



Eagle County Clerk and Recorder

Becky Close

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Eagle, Colorado 81631

\*292094\*

CUSTOMER INFORMATION      TRANSACTION INFORMATION      PAYMENT SUMMARY

Transaction #: 292094  
Receipt #: 202515711  
Cashier Date: 11/10/25 12:37  
Cashier By: jsalaz  
Print Date: 11/10/2025 12:38:29

Total Fees:	\$43.00
Total Payments:	\$43.00
Balance Due:	\$0.00

1 Payment

Over Counter Credit Card \$43.00

1 Official Record

COVENANTS Document #: 202515275 Pages: 55 Date: 11/10/2025 24:37:41

From: CONFLUENCE AT TWO RIVERS To: FCAP CONFLUENCE

Fees:	ERTB State (ERTB)	\$2.00
Fees:	Recording Fees	\$40.00
Fees:	Tech County Surcharge	\$1.00



Eagle County, CO

**202515275**

Becky Close

11/10/2025

Pgs: 55

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REC: \$43.00

DOC: \$0.00

# **Declaration for Confluence at Two Rivers**

**A planned Community subject to the Colorado Common Interest Ownership Act**

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**Declaration**  
**for**  
**Confluence at Two Rivers**  
a Planned Community subject to the Colorado Common Interest Ownership Act

This Declaration is made by FCAP Confluence, LLC, a Colorado limited liability company (“Declarant”).

**Recitals:**

A. Declarant is the owner of certain real property located in the County of Eagle, State of Colorado, which is more particularly described as set forth in Exhibit A attached and by reference made a part of this Declaration.

B. Declarant desires to create a planned Community on the real property described in Exhibit A in which portions of such real estate are designated for residential use (as provided for in this Declaration) and portions are designated or may be designated as Common Elements.

C. The purposes of Declarant and of this Declaration include, but are not limited to the following:

- to create the planned community known as Confluence at Two Rivers;
- to preserve and enhance the value and desirability of the Real Estate and the Community; and
- to serve the purposes set forth in this Declaration and the other Governing Documents of the Community.

Declarant has caused the “Confluence at Two Rivers Community Association, Inc.,” a Colorado nonprofit corporation, to be incorporated under the laws of the State of Colorado as the owners’ association, for the purpose of exercising the functions as set forth in this Declaration.

**ARTICLE 1. Submission / Defined Terms**

**Section 1.1 Submission of Real Estate.**

(a) Declarant submits the real property described in Exhibit A, together with all exceptions to title described in Exhibit B, including easements, rights, and appurtenances and the improvements erected or to be erected, together with all easements, rights, and appurtenances (including non-severed water and mineral rights) (collectively, the “Real Estate”) to the terms and conditions of this Declaration.

(b) Declarant declares that:

(i) all of the Real Estate is held or sold, and conveyed subject to the easements, restrictions, covenants, and conditions in this Declaration;

(ii) this Declaration is made for the purpose of protecting the value and desirability of the Real Estate;

(iii) this Declaration is made to be subject to CCIOA;

(iv) this Declaration encumbers the Real Estate regardless of ownership and thus runs with the land;

(v) this Declaration is binding on all parties having any right, title or interest in the Real Estate, their heirs, legal representatives, successors, and assigns; and

(vi) this Declaration inures to the benefit and burden of each Owner and the Association.

**Section 1.2 Community Is Subject to CCIOA.** The Community is subject to all of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as may be amended.

**Section 1.3 Defined Terms.** Each capitalized term in this Declaration has the meaning specified or used in this Declaration, as defined below, or as the context provides or requires otherwise.

(a) Allocated Interests. The votes in the Association and the Common Expense liability allocated to each Townhome pursuant to the terms of this Declaration and as initially set forth in Exhibit C. The Allocated Interest for each Townhome is a fraction, the numerator of which is one and the denominator of which is the total number of all Townhomes in the Community. Each Townhome is allocated one vote in the Association.

(b) Articles of Incorporation. The Articles of Incorporation for the Association filed with the Colorado Secretary of State, as amended from time to time.

(c) Assessment(s). Common Expense Assessments and any other assessment as allowed or provided for by this Declaration and under the limited lien priority provisions of CCIOA.

(d) Association. Confluence at Two Rivers Community Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

(e) Board or Board of Directors. The body responsible for management and operation of the Association. The term has the same meaning as executive board as defined in the Act.

(f) Building(s). The buildings constructed or to be constructed by Declarant on the Real Estate.

(g) Bylaws. The Bylaws of the Association, as amended from time to time.

(h) CCIOA or Act. The Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as amended from time to time. The Act applies as provided for by this Declaration.

(i) Common Elements. All of the Real Estate owned by the Association within the Community except the Townhomes and the real property upon which the Townhomes are constructed.

(j) Common Expense Assessment. In addition to the definition included in the Act, the term Common Expense Assessment means the funds required to be paid by each Owner in payment of such Owner's liability for, without limitation, the following items:

(i) an Owner's Allocated Interest in the Common Expenses;

(ii) late charges, attorneys' fees, fines, and interest charged by the Association at the rate as determined by the Board;

(iii) charges against a particular Owner and/or Townhome for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation of the Governing Documents by an Owner or Related Users ("Individual Purpose Assessment");

(iv) charges levied against an Owner pursuant to the Declaration due to Owner's negligence or misconduct ("Default Assessment"); and

(v) any sums permitted by the Governing Documents to be assessed against a particular Owner or Townhome.

(k) Common Expenses. As used in this Declaration, this term includes all charges levied by and for the benefit of the Association pursuant to the Governing Documents, including, but not limited to: annual costs and expenses of the Association resulting from owning, leasing, using, maintaining, or otherwise controlling any real or personal property, or sharing in the costs of operating any part of the Community, the Common Elements, or those portions of Townhome Exteriors that are maintained by the Association pursuant to Section 5.2; and expenses incurred by the Association pursuant to this Declaration in amounts determined by the Board of the Association, and as budgeted to fund reserves.

(l) Community. Confluence at Two Rivers, the planned Community created by this Declaration.

(m) County. Eagle County, Colorado.

(n) Declaration. This Declaration and any and all duly executed amendments, supplements, or additions to this Declaration recorded in the office of the Clerk and Recorder of Eagle County, Colorado, and including any maps or plats recorded in connection with the Community.

(o) Declarant. The "Declarant" named in this Declaration and/or any successor and/or assignee designated by written notice or assignment executed by a Declarant and by the transferee and recorded (to the extent any rights or powers of Declarant are transferred or assigned to such transferee).

(p) Design Guidelines. Collective reference to all written design and development guidelines, policies and procedures, application and review procedures and fee schedules, and all architectural controls which apply to renovations or remodeling of any Townhome, as enacted by Declarant and/or Board of Directors, pursuant to rule-making authority.

(q) Development Rights or Special Declarant Rights. The rights of a declarant under CCIOA, whether expressly stated in this Declaration or not and the rights of Declarant under this Declaration, including control of the Board of the Association.

(r) Excluded Claim(s). Any claim in a civil action, lawsuit or arbitration (other than the arbitration allowed for in this Declaration) related to construction or design of the Buildings, Townhomes, Lots, grading, landscape, Common Elements, drainage within the Community or any improvements constructed or designed by Declarant or the following persons: a contractor, subcontractor, developer, builder, architect, engineer or inspector, or affiliates of any of these, or any person or persons responsible for any part of the construction or design of a Townhome or the Community, including officers, directors, shareholders, members, managers, employees or servants of these persons. Excluded Claim also includes any claims against Declarant or its affiliates or agents or employees of Declarant or its affiliates.

(s) Governing Documents. Collective reference to those documents which govern the operation of the Community and the Association, including: (i) this Declaration; (ii) the Articles of Incorporation; (iii) the Bylaws; (iv) the Rules, regulations, policies and procedures (including Design Guidelines); and (v) the Plat, as one or more of the same may be amended from time to time.

(t) Improvements. Any change to the original Townhome Exterior or Real Estate visible from a neighboring Townhome subsequent to an Owner's acquisition of its interest therein, including as installed within or upon all or a portion of a Townhome.

(u) Limited Common Elements. Any portion of the Real Estate which is either limited to or reserved in this Declaration, on the Plat, or by authorized action of the Association or Declarant, as a common element for the exclusive use and benefit of a Townhome, or is limited to and reserved for the common use of more than one but fewer than all Townhomes.

(v) Lot(s). Those separate parcels shown upon the Plat or any other recorded map or plat affecting the Real Estate.

(w) Mortgage. Any mortgage instrument, deed of trust, or other security instrument duly recorded in the records of the office of the Clerk and Recorder of Eagle County creating a lien on an Owner's ownership interest in a Townhome, together with each and every collateral obligation secured by such instrument. A "First Mortgage" is a Mortgage having priority of record over all other recorded liens against an Owner's ownership interest in a Townhome except the Common Expense Assessment lien of the Association (as allowed under parts of CCIOA made applicable in this Declaration, to allow for limited lien priority of the Association as allowed for under that Act) and governmental liens (made superior by other state statutes).

(x) Mortgagee. A bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, an agency of the United States Government (including "VA" or "FHA"), mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, or Declarant, holding a Mortgage. A "First Mortgagee" is a Mortgagee having priority of record over all other recorded liens against an Owner's ownership interest in a Townhome except the Common Expense Assessment lien of the Association (as allowed under parts of CCIOA made applicable in this Declaration, to allow for limited lien priority of the Association as allowed for under that Act) and governmental liens (made superior by other state statutes).

(y) Owner. Any individual, group of individuals, or entity that purchases a Townhome holds a fee interest in and to that portion of the Real Estate upon which such Townhome is constructed.

(z) Party Wall(s). Any wall that is built as a part of the original construction of the Townhomes and placed on or about the horizontal or vertical boundary line between two (2) Townhomes. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply.

(aa) Period of Declarant Control. The period of time commencing on the date of recordation of this Declaration and expiring on the earlier of: sixty (60) days after conveyance of Townhomes to Owners other than Declarant in seventy-five percent (75%) of the maximum number of Townhomes (as allowed under this Declaration); two (2) years after the last sale of a Townhome by Declarant in the ordinary course of business; or two (2) years after any right to add new real property was last exercised or as surrendered, in writing, by Declarant.

(bb) Plat. That certain site plan or plat for all of the Real Estate recorded in the real property records for Eagle County, Colorado, as the same may be amended from time to time. The "notes" on the various sheets comprising a Plat are incorporated by this reference and are fully enforceable as though set forth in this Declaration.

(cc) Real Estate. The property described in Exhibit A, together with all easements, rights, and appurtenances and the improvements erected or to be erected on the Real Estate, together with all easements, rights, and appurtenances (including non-severed water and mineral rights). All exceptions to title to which the Community is subject to as of the date of this Declaration are recited in Exhibit B.

(dd) Related User. Any person who resides with an Owner within a Townhome; is a guest or invitee of an Owner; is an occupant or tenant of a Townhome; and any family member, guest, invitee or cohabitant of the foregoing.

(ee) Rules or Rules and Regulations. All rules, regulations, policies, and regulations, including by way of example only, use restrictions, Design Guidelines, governance policies, and enforcement enacted by the Board pursuant to this Declaration, the Bylaws and as allowed by law.

(ff) Townhome. A separate ownership interest in a residential townhome and that portion of the Real Estate upon which such townhome is constructed and that shares a Party Wall with part of another townhome and is part of a Building and/or a physical portion of the Community as shown on the Plat or any other recorded map, and all improvements and fixtures contained therein, together with the undivided interest in the Common Elements.

(gg) Townhome Exterior. Townhome Exterior includes items specifically allocated to an Owner to maintain, repair, replace and improve, and includes all exterior surfaces of a Townhome including, but not limited to, all structural components, foundations, windows, doors, door and window trim, window wells, exterior siding, stucco, brick, roofs, roofing surfaces and shingles and roof lining, gutters, downspouts, drain spouts, flues, front patios, balconies and deck areas (if any), exterior screen and glass surfaces, external vents, sidewalks, concrete on the exterior of the Townhome and any Improvements added by an Owner.

## ARTICLE 2. Real Estate, Townhomes, and Common Elements

**Section 2.1 Real Estate.** The Community is a planned residential townhome community located in Eagle County, Colorado. The Real Estate of the Community is described in Exhibit A. All exceptions to title to which the Community is presently subject are recited in Exhibit B. In addition, the Community may be subject to other easements or licenses granted pursuant to the Governing Documents, or granted or allowed by authority reserved in any recorded document or established under this Declaration, or in the Act. The Real Estate is subject to Declarant's Development Rights and Special Declarant Rights as provided for in this Declaration.

