 4.5 of this Declaration). This contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or a Builder of each Lot and shall, until use, be maintained for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the sale of his Lot, an Owner shall be entitled to reimbursement at closing (in the form of a credit on the closing settlement statement) from the purchaser of such Lot (but not from the Association) the Owner's contribution to the working capital fund.

6.21 Other Charges. The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amounts(s) as the Board of Directors may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; return check charges; charges for faxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; charges for notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s).

6.22 Charges for Misconduct. If any Association expense is caused by the misconduct of any Owner, as determined by the Board, the Association may assess that Association expense exclusively against such Owner and his Lot.

## VII. RESTRICTIVE COVENANTS AND OBLIGATIONS

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 Lots.

7.2 Residential. The Lots are hereby restricted to residential use and uses related to the convenience and enjoyment of such residential use. No Buildings or structures shall be moved from other locations onto the Lots or Common Property; no Common Property or Lot Improvements other than those originally planned or installed by Declarant shall be erected or constructed on the Common Property or upon any Lot unless approved by the Architectural Review Committee or its designated representative. No free-standing shed or other out-building shall be used or permitted to be kept or stored on any portion of a Lot, either temporarily or permanently.

7.3 Sales and Construction Facilities of Declarant. Notwithstanding any provision in this Declaration, Declarant, any Builders, and their agents, employees and contractors shall be permitted to maintain during the period of construction and sale of the Buildings in the Community upon such portion of the Community as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient, or incidental to the construction, sale or rental of Lots and Residences including, but not limited to, construction and storage areas, construction trailers, model homes and business and sales offices located in any Lots in the Community, lighting, and temporary parking facilities for all employees of Declarant, provided, however, that the limit on Declarant's right to use the Property for sales purposes shall not limit its right to use the Properties for construction or development purposes; provided further that these rights shall terminate no later than twenty (20) years after the effective date of this Declaration, and provided further, that such use shall not unreasonably interfere in any way with the right of ingress or egress to any privately owned Residence and the use and enjoyment thereof as a private Residence, nor the rights of ingress or egress to the Common Property and Improvements thereon, nor the use thereof for recreation or other proper purposes by the Owners and the Members, agents and Officers of the Association.

7.4 Compliance with Law. No improper or unlawful use shall be permitted or made of the Community or any part thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Community shall be observed; provided, however, the Association shall have no duty or obligation to enforce governmental laws and regulations.

7.5 Rules and Regulations. Rules and Regulations may be adopted by the Board of Directors, provided such Rules and Regulations shall be furnished to Owners prior to the time they are adopted and that Owners be notified as provided in the Bylaws of the Association that the Board of Directors will consider adoption of the Rules and Regulations so that Owners will have an opportunity to be heard or furnish input regarding the adoption and so that such Rules and Regulations shall be uniform and nondiscriminatory. After adoption, a copy of such Rules and Regulations shall be provided to all Owners. The Association shall adopt a fine system to impose monetary penalties for such infractions, or take judicial action against any Owner to enforce compliance with such Rules, Regulations, or other obligations, including injunctive relief or to obtain damages for noncompliance, all to the extent permitted by law. The Board of Directors may adopt and publish a fine schedule which shall list fines which shall be imposed for violations of this Declaration, the Association Bylaws, Articles of Incorporation, and any Rules and Regulations.



7.6 No Other Business. Lots shall be used for residential purposes only, including uses which are customarily incident thereto and shall not be used at any time for business, commercial or professional purposes; provided, however, that an Owner shall be entitled to conduct business activities from within his Lot, subject to the following restrictions: (i) there shall be no separate access or entrance to such business activity; (ii) the business activity shall not be conducted upon any portion of the Community other than the Owner's Lot and shall be conducted on the Lot exclusively by the Owner, without the aid of assistants, employees or independent contractors working on the Lot; (iii) the business activity shall not include the commercial manufacture, creation, exchange, storage or sale of chattels, goods, wares or merchandise; (iv) the existence or operation of the business activity is not readily apparent or observable from outside the Lot; (v) the business activity conforms to all zoning requirements for the Community; (vi) the business activity does not involve regular visits to the Lot by customers, patients, clients, suppliers or other business invitees or door-to-door solicitation of residents of the Community and does not adversely affect pedestrian or vehicular traffic within the Community; and (vii) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, a hazardous or offensive use, or a threat to the safety or security of the other residents of the Community. The term "business", as used in this Section, shall have its ordinarily and generally accepted meaning and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether such activity is engaged in full or part time, such activity is intended to or does generate a profit or fee or a license is required. No other business activity of any kind shall be conducted in any Lot or on the Community, except that permitted by the Association or otherwise provided herein.

7.7 Setbacks. Subject to Section 9.11 hereof, no portion of any Residence shall be located outside any applicable setback described in any Plat or other document approved by the governing municipality for the Community.

7.8 Miscellaneous Use Restrictions.

7.8.1 Fences and Walls. No fences, hedges or walls shall be erected or maintained upon the Lots, except such as are installed by Declarant or Builder in accordance with the initial construction of the Buildings located thereon, unless approved by the Architectural Review Committee. Any fences, hedges, or walls which shall be installed as part of the initial construction shall not be removed, transferred, or altered in any manner, except as approved by the Architectural Review Committee or its designated representative. The Architectural Review Committee may prohibit any fence which impairs the line of sight from any driveway to the street. No fence shall be installed which blocks or impedes established drainage ways. In reviewing any proposed construction of fences, the Architectural Review Committee shall apply the covenants and restrictions set forth in this Declaration or any Supplementary Declaration, and any additional Design Guidelines promulgated by the Architectural Review Committee for the Community as a whole or any particular Plat, or phase of the Community, and the reasonable discretion of the Architectural Review Committee.

7.8.2 Antennas. Except as may otherwise be permitted by the Architectural Review Committee, no exterior radio antenna, television antenna, or other antenna, satellite dish, or audio or

visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a Residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended from time to time. As to "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended, the Association shall be empowered to adopt reasonable Rules and Regulations governing the types of "antenna" (including certain satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 and/or regulations promulgated thereunder, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

7.8.3 Reconstruction of Buildings. Any Improvement which may be destroyed in whole or in part by fire, hail, windstorm or any other cause or act of God, shall be rebuilt or all debris removed so as not to render any such property or any portion thereof, in the opinion of the Board, unsanitary, unsightly, offensive or detrimental to any other property or to its occupants.

7.8.4 Nuisances. No noise or other nuisance shall be permitted to exist or operate upon any Lot so as to be, in the opinion of the Board, offensive or detrimental to any other property or its occupants. Without limiting the generality of any of the foregoing provisions, no exterior lights, speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any Lot without the prior written approval of the Board. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof, in the opinion of the Board, unsanitary, unsightly, offensive or detrimental to any other property or to its occupants.

7.8.5 Unsightly Articles/Vehicles. No unsightly article shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Trailers, mobile homes, recreational vehicles, graders, trucks (other than pickups used solely for the private and non-business use of the residents of a Residence), boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment, garden and maintenance equipment, and all commercial and business vehicles shall be kept at all times, except when in actual use, within a garage or Residence, or in a storage facility located off the Community. No equipment, tools, lumber, grass, plant waste, shrub or tree clippings, metals, building materials or scrap shall be kept, stored or allowed to accumulate within the Community. No lawn or yard art shall be allowed on the Community or on any Lot without prior approval of the Architectural Review Committee. No personal items shall be stored outside in confines of any garage or Residence. The Association shall have the right to enter upon any Lot in order to remove any vehicle or other unsightly article located upon any Lot in violation of this Section and store the vehicle or article in a storage facility off the Community site. Any costs or expenses incurred by the Association shall be borne by the Owner as provided in Section 7.9. Without limiting the generality of the foregoing:

(i) No commercial-type vehicles, other than pickup trucks not in excess of one (1) ton rating as defined by the Colorado Motor Vehicle Department which are solely for

personal use, shall be allowed on the Common Property, any Lot, or any street or driveway in the Community except while engaged in transport to and from any Building or Lot. For purposes of applying this provision, any vehicle having any advertising material affixed to its exterior shall be deemed a "commercial-type" vehicle.

(ii) All vehicles parked on any portion of the Community for any period of time must be properly registered and licensed in accordance with the requirements of the State of Colorado.

(iii) No pickup trucks shall be permitted on any portion of the Community which carry a bed "topper" or any form of camper shell extending vertically above the roof of the truck cab for more than twelve (12) inches.