**Section 2.2 Number of Townhomes.** The initial maximum number of Townhomes is forty-six (46).

**Section 2.3 Identification of Townhomes / Description of Townhomes.** A contract for the sale or assignment of a Townhome, written prior to recordation of the Plat and Declaration, may legally describe a Townhome by its identifying unit designation followed by the words "Confluence at Two Rivers", with further reference to the Declaration and Plat to be recorded. Subsequent to the recordation of the Plat and Declaration, a contract for the sale or assignment of a Townhome may legally describe a Townhome by its identifying unit designation followed by the words "Confluence at Two Rivers", with further reference to the recorded Plat and the recorded Declaration. An Owner's undivided interest in the Common Elements shall not be separated from the Townhome to which it is appurtenant and shall be deemed conveyed or encumbered with that Townhome without specific reference thereto in the legal description and instrument conveying or encumbering said Townhome which may only refer to the title to that Townhome. The reference to the Plat or Declaration in any instrument shall be deemed to include any supplements or amendments to the Plat or Declaration without specific reference thereto.

**Section 2.4 Initial Common and/or Limited Common Elements.**

(a) The Common Elements shall remain undivided, and no Owner or any other person shall bring any action for partition or division of the Common Elements.

(b) Common Elements may be added or modified, as allowed under this Declaration. See Exhibit D.

(c) There are no Initial Limited Common Elements in the Community. See Exhibit E.

(d) Limited Common Elements may be added or modified, as allowed under this Declaration. See Exhibit F and other provisions of this Declaration.

(e) Until added, areas that may become Common Elements will be maintained by Declarant.

(f) Once the initial improvements of Declarant on the Common Elements are constructed and in use by any Owner who acquired a Townhome from Declarant, those Common Elements are to be maintained by the Association. The Association, by the terms of this Declaration, agrees to maintain the Common Elements.

(g) Declarant has the right to perform maintenance on Common Elements, if it desires, inclusive of any landscaping that may extend into the boundaries of any Townhome. This maintenance may extend through any warranty periods provided by vendors to Declarant on landscape or other improvements made to the Common Elements.

(h) The Common Elements may be regulated by the Association, including the determination of the Board to use the Common Elements in manners deemed by the Board to be consistent with the purposes of this Declaration (as set forth in this Declaration).

(i) Portions of the Common Elements may be designated as a Limited Common Element to certain Townhomes.

(j) Easements for use and/or access are established across the areas that are, and also that may become, Common Elements, which easements are for the benefit of the Owners. Once the areas that may become Common Elements are constructed or improved by Declarant and in use by the Owners, those areas are to be covered by the general liability insurance maintained by the Association as provided elsewhere in this Declaration.

(k) The Common Elements or Limited Common Elements, if any, may be changed, from time to time, by Declarant or by the Board, pursuant to the provisions in this Declaration.

**Section 2.5 Radon Notice and Disclaimer.** Owners acknowledge that Declarant and this Declaration disclose that radon gas contamination is a naturally occurring threat throughout the Rocky Mountain region and that potential radon contamination in a Townhome can be mitigated through modifications to a Townhome. By acquiring a Townhome, each Owner acknowledges they have assumed all risk for any potential radon contamination and that should radon contamination be discovered by an Owner or resident at any time, it is an Owner or resident's sole obligation to correct the radon contamination. Declarant and the Association have made no investigation to determine whether the Real Estate is affected by radon. Each Owner and resident acknowledge that neither Declarant nor the Association has made any representations or warranties, express or implied, concerning the presence or absence of radon within the Real Estate or any Townhome or the soils beneath or adjacent to any Townhome. Each Owner releases Declarant and the Association from any and all liabilities and claims with respect to radon gas.

**Section 2.6 Concrete Finishes.**

(a) Each Owner acknowledges and accepts that there may be concrete finishes on improvements of or serving a Townhome and that those areas, as constructed with concrete, will settle and crack.

(b) When natural materials like concrete are used, natural variability, not uniformity, is to be expected as the surface of the concrete matures. Each Owner and the Association waives and releases Declarant from variability in concrete finishes.

(c) Declarant and the Association are not responsible for and do not warranty interior or exterior concrete, including, but not limited to, cracking, discoloration, spalling, settlement, heaving and/or movement.

(d) Declarant does not warrant any damage to the Real Estate in the event that proper maintenance is not performed, including the use of ice melting materials (which is not recommended) on any part of the Real Estate.

**ARTICLE 3. The Association**

**Section 3.1 Membership.** Every person who is an Owner is subject to this Declaration and is a member of the Association. Membership is appurtenant to and may not be separated from ownership of a Townhome. Ownership of such Townhome is the sole qualification for such membership. Where more than

one person holds an ownership interest in a Townhome, all such persons are members of the Association; provided, however, regardless of the number of owners of a Townhome, each Townhome shall only be allocated one vote in the Association.

**Section 3.2 General Purposes, Powers, Authority and Restrictions on and of the Association.**

(a) The Association, acting solely through its Board of Directors, is to perform functions and manage the Community, including its business affairs, as provided in the Governing Documents, so as to protect the value and desirability of the Real Estate and to further the interests of the Owners and Related Users.

(b) Any purchaser of a Townhome is deemed to have assented to, ratified and approved this Declaration and the terms of this Declaration.

(c) The Association has all powers necessary or desirable to effectuate the purposes of the Community and the Association.

(d) The Association is governed by the Governing Documents and other applicable laws.

(e) The Board of Directors may, by written resolution, delegate authority to a manager, managing agent or bookkeeper for the Association, provided no such delegation relieves the Board of final responsibility.

(f) The Association may not commence an arbitration on an Excluded Claim without first complying with the terms of other provisions of this Declaration.

(g) The Association may not sue on an Excluded Claim.

**Section 3.3 Association Services and/or Utilities.**

(a) The Association may provide services and utilities to any portion of the Real Estate or Townhomes as it determines.

(b) Water and sewer utilities may initially be provided by the Association to the Real Estate and Townhomes by one or more meters or facilities allocated by local government to the Association.

**Section 3.4 Association Accounting, Reserve Funds and Surplus.**

(a) The Association is to keep books and financials as is typical for homeowner associations.

(b) The Association may establish a reserve fund for the maintenance, repair and replacement of those items the Association is required to maintain. The Association is not required by this Declaration to establish a reserve fund.

(c) Reserve funds may be funded through the monthly payments of the annual Common Expense Assessments or through other Assessments.

(d) Any surplus funds derived from Assessments may be transferred to the reserve fund, or may be used for Association operations. The choice may be made in the Board of Directors' sole discretion. By purchase of a Townhome, each Owner directs the Board of Directors to make this determination periodically, as the Board determines.

**Section 3.5 Association Agreements / Contracts.**

(a) Any agreement for professional management or bookkeeping, or for employment or lease of recreational or parking area facilities entered into during the Period of Declarant Control may not exceed one (1) year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days' written notice. This provision is based on Section 305 of the Act and provides a period of notice of thirty (30) days, for the benefit of the Association as opposed to the ninety (90) day notice set out as the minimum in the Act. The Association is not bound either directly or indirectly by the foregoing contracts or leases entered into during the Period of Declarant Control unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after at least thirty (30) days' notice to the other party to the contract.

(b) Any other agreements, contracts for services or leases (other than as set forth above or as entered into by the Association by Declarant or an affiliate of Declarant) are not limited to one (1) year and are not subject to the termination rights set forth above and allowed for as to specified contracts by the Act, so long as the contract or lease is bona fide and not unconscionable to the Owners at the time it was entered into under the circumstances then prevailing.

**Section 3.6 Promulgation of Rules.**

(a) Subject to the terms of this Declaration, the Board may adopt, amend, repeal and enforce Rules and impose fines for violations of the Governing Documents.

(b) The Board may proceed with Rules as it deems desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, and the Townhomes and Real Estate in accordance with the following:

- (i) The Rules are to be reasonable and uniformly applied.
- (ii) Copies of the currently effective Rules must be made available to each Owner upon request.
- (iii) Each Owner must comply with the Rules and see that Related Users comply with the Rules.
- (iv) In the event of conflict between the Rules and this Declaration, this Declaration prevails, but only to the extent that such rule or regulation invalidates a specific provision in this Declaration.

**Section 3.7 Open Meetings of the Association and Board of Directors.**

(a) All meetings of the Association and the Board of Directors are open to every Owner, or to any person designated by an Owner in writing to the Association as the Owner's representative in advance of a meeting.

(b) All Owners or designated representatives so desiring are permitted to attend, listen, and speak at an appropriate time determined by the Board of Directors during the meeting.

(c) The Board of Directors may place reasonable time restrictions on those persons speaking during the meeting but must permit an Owner or its designated representative to speak before the Board takes formal action on an item under discussion, in addition to any other opportunities to speak.

(d) The Board of Directors may provide for a reasonable limit on the number of persons to speak on each side of an issue.

(e) Upon the final resolution of any matter for which the Board of Directors receives legal advice or that concerns pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in any appropriate manner, or it may elect to disclose such information, as it deems appropriate.

**Section 3.8 Governance Policies.** The Association is to adopt and maintain Governance Policies, to guide governance and operation of the Community and the Association and as required by CCIOA.

**Section 3.9 Indemnification.** To the full extent permitted by law, all officers, members of the Board of Directors and committee members of the Association shall be and are indemnified by the Owners and the Association. This indemnification extends to all expenses and liabilities including attorneys' fees reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or member of the Board of Directors, or committee member or any settlements of the Association. This indemnification applies whether or not they hold such position at the time such expenses are incurred. In the event such person is adjudged guilty of willful misfeasance or malfeasance in the performance of their duties, this indemnification will then no longer apply and such person is to reimburse the Association.

**Section 3.10 Appointment / Removal of Officers / Board Members During the Period of Declarant Control.** Declarant has the power and authority, pursuant to the Act and this Declaration, to appoint and remove officers and members of the Board of Directors. This authority extends through the Period of Declarant Control.

**Section 3.11 Initial Owner Elections of Board Members.**

(a) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the maximum number of Townhomes allowed under this Declaration to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Owners other than Declarant.

(b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the maximum number of Townhomes allowed under this Declaration to Owners other than Declarant, not less than thirty-three and one-third percent (33<sup>1</sup>/<sub>3</sub>%) of the members of the Board of Directors must be elected by Owners other than Declarant.

(c) Upon termination of the Period of Declarant Control, a majority of the Board of Directors must be elected by the Owners as provided for in the Act.

**Section 3.12 Contracts of the Association Entered into During the Period of Declarant Control.** Contracts of the Association entered into by the Association during the time or Period of Declarant Control may be subject to termination by the Association, once a majority of the Board has been elected by the Owners, as allowed for in the Act.

**Section 3.13 Declarant May Relinquish Rights.** At any time prior to the end of the Period of Declarant Control, Declarant may relinquish the right to appoint and remove Board members, but may require certain specific actions of the Board of Directors to be approved by Declarant.

#### **ARTICLE 4. Easements**

**Section 4.1 Easement for Access.** Owners have an easement for access to the Townhomes, for pedestrian access and for vehicle access (on such roads and parking areas as may be constructed) on the properties owned by Declarant and described in Exhibit E. All or part of those properties may become Common Elements when and as determined by Declarant. Owners fully assume, on behalf of Owner and Related Guests, all risks associated with the use of the access easement and all liability for any damage or injury to any person or thing as a result of such use. Upon the request of Declarant, Owner shall also immediately reimburse Declarant for any expenses that Declarant incurs related to any damage or injury to any person or improvement as a result of any negligent use or misuse of the access easement by Owner or Related Guests. Declarant shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of Declarant or its agents or employees. **DECLARANT SHALL NOT BE LIABLE TO OWNERS, RELATED GUESTS OR ANY OWNER'S FAMILY MEMBER OR OTHER INVITEE FOR INJURY OR DAMAGE CAUSED BY ANY LATENT CONDITION OF SUCH AREAS OR CAUSED BY THE ELEMENTS OR BY OTHER RESIDENTS OR PERSONS.**

**Section 4.2 Easement for Utilities and Drainage.**

(a) Each and every Townhome is subject to an easement for installing, replacing, repairing, and maintaining common water, irrigation, sewer, drainage, electricity, cable, dish or satellite antennas and/or other utility lines/utilities and for any utility boundary fencing.

(b) Utilities serving any Townhome or Common Elements may pass through other portions of the Real Estate, which is burdened with this easement.

(c) By virtue of these easements, it is expressly permissible for Declarant or the Association or the utility companies, municipalities or other parties supplying such utility service to erect and maintain the necessary equipment within the Real Estate and to affix, repair and maintain equipment, irrigation lines, water and sewer pipes, gas, electric and telephone wires, circuits, conduits and meters.

(d) These easements and related obligations and duties are appurtenant to and pass with the title to each Townhome.

(e) Declarant has the reserved right to establish easements to serve the Community or the properties described in Exhibit A. In this regard, any easements given of Declarant subsequent to this Declaration or any Plat being recorded are confirmed and expressly included in the Community and made subject to this Declaration.

**Section 4.3 Easement for Encroachments.** If any portion of a Townhome encroaches upon any Common Element or adjoining Townhome, a valid easement for such encroachment and for the

maintenance of same, shall and does exist. Similarly, if any portion of the Common Elements encroaches upon a Townhome, a valid easement for the encroachment and for the maintenance of same shall and does exist. Such encroachments and easements are not considered or determined to be encumbrances either on the Common Elements or any Townhomes affected. Further, such easements are deemed to run with the land upon which the improvements may be found.

**Section 4.4 Easements for the Association and Each Owner.** The Real Estate is subject to an easement in favor of Declarant or the Association (including its agents, employees and contractors) and to the adjacent Owner, to allow for their performance of obligations under this Declaration or under any of the other Governing Documents.

**Section 4.5 Emergency Easements.** A nonexclusive easement for ingress and egress is granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or subsequently servicing the Community, to enter upon any part of the Community in the performance of their duties.

**Section 4.6 Perimeter Easements.** Easements are given by all Owners to Declarant and to the Association for the placement or existence of any boundary fences and/or walls, if any, and for any boundary improvements. These easements include the right and easement, but not the obligation, of the Association to maintain either the boundary fence or any boundary line improvement or wall.

**Section 4.7 Warranty, Repair and Construction Easement.** Declarant and its assignees have the right to perform warranty work, repairs and complete construction on the Common Elements and the Real Estate, including after sale of a Townhome to an Owner. This includes the right to control such work and repairs, along with a right of access, until completion. These rights of Declarant are not to be construed as Development Rights or Special Declarant Rights or other rights allowed for under CCIOA, but rather, as rights independent of CCIOA, based on common law.

**Section 4.8 Owners' Easements of Enjoyment.**

(a) Every Owner has a right and easement for access to their Townhome by this Declaration and through the Association.

(b) Every Owner also has the right and easement of enjoyment in and to the Common Elements of this Community.

(c) These easements are appurtenant to and pass with title to every Townhome, subject to the following provisions:

(i) The right of the Association to promulgate and publish Rules with which each Owner and their Related Users must strictly comply.

(ii) The right of the Association to suspend the voting rights of an Owner for any period during which any Assessment against their Townhome remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rules.

(iii) The right, power, and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer, or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act.

(iv) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing, and making replacements.

(v) The rights of the Association as set forth in this Declaration and other Governing Documents for the Community.

(vi) The Development Rights and Special Declarant Rights of Declarant reserved in this Declaration.

(vii) The obligation of the Association to maintain general liability insurance on areas that may become Common Elements after those areas are improved by Declarant and in use by Owners.

**Section 4.9 Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Elements to Related Users.

## ARTICLE 5. Maintenance

**Section 5.1 Scope of Association Maintenance and other Responsibilities.** The Board of Directors of the Association determines the specifications, scope, extent, nature and parameters of the Association's maintenance and other responsibilities.

**Section 5.2 Limited Snow Removal.** The Association has sole control over and assumes the cost of limited snow clearing on the Real Estate from the front-door walkway (i.e., the sidewalk located in the front of a Townhome from the back of the curb of the private street to the base of the bottom step of the front door stoop). For snow events of less than two inches (2"), each Owner and/or their Related User is responsible for snow clearing on their front-door walkway or other sidewalks. Ice melt products are prohibited for use by the Association or any Owner or resident. Only sand is allowed on concrete for treatment of ice.

**Section 5.3 No Association Maintenance, Repair, Replacement or Improvement of Townhome Exteriors.** Maintenance, repair, replacement and improvement of Townhome Exteriors (except as to the limited snow clearing described in Section 5.2 of this Declaration) is allocated to each individual Owner as more fully provided in Section 5.10 below.

**Section 5.4 Association's Maintenance of Common Elements.** The Association is responsible for maintenance, repair, replacement and improvement of the Common Elements, including, but not limited to private roads and streets, parking areas, curbs, sidewalks, drainage, common area lighting, landscaping, retaining walls and a Community perimeter boundary fence. The Association's obligation to maintain all landscaping of the Real Estate and Community is inclusive of any landscaping located within the boundaries of any Townhome outside of the foundation thereof but excluding the maintenance of any Association approved Improvements.

**Section 5.5 Utility Maintenance by the Association.** The Association will maintain all pipes, lines, ducts, electrical conduits, or other apparatus serving more than one Townhome or which pass through or on another Townhome, including electric utility lines in soffits of the Townhomes.

**Section 5.6 Association Service Contracts.** The Association will maintain and be responsible for service contracts or providing for:

- (a) trash and recycling; and

(b) other services as determined by the Association, acting through the Board of Directors.

**Section 5.7 Chart.** The Association may supplement the list of items to be maintained by the Association or Owners by resolution or by a maintenance and insurance chart adopted by the Board.

**Section 5.8 Declarant Responsibility Is Limited as to Association Maintenance.** Declarant has no responsibility for any actions of the Association or its decisions once Declarant relinquishes control to a Board of Directors elected by Owners.

**Section 5.9 Association Maintenance Policy Responsibilities.** The Association has full responsibility to ensure proper maintenance policies are in place and are implemented.

**Section 5.10 Owner Maintenance and Other Responsibilities.**

(a) Except for those maintenance items allocated to the Association in Section 5.2 above, Owners are responsible for the maintenance, repair, replacement and improvement of the Townhome (including maintenance, repair, replacement, and improvement of the interior of the Townhome and all portions of Townhome Exteriors that are not otherwise maintained by the Association pursuant to Section 5.2), and all other improvements located thereon.

(b) Subject to Section 5.11, Owners are responsible for any Party Walls in their Townhome, in conjunction with the other Owner that shares that Party Wall.

(c) Owners are responsible for all utilities, lines, and facilities that serve their Townhome, including, but not limited to, water and sewer, whether located within or outside the Townhome boundary.

(d) Owners are responsible for maintenance, repair, replacement, and improvement of any solar panels on the Townhome Exteriors (installation of which is subject to architectural approval by the Board).

(e) Each Townhome and Townhome Exterior must at all times be kept well maintained, in good repair and replacement, and in a clean, sightly, and wholesome condition.

(f) Trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials are not permitted to remain exposed upon any Townhome so that the same are visible from any neighboring Townhome, Common Element or any street, except as necessary during a period of construction.

(g) The Association and its agents have the authority to enter, replace, maintain, repair and clean up Townhomes which do not conform to the provisions of this Section, and to charge and collect from the Owner of that Townhome all reasonable costs as an Assessment, after not less than two (2) notices, each allowing the Owner thirty (30) days to comply.

**Section 5.11 Party Wall Maintenance and Covenants.**

(a) An Owner is responsible for any Party Walls in its Townhome, if any; in conjunction with the other Owner that shares a Party Wall. Owners are also responsible for any shared sewer line that services their Townhome located within a boundary line of another Townhome, if any; which sewer lines are to be maintained by the two (2) Owners that share the

sewer line as an additional part of the party wall provisions of this Declaration. The cost of maintenance, repair, alteration, improvement and replacement of each Party Wall, fence, and shared sewer line is to be shared equally by the Owners that share the same.

(b) The right of an Owner to contribution from another Owner pursuant to this Declaration is appurtenant to an Owner's title to the Townhome and such rights and obligations pass to the Owners' successors in title.

(c) If a Party Wall is destroyed or damaged by fire or other casualty, the Association (if it receives insurance proceeds or if it determines) has sole control over the Party Wall. If the Association does not exercise control over a repair and notifies the Owners, then any Owner whose Townhome adjoins such Party Wall may repair or restore it, and the other Owner is to immediately, upon receipt of written demand, pay their portion of such costs to the Owner making such restoration or repair.

(d) Regardless of the above terms and provisions, an Owner who, by his negligent or willful act, causes the Party Wall to be exposed to the elements or damaged in any manner will bear the whole cost of furnishing the necessary protection against such elements or of making the necessary repairs or restoration.

(e) Party Walls may not be penetrated for speaker installation, TV installation (TVs may be mounted on a bracket to a Party Wall) or in a manner larger than appropriate to hang a normal or reasonable size picture, painting, etc.

#### **ARTICLE 6. Covenant for Assessments**

##### **Section 6.1 Creation of Association Lien and Personal Obligation to Pay Assessments and**

##### **Fees.**

(a) Each Owner is deemed to covenant and agree, by purchase of a Townhome, whether or not it is so expressed in any instrument, to pay to the Association Assessments, including Common Expense Assessments, pursuant to the Governing Documents.

(b) Assessments are the personal obligation of each Owner at the time when the Assessment or other charges became due.

(c) The Assessments are a charge on each Townhome and are a continuing lien upon the Townhome against which each such Assessment is made.

(d) If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

(e) The personal obligation to pay any past due sums does not pass to a successor in title, unless expressly assumed by them.

(f) All Assessments are to be payable in the amounts specified in the levy, and no offsets or reduction are permitted by any reason, including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

**Section 6.2 Declarant Assessment Exemption.** Until a certificate of occupancy is issued for the initial Townhome, the Townhome is exempt from Assessments of the Association based on benefits provided through assessments. Declarant is obligated, during any period of time Assessments are not imposed on any Townhome, to fund operating deficits of the Association. Declarant is to fund those deficits upon invoice from the Association. Such invoice will be deemed an Assessment of the Association, against all Real Estate then owned by Declarant, collectable and enforceable under the terms of this Declaration.

**Section 6.3 Purpose of Common Expense Assessments.** In addition to such other purposes as set forth in other parts of this Declaration, Common Expense Assessments are to be used for the purposes of promoting the interests of Owners and Related Users, and in particular:

- (a) To enforce all provisions of the Governing Documents;
- (b) To exercise all rights and powers and to discharge all duties and obligations pursuant to the Governing Documents;
- (c) To discharge all expenses incurred by the Association in the alteration, enhancement, construction, reconstruction, repair, maintenance or replacement of the Common Elements and the limited snow clearing for which it is responsible hereunder, as well as public improvements, if any, for which the Association has responsibility;
- (d) To discharge all expenses incurred by the Association in the alteration, maintenance, repair and replacement of any property the Association may elect to so alter, maintain, repair or replace pursuant to the Governing Documents; and
- (e) To fund any operating deficit or reserves the Association deems necessary to meet its financial obligations.

**Section 6.4 Apportionment of Common Expenses.**

(a) Except as provided below and elsewhere in this Declaration, all Common Expense Assessments are to be assessed against all Townhomes in an amount equal to the then-current annual estimated expenses (including reserves) of the Association multiplied by the Allocated Interest of each such Townhome.

(b) If any Assessments for utilities of the Association are based on use (for example, for water and/or sewer), to the extent the Association has private sub-meters for these utilities, those Assessments may be based on the sub-metering of the Association.

(c) Regardless of the foregoing:

(i) Common Expenses for services provided by the Association to an individual Townhome or at the request of the Owner of a Townhome may be assessed against that Townhome.

(ii) Any Common Expense for property insurance on the Real Estate, as may be provided by the Association, may be assessed in proportion to risk.

(iii) Fees, charges, taxes, impositions, late charges, fines, attorneys' fees, collection costs and interest charged by the Association against an Owner are enforceable as Common Expense Assessments.

**Section 6.5 Default Assessments.** In the event that the need for maintenance, repair, or replacement of the Common Elements, any portion of the Common Elements, or any other portion of the Community, including but not limited to those portions of the Townhome Exteriors that the Association maintains pursuant to Section 5.2, is caused by or in any way results from the negligent or willful act or failure to act, or the misconduct of an Owner or an Owner's Related User, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement is the personal obligation of such Owner. This obligation is considered a "Default Assessment," collectible as an Assessment.

**Section 6.6 Annual Assessment / Commencement of Common Expense Assessments.**

(a) The Common Expense Assessments are to be made on an annual basis against all Townhomes based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

(b) Assessments for metered utilities (as water and/or sewer utilities may be sub-metered) or for insurance (based on allocated risks) may be approved without a budget, but rather, based on metered use or allocated risk.

(c) Proposed budgets are to be submitted to the Owners, pursuant to the Act.

(d) A budget proposed by the Board of Directors is deemed adopted unless vetoed by the vote of at least seventy percent (70%) of the Owners.

(e) Assessments are payable in monthly installments or as the Board determines.

(f) Assessments begin at the closing of a sale of a Townhome.

(g) The omission or failure of the Board of Directors to levy the Assessment for any period is not deemed a waiver, modification or a release of the Owners from their obligation to pay.

**Section 6.7 Special Assessments.** The Association may, at any time, from time to time, determine, levy and assess a Special Assessment applicable to that particular assessment year, provided that the Association complies with the budget process of the Act.

**Section 6.8 Lien Priorities.**

(a) The Assessment lien of the Association is prior to all other liens and encumbrances on a Townhome, except: liens and encumbrances recorded before the recordation of this Declaration; a First Mortgage on a Townhome (except as allowed by CCIOA with regard to the Association's limited lien priority); and liens for real estate taxes and other governmental assessments or charges against the Townhome.

(b) This section does not affect the priority of mechanics' or materialmen's Liens.