(iv) No recreational vehicles may be parked or stored on any portion of the Property at any time, except during transport to or from a Building or Lot, or for purposes of loading or unloading, for a period not to exceed twenty-four (24) hours.

(v) No trailers of any kind shall be allowed on any portion of the Community except while directly engaged in transport to or from a Building or Lot.

(vi) No abandoned, inoperative or junk vehicles of any kind shall be parked or stored on any portion of the Community, except in a garage. An "abandoned, inoperative or junk vehicle" shall be defined as any vehicle which is not currently licensed or has not been driven outside the Community under its own propulsion for a period of three (3) days or longer. The Association may cause a written notice describing the "abandoned, inoperative or junk vehicle" and requesting removal thereof to be served on the Owner in possession of the vehicle or Lot Owner on which the vehicle is located, or posted on the vehicle itself. If the vehicle shall not have been removed within seventy-two (72) hours after service or posting of that notice, the Association shall have the right to enter the Lot, if necessary, and to remove the vehicle from the Community, and store the vehicle off-site without any liability to the Association. Any costs and expenses, including reasonable attorney's fees, incurred by the Association, in connection with service or posting of any notice, or removal, transportation and storage of any "abandoned, inoperative or junk vehicle" under this Section shall be borne by the Owner as provided in Section 7.9. Any vehicle parked in a marked fire lane shall be subject to immediate removal without any prior notice to the vehicle owner or responsible Lot Owner.

(vii) Exterior parking within the Community is extremely limited. For this reason, and because each Residence has an attached two car garage, all Owners or residents MUST only park within the confines of the garages appurtenant to their Residence. No vehicle belonging to, or being used by, any Owner or Resident is permitted to be parked anywhere within the Community unless it is within the confines of the garage appurtenant to the Resident. PRIOR TO PURCHASING OR LEASING A UNIT IN THE COMMUNITY, ALL OWNERS OR RESIDENTS ARE STRONGLY ENCOURAGED TO MEASURE THEIR VEHICLES TO ENSURE THAT THEY FIT IN THE CONFINES OF THE GARAGE APPURTENANT TO THEIR RESIDENCE. If any Residence has more than two vehicles, or any vehicle that does not fit within the confines of the

garage appurtenant to the Residence, those additional or oversized vehicles must be parked completely outside of the Community. The Board of Directors is expressly prohibited from granting exceptions to this restriction. Owners or Residents of Lots Units in **Building 9 (Lots 41 through 46)** shall be exempt from this provision to the extent that they can fit vehicles completely within the driveways serving those Lots.

Notwithstanding any provision in this Declaration, the Bylaws or Rules of the Association, the Association shall not prohibit the parking of a motor vehicle by an Owner on a street, driveway or guest parking area in the Community if the vehicle is required to be available at designated periods at the Owner's residence as a condition of the Owner's employment and if all of the following criteria are met:

- (i) The vehicle has a gross vehicle weight rating of 10,000 pounds or less;
- (ii) The Owner is a bona fide member of a volunteer fire department or is employed by an emergency service provider as defined in Section 29-11-101(1.6) of Colorado Revised Statutes;
- (iii) The vehicle bears an official emblem or other visible designation of the emergency service provider; and
- (iv) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other owners to use streets and driveways within the Community.

7.8.6 Storage. No Lot shall be used as storage or work space for rebuilding any motor or other vehicles described in Section 7.8.5. No Lot shall be used for the storage of explosives, gasoline or other volatile, inflammatory or incendiary materials or devices. Gasoline, oil, propane or other fuel used in the operation of a snow blower, lawnmower, barbecue grill or the like may be kept within an attached garage if stored in a safe manner in a container designed for the purpose of storing such materials, and which will prevent accidental spills and fires. The Owner shall be solely responsible for maintaining any fuel or other volatile substances in compliance with all applicable laws, any Rules and Regulations imposed by the Association and any requirements imposed by any underwriter of any insurance policy maintained by the Association.

7.8.7 Signs and Flags. No sign or flag of any kind shall be displayed to the public view on any Lot; provided, however, that signs and United States or Colorado flags of reasonable size not to exceed five (5) square feet may be displayed on or from a Residence. Any signs shall be solely for advertising the Residence for sale or lease or indicating that the residence has been "sold" for a period of two weeks after closing. For Sale or For Lease signs not exceeding five (5) square feet may only be displayed from the inside of the window of a Residence. Signs and flags used for sale, administration and directional purposes by Declarant during development of the Community will be permitted without the consent of any Owner or First Mortgagee. Notwithstanding the foregoing, nothing in this Declaration, the Bylaws or any Rules of the Association shall be deemed to prohibit:

(i) The display of the American flag in a window of the Owner's Residence or on a balcony adjoining the Owner's Residence if the American flag is displayed in a manner consistent with the Federal Flag Code, 4 U.S.C. §§ 4 through 10. The Association may adopt reasonable Rules regarding the placement and manner of the display of the American flag, which Rules may regulate the location and size of the American flag and flag poles to hold the American flag, but shall not prohibit the installation of an American flag or flag pole.

(ii) The display by an Owner of a service flag bearing a star denoting the service of the Owner or a member of the Owner's immediate family in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the Owner's Residence. The Association may adopt reasonable Rules regarding the size and manner of display of service flags, provided that the maximum dimensions allowed shall not be less than nine (9) inches by sixteen (16) inches.

(iii) The display of a political sign by an Owner on the Owner's Residence or in a window of the Owner's Residence earlier than forty-five (45) days before the day of an election and later than seven (7) days after the day of an election is prohibited. The Association may adopt Rules to regulate the size and number of political signs that may be placed on a Residence if the Association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. If the applicable city, town or county in which the property is located does not regulate the size and number of political signs on residential property, the Association shall permit at least one political sign per political office or ballot issue that is contested in a pending election with the maximum dimensions of thirty-six (36) inches by forty-eight (48) inches on an Owner's Residence. For purposes of this section, "political sign" shall mean a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue.

7.8.8 Single-Family Use Only. No Lot and no Residence on any Lot shall be used for any purpose other than for use by one single-family Residence according to this Declaration. However, nothing in this Declaration shall prevent the lease of a Lot by the Owner thereof for residential purposes, provided that such lease shall be in writing, shall be for a minimum term of six (6) months and shall expressly provide that all tenants, family members, guests and invitees shall be subject to the terms and provisions of this Declaration and the Association's Articles, Bylaws and Rules and Regulations. No commune, co-operative or similar type living arrangement shall be permitted on any Lot. The Owner of a leased Lot must, upon receipt of a written request from the Association, provide a copy of the Owner's current signed lease.

7.8.9 Hazardous Activities. No activities shall be conducted on any Lot, Common Property or Licensed Property and no Improvements constructed on any Lot, Common Property, or Licensed Property which are unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot and no open fires shall be lighted or permitted on any Lot, except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace, provided, however, that no charcoal or wood fueled barbecue units or fires shall be permitted on any balconies or decks.

7.8.10 Garage Sales. No garage, patio, porch or lawn sale shall be held on any Lot, except that the Owner of any Lot may conduct such sale if the items sold are only his own furniture and furnishings, not acquired for purposes of resale; if such sale is held at such time and in such manner as not to disturb any other resident of the area; and if such sale is held in full compliance with all applicable governmental ordinances, statutes, resolutions, rules and regulations, on an infrequent, occasional basis.

7.8.11 New Construction. All Residences shall be of new construction and no existing Residence shall be moved onto any Lot. No other building (including but not limited to playhouses and storage sheds) may be moved onto a Lot without the prior written approval of the Architectural Review Committee and without compliance with the restrictions set forth in this Article VII.

7.8.12 Storage of Building Materials. No building materials shall be stored on any Lot except temporarily during continuous construction of an Improvement or its approved alteration or improvement.

7.8.13 Temporary Structures. No trailer, mobile home, tent or shack or other temporary building, improvement or structure shall be placed upon any property, except that temporary structures necessary for storage of tools and equipment and for office space for architects, builders and foremen during actual construction may be maintained by Declarant or Builders, or by an Owner with the prior approval of Architectural Review Committee, such approval to include the nature, size and location of such structure.

7.8.14 Basketball Hoops/Play Equipment. Permanently mounted or installed outdoor basketball standards, backboards, play equipment or similar structures or devices are prohibited; provided, portable basketball standards, backboards and play equipment may be used on a Lot without prior approval, but must be stored inside overnight or otherwise when not in use.