(c) The lien of the Association under this Article is not subject to the provisions of any homestead exemption as allowed by state or federal law.

(d) Sale or transfer of a Townhome does not affect the lien for Assessments except that the sale or transfer of Townhome pursuant to foreclosure of any First Mortgage or any proceeding in lieu of foreclosure, cancellation, or forfeiture, will only extinguish the lien of Assessment as and if provided by applicable law. No such sale, transfer, foreclosure, or any proceeding in lieu of

foreclosure, nor cancellation or forfeiture relieves any Owner from continuing liability for any Assessment charges subsequently becoming due nor from the lien.

**Section 6.9 Reserves / Surplus.** The Association may establish a reserve fund for the maintenance, repair and replacement of those items the Association is required to maintain that must be periodically maintained, repaired or replaced. Such reserve fund may be funded through the monthly payments of the annual Common Expense Assessments. Any surplus funds derived from Assessments are to be transferred to the reserve fund or used for Association operations in the Board of Directors' sole discretion, and by acceptance of title to a Townhome, each Owner directs the Board of Directors to make this determination periodically, as the Board determines.

**Section 6.10 Effect of Non-Payment of Assessments.**

(a) Any Assessment provided for in this Declaration or any installment which is not fully paid within fifteen (15) days after the due date bears interest at the rate of interest specified in the collection policy as then in effect, as adopted by the Board of Directors.

(b) The Association may also assess a monthly late charge.

(c) Failure to make payment within the sixty (60) days of the due date may cause the total amount of such Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board.

(d) The Association may bring a lawsuit against any Owner obligated to pay overdue Assessment(s), or monthly or other installments, and may also proceed to foreclose its lien against such Owner's Townhome. A lawsuit by the Association against an Owner to recover a money judgment for unpaid Assessments, or any monthly or other installment, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien.

(e) The Association's costs of suit, expenses and reasonable attorneys' fees incurred simply by virtue of the failure of the Owner to timely pay Assessments when due, including attorneys' fees and costs for consultation and for preparing and recording any lien notice, and the Association's costs of suit, expenses and reasonable attorneys' fees incurred for any such action and/or foreclosure proceedings, will be included as part of the delinquent Assessment, will be taxed by the court as a part of the costs of such action or foreclosure proceedings, and will be recoverable by the Association from such Owner obligated to pay the same and from the proceeds of the foreclosure of such Owner's Townhome.

(f) Foreclosure, whether completed or commenced but not completed, by the Association of its lien does not estop or otherwise preclude the Association from subsequently foreclosing or commencing an action to foreclose its lien for any subsequent Assessments, or monthly or other installments, which are not fully paid when due.

(g) The Association has the power and right to bid on or purchase the interest of an Owner to any Townhome at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, and to convey or otherwise deal with the same.

(h) The rights of the Association are expressly subordinate to the rights of any First Mortgage as set forth in its First Mortgage to the extent permitted under the Act.

**Section 6.11 No Waiver or Abandonment.** No Owner may be exempt from liability for payment of the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Townhome against which the Assessments are made.

**Section 6.12 This Declaration Is Notice of Association Lien Rights.** Recording of the Declaration constitutes record notice and perfection of the lien for Assessments. No further recordation is required. However, the Board of Directors may prepare and record in the real property records of Eagle County, Colorado, a written notice setting forth the amount of any unpaid indebtedness, the name of the Owner, and a description of the Townhome.

**Section 6.13 Fees at Closing.** The Association requires each Owner of a Townhome (other than Declarant) to make a non-refundable, pro-rated payment to the Association for the month within which the closing occurs as well as a full assessment payment for the month after closing. The Association also requires payment of two (2) months of Assessments as working capital at closing, which sum may be immediately used by the Association as a part of its operation. Payment of working capital does not relieve an Owner from making regular payments of Assessments as the same become due. Owners also are to pay transfer, record change fees and other fees charged by the Association or its managing agent for a closing or refinance.

**Section 6.14 Borrowing.** The Association has the power to borrow money and assign future income, including the right to assign its right to receive Assessments.

#### **ARTICLE 7. Restrictions on Use, Alienation and Occupancy**

##### **Section 7.1 Use Restrictions.**

- (a) Initial use restrictions applicable to the Real Estate are set forth in this Declaration.
- (b) The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (as appointed by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing or must be contained in written guidelines or rules.
- (c) The Board of Directors has absolute authority to promulgate Rules and resolutions for restrictions on use, occupancy or alienation which are not contrary to restrictions or other limitations contained within this Declaration.
- (d) It is expected that Rules will govern the operations of the Community, the Owners and the Association in greater detail than the covenants in this Declaration. A specific provision of a Rule is invalid only to the extent that its strict application would contradict a specific provision in this Declaration.
- (e) The Board of Directors may establish and enforce penalties for infractions.
- (f) Owners are responsible for fines assessed against their Related Users.
- (g) All monetary penalties enforced pursuant to this Declaration or the Rules are collectible as Common Expense Assessments.

**Section 7.2 Owners' Acknowledgment.**

(a) All Owners and Related Users of Townhomes are given notice that use of each Townhome is limited by provisions of each of the Governing Documents as they may be amended, expanded, and otherwise modified from time to time.

(b) Each Owner, by acceptance of title to a Townhome, acknowledges and agrees that the use and enjoyment and marketability of their interest in the Townhome is affected by these Governing Documents and that all restrictions upon the use and occupancy of a Townhome, may change from time to time.

**Section 7.3 Rights of Owners.** The Board of Directors may not adopt any restriction on use, alteration or occupancy in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and Related Users will be treated similarly.

(b) Speech. The rights of Owners to display noncommercial signs and symbols in or on their Townhomes of the kinds normally displayed in or outside of houses located in single-family residential neighborhoods may not be abridged, except that the Association may adopt reasonable number, size, time, place and manner restrictions for the purpose of minimizing damage, disturbance, clutter and unpleasant aesthetics as allowed by statute.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations on their Townhomes of the kinds normally displayed in or outside houses located in single-family residential neighborhoods may not be abridged, except that the Association may adopt reasonable time, place and manner restrictions for the purpose of minimizing damage, disturbance, clutter and any unpleasant aesthetics and consistent with state statutes. The Association may restrict seasonal holiday displays. For example, winter season holiday displays may be restricted from the week before Thanksgiving to the week of New Year's Day.

(d) Restriction on Commercial Signs, Flags and Advertising Devices. With the exception of one professionally-lettered "For Sale" sign posted in a window in the interior of a Townhome that is being offered for sale, no commercial sign, flag, poster, billboard, advertising device, banners, balloons, streamers, or display of any kind may be erected or maintained anywhere within the Community unless approved in writing by the Association through the Board of Directors.

(e) Activities within Townhomes. No rule may interfere with legal activities carried on within the confines of Townhomes located on the Real Estate. However, the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that: create monetary costs for the Association or other Owners; create a danger to the health or safety of occupants of other Townhomes; generate excessive noise or traffic; or create unsightly conditions or conditions otherwise disallowed by this Declaration which are visible outside the Townhome or that create an unreasonable source of annoyance to other Owners.

**Section 7.4 Use, Occupancy, Covenants and Use Protection.** Townhomes within the Community may be primarily used only for residential purposes permitted by the local zoning codes and permits and as allowed for under restrictions in this Declaration. Use of Townhomes for primarily residential uses may not be unreasonably regulated or governed by the Association.

**Section 7.5 Restrictions on Townhome Exterior Alterations and Landscaping.** Owners may not make alterations to the Townhome Exterior unless such alterations are approved in advance by Declarant until the end of the Period of Declarant Control. After that date, this right is deemed transferred to the Association (if not transferred earlier by Declarant). Declarant or the Association (within the timeframe provided) may establish written guidelines for modifications proposed by Owners. Owners have no right or obligation to maintain any landscape around the Townhome Exteriors or on any other part of the Real Estate.

**Section 7.6 Construction of the Community Disclaimers.** Declarant has disclosed that the Community that includes the Townhomes is subject to construction of initial Townhomes. Owners acknowledge that initial construction, dust, construction noise, inconveniences and related issues, as well as the density of the greater community are initially impacting the Community. These inconveniences include those from construction labor personnel, storage, port-a-potties, construction debris, parking of construction personnel, and more.

**Section 7.7 Restrictions on Fences and Similar Structures.** Fences or similar structures may not be constructed or maintained for any Townhome without written approval as required under this Declaration.

**Section 7.8 Hot Tub Restrictions.** Hot tubs or similar facilities may not be constructed or maintained on a Townhome without written approval as required in this Declaration.

**Section 7.9 Pet Covenants and Restrictions.**

(a) Owners may keep pets which are common, bona fide household pets, so long as such pets are of the type, number, or combinations allowed by the County or applicable government authority, and by Rules adopted by the Association.

(b) Pets may not be bred or kept for any commercial purpose or kept in such number or in such manner as to be unreasonable or to create a nuisance to any resident.

(c) The Association may adopt reasonable Rules designed to minimize damage and disturbance to other Owners and Related Users, including Rules requiring waste removal, leash controls, noise controls and more.

(d) Nothing in this section of the Declaration prevents the Association from requiring or causing removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance, which includes excessive barking or pet noises, in the Board of Directors' sole discretion.

(e) An Owner's right to keep household pets is coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages are subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in this Declaration.

(f) Dogs may not be kept on a patio or enclosed outdoor area serving a Townhome if the dogs are excessively barking or otherwise creating a nuisance to neighboring Townhomes.

(g) Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outside a Townhome.

(h) Feces left by pets upon the Common Elements or any other area must be removed promptly by the owner of the pet or the person responsible for the pet. If the pet is staying or visiting the Townhome of an Owner, and the owner of the pet does not promptly remove the feces, the Owner of that Townhome is the person responsible. Promptly is defined to mean within twenty (24) hours or as the Board determines.

(i) The Board of Directors may require any pet that, in the Board's opinion, endangers the health or safety of any Owner or Related User or creates a nuisance or unreasonable disturbance be permanently removed from the Townhome and the Community upon ten (10) days' written notice. If the Owner or Related User fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Related User to do so.

(j) Any Owner or Related User or guest who keeps or maintains any pet in a Townhome or within the Community is deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within a Townhome or in the Community.

(k) Any increased or extraordinary landscape maintenance expenses incurred by the Association as a result of pets maintained within any Townhome may, in the discretion of the Association, be assessed to the Owners of those Townhomes, or the Townhome of an Owner (as the person responsible for the pet, as provided by this Declaration) or as the Board of Directors may determine. These costs can be assessed by the Association, with the action of the Board, as the Board determines in its reasonable discretion.

(l) The Association has all remedies available under the Act and by law related to any violation of these pet covenants and restrictions.

**Section 7.10 Restriction on Further Subdivision** No Townhome may be further subdivided or separated into smaller parcels by any Owner. No portion consisting of less than all of any Townhome, or any easement or other interest in this Declaration, may be conveyed, transferred or assigned by an Owner. This covenant does not prohibit corrective instruments.

**Section 7.11 Vehicular Parking, Storage, RVs and Repairs**

(a) Vehicular parking and use of all private access within the Community is subject to the control of the Association.

(b) Parking in fire lanes or handicap aisles (as designated by the Association or as designated by local government or a local fire protection authority) is not permitted.

(c) No activity such as, but not limited to, cleaning, washing, waxing, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat may be performed or conducted within the Community.

(d) The parking of RVs, boats, trailers, ATVs and similar vehicles shall be governed by the Rules of the Association.

(e) The Rules of the Association may further govern the types of vehicles that may be parked or stored within the Community.

(f) Storage, staging or parking of a so-called "tiny house" on any part of the Real Estate or any other property of the Community is prohibited, regardless of whether such structure is constructed with a wheel/axel feature.

**Section 7.12 Prohibitions on Increased Costs, Damage, and Noise.** Without the prior written consent of the Board of Directors, nothing may be done or kept in a Townhome or on any part of the Real Estate that would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would damage the Community, or increase the Common Expenses.

**Section 7.13 Nuisance Covenants and Restrictions.** An Owner or Related User may not conduct activities within a Townhome or use any portion of the Real Estate or Townhome in a manner that interferes with or causes disruption to the use and quiet enjoyment of another resident or Related User.

**Section 7.14 Noise Covenants and Restrictions.** No Owner or Related User may use or allow the use of the Real Estate, the Townhome or the Common Elements in any manner which creates unreasonable noise between the hours of 10:00 p.m. and 7:00 a.m. which can be heard by persons in another Townhome. As to the level of noise that is objectionable, that is in the Board of Directors' sole discretion. No Owner or Related User may unreasonably interfere with the rights, comfort or convenience of any other Owner of their Townhome.

**Section 7.15 Noxious and Other Activities.**

(a) Noxious, destructive, offensive or unsanitary activity is not allowed to be carried out in a Townhome or within the Community.