7.8.15 Livestock, Poultry, and Pets. No animals or pets other than domesticated dogs, cats, and other small common household pets (i.e., gerbils, hamsters, fish, birds, etc.) shall be allowed on the Property. Raising or keeping livestock such as horses, cows, sheep, goats, poultry, pigs, swine and the like is prohibited. No Owner shall keep more than a total of three (3) domesticated dogs and cats on any Lot at any time, provided that they are not kept, bred or maintained for any commercial purpose. All common household pets shall be allowed upon any Lot subject to any applicable ordinances imposed by any governmental entity having jurisdiction over the Community. All household pets shall be controlled by their owners at all times, and shall not be allowed off their Owner's Lot except when properly leashed and accompanied by the pet owner or his representative with the leash physically attached to the pet (including, but not limited to, dogs and cats) and in the hands of the pet owner or his representative. All pets are prohibited from being outside of any Unit unless they are caged or leashed as previously described. Each Owner of a Lot shall be financially responsible for any damage caused by a household pet kept on the Owner's Lot. The Association shall have the right to repair any damage caused by any such household pet, and the cost of any repairs shall be borne by the Owner as provided in Section 7.9. If any pet is determined to represent a nuisance or danger to the Community, as determined at the sole discretion of the Board of Directors, the Board of Directors may require the permanent removal of the pet by the Owner,

after notice and opportunity for a hearing. Any costs incurred by the Association in having the pet removed shall be borne by the Owner as provided in Section 7.9.

7.8.16 Windows. All windows shall have painted or stained wood, vinyl or non-reflective metal frames and dividers. Reflective glass and reflective window tinting are not permitted.

7.8.17 Window Coverings. Reflective shades and reflective film-type window coverings are prohibited.

7.8.18 Solar Panels. Any solar panels and related appurtenances and equipment, whether included in the original construction or added at a later date, shall be subject to the review and approval of the Architectural Review Committee. Solar panels and related appurtenances shall be designed and constructed so as to appear as an integrated part of the building architecture. This shall generally mean that the panels shall be roof-mounted so that the top surface is flush with the roof surface, with all appurtenances recessed into the structure's attic. When solar orientation prohibits this approach, the roof shall be altered so that the panels appear to be "built-in", i.e., shall not be visible. If panels are ground or wall mounted, they shall be integrated into the structure using compatible materials so that the panels appear as a natural extension of the Residence.

7.8.19 Firewood. Firewood shall be neatly stacked and shall be located within the confines of a screened enclosure such as a fence or wall and shall not exceed six feet (6') in height.

7.8.20 Swimming Pools/Hot Tubs. Any swimming pools, spas, hot tubs and jacuzzis, are prohibited on any Lot.

7.8.21 Mechanical Equipment/Utilities. All utilities shall be installed underground. On-grade utility appurtenances, such as electrical transformers, utility meters, etc., shall be screened using approved means. Mechanical equipment, such as air conditioners, heating equipment, etc., shall be installed as an integral part of the architecture whenever possible. Under no circumstances shall these items be roof mounted.

7.8.22 Dog Houses/Runs. Dog houses, shelters, and runs are prohibited.

7.8.23 Exterior Lighting. Exterior lighting shall not be directed in such a manner as to create an annoyance to adjoining properties. High wattage area lighting ("yard lights") are prohibited. Illumination of roofs or features on roofs is prohibited.

7.8.24 Driveways. Any modification to a driveway, except for repair and replacement as approved by the Architectural Review Committee prior to repair or replacement, is prohibited.

7.8.25 Site Grading. The grading on the Lots (including grading around the building foundation), and the grading on the Common Property shall be maintained at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner and the Association agree, for themselves and their successors and assigns, that they will not in any way interfere with or obstruct the established

drainage pattern over any real property which they have a duty to maintain, from adjoining or other real property. In the event that it is necessary or desirable to change the established drainage over any Lot or Common Property, then the party responsible for the maintenance of such real property shall submit a plan to the Architectural Review Committee for its review and approval, and any such change shall also be made in accordance with all laws, regulations and resolutions of all applicable governmental entities, including the City of Colorado Springs. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading by the Declarant or a Builder is completed.

7.9 Failure to Maintain. In the event that the Owner of a Lot shall fail to maintain the Lot and Improvements thereon in a manner consistent with the requirements of this Declaration, any Design Guidelines or any Supplementary Declaration, the Architectural Review Committee or the Association, its Management Contractor, agents, contractors and employees shall have the right, in addition to any other remedies, to enter upon the Lot and to repair, maintain, and restore the Lot, the exterior of the Residence, and any other Improvements on the Lot in the manner contemplated by this Declaration and any Supplementary Declaration. The cost of such maintenance, repair, and restoration shall be the responsibility of the Owner and shall be added to and become a part of the annual assessments applicable to the Lot.

## VIII. PARTY WALLS

8.1 General Rules of Law Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law, regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

8.2 Sharing 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 Party Wall in proportion to such use.

8.3 Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it, and if any other Owner thereafter makes use of the Party Wall, each such Owner shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from one or more others under any rule of law regarding liability for negligent or willful acts or omissions.

8.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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



## IX. ARCHITECTURAL REVIEW COMMITTEE

### 9.1 Membership.

9.1.1 The Board of Directors may appoint an Architectural Review Committee (hereinafter referred to as the "Architectural Review Committee") which shall be composed of three (3) or more members. In the event no such appointment is made, then the Board of Directors shall constitute the Architectural Review Committee and shall have all of the duties and responsibilities of the Architectural Review Committee as set forth herein. Any member of the Architectural Review Committee not appointed by Declarant may be removed by the Board of Directors at any time.

9.1.2 In the event of death, disability, or resignation of any member of the Architectural Review Committee, the Board of Directors shall have (from either the Architectural Review Committee of the Board of Directors) authority to designate a successor or successors.

9.1.3 An affidavit executed by a majority of the members of the Architectural Review Committee and maintained in the Association's records shall be sufficient evidence of the membership and of the other recitals therein contained.

9.2 Evidence of Action. The Architectural Review Committee's approval or disapproval as required in this Declaration shall be in writing, as indicated by the signatures of a majority of the Architectural Review Committee or its designated representatives. The Architectural Review Committee shall not be required to maintain records of plans submitted. Approval by the Architectural Review Committee shall be conclusive evidence of compliance with this Declaration, provided that Improvements are constructed in substantial compliance with the plans as approved. The Architectural Review Committee shall exercise reasonable efforts to approve or disapprove plans submitted to it within forty-five (45) days after submission. In the event the Architectural Review Committee fails to approve a proposal within sixty (60) days after plans and specifications have been submitted to it by hand delivery against a written receipt or by mailing, certified mail, first-class postage prepaid, return receipt requested to the Architectural Review Committee at the address designated by the Association, the proposal shall be deemed denied. If no suit to enjoin the proposed construction has been commenced within one (1) year after the proposed construction has begun and became apparent, approval by the Architectural Review Committee will not be required, and the covenants in this Article shall be deemed to have been complied with fully.

9.3 Duties. The Architectural Review Committee shall act upon and approve or disapprove any and all matters to be submitted to the Architectural Review Committee pursuant to any of the provisions of this Declaration and shall have all duties and powers as are hereinafter provided and set forth. The Architectural Review Committee may, in its sole discretion, employ or appoint a representative to review plans and specifications submitted to the Architectural Review Committee and make decisions to approve or disapprove any submission or to perform any inspections of any work in progress or after completion as provided in Section 9.6. In the event a representative acting on behalf of the Architectural Review Committee decides a request for architectural approval which is adverse to the applicant, the applicant shall have the right to appeal such decision to the full Committee, by written request submitted to and received by the Committee within thirty (30) days after the applicant's receipt of the decision by the Committee's representative.

Neither the members of the Architectural Review Committee nor its designated representative shall be entitled to any compensation for services performed, nor shall the Architectural Review Committee or any member thereof be liable, in any manner, for any action or failure to act done in good faith arising out of their service on the Architectural Review Committee.

#### 9.4 Approval of Plans.

9.4.1 All plans and specifications in connection with the construction (which is commenced on or after the effective date of this Declaration) of any Improvement, including but not limited to any Residence, ancillary structure, exterior lighting, machinery, solar panel or installation, deck, patio, patio enclosure, fence, wall, driveway, out-building, or other structure, and in connection with any grading, landscaping or gardening of any portion of the Lot, including without limitation, the removal or planting of any trees, shrubs or other vegetation, exterior maintenance and remodeling of any Residence or other structure, including, but not limited to, changing the initial color or exterior materials of the Residence, or any other Lot Improvements or appurtenances, such as mailboxes, or any alteration of any of the above described improvements to a Lot shall be submitted to the Architectural Review Committee or its designated representative for its prior written approval.

9.4.2 Before any construction or alteration begins, plans and specifications showing the nature, kind, shape, height, materials, and location, the exterior design the exterior materials to be used, the color scheme, the site plan, a topographic survey, the location of the driveway and sidewalks and plans for the proper landscaping and drainage of the Lot with respect to adjacent Lots must be submitted to the Architectural Review Committee for its prior written approval.

9.4.3 The Architectural Review Committee shall determine in its sole discretion whether to approve any plans submitted to it for review. In passing upon such plans, specifications and other requirements, the Architectural Review Committee may take into consideration whether the proposed Residence or other Improvement, structure or alteration and the materials of which it is to be built are reasonable and suitable for the Lot upon which the Residence or other structure or alteration is to be erected, the harmony thereof with the surroundings, and the effect of the Residence or other structure or alteration as planned on the outlook from and/or property values of adjacent or neighboring property.

9.4.4 No Residence, Improvement, fence, wall, driveway, landscaping, structure or alteration of any kind, including, but not limited to, those specifically described in this Article VIII, which has not received prior written approval by the Architectural Review Committee and which does not fully comply with such approved plans and specifications, shall be erected, constructed, placed, or maintained upon any Lot. No changes or deviations in and from such plans and specifications as so approved shall be made without the prior written consent of the Architectural Review Committee. The Architectural Review Committee shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications.

9.4.5 In passing upon such plans, specifications, and other requirements, the Architectural Review Committee may, in the exercise of its sole discretion, apply the pertinent requirements and considerations set forth in the covenants and restrictions set forth in this

Declaration, any Supplementary Declaration and/or any Design Guidelines promulgated by the Architectural Review Committee.

9.5 Contractor Suitability.

9.5.1 No contractor (including an Owner acting as a contractor) shall perform any work on any Lot affecting the structural integrity of a Building or the integrity of its mechanical or utility systems ("Work") without the prior approval of the Architectural Review Committee. No Owner shall commence any Work or permit any contractor to commence any Work unless and until the Architectural Review Committee has approved the contractor as provided in this Section. The Architectural Review Committee may require any Owner to submit one or more contractors for approval at the time the Owner submits the plans and specifications for the Work to the Architectural Review Committee for its prior approval as provided in Section 9.4.

9.5.2 The Architectural Review Committee shall have the right, in its sole discretion, which may be exercised prior to or after the commencement of any Work on any Lot, to disapprove the selection by any Owner of a contractor (including an Owner acting as a contractor), including any contractor previously approved by the Architectural Review Committee. The Architectural Review Committee may exercise its right to disapprove any contractor based upon any of the following grounds: (1) a belief that the contractor is not financially responsible; (2) the contractor's failure to comply with approved plans and specifications in work previously performed on any Lot or the Properties; or (3) that the contractor cannot complete the construction or other work requested by the Owner in accordance with the standards imposed by the Architectural Review Committee. The Architectural Review Committee shall have no duty to investigate any facts supporting its decision to disapprove any contractor, including without limitation the contractor's financial responsibility, the contractor's past performance or the contractor's present undertakings. In the event the Architectural Review Committee disapproves a contractor after it has begun work, the Association shall have the right to contract for the completion of the work at the Owner's expense. Any costs or expenses incurred by the Association shall be borne by the Owner as provided in Section 7.9. Neither the Association, the Architectural Review Committee nor its members shall be liable to any Owner, contractor or any person for any damages or costs incurred with respect to or as a result of the Architectural Review Committee's decision to disapprove any contractor under this Section.

9.6 Approval of Contractor; Inspection of Work.

9.6.1 No Owner or contractor shall commence construction of any improvement, excavation, grading, landscaping, gardening or construction of any structure, Building or Improvement of any kind to be located on any Lot ("Work"), until the Architectural Review Committee has approved the plans and/or specifications therefor and the Owner has provided the Architectural Review Committee with a valid building or other permit, if required, issued by any governmental agency having jurisdiction over the Community. No contractor shall commence any work on any Lot unless and until the Architectural Review Committee has approved the contractor as provided in Section 9.5.

9.6.2 In addition to all restrictions imposed on any Work, all utility connections on any Lot must be approved by the Architectural Review Committee prior to installation.

9.6.3 The Architectural Review Committee shall have the right to inspect any Work done by an Owner or contractor at any time during the period the Work is being performed or after the Work has been completed to ensure that the Work complies with the plans approved by the Architectural Review Committee. If the Architectural Review Committee determines, in its sole discretion, that the Work is not being performed in accordance with the approved plans and/or specifications, the Architectural Review Committee shall have the right to require the contractor, or the Owner as the case may be, to immediately terminate all Work being performed upon the Lot. The Architectural Review Committee may enforce the provisions of this Section by means of an appropriate action to enjoin the violation of this Declaration as provided in Section 5.2.

9.6.4 Upon completion of any Work, the Owner shall, to the greatest extent possible, restore the Lot to the condition which existed prior to the commencement of such Work (taking into account the Work itself) so that the Lot and any Improvements or other structures on the Lot shall be, to the greatest extent possible, in harmony with the surrounding natural environment. If a Certificate of Occupancy is issued with respect to the Work prior to September 15 of any calendar year, the Owner shall complete the restoration within forty-five (45) days after the date of issuance of that Certificate of Occupancy or actual occupancy of the Lot, whichever first occurs. If a Certificate of Occupancy is issued or actual occupancy of the Lot takes place after September 15 of any calendar year, the Owner shall complete the restoration of the Lot prior to June 1 of the following year. In the event the restoration is not complete as and when required, the Association shall have the right to complete the restoration of the Lot at the Owner's expense. Any costs and expenses incurred by the Association shall be borne by the Owner as provided in Section 7.9.

9.7 Declarant; Builders. Notwithstanding any provision to the contrary in this Declaration, neither Declarant nor any Builder, nor any contractor or subcontractor performing work for any Builder, shall be subject to any approval or inspection as provided in Section 9.5 or 9.6 or subject to any of the provisions of Sections 7.8.3, 7.8.4, 7.8.5, 7.8.6, 7.8.8 and 7.8.9. The Architectural Review Committee shall have no right to control any work performed by or on behalf of Declarant or a Builder which has obtained approval for plans as provided in Section 9.4. This Section shall be a complete defense to any action by the Architectural Review Committee to enforce the provisions of Sections 9.5, 9.6, 7.8.3, 7.8.4, 7.8.5, 7.8.6, 7.8.8 or 7.8.9 against Declarant or a Builder or any contractor or subcontractor performing work for Declarant or a Builder.

9.8 Reserved Right of Declarant. Notwithstanding the above provisions, and until Declarant has conveyed its last Lot to a purchaser, Declarant shall have the right, and the right is hereby specifically reserved unto Declarant, to appoint the members of such Architectural Review Committee and to fill any vacancies therein created. (This Section supersedes the authority granted in Section 9.1 above.)

9.9 Binding Agreement to Pay Legal Costs. In the event that an Owner shall dispute the determination of the Architectural Review Committee and files a lawsuit to overrule, vacate or otherwise mitigate the effect of any determination of the Architectural Review Committee, or if an Owner fails to submit for approval any action as required by Section 9.4 and the Architectural

Review Committee any Owner, or the Association brings an action to enforce these provisions, then the Owner and the Association are hereby bound to the agreement that any and all costs, including reasonable attorney's fees, associated with the institution and defense of such a suit, shall, to the extent permitted by a court of competent jurisdiction, be paid to the prevailing party by the losing party.

9.10 Variance. The Architectural Review Committee may, in its sole discretion, grant reasonable variances or adjustments from any conditions or restrictions imposed by this Declaration. A variance or adjustment shall only be granted if it is not material, detrimental or injurious to the other property or improvements to the neighborhood, and shall not defeat the general intent and purpose of this Declaration. Any variance granted by the Architectural Review Committee shall not affect or negate the requirements of any other applicable authorities.

9.11 Minor Violations of Setback Requirements. Upon erection of any Residence upon any of the Lots which are subject to these restrictions, if it is disclosed by survey that a minor violation and infringement of setback lines has occurred, such violation and infringement shall be deemed waived by the Owners of the Lots immediately adjoining the Lot upon which the violation and infringement occurs, and such waivers shall be binding upon all other Owners who are subject to this Declaration. Nothing herein contained shall prevent the maintenance of suit for any other violation of the restrictions contained in this Declaration. A "minor violation" for the purpose of this Section is a violation of not more than thirty (30) inches beyond required setback lines or Lot lines. This provision shall only apply to the original structures and shall not be applicable to any alterations or repairs to such structures.