(b) No Owner or Related User may use or allow the use of a Townhome or any portion of the Community at any time, in any way, which may endanger the health or property of other occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Related Users or, in the Board of Directors' discretion, constitute a nuisance.

(c) Smoking of any kind, including vaping, is prohibited on patios, balconies, deck areas (if any), and the Common Elements.

(d) By Rules adopted by the Board, the covenants and restrictions in this section may be further expanded and clarified, including rules related to smoking of any kind.

(e) The intention of this section provision is to grant the Association and aggrieved persons a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Townhomes and of the Community.

(f) Specific unauthorized and unreasonable annoyances or disturbances include, and are not limited to, the following:

(i) any fighting, screaming, shouting, excessively loud talking, whistling, playing of music or television, raucous behavior, or insobriety either outside of a Townhome at any time or within a Townhome if such conduct can be heard in the normal course of activities in any other Townhome(s);

(ii) the use of any TV, stereo, alarm, equipment, or device, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations either

outside of a Townhome at any time or within a Townhome if such sounds can be heard or vibrations felt in the normal course of activities in any other Townhome(s);

(iii) any threatening or intimidating conduct towards any resident, guest, or pet in the Community;

(iv) any conduct which, in the Board of Directors' reasonable discretion, creates any danger or risk of injury to others or damage to in the Community or which creates any threat to health or safety of any other resident;

(v) any excessively loud play activities either outside of a Townhome at any time or within a Townhome if such conduct can be heard in the normal course of activities in any other Townhome(s);

(vi) any conduct which creates any noxious or offensive odor either outside of a Townhome at any time or within a Townhome if such odors can be detected in the normal course of activities in any other Townhome(s);

(vii) any incessant or excessive pet noises, including dog barking, if such conduct can be heard in the normal course of activities in any other Townhome(s) with the windows and doors of the Townhome closed;

(viii) any construction or similar activities in a Townhome that can be heard in other Townhomes between the hours of 7:00 p.m. and 7:00 a.m.; or

(ix) any similar action or activity outside of a Townhome or within the Community, or which occurs inside a Townhome, but which interferes with the peaceful use and enjoyment of other Townhomes or the Common Elements by any other Owner or Related User.

**Section 7.16 Covenants and Restrictions on Marijuana Use, Growing and Distribution.**

(a) By Rule adopted by the Board, residents may be precluded from the growth or cultivation of marijuana for personal use by the resident or for use by anyone else. This Rule is expressly allowed to regulate activity and use inside a Townhome due to the pungent odor of growing marijuana and the migration of that odor to neighboring Townhomes.

(b) No Townhome or portion of the Real Estate may be used for the production of hash oil, whether for personal use or distribution. Other marijuana-infused products or edibles may not be produced in a Townhome except for personal use, provided the use otherwise complies with the Governing Documents and Colorado law.

(c) No Owner or Related User may use any portion of a Townhome for the purpose of distributing, marketing, or promoting any business or other promotion related to marijuana.

(d) It is expressly permissible for Owners and Related Users to work for a business that is involved in the growing, distribution, marketing or promotion of marijuana.

(e) The covenants and restrictions in this section may be further expanded and clarified by the Board through Rules.

(f) Owners will be responsible for any costs or damages resulting from a violation of this section.

**Section 7.17 Easements Protected.** No Owner or Related User may do any work which, in the Board of Directors' reasonable opinion, would impair any easement or other interest in the Real Estate, without prior written consent of the Board of Directors.

**Section 7.18 No Waste.** No damage to or waste of a Townhome, the Townhome Exterior, the Common Elements, or any part of the Common Elements is permitted by any Owner or Related User. Each Owner and Related User indemnifies and holds the Association and the others harmless against all loss to the Association or others resulting from any such damage or waste caused by such Owner or Related Users.

**Section 7.19 No Restrictions on Mortgaging.** No Rule may impose any restriction on the right of the Owners to mortgage or otherwise encumber their Townhome, nor is there any requirement for the use of a specific lending institution or particular type of lender.

**Section 7.20 Use of Common Elements.** There are no obstructions of the Common Elements allowed, nor may anything be kept or stored on any part of the Common Elements without the prior written approval of the Board of Directors, or others with rights in those areas.

**Section 7.21 Failure to Maintain.**

(a) If the Board of Directors determines that any Owner has failed or refused to discharge properly their obligation with regard to the maintenance, repair, or replacement of items for which they are responsible under this Declaration, then, the Association may give the Owner at least two (2) written notices of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's sole cost and expense, allowing the Owner thirty (30) days to comply.

(b) The notice must set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors.

(c) If the Board of Directors determines that an emergency exists, the Owner has ten (10) days (or such shorter time as the Board may determine) within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.

(d) If the Board of Directors determines that: (i) an emergency exists; or (ii) that an Owner has not complied with the demands given by the Association as provided in this Declaration, then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs are to be added to and become a part of the Assessment to which such Owner is subject and become the personal obligation of the Owner. A lien against the Townhome secures these charges and costs, which are collectable as provided in this Declaration for the collection of assessments.

**Section 7.22 Rubbish, Trash, and Garbage.**

(a) All rubbish, trash, and garbage must be regularly removed from each Townhome and is not allowed to accumulate in a Townhome or on the Real Estate.

(b) No garbage or trash may be placed outside the Townhome, temporarily or otherwise, except on the day of pickup.

(c) Rubbish, trash, recycling and garbage must be disposed of in appropriate sealed bags and either placed in the trash cans or proper receptacles designated by the Board of Directors for collection, and only at times to allow for timely collection by a contractor, or must be removed from the Community.

**Section 7.23 No Unsightliness.** All unsightly conditions, structures, facilities, equipment, objects and conditions must be enclosed within an approved structure.

**Section 7.24 Window Coverings.** If window coverings are installed, they must be consistent and used uniformly with like types and colors. The side of the window covering which can be seen from the outside of the building shall be a light color (white, off-white, grey, beige, or a natural wood stain appearance or as approved by the Association) and compliment the colors on the exterior of the building. No reflective materials, sheet, towels, newspapers or other paper material, flags or banners, or any other material that is not a standard window treatment is permitted. A window may be temporarily covered with an alternative material without violating this section, so long as the temporary material is permanently removed within five (5) days.

**Section 7.25 Storage Restrictions.** To the extent a Townhome has a patio area such patio area may not be used as a storage area. Patio areas may have patio/outdoor furniture and other similar furnishings, provided the furniture is compliant and suitable to the aesthetics and tastes of the Community as determined by the Board of Directors. Pets may not be left unattended in patio areas.

**Section 7.26 Grilling Restrictions.** Grilling is limited to gas or electric grills. The Association may also establish Rules and regulations related to grilling.

**Section 7.27 Antennas and Satellite Dishes.**

(a) No satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation may be erected, used or maintained on any portion of the Community, including on any portion of the Real Estate or Townhome; provided, however, that the Association shall have the right to erect, construct and maintain these devices.

(b) The following restrictions and covenants apply to all Owners and residents:

(i) No transmission antenna of any kind may be erected anywhere in the Community, without written approval of the Board of Directors.

(ii) No direct broadcast satellite ("DBS") antenna or multi-channel multi-point distribution service ("MMDS") antenna larger than one meter in diameter shall be placed, allowed, or maintained upon a Townhome.

(iii) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission rules and the rules and regulations of the Association, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Townhome that permits reception of an acceptable signal. These

items may be precluded if the Association allows for a master antenna for a building or for the entire site.

(iv) If an individual antenna or dish or similar device is installed by an Owner or resident, the Owner is responsible for maintaining that installation and all resulting maintenance due to that installation.

(v) If a Townhome is transferred which includes a satellite dish or antenna, the grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dishes or antennas.

**Section 7.28 Solar Panels or Similar Installations.** Solar panels or similar installations may be made with written approval of the Board of Directors, or an Architectural or Design Review Committee ("Committee"), if established, as elsewhere provided in this Declaration. Solar panels and other similar installations may also be regulated by local government. An agreement may be required by the Association addressing ongoing maintenance, repair, replacement, and improvement reallocations.

**Section 7.29 Reasonable Rights to Develop.** No Rule by the Association or Board of Directors may unreasonably impede Declarant's right to develop in accordance with the Plat, any other recorded map and this Declaration.

**Section 7.30 Individual Owner Rights of Enforcement.** Nothing in this Declaration may be construed to affect the rights of an aggrieved Owner or Related User to proceed individually against a violator of this Declaration for relief from interference with their property or personal rights. The Board of Directors may, in its discretion, require aggrieved individuals to seek redress personally for interference with their rights before the Association intervenes and commences an enforcement action. No claim for any loss, damage or otherwise exists by an aggrieved Owner or Related User against the Association for failure to enforce the provisions of this Declaration if the aggrieved Owner or Related User has not personally pursued all available remedies against the violator for redress provided under Colorado law and complied with dispute resolution Governance Policies of the Association.

**Section 7.31 Declarant's Exemption and Uses.** It is expressly permissible for Declarant, its assigns, employees and agents to perform such construction activities and to maintain upon portions of the Community such facilities as deemed incidental by Declarant to the construction of Townhomes and development of the Community. This includes exemption from the covenants and restrictions in this Article and also, without limiting the generality of the foregoing, the maintenance of temporary business offices, construction trailers or offices, storage areas, trash bins, portable toilets, construction yards and equipment, any and all signs of any kind, flags, banners, model Townhomes, temporary sales offices, parking areas, lighting facilities and similar or dissimilar uses.

## **ARTICLE 8. Architectural Approval**

**Section 8.1 Approval of Improvements Required; Restrictions and Requirements.** The approval of the Board or Committee, as may be established by the Board, is required for any Improvement to the Townhome Exterior or that is visible from the exterior of a Townhome.

**Section 8.2 Submissions of Plans.**

(a) Prior to commencement of work to accomplish any proposed Improvement to a Townhome, the person proposing to make that Improvement (“Applicant”) shall submit to the Board or Committee all documentation required under this Declaration and under any adopted Design Guidelines.

(b) The Board or Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvement.

(c) Until receipt of all required materials in connection with the proposed Improvement, the Board or Committee may postpone review of any materials submitted for approval. If the Board or Committee requires submission of additional plans, specifications, or other information, the Board or Committee is to provide written notice to the Applicant.

**Section 8.3 Criteria for Approval.**

(a) The Board or Committee shall exercise its reasonable judgment to determine whether the proposed improvements, construction, alterations or landscaping conform to and harmonize with the existing surroundings, landscaping and structures.

(b) Actions taken by the Board or Committee on matters coming before it are to be in good faith and not arbitrary or capricious.

(c) The standards for approval include, but are not limited to:

(i) conformity and harmony of exterior appearances of structures with neighboring structures, including design compatibility and scale;

(ii) color and materials to be used;

(iii) effective location and impact on nearby Common Elements and Townhomes;

(iv) relation to the Community;

(v) preservation of aesthetic beauty and conformity with the specifications and purposes generally set out in this Declaration and in the Design Guidelines; and

(vi) any other matter deemed to be aesthetically relevant or appropriate.

**Section 8.4 Design Guidelines.** The Board or Committee may, from time to time, issue, revise, and reissue guidelines, standards, and rules (the “Design Guidelines”) relating to the procedures, materials to be submitted, and fees applicable in connection with the approval of any proposed Improvement.

**Section 8.5 Design Review Fee.** The Board or Committee may, in the Design Guidelines, provide for the payment or deposit of a fee to accompany each request for approval of any proposed Improvement.

**Section 8.6 Authority of Association to Engage Consultants.** The Board or Committee has the authority to select and engage professional consultants to assist in reviewing applications and/or to inspect any of the work performed. The cost of any consultants are to be paid by the Owner or Applicant, whether or not the application is approved. Prior to incurring consultant costs, the Association will notify

the Owner of its belief that review and/or inspections by consultants are necessary. The Owner will then have the right to withdraw the submission. The Association may require payment of costs prior to review.

**Section 8.7 Decision of Committee.** No Improvements may be made without the Board or Committee's approval. Approval is not given by lapse of any time frame. Approval is only given by affirmative action of the Board or Committee.

**Section 8.8 Prosecution of Work After Approval.** All Improvements approved by the Board or Committee must be accomplished promptly and diligently and in complete conformity with the approved plans and/or conditions of approval, and completed within four (4) months after the date of commencement unless a longer period is granted by the Board or Committee. If a modification to existing construction is not commenced within one (1) year of approval, the approval granted shall automatically lapse.

**Section 8.9 Inspection of Work.** The Board or Committee or its duly authorized representative has the right to inspect any Improvement prior to or after completion.

**Section 8.10 Notice of Noncompliance.** If, as a result of inspections or otherwise, the Board or Committee determines that work has been done without obtaining approval of the Board or Committee, or was not performed in accordance with the terms of the approved application, or was not completed within the required time frame, the Board or Committee may notify the Owner in writing of the noncompliance specifying the particulars of the noncompliance.