9.12 No Review. The following types of changes, additions, or alterations do not require the approval of the Architectural Review Committee. Although exempt from Architectural Review Committee review, all work must proceed in accord with all applicable law, codes, and regulations, and the provisions of this Declaration.

9.12.1 Modifications to the interior of a Residence when those modifications do not unduly affect the outside appearance of the structure.

9.12.2 Repairs to a structure in accordance with previously approved plans and specifications.

9.12.3 Seasonal decorations if removed promptly (within fifteen (15) days following the holiday) so long as the decorations are not installed in any manner that will penetrate the exterior of a Building. The use of nails or screws to hang seasonal decorations is prohibited.

## X. INSURANCE

10.1 Duty to Maintain Insurance. The Association shall maintain insurance as required by the Act and other applicable law, including the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. In addition, the Association may maintain such insurance on such other property as the Board of

Directors may determine in its discretion from time to time, or as may be hereinafter required. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any of the Agencies with respect to their insurance, guaranty or purchase of Security Interests.

10.1.1 Property insurance for broad form covered causes of loss, which shall be primary insurance, on the Common Property and the Lots; except that the total amount of insurance must not be less than the full insurance replacement costs of all the insured property less applicable deductibles at the time the insurance is purchased and at such renewal date, exclusive of land, foundation, excavations, paved surfaces and other items normally excluded from property policies. Such policy or policies shall contain extended coverage, vandalism, and malicious mischief endorsements. The property insurance on the Lots shall cover: the residential Buildings; the outdoor fixtures; the fixtures, improvements and alterations contained within the interior of the Residence that are a part of the Building; and permanently installed machinery and equipment. The Improvements to be insured by the Association under this section shall be continually insured to value, and the policy or policies shall contain replacement cost insurance. The Owners shall also be included as additional insureds. The Lot Owner shall be responsible for maintaining property insurance on the personal property owned by the Owner, including the furnishings and other personal property contained within or located upon the Owner's Unit, and liability insurance coverage on the Owner's Lot.

10.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Property and the Association's performance of its maintenance obligations of exterior components of the Residences and the Lots, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Board of Directors, the Association, any managing 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 member of the Board of Directors. The Owners shall also be included as additional insureds for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Property. The insurance shall cover claims of one or more insured parties against other insured parties.

10.1.3 A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community and/or any Owner who disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than the greater of (i) Fifty Thousand Dollars (\$50,000.00) or (ii) two (2) months aggregate assessments on the Lots, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a

managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subsection (c).

10.1.4 If any Common Property are located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on such parcels has been made available under the National Flood Insurance Program, then such a policy of flood insurance on such parcels in an amount at least equal to the lesser of: (i) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or (ii) one hundred percent (100%) of current replacement costs of all buildings and other insurable property located within a designated flood hazard area.

10.1.5 To the extent required by state law, the Association shall obtain and maintain worker's compensation insurance. All policies of worker's compensation insurance shall be in conformance with state law.

10.1.6 In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

10.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard non-contributory security interest holder's clause in favor of each security interest holder and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each security interest holder, insurer or guarantor of a security interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including security interest holders, upon request. Any such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

10.3 Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustment.

10.3.1 To the extent the Association settles a claim for damages, it shall have the authority, but not the obligation, 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 any one (1) Residence 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.

10.3.2 Any loss to any portion of a Lot or to any Common Property that the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the Person who is responsible for the repair and maintenance of the property that is damaged or destroyed, may be apportioned among the Persons sharing in a joint duty of repair and maintenance, and/or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, his tenants, family members, guest or invitees. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

10.4 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any security interest holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and security interest holders as their interests may appear. Subject to the provisions of Section 11.2 of Article XI of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and security interest holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

10.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

10.6 Acceptable Insurance Companies. Each insurance policy purchased by the Association must be written by a hazard insurance carrier that is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee; (b) under the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgages or any Owner from collecting insurance proceeds.

10.7 Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot and the Improvements thereon, including but not limited to flood insurance, and the



furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot.

10.8 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Board of Directors or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance. Any security interest holder shall be furnished with a copy of such appraisal upon request.

10.9 Notice of Cancellation. If the insurance described in Section 10.1 of this Article is not reasonably available, or if any policy of such insurance is cancelled 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. If the insurance described in Section 10.1 of the Article is not reasonably available, the Association may carry any other insurance it considers appropriate.

10.10 Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors to ascertain whether the coverages contained in the policies are sufficient for the upcoming year, whether any necessary repairs or replacements of the property which occurred in the preceding year were covered by insurance, and that all possible insurance claims have been filed.

## **XI. CASUALTY**

11.1 Association As Agent and Attorney In Fact. All of the owners irrevocably constitute and appoint the Association as their true and lawful agent and attorney in fact in their name, place and stead for the purposes of dealing with the Common Property upon its damage, destruction, obsolescence and/or condemnation as hereinafter provided. Acceptance by any grantee of a deed from Declarant or from any Owner shall constitute appointment of the Association as agent and attorney in fact as herein provided.

11.2 General Authority of Association. As attorney in fact, the Association 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 may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the Common Property Improvements as used in this Article means restoring the Community to substantially the same condition in which it existed prior to damage. Notwithstanding the provisions of Section 4.6 above, the proceeds of any insurance collected shall be used by the Association for the purpose of repair or reconstruction unless Owners, to which at least eighty percent (80%) of the votes in the Association are allocated, and sixty-seven percent (67%) of the First Mortgagees agree not to rebuild in accordance with the provisions set forth in this Article.

11.3 Notices and Cost Estimates. As soon as practical after an event causing damage to, or destruction of any part of the Common Property, the Association shall immediately obtain estimates

that it deems reliable of the cost of repair or reconstruction of that part of the Community damaged or destroyed.

11.4 Insurance Proceeds Sufficient to Repair. In the event that proceeds from insurance coverage are sufficient to cover the cost of repair or construction after a casualty pursuant to the estimate of costs obtained by the Association, then such repair or reconstruction shall be promptly performed by the Association as attorney in fact for the Owners pursuant to this Article.

11.5 Insurance Proceeds Insufficient to Repair. If the insurance proceeds are insufficient to repair or reconstruct the damage or destroyed Common Property, Common Property Improvements, or those portions of a Lot or Building which the Association has the duty to insure and maintain, such damage shall be repaired as promptly as possible by the Association and any costs of such repair or reconstruction in excess of insurance proceeds available shall be assessed against all Owners as a Common Expense pursuant to Article VI.

## **XII. CONDEMNATION**

12.1 Consequences of Condemnation. At any time during the continuance of the ownership pursuant to this Declaration, if all or any part of the Common Property shall be taken, or condemned by any public authority, or sold, or otherwise disposed of in lieu of or in avoidance thereof, the provisions of this Article XII shall apply.

12.2 Proceeds and Notice. Subject to the Association's compliance with C.R.S. § 38-33.3-107, all compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award" shall be payable to the Association; provided, however, that the Association shall provide timely notice of such condemnation proceeding or condemning authority acquisition to all Owners and First Mortgagees who request such notice.

## **XIII. GENERAL RESERVATIONS**

13.1 Reservation of Easements, Exceptions, and Exclusions. Declarant reserves the right to establish from time to time, by dedication or otherwise, utility (including cable television) and other easements, for purposes including but not limited to streets, paths, walkways, drainable recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions consistent with the ownership of the Properties for the best interest of all Owners and the Association in order to serve all the Owners within the Community. The rights herein reserved unto Declarant shall continue until Declarant no longer retains an interest in the Community, or twenty (20) years after the effective date of this Declaration, whichever occurs first.

13.2 Rights of Declarant and Builders Incident to Construction. Notwithstanding any contrary provision in this Declaration, an easement is hereby reserved by and granted to Declarant and any Builder for access, ingress, and egress over, in, upon, under, and across the Community, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's or any such Builder's construction on the Properties; provided, however, that no such rights or easements shall be exercised by Declarant in

such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of that Owner's Lot.

#### **XIV. ANNEXATION; WITHDRAWAL**

14.1 Annexation. Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

14.2 Special Rights Reserved to Declarant: Enlargement of Community.

14.2.1 Notwithstanding the preceding Section 14.1, Declarant may exercise any Development Rights, including the right to annex to this Declaration the Annexable Property or any portion(s) thereof, until termination of this right as provided below, without consent of any other Owner, Mortgagee, or any other Person. The Declarant's right to annex the Annexable Property without approval shall terminate automatically at the time of termination of the Special Declarant Rights as provided in Section 1.35 of this Declaration. Each such annexation shall be effected, if at all, by recording in the records of the Office of the Clerk and Recorder of El Paso County, Colorado, an Annexation of Additional Land substantially in the form attached hereto as Exhibit E which document:

14.2.2 shall provide for annexation to this Declaration of the property described in such Statement of Annexation of Additional Land;

14.2.3 shall state that the Declarant (or other Person(s)) is the owner of the Lots thereby created, if any;

14.2.4 shall assign an identifying number to each new Lot, if any;

14.2.5 shall describe any Common Property within the property being annexed;

14.2.6 shall, if the annexed property includes one (1) or more Lots, reallocate the Allocated Interests among all Lots; and

14.2.7 may include such other provisions as the Declarant deems appropriate. Other provisions that may be included in an Annexation of Additional Land include, without limitation, covenants, conditions, restrictions, requirements and/or other provisions that apply or will apply to some or all of the property that is thereby being annexed to this Declaration. Any of such other provisions referenced in the preceding sentence may be amended with the consent of the Owners of sixty-seven percent (67%) of the Lots to which such other provisions apply.

14.2.8 Except as otherwise specifically stated in the Annexation of Additional Land, all provisions of this Declaration, including without limitation (as to Lots) those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the effective date of the Annexation of Additional Land

(which shall constitute the date of recording of the Annexation of Additional Land unless otherwise stated therein)

14.2.9 The property which is described on the attached Exhibit A and each portion of the Community which is annexed to this Declaration by the Declarant shall be subject to a right of withdrawal by the Declarant. Such withdrawal may be accomplished, if at all, in accordance with CCIOA. However, the Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community, upon the first conveyance of any Lot in such portion of the Community to any Person other than the Declarant, but in any event, no later than the automatic termination provided in Section 1.35 of this Declaration.

14.3 Assessments and Voting Rights. On the date of recordation of any Annexation of Additional Land, the Assessment responsibility indicated in Section 6.1 and the voting rights outlined in Section 4.3, appurtenant to the annexed Lots, shall become effective.

14.4 Future Improvements. All future Improvements to the Community shall be consistent with initial Improvements in terms of quality of construction.

14.5 Subdivision of Lots. The Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by the Declarant in the Community. Without limiting the generality of the foregoing, the Declarant reserves the right to move any Lot line(s) on Lot(s) owned by the Declarant, for the purpose of accommodating Improvements which are constructed or are to be constructed; provided that such Lot line adjustments, if any, shall not change the number of Lots in the Community at the time each such Lot line adjustment is approved by the applicable governmental entity. The rights provided for in this Section shall terminate automatically as provided in Section 1.35 of this Declaration. No Lot may be further subdivided from that existing at the time such Lot becomes subject to this Declaration, except by Declarant.

14.6 Use by Declarant and Builders. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, as well as any Builder (with the prior written consent of the Declarant), to perform such reasonable activities, and to maintain upon portions of the Lots and the Common Property such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations as it determines in its discretion from time to time. Further, nothing contained in this Declaration shall limit the rights of Declarant or require the Declarant to obtain approvals: (a) to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements; (b) to use any Improvements on any property (with the consent of the Owner thereof) as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or (c) to require Declarant to seek or obtain Architectural Review Committee approval or any other approvals under this Declaration for any such activity. Any real estate used as a sales office, management office, or a model, shall be a Lot.

## **XV. PRE-EXISTING RESERVATIONS, RESTRICTIONS, EASEMENTS AND COVENANTS**

The Property was subject to the following reservations, restrictions, conditions, exceptions, easements and covenants at the time of the recordation of this Declaration:

15.1 City of Colorado Springs. Any restrictions in the use of property created by the Plat, and building and zoning ordinances of City of Colorado Springs.

15.2 Master Declaration. The Community is subject to the Master Declaration.

15.3 Other Recorded Documents. Any other reservations, restrictions, conditions, exceptions, conditions, easements and covenants not enumerated under this Declaration or the Association Articles of Incorporation or Bylaws, but which exist of record at the time of the recordation of this Declaration, including those enumerated on Exhibit "D".

## **XVI. REVOCATION OR AMENDMENT OF DECLARATION**

16.1 Revocation. Except as provided specifically elsewhere herein, this Declaration shall not be revoked unless the Owners of Lots to which sixty-seven percent (67%) of the votes in the Association are allocated and sixty-seven percent (67%) of the registered First Mortgagees consent and agree to such revocation by instrument(s) duly executed and recorded.

16.2 Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the Properties in perpetuity. Subject to any provision in Section 4.6 above and Declarant's rights hereunder, this Declaration shall not be amended, modified or revised, except as otherwise herein provided, without the consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and approval of sixty-seven percent (67%) of the First Mortgagees. Such amendment may be evidenced by either a recorded instrument indicating such consent or by a recorded certificate of the Secretary of the Association certifying (i) that at a meeting of the Owners, duly called at which a quorum was presented, the Owners of Lots, to which sixty-seven (67%) of the votes in the Association are allocated, consented to the amendment, and that sixty-seven percent (67%) of the First Mortgagees have given approval (as provided in Section 17.9 below) to the amendment, unless a higher percentage is required for such consent and approval by Section 4.6 above, in which case the certificate shall reflect the higher percentage, and (ii) that copies of such written consent and approval are in the corporate records of the Association.

16.3 Amendments to Conform to Agency or Act Requirements. Notwithstanding any provision in this Declaration to the contrary, during the Declarant Control Period, Declarant shall have the right to unilaterally amend this Declaration in order to comply with the requirements of any Agency(ies) or the Act. Such amendment shall not require the vote or consent of Owners in the Community.

16.4 Technical Amendments. Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration at any time during the Declarant Control Period

for the purposes of correcting spelling, grammar, dates or technical or clerical errors, or as is otherwise necessary to clarify the meaning of the provisions of this Declaration.

## **XVII. MISCELLANEOUS PROVISIONS**

17.1 Mailing Address. Each Owner and First Mortgagee shall register his or its mailing address with the Association, and all notices, demands and statements shall be sent by regular United States Mail, first-class postage prepaid, addressed in the name of the Owner or First Mortgagee at such registered mailing address, or to such persons email address if such person has registered its email address with the Association. All notices to Declarant shall be sent by certified mail, first-class postage prepaid, return receipt requested, to the following address: ASHTON DENVER RESIDENTIAL, LLC, 6312 South Fiddler's Green Circle, Suite 350E, Englewood, Colorado 80111, until such address is changed by notice of address change given to the Association.

17.2 Compliance with Provisions. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations, resolutions, and contracts of the Association as the same may from time to time be in force and effect. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief or both, together with reasonable attorney fees, court costs, and injunction bond premiums maintainable by the Board of Directors, or the managing agent, on behalf of the Owners, or by any Owner.

For each claim or defense, including but not limited to counterclaims, cross-claims and third-party claims, an except as otherwise provided in this subparagraph, in any legal proceeding to enforce or defend the provisions of the Act or the Declaration, Bylaws, Articles or Rules of the Association, the Court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney's fees and costs incurred in asserting or defending the claim.

Notwithstanding any contrary provision in this Declaration, the Bylaws or Rules of the Association, if any Owner fails to timely pay Assessments or any money or other sums due to the Association, the Association may require reimbursement for collection costs and reasonable attorney's fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

For any failure to comply with the provisions of the Act or any provision of this Declaration, the Bylaws, Articles or Rules of the Association other than the payment of Assessments or any money or other sums due to the Association, the Association, any Owner or any class of Owners adversely affected by the failure to comply may seek reimbursement for collection costs and reasonable attorney's fees and costs incurred as a result of such failure to comply without the necessity of commencing a legal proceeding.

In connection with any claim in which an Owner is alleged to have violated a provision of the Act or a provision of the Declaration, Bylaws, Articles or Rules of the Association and in which the court finds that the Owner prevailed because the Owner did not commit the alleged violation: (i) The court shall award the Owner reasonable attorney's fees and costs incurred in asserting or defending the claim; and (ii) The court shall not award costs or attorney's fees to the Association. In

addition, the Association shall be precluded from allocating to the Owner's account with the Association any of the Association's costs or attorney's fees incurred in asserting or defending the claim. Nothing in this Declaration, the Articles, Bylaws or Rules of the Association shall be construed to mean that an Owner shall be deemed to have confessed judgment to attorney's fees or collection costs.