**Section 8.11 Correction of Noncompliance.**

(a) The Owner or Applicant must remedy the noncompliance within thirty (30) days after notification by the Board or Committee; provided, however, if a timely appeal to the Board was submitted by the Applicant, the noncompliance may be remedied within forty-five (45) days after denial of the appeal.

(b) If the Owner fails to cure the noncompliance within that period, the Board or Committee may, at its option, record a Notice of Noncompliance against the Townhome(s) on which the noncompliance exists, may enter upon the applicable Townhome and remove the noncompliant Improvement, and/or may otherwise remedy the noncompliance and the Applicant shall reimburse the Association, upon demand, for all expenses incurred. If those expenses are not promptly repaid by the Applicant or Owner to the Association, the Board may levy a specific Assessment against the Owner of the noncompliant Townhome for those costs and expenses. The right of the Association or the Board or Committee to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association and the Board or Committee may have at law, in equity, or under this Declaration. The Applicant and Owner have no claim for damages or otherwise on account of the entry upon the Townhome and removal of the noncompliant Improvement.

**Section 8.12 No Implied Waiver or Estoppel.** No action or failure to act by the Board of Directors or Committee shall constitute a waiver or estoppel with respect to future action by the Board of Directors or Committee with respect to any Improvement to property. Specifically, the approval of the Board or Committee of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement.

**Section 8.13 Committee Power to Grant Variances.** The Board or Committee may authorize variances from compliance with any of the provisions of the requirements in this Article or the Design Guidelines, including restrictions upon height, size, floor area, or placement of structures or similar

restrictions, when circumstances like topography, natural obstructions, hardship, or aesthetic or environmental conditions may require or allow.

**Section 8.14 Meetings of Committee.** The Board or Committee may meet from time to time as necessary to perform its duties.

**Section 8.15 Non-Liability of Committee Action.** No liability may be imposed on the Board or Committee, any member of the Board or Committee, any Committee representative, the Association, or any member of the Board of Directors for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Board or Committee unless due to the willful misconduct of the party held liable. Owners requesting the Improvement are responsible for any safety concerns, structural or otherwise, that the Improvement may raise. Owners are also responsible for verifying the Improvement meets any and all building codes or other governmental laws or regulations. Members of the Board or Committee shall be indemnified by the Association to the same extent as the Board of Directors of the Association, as set forth in the Articles of Incorporation or Bylaws of the Association.

## **ARTICLE 9. Insurance / Condemnation**

**Section 9.1 Association's Property Insurance on the Common Elements.** Commencing not later than the time of the first conveyance of a Townhome to an Owner other than Declarant, the Association will obtain and maintain at all times thereafter, as a Common Expense, property insurance on the Common Elements, as the Common Elements are completed.

**Section 9.2 Owner's Property Insurance on a Townhome.** Each Owner will obtain and maintain at all times property insurance on its Townhome and all personal property, fixtures and furnishings, including, without limitation, the interior finished surfaces of perimeter and partition walls, floors, and ceilings within a Townhome (i.e., cabinets, paint, paneling, tile, carpet, and any floor covering) and the Townhome Exterior, in an amount no less than one hundred percent (100%) of the current replacement cost based on the most recent appraisal of the Townhome and the personal property, fixtures and furnishings comprising a part of the Townhome. All insurance policies held by Owners shall also name the Association as an additional insured. The Association shall have no responsibility to insure any Townhome.

### **Section 9.3 Owners' Additional Insurance Covenants and Requirements.**

(a) Every Owner is obligated to obtain and maintain at all times insurance covering those portions of their Townhome to the extent not insured by the policy required by Section 9.2 of this Declaration.

(b) Each Owner is also responsible for insuring all betterments and improvements to their Townhome subsequently added by the Owner or as previously added by the Owner's predecessors-in-title (other than Declarant).

(c) If the Association ever elects to maintain property insurance that includes the builder's original construction, Owners must still purchase and maintain their own property insurance as required by Section 9.2 of this Declaration.

(d) If the Association ever elects to maintain a "bare walls" property insurance policy, Owners are obligated to maintain their own property insurance to cover items excluded under the Association's "bare wall" policy and including, but not limited to, finished surfaces (of walls, floors, and ceilings), flooring, cabinetry, fixtures, and appliances, betterments, and improvements.

(e) If the Association ever elects to maintain "all in" property insurance, Owners must still maintain their own property insurance, covering deductibles and exclusions from the Association's policy and liability within their Townhome.

(f) Each Owner is also responsible for obtaining insurance covering their personal property and coverage for liability arising within the Townhome and on or within any of the Limited Common Elements, if any.

(g) The Association has no liability for the failure of any Owner to maintain required insurance.

(h) Upon request by the Board of Directors, each Owner must furnish a copy of such insurance policy or policies to the Association.

**Section 9.4 Renter's Additional Insurance Covenants and Requirements.**

(a) Renters or lessees of a Townhome are obligated to obtain and maintain at all times insurance covering those portions of the Townhome that are leased to the extent not insured by policies maintained by the Owner.

(b) Each renter or lessee is responsible for obtaining insurance covering their personal property and coverage for liability arising within the Townhome and on or within any of the Limited Common Elements, if any.

(c) The Association has no liability for the failure of any renter or lessee to maintain required insurance.

(d) Upon request by the Board of Directors, each renter or lessee must furnish a copy of such insurance policy or policies to the Association.

**Section 9.5 Owner's Right to Review Association Insurance Policies.** The Association will make a copy of its insurance policies available for review by Owners and to allow Owners to assess their personal insurance needs. Each Owner has the right to obtain additional coverage at their own expense.

**Section 9.6 Liability Insurance of the Association.** The Association must obtain adequate comprehensive policy of public liability and property damage liability insurance covering the Common Elements and such areas that may become Common Elements (once those areas are improved by Declarant and have been in use by Owners or Related Guests). This policy is to be in such limits as the Board of Directors may from time to time determine, but not in any amount less than \$1,000,000.

**Section 9.7 Fidelity Insurance of the Association.** The Association must obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, members of the Board of Directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association. This includes persons who serve the Association with or without compensation. The fidelity coverage or bonds must comply with applicable law and also should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, members of the Board of Directors, trustees and employees.

**Section 9.8 Worker's Compensation and Employer's Liability Insurance of the Association.** The Association must obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or subsequently be required by law.

**Section 9.9 Officers' and Directors' Professional Liability Insurance of the Association.** The Association must obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association. This policy must cover former board members and officers, and monetary and non-monetary claims.

**Section 9.10 Other Insurance.** The Association may obtain other insurance against other risks of similar or dissimilar nature as it deems appropriate with respect to its responsibilities and duties.

**Section 9.11 Miscellaneous Terms Governing Insurance Carried by the Association.**

(a) The Association must obtain and maintain in full force and effect at all times certain other insurance as set forth in this Declaration.

(b) All such insurance must be obtained, to the extent possible, from responsible companies duly authorized and licensed to do insurance business in the State of Colorado, and must:

(i) Provide for a waiver of subrogation by the insurer as to claims against the Association, members of the Board of Directors, officers, employees, agents, and Owners.

(ii) Contain a severability of interest clause that the insurance cannot be canceled, invalidated, or suspended because of the negligent or intentional acts of the Association, its officers, members of the Board of Directors, employees, and agents.

(iii) Provide that the policy of insurance may not be terminated, canceled, or substantially modified with no less than thirty (30) days' prior written notice to the Association, except in instances of nonpayment of premiums, which will require at least ten (10) days prior written notice.

(c) The cost and expense of all insurance obtained by the Association must be paid for out of Association funds collected by Assessments and otherwise as provided in this Declaration.

(d) The Association may obtain insurance against such other risks of similar or dissimilar nature, including flood insurance, as it may deem appropriate with respect to the Association responsibilities and duties.

**Section 9.12 Insurance Premiums of the Association.** Except as assessed in proportion to risk, if permitted under the terms of this Declaration, insurance premiums for all of the insurance described above to be provided by the Association will be a Common Expense to be included as a part of the annual Assessments levied by the Association.

**Section 9.13 Deductibles.** Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and consistent with the requirements of any institutional First Mortgagees. Any loss falling within the deductible portion of a policy must be borne by the Owner of the property damaged or the party suffering the loss.

**Section 9.14 Managing Agent or Bookkeeper Insurance.** The manager, managing agent or bookkeeper, if any, must be adequately insured for the benefit of the Association, and must maintain and submit evidence of such coverage to the Association.

**Section 9.15 Waiver of Claims Against the Association.** As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners waive and release all claims against one another, the Board of Directors and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

**Section 9.16 Annual Insurance Review of Insurance of the Association.** The Board of Directors may review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

**Section 9.17 Claims and Adjustments by the Association.** Any loss covered by an Association insurance policy must be adjusted by the Association. The insurance proceeds for that loss must be payable to the Association, and not to any institutional First Mortgagee or other such holder of a First Mortgage. The Association will hold any insurance proceeds in trust for the Association, Owners and institutional First Mortgagees or other holders of First Mortgages as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Owners and institutional First Mortgagees or other holders of First Mortgages are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored. The Rules may include nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it has the authority to assess negligent Owners causing such loss or benefitting from such repair or restoration all deductibles paid by the Association. In the event that more than one Townhome 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.

**Section 9.18 Duty to Repair of the Association and of Owners for Covered Property Losses.** Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Owner, at the Owner's option on whether the repair is done by the Association or the Owner, except as provided in the Act.

**Section 9.19 Condemnation and Hazard Insurance Allocations and Distributions.** In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution must be as the parties with interests and rights are determined or allocated by record.

## **ARTICLE 10. Alternative Dispute Resolution – Excluded Claims**

**Section 10.1 Purpose / Scope of Alternative Dispute Resolution.** One of the purposes of this Declaration is to establish a harmonious Community, including the prompt, efficient, fair, and non-belligerent resolution of any construction or design dispute. Accordingly, any construction, design controversy or other claim against Declarant or its affiliates or agents or employees of its affiliates (an "Excluded Claim") arising out of or relating to the Townhome Exteriors, the Townhomes, Common Elements or related to the Community must be resolved as set forth in this Article.

**Section 10.2 Warranty Standards.** The standards for warranty services of Declarant are as published by Declarant for the Townhomes and the Common Elements. Declarant has disclosed to Owners that these standards are customary industry standards. Warranty coverage, under the limited warranty provided by Declarant, does not extend to drainage, soil erosion, landscaping, retaining walls, cracks in

concrete patios or sidewalks, sound transmission, condensation, color variations, noise from duct work and other exceptions and limitations of the warranty of the standards.

**Section 10.3 Direct Communication.** The parties to the disagreement over an Excluded Claim must set forth their respective positions in any dispute in correspondence. Each party must respond within twenty-one (21) days after receipt of a letter from the other until agreement is reached. If an agreement is not reached, the next section of this Declaration applies.

**Section 10.4 Mediation.** If an Excluded Claim cannot be resolved through direct communication of the parties, either party may request appointment of a neutral and properly credentialed mediator. The parties must participate in the mediation in good faith until the dispute is resolved for a period not to exceed ninety (90) days with the consent of all parties. The cost of the mediation must be divided equally among the parties. If a mediation does not resolve the Excluded Claim, the next sections of this Declaration apply.

**Section 10.5 Pre-Conditions to Arbitrations by the Association or Any Owner.**

(a) The conditions and provisions of any local law or ordinance limiting or setting forth procedures for claims against Declarant must first be complied with and completed by the Association or Owner.

(b) The Association or any Owner may proceed with communication and mediation, as allowed for under this Article, without a vote of Owners holding at least ninety percent (90%) of the votes as long as the Association or any Owner is in compliance with the provisions of this Declaration.

(c) On an Excluded Claim, the Association, if the Association complies with the terms of this Article, has the power to commence and maintain an arbitration, as may be deemed appropriate by the Board of Directors only if approved by Owners holding at least ninety percent (90%) of the votes in the Association.

(i) In making its recommendation to the Owners to bring an arbitration on an Excluded Claim, the Board of Directors is to exercise its reasonable judgment. The Board of Directors must consider, without limitation, the likelihood of success, the impact such action may have upon the market values of Townhomes or other portions of the Community, the cost of pursuing the arbitration including attorneys' fees and expert fees, the resources of the Association and whether a special assessment or depletion of reserves will be required in connection with pursuit of those claims or as a result, after those claims have been pursued.

(ii) The Board of Directors must prepare a written analysis of the risks and benefits to the Owners of commencing and maintaining an arbitration on an Excluded Claim.

(iii) The Board of Directors must deliver a copy of that written analysis to each of the Owners at least seven (7) days prior to the date scheduled for the meeting of Owners or prior to any vote on proceeding with arbitration on an Excluded Claim.

(iv) The Board of Directors must deliver a copy of that written analysis to each of the Owners at least ten (10) days prior to the date scheduled for the meeting of Owners or prior to any vote on proceeding with arbitration on an Excluded Claim.