17.3 Construction Disputes. The Association shall not institute litigation or administrative proceedings for declaratory relief, injunctive relief or for claims for monetary damages in excess of Twenty Five Thousand Dollars (\$25,000.00) in its own name, on behalf of itself or two (2) or more owners against any Person, including Declarant, alleging a defect in the design, construction or physical condition or other alleged defect of the Common Elements, Lots or Improvements related thereto without first obtaining the affirmative vote of a majority of the Lot Owners present at a meeting called for that purpose at which a quorum is present. The amount of Twenty Five Thousand Dollars (\$25,000.00) shall be increased annually for each subsequent fiscal year of the Association beginning in the year 2007, in an amount equal to the United States Department of Labor Bureau of Labor Statistics final consumer price index for the Denver-Boulder metropolitan statistical area for the preceding calendar year. The amount shall not be decreased if the final consumer price index for the preceding year decreases.

Any claim, controversy or dispute over or related to the design, construction or physical condition of the Common Elements, Buildings, Residences or Improvements related thereto and made against the Declarant or the Association, which shall be deemed a "Construction Dispute," shall be resolved by binding arbitration in accordance with the Uniform Arbitration Act of 1975, C.R.S. §13-22-201, et seq., as amended (or if such Act is repealed, then such other uniform state arbitration law enacted in its place). Any such arbitration proceeding may be required by an aggrieved person upon written notice delivered to the Association, the Declarant or other person(s), as the case may be, before the date when commencement of legal or equitable proceedings based on such claim or dispute would be barred by the applicable statute of limitations. No such demand for arbitration shall be made after the date when such proceedings would be barred by the applicable statute of limitations. The American Arbitration Association (AAA), or other arbitrator agreed to by the parties, shall administer all aspects of arbitrations conducted hereunder, including the selection of arbitrators, pursuant to the AAA's Commercial Arbitration Rules (or other rules mutually acceptable to the parties). Arbitration hereunder shall be before a three-person panel of arbitrators for any dispute involving claims and counterclaims in the aggregate of One Hundred Thousand Dollars (\$100,000.00) or more unless the parties agree to a single arbitrator, and shall be resolved before a single arbitrator for such disputes involving claims and counterclaims, in the aggregate, of less than One Hundred Thousand Dollars (\$100,000.00). Each arbitrator shall possess the requisite experience and expertise in respect to matters to which the controversy relates to enable him or her to perform his or her arbitral duties competently. The cost of the arbitrator(s) and of any hearing transcript shall be divided equally between the parties. Any and all discovery in conjunction with such arbitration shall be limited to information directly relevant to the controversy or claim in arbitration and shall be concluded within forty-five (45) days after the appointment of the arbitrator or arbitration panel.

No party shall be entitled to receive any award of damages in connection with the arbitration of a Construction Dispute other than such party's direct damages, and Declarant, the Association and any Owner shall be deemed to have waived their right to receive any damages in a dispute other than

direct damages, including, without limitation, the right to receive indirect damages such as special damages and consequential damages, and the right to receive punitive or exemplary damages. BY TAKING TITLE TO A LOT, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER HAS WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF DAMAGES IN CONNECTION WITH THE ARBITRATION OF A DISPUTE OTHER THAN SUCH OWNER'S DIRECT DAMAGES. Judgment upon the arbitrator's determination shall be entered and enforced by the district court for the County in which the Community is located. In the event that any judicial proceeding is allowed or had herein, in order to expedite final resolution of the dispute, each party to the dispute waives any right to a jury trial for claims and counterclaims relating to the dispute.

17.4 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, word or section or the application thereof in any circumstances is invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any such provisions, paragraph, sentence, clause, phrase, word, or section in any other circumstances shall not be affected thereby.

17.5 Terminology. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural and the singular; and the use of any gender shall include all genders.

17.6 State Law. The provisions of this Declaration shall be in addition and supplemental to all laws of the State of Colorado.

17.7 Declarant's Rights Transferable. Any right or interest of Declarant hereunder, established or reserved, may be transferred or assigned by Declarant either separately, or with one or more of such rights or interest, to any person or entity without the consent of the Owners, the Association, or any First Mortgagee.

17.8 Registration of First Mortgagees. Whenever this Declaration permits or requires that a First Mortgagee receive notice, such requirement of notice shall be waived if the First Mortgagee has failed to register its name and proper address with the Association for the purpose of such notices as provided in Section 17.1. The Association shall maintain as part of its books and records a list of the First Mortgagees who have registered in order to receive any notices which are permitted or required to be given to First Mortgagees under this Declaration.

17.9 Approval by First Mortgagees. Whenever this Declaration requires the approval of First Mortgagees, only those First Mortgagees who have registered as provided under Section 17.8 need be included in the request for approval and in any determination of whether the applicable percentage of First Mortgagees have approved any intended action. For purposes of this Section, to obtain the approval or consent of any First Mortgagee, the Association shall send a dated, written notice and a copy of any proposed amendment by certified mail to each First Mortgagee at its most recent address shown on the recorded Mortgage or recorded assignment thereof. In addition, the Association shall cause the dated notice, together with information on how to obtain a copy of the proposed amendment, to be printed in full at least twice on separate occasions at least one week apart in a newspaper of general circulation in the county in which the Project is located. A First



Mortgagee that does not deliver to the Association a negative response within sixty (60) days after the date of the notice shall be deemed to have approved the proposed amendment.

17.10 Conflict. In the event of any conflict between the use restrictions imposed in this Declaration and any use restriction or regulation imposed by any governmental agency having jurisdiction over the Properties, the more stringent use restrictions shall control. In the event of any conflict between the Articles of Incorporation and the Bylaws, the Articles shall control; in case of any conflict between this Declaration and the Bylaws, the Declaration shall control; in the case of any conflict between the Articles and this Declaration, this Declaration shall control; and in the case of any conflict between this Declaration and the Act, the Act shall control.

17.11 DISCLAIMER ON SAFETY. DECLARANT, THE BUILDERS, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE BUILDERS, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, MANAGERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS OR RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

[signature on following page]

DATED this 6 day of JUNE, 2006.

DECLARANT:

ASHTON DENVER RESIDENTIAL, LLC,  
a Nevada limited liability company

BY:



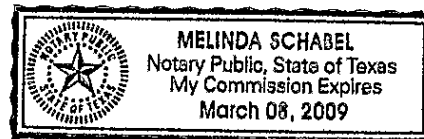
Christopher M. Ruddle  
Controller and Vice President of Finance

STATE OF TEXAS            )  
                                      ) ss.  
COUNTY OF DALLAS    )

The above and foregoing Declaration of Covenants, Conditions, and Restrictions for Townes at Kettle Creek was acknowledged before me this 6th day of JUNE, 2006, by Christopher M. Ruddle, as Controller and Vice President of Finance of Ashton Denver Residential, LLC, a Nevada limited liability company, on behalf of such limited liability company.

My commission expires:

Witness my hand and official seal.

  
Notary Public

## **EXHIBIT A**

None at the time of recording of this Declaration. Real property including the Annexable Property identified on Exhibit C of this Declaration may be annexed into the Declaration and made a part of the Community from time to time in accordance with Article XIV of this Declaration.

## **EXHIBIT B**

Initial Common Property: None at the time of recording of this Declaration. Common Property including Common Property within the Annexable Property identified on Exhibit C of this Declaration may be annexed into the Declaration and made a part of the Community from time to time in accordance with Article XIV of this Declaration. It is anticipated that the following real estate will be annexed into the Community as Common Property: Tracts A, C-1, C-2 and C-3, The Townes at Kettle Creek, City of Colorado Springs, County of El Paso, State of Colorado.

## EXHIBIT C

### Annexable Property Legal Description:

A tract of land being a portion of the Southwest quarter of Section 22, and the Northwest quarter of Section 27, Township 12 South, Range 66 West of the 6th P.M., El Paso County, Colorado, described as follows:

Basis of Bearings: The southeasterly line of Bison Ridge at Kettle Creek Filing No. 1, as recorded under Reception No. 204068973, records of El Paso County, Colorado, being monumented at each end by a No. 5 rebar with a 1 1/2" aluminum cap stamped "JR Eng RLS 31161". Said line is assumed to bear N45°28'00"E.

Beginning at the Southerly corner of Lot 43 of Bison Ridge at Kettle Creek Filing No. 1, as recorded under Reception No. 204068973, records of El Paso County, Colorado; thence N45°28'00"E, along the Easterly line of said Bison Ridge at Kettle Creek Filing No. 1, a distance of 579.12 feet to the Easterly corner of said Bison Ridge at Kettle Creek Filing No. 1, said point also being a point on the Westerly right-of-way line of Powers Boulevard, as established by URS Corporation; thence on said Westerly right-of-way line, the following two (2) courses:

1. S35°44'13"E, a distance of 244.44 feet;
2. S23°49'06"E, a distance of 401.92 feet;

thence S58°43'02"W, a distance of 401.60 feet; thence S68°14'10"W, a distance of 99.49 feet to a point on the Easterly right-of-way line of Rhinestone Drive, as platted in said Bison Ridge at Kettle Creek Filing No. 1; thence on said Easterly right-of-way line, the following seven (7) courses;

1. On the arc of a curve to the left, whose center bears S65°17'41"W, having a delta of 26°02'26", a radius of 432.50 feet, a distance of 196.57 feet to a point of reverse curve;
2. On the arc of a curve to the right, having a delta of 19°23'02", a radius of 367.50 feet, a distance of 124.33 feet to a point on curve;
3. S58°38'16"W, a distance of 7.50 feet to a point on curve;
4. On the arc of a curve to the right, whose center bears N58°38'16"E, having a delta of 08°43'31", a radius of 375.00 feet, a distance of 57.11 feet to a point of tangent;
5. N22°38'13"W, a distance of 74.45 feet to a point of curve;
6. On the arc of a curve to the left, having a delta of 04°23'02", a radius of 225.00 feet, a distance of 17.22 feet to a point of tangent;
7. N27°01'15"W, a distance of 29.93 feet to the Point of Beginning.

Containing a calculated area of 7.345 acres, more or less.

## EXHIBIT D

Easements, licenses and encumbrances on title -- The following items which are recorded, are recorded in the office of the Clerk and Recorder of El Paso County, Colorado:

Covenants, conditions, restrictions and easements, if any, which do not contain a forfeiture or reverter clause, (deleting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin) as contained in instrument recorded January 16, 2005 at Reception No. 205002588 and any and all amendments and/or supplements thereto.

Inclusion of the subject property lying within the Chapel Hills Water and Sanitation District as evidenced by the Order and Decree Creating District recorded September 20, 1965 in Book 2094 at page 369.

The effects, if any, of the Map of the Chapel Hills Master Plan recorded May 12, 1976 in Book 2829 at page 43 and October 24, 1978 in Book 3100 at page 260.

Terms, agreements, provisions, conditions and obligations as contained in Annexation Agreement recorded December 10, 1982 at Reception No. in Book 3646 at page 206.

Easement(s) and rights of way including its terms and conditions for utility as granted to City of Colorado Springs in instrument recorded January 6, 1986 at Reception No. 1342119 in Book 5110 at page 605. Correction document recorded in conjunction therewith April 7, 1986 in book 5150 at page 1485.

Each and every right of access to and from Powers Blvd. as implied in Instrument recorded October 11, 2002 at Reception No. 202175546, as amended.

Emergency Access Easement (AC-406) as implies in Instrument recorded October 11, 2002 at Reception No. 202175546, as amended.

Terms, agreements, provisions, conditions, obligations and easements as contained in Permanent Easement Agreement, recorded February 24, 2004 at Reception No. 204030856.

Terms, agreements, provisions, conditions, obligations and easements as contained in Grant of Drainage Easement, recorded March 2, 2004 at Reception No. 204035054.

Terms, agreements, provisions, conditions, obligations and easements as contained in Drainage and Temporary Easement Agreement between Kettle Creek, LLC, John Venezia Family Trust and Bison Ridge at Kettle Creek LLC, recorded \_\_\_\_\_, 2006 at Reception No. 204035054.

Terms, agreements, provisions, conditions, obligations and easements as contained in subdivision plat of The Townes at Kettle Creek, City of Colorado Spring, County of El Paso, State of Colorado.

## EXHIBIT E

### FORM OF

#### ANNEXATION OF ADDITIONAL LAND TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE TOWNES AT KETTLE CREEK

ASHTON DENVER RESIDENTIAL, LLC, a Nevada limited liability company (the "Declarant") executes this Annexation of Additional Land to Declaration of Covenants, Conditions and Restrictions for The Townes at Kettle Creek (the "Supplemental Declaration"), this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

#### RECITALS

A. Declarant executed and caused to be recorded that certain Declaration of Covenants, Conditions and Restrictions for The Townes at Kettle Creek (the "Declaration") on \_\_\_\_\_, 2006, in Book \_\_\_\_ at Page \_\_\_\_ under Reception No. \_\_\_\_\_ of the records of the Office of the Clerk and Recorder of El Paso County, Colorado.

B. Article XIV of the Declaration reserves unto the Declarant the right to annex land to the Declaration by recordation of one or more Annexations of Additional Land to the Declaration.

C. The purpose of this Supplemental Declaration is to annex certain land into the Declaration and to include certain land within the Community, as defined in the Declaration.

#### DECLARATION

NOW, THEREFORE, Declarant declares that the property described herein is and shall be held, transferred, sold, conveyed and occupied subject to all of the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration and shall be binding on all persons having or acquiring any right, title or interest in the property described herein, their heirs, successors, and assigns, and shall inure to the benefit of, be binding upon, and be enforceable by Declarant, its successors in interest, each Owner and his successors in interest, and The Townes at Kettle Creek Owners Association, Inc., and its successors in interest.

All captioned terms used herein have the same meaning as set forth in the Declaration.

1. Legal Description of the Property Being Annexed. The property being annexed to the Declaration and the common interest Community by this Supplemental Declaration is described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The Declarant is the Owner of the Property.

2. Annexation. The Property described in Exhibit A hereof is being annexed to the Declaration and the Common Interest Community pursuant to the provisions of Article XIV, Section 5 of the Declaration.

3. Effect of Annexation. Upon recording of this Supplemental Declaration, the Property, the Lots and any Common Property therein, shall be deemed to be included within the Community covered by the Declaration and subject to all of the terms, provisions, covenants, conditions, reservations, charges, and liens set forth in the Declaration, including all assessment obligations set forth in the Declaration. The Property described in Exhibit A and the Lots and any Common Property located therein is also expressly subject to all of the provisions of the Articles of Incorporation and the Bylaws of The Townes at Kettle Creek Owners Association, Inc., as more particularly described in the Declaration, the Articles of Incorporation, and the Bylaws. As provided in the Declaration, the Allocated Interests attributable to each Lot in the Property shall be one over the total number of Lots subject to the Declaration after the annexation of the Property.

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

DECLARANT:

ASHTON DENVER RESIDENTIAL, LLC,  
a Nevada limited liability company

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO

)

) ss.

COUNTY OF \_\_\_\_\_

)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of ASHTON DENVER RESIDENTIAL, LLC, a Nevada limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[Seal]

\_\_\_\_\_  
Notary Public

(ATTACH EXHIBIT A)

{31975.10.6/6/2006 09:32 AM.SARO.A0220783.DOC;4}

E-2



## Chris Ruddle

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**From:** Scott Ross [sross@lrfllegal.com]  
**Sent:** Tuesday, June 06, 2006 10:45 AM  
**To:** Chris Ruddle  
**Cc:** Roger Thiret; Greg Epp; Rick Rubin  
**Subject:** Ashton Homes Denver, Townes at Kettle Creek CCR's  
**Attachments:** Kettle Creek Declaration CCR Ashton (A0220783-4).DOC

Dear Chris: Due to the requirements of Colorado law and the fact that the Statement of Authority for Ashton Denver Residential designates you as the person authorized to sign in connection with property conveyances, I am forwarding to you for signature the CCR's of the Townes at Kettle Creek. The City requires that the CCR's be recorded before the final plat is recorded and I understand that the Plat has been approved and is now ready for recording.

Therefore, please date and sign the CCR's on page 49, and have your signature notarized, and return it by overnight delivery to Ashton's Denver office to the attention of Roger Thiret.

Thank you for your attention to this matter.

Scott A. Ross  
Lottner Rubin Fishman Brown & Saul, P.C.  
633 17th Street, Suite 2700  
Denver, Colorado 80202  
303-383-7627 (phone)  
303-292-1300 (fax)

This electronic message transmission contains information from the law firm of LottnerRubinFishmanBrown+Saul, P.C., which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please notify us by telephone (303-292-1200) or by electronic mail (sross@lrfllegal.com) immediately.

6/6/2006

El Paso - 84154-2006