(v) The Association may not bring an arbitration or any other legal action on an Excluded Claim, even with amendment of this Declaration, without compliance with the terms of this Article (un-amended).

(vi) The Association may not commence or maintain an arbitration on any Excluded Claim unless the commencement and maintenance have first been recommended by the Board of Directors and is also approved by Owners holding at least ninety percent (90%) of the votes in the Association.

**Section 10.6 Arbitration Process and Procedures.**

(a) If the Excluded Claim cannot be resolved through mediation, such dispute must be decided by mandatory and binding arbitration in accordance with the rules of the American Arbitration Association ("AAA") currently in effect.

(b) If the mandatory and binding arbitration of this Declaration is determined to be unenforceable by any court of competent authority, then, in those events, all Excluded Claims must still be decided by mandatory and binding arbitration in accordance with the rules of the AAA currently in effect.

(c) The following procedures apply to arbitration:

(i) Demand for arbitration must be filed in writing with the other party and with the AAA.

(ii) A demand for arbitration must be made within thirty (30) days after the dispute in question has arisen and failed to be resolved by mediation.

(iii) In no event may the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

(iv) No arbitration arising out of or relating to this Declaration may include, by consolidation, joinder or any other manner, an additional person or entity not subject to the Declaration except that Declarant, at its sole election and in its sole discretion, may, by consolidation, joinder or any other manner, include contractors, subcontractors or other parties involved in the construction and/or planning of the Community.

(v) The arbitrator to hear the Excluded Claim may be jointly selected by the parties. If the parties cannot agree within thirty (30) days, the parties shall select the arbitrator they desire. Then, those arbitrators shall, amongst them, select the arbitrator to hear the Excluded Claim.

(d) The provision of this Article to arbitrate, or Declarant's election to arbitrate, or Declarant's determination to include any additional person or entity not subject to this Declaration in an arbitration are specifically enforceable in accordance with applicable law in any court having jurisdiction.

(e) The award rendered by the arbitrator or arbitrators is final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

(f) All filing fees and AAA costs associated with the arbitration itself must be paid for by the party who files the notice of arbitration.

**Section 10.7 Lawsuits by the Association or Any Owner Are Precluded.**

(a) The Association may not commence or maintain a lawsuit on any Excluded Claim, as these claims are subject to the arbitration provisions of this Article and the agreements of initial Owners entered into with Declarant.

(b) Owners may not bring a lawsuit on an Excluded Claim, as these claims are subject to the arbitration agreement as initial Owners have entered into with Declarant and are also subject to the provisions of this Article.

**Section 10.8 Subsequent Owners.** The provisions of this Article are binding on all subsequent Owners (those who did not purchase a Townhome from Declarant).

**Section 10.9 Sole Remedy; Waiver of Judicial Rights.** Subject to Declarant's election rights set forth in this Declaration, and the remedies available for Excluded Claims, Declarant, the Association, and each Owner expressly consent to the substance and procedures established in this Article as their sole and exclusive remedy. Each of these parties also expressly waives any right they may have to seek resolution of any Excluded Claim contemplated by this Article in any court. Each of these parties also waives any right to trial by a jury. If a dispute involves Declarant, an Owner, or the Association, no person may file a memorandum of *lis pendens* or similar instrument that would encumber or create a lien upon the Real Estate or the land owned by Declarant or the Association.

**Section 10.10 Binding Nature; Applicable Law.** The consideration of the parties to be bound by the provisions of this Article of this Declaration is not only the waiver of access to determination by a court (as applicable) and by a jury, but also the waiver of any rights to appeal the arbitration finding other than for the reasons available under Colorado law. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction.

**Section 10.11 Location.** All alternative dispute resolution proceedings under this Article must be held in the greater Denver metropolitan area in the State of Colorado, unless otherwise mutually agreed by the parties.

**Section 10.12 Payment of Expenses Under This Article.** Beyond filing fees and AAA costs associated with the arbitration (those costs being the obligation of the party who files the notice of arbitration), each party is responsible for their own costs, expenses, experts and attorneys' fees in the mediation and arbitration.

**Section 10.13 Amendment of This Article.** The provisions of this Article may only be amended with the consent of Declarant. This reservation is a reserved Development Right of Declarant under this Declaration and also CCIOA.

## **ARTICLE 11. Amendment And Termination**

**Section 11.1 Amendment of Declaration by Owners.** Subject to provisions elsewhere contained in this Declaration requiring the consent of others, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration may be changed or repealed, and any such provision added to this Declaration at any time and from time to time upon approval of the Board of Directors and at least sixty-seven percent (67%) of the votes in the Association.

**Section 11.2 Technical, Clerical, Typographical or Clarification Amendment.** If Declarant determines that any amendments to this Declaration or to the Plat are necessary in order to make non-material changes, such as for the correction of a technical, clerical, or typographical error or clarification of a statement, then, subject to the following sentence of this section, Declarant has the right and power to make and execute any such amendment without obtaining the approval of any Owners. Each such amendment of this Declaration must be made, if at all, by Declarant prior to the date that is twenty (20) years from the recording date of this Declaration.

**Section 11.3 Amendment Required by Mortgage Agencies.** Until the date that is twenty (20) years from the recording date of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which the FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant. After that date, those types of amendments may be made by the Board of Directors or the Association. Any such amendment or repeal will be effective upon the recordation in the office of the Clerk and Recorder of Eagle County, State of Colorado, of a certificate setting forth the amendment or repeal in full.

**Section 11.4 Recording of Amendments.** To be effective, all amendments to or termination of this Declaration must be recorded in the office of the Clerk and Recorder of Eagle County, Colorado, and must contain evidence or a recital of approval. One method of satisfying the requirements of this section is the recordation of a certificate of the Secretary of the Association, certifying that Owners representing the requisite percentage of the Townhomes have given their notarized written consent to the amendment. The Secretary must further certify that originals of such written consent by Owners are in the corporate records of the Association and available for inspection. No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one (1) year after the amendment is recorded.

**Section 11.5 Approval Required for Certain Amendments.** No amendment may change the formulas for determining Allocated Interests as set forth in this Declaration in the absence of the approval of the Owners holding at least ninety percent (90%) of the votes in the Association.

**Section 11.6 Required Consent of Declarant to Amendment.** Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving rights of Declarant, or for the benefit of Declarant or its assignees, is not effective unless Declarant and its assignees, if any, have given written consent to such amendment or repeal. That consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. Rights of Declarant, as provided for in this Declaration, are not to be construed as Development Rights or Special Declarant Rights or other rights allowed for under CCIOA, but rather, as rights independent of CCIOA, based on common law.

**Section 11.7 Association Certification.** Amendments to the Declaration required by this Article to be recorded by the Association are to be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. In the event of an amendment to the Declaration by the Owners, the Association may record the amendment with a certificate from the Association executed by any officer designated for that purpose or, in the absence of the designation, by the president, when the requisite number of Owners have consented to the amendment.

**Section 11.8 Expenses.** All expenses associated with preparing and recording an amendment to the Declaration are the sole responsibility of:

(a) Declarant, in the case of an amendment pursuant to reallocation of Allocated Interests and recordation of new plats in the exercise of Development Rights; and

(b) in all other cases, by the Association as a Common Expense or the applicable Owner.

**Section 11.9 Termination.** The Community may be terminated upon an affirmative vote of the Owners holding ninety percent (90%) of the Allocated Interests.

## **ARTICLE 12. General Provisions**

**Section 12.1 Enforcement.** The Association or an Owner or Owners of any of the Townhomes may enforce this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorneys' fees incurred in enforcing this Declaration, or to restrain such violation or attempted violation. Failure of the Association or of any Owner to enforce any covenant or restriction in this Declaration is not and shall in no event be deemed a waiver of the right to do so subsequently. Disputes which do not involve payment of sums and charges due to the Association, upon approval of both the Owner(s) and the Board of Directors, may be submitted to binding arbitration.

**Section 12.2 Special Taxing and Metropolitan District Disclosure.** The Community may be subject to special taxing and metropolitan districts. Special taxing districts may be subject to general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within such districts. Owners in such districts may be placed at risk for increased mill levies and tax to support the servicing of such debt where circumstances arise resulting in the inability of such a district to discharge such indebtedness without such an increase in mill levies. Owners should investigate the special taxing districts in which the Real Estate is located by contacting the county treasurer, by reviewing the certificate of taxes due for the Real Estate, and by obtaining further information from the Board of County Commissioners, the County Clerk and Recorder or the County Assessor.

**Section 12.3 Right to Pay Taxes and Insurance Premiums.** Any First Mortgagee is entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Townhome.

**Section 12.4 Severability.** Each of the provisions of this Declaration is deemed independent and severable. If any provision of this Declaration or the application of this Declaration to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

**Section 12.5 Term of Declaration.** The provisions of this Declaration (and all covenants) run with and bind the Real Estate in perpetuity, unless amended or terminated as allowed for in this Declaration.

**Section 12.6 Interpretation.** The provisions of this Declaration are to be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Real Estate and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration is to be construed and governed under the laws of the State of Colorado.

**Section 12.7 Singular Includes the Plural.** Unless the context otherwise requires, the singular includes the plural, and the plural includes the singular, and each gender referral is deemed to include the masculine, feminine and neuter.

**Section 12.8 Captions.** All captions and titles used in this Declaration are intended and used solely for convenience of reference and ease of use of this Declaration. Captions and titles used in this Declaration do not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article of this Declaration.

**Section 12.9 Further Acts.** Each Owner shall execute such documents and undertake such actions as the Association may reasonably request in order to effectuate the intent and purposes of this Declaration.

### **ARTICLE 13. Development Rights, Special Declarant Rights, and Additional Reserved Rights**

**Section 13.1 Development Rights and Special Declarant Rights.** Declarant reserves, through the date that is twenty (20) years after the recording date of this Declaration, the following Development Rights and Special Declarant Rights:

- (a) the right to convert any portion of the Real Estate owned by Declarant or with the consent of the Owner into a Common Element or Limited Common Element;
- (b) the right to convert a Common Element into a Limited Common Element;
- (c) the right to convert a Limited Common Element to a Lot owned by Declarant, or with the consent of Declarant, to a Lot, or a part of a Lot or a Common Element;
- (d) the right to approve re-assignments of Limited Common Elements;
- (e) the right to approve a structure on the Real Estate that is not designated as a Townhome or residence;
- (f) the right and discretion to set an initial "community-wide standard;"
- (g) the right to approve subordinate or supplemental covenants of any Owner or on any Townhomes in the Community;
- (h) the right to withdrawal all of any part of the real property described in **Exhibit A**; provided no part of the Real Estate with a Townhome constructed thereon have been conveyed by Declarant to an Owner. Once a Townhome is constructed and is a part of a Building, then no part of the Real Estate upon which such Building is constructed may be withdrawn. Otherwise, all of the Real Estate is subject to Declarant's withdrawal rights;
- (i) the right to annex any withdrawn real estate or real estate adjacent to the Community, in the vicinity of the Community or across a public or private street from the Community or within the County in which the Real Estate is located (provided the Owner consents);
- (j) the right to add property adjacent to the Real Estate, with the consent of that Owner of that Real Estate and additional unspecified Real Estate according to the provisions of this Declaration subject to the limitations set forth in this Declaration and/or the Act;

- (k) the right to re-designate, change, modify or amend any Building designations and grouping of Townhomes to or within a Building;
- (l) the right to change the allocated interests initially set forth in Exhibit C as and if Townhomes are withdrawn or added, or as otherwise determined by Declarant;
- (m) the right to establish a common interest community, exempt from or subject to CCIOA, on any withdrawn Real Estate;
- (n) the right to subject the Real Estate and the Community to a master declaration with such terms, conditions, reservations, and restrictions as Declarant determines;
- (o) the right to relocate boundaries between adjoining Lots owned by Declarant, enlarge Lots, reduce the areas that are Common Elements and/or that may become Common Elements (as those areas are set forth in Exhibits D, E, and/or F), reduce the size of Lots, subdivide Lots owned by Declarant or complete or make improvements, as the same may be indicated on plats and maps filed of record;
- (p) the right to enlarge or reduce the Common Elements and to create additional Lots;
- (q) the right to exercise any additional reserved right created by any other provision of this Declaration;
- (r) the right to amend the use restrictions included in this Declaration, together with the right to add new use restrictions;
- (s) the right to amend the Declaration or Plat in connection with the exercise of any Development Right;
- (t) the right to amend the Plats in connection with the exercise of any Development Right;
- (u) the rights under any deed or deeds of Common Elements to the Association;
- (v) the right to amend zoning of the Real Estate, provided uses of existing Owners are preserved;
- (w) the right to appoint or remove any officer of the Association or any Director during the Period of Declarant Control;
- (x) the right to make amendments to this Declaration or the other Governing Documents to meet or comply with any requirements of any lender to an Owner or any local governmental authority or any changes in law;
- (y) the right to make amendments to the Declaration, Bylaws or Articles of Incorporation to meet or comply with any requirement of FHA or VA;
- (z) the right to use and to permit others to use, easements through the areas that may become Common Elements (as set forth in Exhibits D, E, and/or F) and also the Common Elements, once and if deeded to the Association, as may be reasonably necessary;
- (aa) any rights allowed Declarant under CCIOA; and

(bb) the rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above, unless (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant, (ii) extended as allowed by law, or (iii) terminated by written instrument executed by Declarant, recorded in the real property records of Eagle County.

**Section 13.2 Additional Reserved Rights.** In addition to the rights set forth above, Declarant also reserves the following additional rights:

(a) Sales and Offices. The right to maintain mobile and other sales offices, parking lots, management offices and models on the Real Estate.

(b) Signs. The right to maintain signs and advertising at the Community and to advertise the Community or other communities developed or managed by or affiliated with Declarant.

(c) Construction Easement. Declarant and its assignees expressly reserve to itself the right to:

- (i) construct Townhomes in the Community, including limiting access to parking areas and existing Townhomes for up to seventy-two (72) hours;
- (ii) perform warranty work, and repairs and construction work; and
- (iii) store materials in secure areas, in Townhomes, and on Common Elements.

Declarant's construction easement includes the future right to control such work and repairs and the right of access thereto until completion. All work may be performed without the consent or approval of any Owner or Mortgagee. Declarant and its assignees have such an easement through the Common Elements as may be reasonably necessary for exercising reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property.

(d) Use Agreements. The rights to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance and regulation of parking and/or recreational facilities and/or Common Elements, which may or may not be a part of the Community.

(e) Access Easement. Declarant and its successors and assigns shall have an access easement to and from any real property accessible through the Community.

(f) Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration or by the Act.

**Section 13.3 Rights Transferrable / Rights Transferred.** Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of Eagle County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Owners or any Mortgagee. Any rights created or reserved under this Article or the Act for the benefit of Declarant may also be transferred to the Association by an instrument describing the rights transferred recorded in the real property records of Eagle County, Colorado. Such

instrument shall be executed by the transferor Declarant and the Association as transferee. The rights transferred may then be exercised by the Association in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the appropriate Owner(s) or any Mortgagee.

**Section 13.4 No Further Authorizations Needed.** Except as set forth in this Declaration, the consent of Owners or Mortgagees shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at its sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the property in whatever order determined. Declarant or its assignees shall not be obligated to exercise any reserved rights or to expand the Community beyond the number of Townhomes initially submitted.

**Section 13.5 Amendment of the Declaration or Plat.** If Declarant or its assignees elect to exercise any reserved rights, that party shall comply with the Act.

**Section 13.6 Interpretation.** Recording of amendments to the Declaration and the Plat or Plats pursuant to reserved rights in this Declaration shall automatically effectuate the terms and provisions of that amendment. Further, such amendment shall automatically: (i) vest in each existing Owner the reallocated Allocated Interests appurtenant to their Townhome; and (ii) vest in each Mortgagee a perfected lien and security interest in the reallocated Allocated Interests appurtenant to their Townhome. Further, upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community as expanded and to any additional improvements, and the same shall be added to and become a part of the Community for all purposes. All conveyances of Townhomes after such amendment is recorded shall be effective to transfer rights in all Common Elements, whether or not reference is made to any amendment of the Declaration or Plat. Reference to the Declaration and Plat in any instrument shall be deemed to include all amendments to the Declaration, and the Plat without specific reference thereto.

**Section 13.7 Construction.** Subsequent to the initial Real Estate and improvements made subject to this Declaration, any additional buildings, structures and types of improvements to be placed on the Real Estate or any part may be of such quality and type as the persons developing the same may determine, and those improvements need not be of the same quality or type as the improvements previously constructed on the Real Estate, nor of the same size, style or configuration. The improvements may be located anywhere in the Common Elements of the Community, the same being reserved for future development, or on the additional Real Estate as may be added or as shown on the Plat.

**Section 13.8 Termination of Reserved Rights.** The rights reserved to Declarant, for itself, its successors and assigns, shall expire as set forth above or in the Act, unless:

- (a) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board may impose on the subsequent exercise of the expansion rights by Declarant;
- (b) extended as allowed by law; or,
- (c) terminated by written instrument executed by Declarant, recorded in the records of the Clerk and Recorder of Eagle County, State of Colorado.

[SIGNATURES BEGIN ON SUBSEQUENT PAGE]



**Exhibit A – Description of the Real Estate**

The Land is Described as follows:

LOT 1, BLOCK 11, AMENDED FINAL PLAT OF TWO RIVERS VILLAGE, ACCORDING TO THE AMENDED FINAL PLAT RECORDED MAY 14, 2003 RECEPTION NO. 833300, COUNTY OF EAGLE, STATE OF COLORADO.

LOT 2, A RESUBDIVISION OF LOTS 2 AND 3, BLOCK 11, AMENDED FINAL PLAT OF TWO RIVERS VILLAGE, ACCORDING TO THE AMENDED FINAL PLAT RECORDED JUNE 13, 2024 UNDER RECEPTION NO. 202406495, COUNTY OF EAGLE, STATE OF COLORADO.

**Exhibit B – Exceptions to Title as to Confluence at Two Rivers**

1. TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION NO. 2003-055 RECORDED MAY 16, 2003 AT RECEPTION NO. 833745.
2. TERMS, CONDITIONS AND PROVISIONS OF TRANSFER OF DECLARANT RIGHTS RECORDED SEPTEMBER 16, 2003 AT RECEPTION NO. 849864 AND AS AMENDED IN INSTRUMENT RECORDED AUGUST 16, 2010 UNDER RECEPTION NO. 201016045.
3. AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW AS CONTAINED IN INSTRUMENT RECORDED SEPTEMBER 16, 2003 RECEPTION NO. 849865, AND ANY AND ALL AMENDMENTS AND SUPPLEMENTS THERETO.
4. TWO RIVERS METROPOLITAN DISTRICT MAP RECORDED DECEMBER 18, 2009 UNDER RECEPTION NO. 27078.
5. TERMS, CONDITIONS AND PROVISIONS OF THE TWO RIVERS VILLAGE AND TWO RIVERS ESTATES PLANNED UNIT DEVELOPMENT GUIDE RECORDED AUGUST 18, 2011 AT RECEPTION NO. 201115412 AS THE SAME HAS BEEN OR MAY BE AMENDED FROM TIME TO TIME.
6. THE EFFECT OF NOTICE, RECORDED NOVEMBER 03, 2014, UNDER RECEPTION NO. 201418865.
7. TERMS, CONDITIONS AND PROVISIONS OF VACATION AND ABANDONMENT OF EASEMENT RECORDED JUNE 27, 2023 UNDER RECEPTION NO. 202307792 AND CORRECTION RECORDED DECEMBER 11, 2023 UNDER RECEPTION NO. 202316317.
8. TERMS, CONDITIONS AND PROVISIONS OF QUIT CLAIM DEED RECORDED JANUARY 12, 2024 UNDER RECEPTION NO. 202400416.
9. TERMS, CONDITIONS AND PROVISIONS OF QUIT CLAIM DEED RECORDED JANUARY 17, 2024 UNDER RECEPTION NO. 202400478.
10. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF A RESUBDIVISION OF LOTS 2 AND 3, BLOCK 11, TWO RIVERS VILLAGE RECORDED JUNE 13, 2024 UNDER RECEPTION NO. 202406495.
11. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.

12. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
13. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
14. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
15. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
16. 2024 TAXES AND ASSESSMENTS NOT YET DUE OR PAYABLE.
17. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED JANUARY 23, 1902, IN BOOK 48 AT PAGE 257.
18. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED JULY 01, 1897, IN BOOK 48 AT PAGE 217.
19. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED JULY 01, 1897, IN BOOK 48 AT PAGE 217.
20. TERMS, CONDITIONS AND PROVISIONS OF PATENT RECORDED MAY 14, 1934 IN BOOK 93 AT PAGE 397.
21. RIGHT OF WAY EASEMENT AS GRANTED TO EAGLE VALLEY TELEPHONE COMPANY IN INSTRUMENT RECORDED JUNE 15, 1977, IN BOOK 256 AT PAGE 425.
22. RIGHT OF WAY EASEMENT AS GRANTED TO HOLY CROSS ELECTRIC ASSOCIATION, INC. IN INSTRUMENT RECORDED MARCH 21, 1979, IN BOOK 283 AT PAGE 312.
23. RIGHT OF WAY EASEMENT AS GRANTED TO HOLY CROSS ELECTRIC ASSOCIATION, INC. IN INSTRUMENT RECORDED SEPTEMBER 20, 1983, IN BOOK 368 AT PAGE 781.
24. RIGHT OF WAY EASEMENT AS GRANTED TO EAGLE TELECOMMUNICATIONS IN INSTRUMENT RECORDED JUNE 19, 1991, IN BOOK 556 AT PAGE 546.
25. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF TWO RIVERS VILLAGE RECORDED MAY 17, 2002 RECEPTION NO. 795926 AND AMENDED FINAL PLAT RECORDED MAY 14, 2003 AT RECEPTION NO. 833300.
26. TERMS, CONDITIONS AND PROVISIONS OF SCHOOL SITE AGREEMENT RECORDED MAY 17, 2002 AT RECEPTION NO. 795928.
27. TERMS, CONDITIONS AND PROVISIONS OF ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT RECORDED OCTOBER 02, 2002 AT RECEPTION NO. 809076.

**Exhibit C – Allocated Interests**

<b>Address:</b>	<b>Townhome</b>	<b>Allocated Interest</b>	<b>Vote Allocation</b>
30 Buffalo Circle Unit 1	1	1/46	1
30 Buffalo Circle Unit 2	2	1/46	1
30 Buffalo Circle Unit 3	3	1/46	1
30 Buffalo Circle Unit 4	4	1/46	1
30 Buffalo Circle Unit 5	5	1/46	1
30 Buffalo Circle Unit 6	6	1/46	1
30 Buffalo Circle Unit 7	7	1/46	1
30 Buffalo Circle Unit 8	8	1/46	1
30 Buffalo Circle Unit 9	9	1/46	1
30 Buffalo Circle Unit 10	10	1/46	1
67 Lakeshore Drive Unit 11	11	1/46	1
67 Lakeshore Drive Unit 12	12	1/46	1
67 Lakeshore Drive Unit 13	13	1/46	1
67 Lakeshore Drive Unit 14	14	1/46	1
67 Lakeshore Drive 15	15	1/46	1
67 Lakeshore Drive 16	16	1/46	1
67 Lakeshore Drive Unit 17	17	1/46	1
67 Lakeshore Drive Unit 18	18	1/46	1
30 Buffalo Circle Unit 19	19	1/46	1
30 Buffalo Circle Unit 20	20	1/46	1
30 Buffalo Circle Unit 21	21	1/46	1
30 Buffalo Circle Unit 22	22	1/46	1
30 Buffalo Circle Unit 23	23	1/46	1
30 Buffalo Circle Unit 24	24	1/46	1
30 Buffalo Circle Unit 25	25	1/46	1
30 Buffalo Circle Unit 26	26	1/46	1
30 Buffalo Circle Unit 27	27	1/46	1
30 Buffalo Circle Unit 28	28	1/46	1
30 Buffalo Circle Unit 29	29	1/46	1
30 Buffalo Circle Unit 30	30	1/46	1
70 Buffalo Circle Unit 1	31	1/46	1
70 Buffalo Circle Unit 2	32	1/46	1
70 Buffalo Circle Unit 3	33	1/46	1
70 Buffalo Circle Unit 4	34	1/46	1
70 Buffalo Circle Unit 5	35	1/46	1

70 Buffalo Circle Unit 6	36	1/46	1
70 Buffalo Circle Unit 7	37	1/46	1
70 Buffalo Circle Unit 8	38	1/46	1
70 Buffalo Circle Unit 9	39	1/46	1
70 Buffalo Circle Unit 10	40	1/46	1
70 Buffalo Circle Unit 11	41	1/46	1
70 Buffalo Circle Unit 12	42	1/46	1
70 Buffalo Circle Unit 13	43	1/46	1
70 Buffalo Circle Unit 14	44	1/46	1
70 Buffalo Circle Unit 15	45	1/46	1
70 Buffalo Circle Unit 16	46	1/46	1
<b>Total</b>	<b>46</b>	<b>1.00</b>	<b>46</b>

**Exhibit D – Real Property That May Become Common Elements**

Any real property adjacent to the Community that the owner of that property conveys to the Association and/or Declarant or consents to the conversion of that property to be a part of the Common Elements.

**Exhibit E – Initial Limited Common Elements**

None.

**Exhibit F – Real Property That May Become Limited Common Elements**

Any real property adjacent to the Community that the owner of that property conveys to the Association and/or the Declarant, the Association or that the owner consents to the conversion of that property to be a Limited Common Element.

