

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CAMBER TOWNHOMES
[•], 202[•]

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CAMBER TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CAMBER TOWNHOMES (“**Declaration**”) is made as of [●], 202[●], by 624 Montezuma Rd., LLC, a Colorado limited liability company (“**Declarant**”).

RECITALS

A. Declarant is the owner of certain real property located at 624 Montezuma Road, Keystone, Colorado, as more particularly described on the attached **Exhibit A** (the “**Land**”).

B. A townhome project has been constructed on the Land commonly known as “Camber Townhomes.”

C. Declarant declares that the Property is and shall be a “planned community” within the meaning of the Colorado Common Interest Ownership Act, C.R.S. §38,3.3-101, *et seq.*, as it may be amended from time to time (“**CCIOA**”). Since the Property will not contain more than twenty (20) Units, and is not subject to any development rights (as such term is defined in CCIOA) reserved for Declarant under this Declaration, the Property shall qualify for the small planned community exemption under Section 38-33.3-116(2) of CCIOA. The Property shall not be subject to CCIOA except to the extent required in Section 38-33.3-116(2) of CCIOA and to the extent that this Declaration expressly makes the Property subject to a specific provision of CCIOA. Any express provision of this Declaration which subjects a portion of the Property to a specific provision of CCIOA shall be strictly construed and shall not be interpreted to mean that the Property is intended to be subject to any other provision of CCIOA except to the extent expressly set forth in another provision of this Declaration.

DECLARATION

NOW THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the following covenants, conditions, restrictions and easements which are for the purpose of protecting the desirability of, and which shall run with title to, the Property.

**ARTICLE 1
DEFINITIONS**

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 “**Adjoining Owners**”: The Owners of Units served by a Party Wall.

1.2 “**Alteration**”: Any construction or other work which is permitted to be performed by an Owner under **Article 10**.

- 1.3 “**Architect**”: Shall have the meaning given in **Section 13.1(f)**.
- 1.4 “**Articles**”: The Articles of Incorporation of Camber Townhomes Owners Association, Inc., filed with the Colorado Secretary of State, as they may be amended from time to time.
- 1.5 “**Assessments**”: Shall have the meaning given in **Section 9.7**.
- 1.6 “**Association**”: Camber Townhomes Owners Association, Inc., a Colorado nonprofit corporation, its successors and assigns.
- 1.7 “**Association Documents**”: The Articles, the Bylaws, the Rules, the Responsible Governance Policies, and this Declaration.
- 1.8 “**Award**”: Shall have the meaning given in **Section 13.5(c)(ii)**.
- 1.9 “**Balcony**”: Any porch, balcony, patio attached or affixed to the exterior of a Unit.
- 1.10 “**Base Assessment**”: Assessments levied on all Units to fund Common Expenses for the general benefit of all Units, as more particularly described in **Article 9**. Base Assessments shall be levied in accordance with the allocations set forth on **Exhibits B-1 – B-3**, as applicable, which allocations were calculated on the basis of a fraction, the numerator of which is the number of bedrooms contained in each Unit and the denominator of which is the total number of bedrooms within the Property. In accordance with **Section 9.3**, in the event an Owner of a Workforce Housing Unit elects to opt out of paying the Base Assessments allocated to Non-Essential Services, if any, as set forth in **Section 9.2(b)**, such Workforce Housing Unit(s) shall be deducted for the purposes of calculating the allocations of Base Assessments as set forth on **Exhibit B-2** or **B-3**, as applicable.
- 1.11 “**Board of Directors**” or “**Board**”: The body responsible for administration of the Association, selected as provided in the Bylaws.
- 1.12 “**Bound Party**”: Shall have the meaning given in **Section 13.3**.
- 1.13 “**Building**”: Each individual building located on the Land, as depicted on the Map. Each Building may be specifically referred to by the designation given on the Map (i.e., Building A located at [●] Montezuma Road, Building B located at [●] Montezuma Road, Building C located at [●] Montezuma Road, and Building D located at [●] Montezuma Road).
- 1.14 “**Business**” and “**Trade**”: Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the immediate family of the producers of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.
- 1.15 “**Bylaws**”: The Bylaws of Camber Townhomes Owners Association, Inc. incorporated by reference, as they may be amended from time to time.

1.16 “**CCIOA**”: Shall have the meaning given in **Recital C**.

1.17 “**Claim**”: Shall have the meaning given in **Section 13.3**.

1.18 “**Claimant**”: Shall have the meaning given in **Section 13.5(a)**.

1.19 “**Commercial Activities**”: Shall have the meaning given in **Section 14.1(c)**.

1.20 “**Common Elements**”: The real property and Improvements on the Property as designated on the Map as “Common Elements.” The Common Elements shall be owned by the Association for the common use and enjoyment of the Owners, subject to the terms of this Declaration.

1.21 “**Common Expenses**”: The actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles.

1.22 “**Community-Wide Standard**”: The standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard may be more specifically determined by the Board.

1.23 “**Construction Activities**”: Shall have the meaning given in **Section 14.1(b)**.

1.24 “**County**”: Summit County, Colorado.

1.25 “**Declarant**”: 624 Montezuma Rd., LLC, a Colorado limited liability company, or its successor, successor-in-title, or assign who has or takes title to any portion of the Property for the purpose of development or resale in the ordinary course of business and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.26 “**Declarant Control Period**”: The period beginning on the date the Association is formed and ending on the first to occur of (i) 60 days after 75% of the total number of Units that may be created pursuant to **Section 2.2(b)** have been conveyed to Owners other than Declarant; (ii) two years after the last conveyance of a Unit by Declarant in the ordinary course of business; (iii) two years after any right to create new Units pursuant to this Declaration was last exercised; or (iv) the date on which Declarant, in its sole discretion, voluntarily terminates the Declarant Control Period pursuant to a statement of termination executed by Declarant and recorded in the Office of the County Recorder. If Declarant terminates the Declarant Control Period pursuant to the preceding clause (iv), Declarant may require that, for the balance of what would have been the Declarant Control Period had Declarant not terminated it, certain actions of the Association or the Board, as described in the statement of termination recorded in the Office of the County Recorder, be approved by Declarant before they become effective.

1.27 “**Delinquency Costs**”: Shall have the meaning given in **Section 9.7**.

1.28 **“Design Guidelines”**: The architectural, design, development, and other guidelines, standards, controls, and procedures including but not limited to, application and review procedures, attached to this Declaration as **Exhibit D**.

1.29 **“Designated Parking Spaces”**: Shall have the meaning given in **Section 2.2(c)(iv)**.

1.30 **“Dwelling”**: Any building or structure or portion of a building or structure situated upon a Unit which is intended for use and occupancy as an attached residence.

1.31 **“First Mortgage”**: A Mortgage that is recorded in the Office of the County Recorder and has priority of record over all other liens recorded in the Office of the County Recorder except those liens made superior by statute (*e.g.*, general ad valorem tax liens and special assessments, and mechanics’ liens).

1.32 **“First Mortgagee”**: The holder, from time to time, of a First Mortgage on any Unit as shown by the Office of the County Recorder.

1.33 **“Fiscal Year”**: The fiscal accounting and reporting period of the Association as set forth in the Bylaws.

1.34 **“Garage”**: Any building or structure or portion of a building or structure situated upon a Unit which is intended for the storage of automobiles.

1.35 **“General Benefit Expense”**: Shall have the meaning given in **Section 9.5(a)**.

1.36 **“General Common Elements”**: The portions of the Common Elements allocated for the use of all Units. A portion of the General Common Elements may be referred to as a **“General Common Element.”** General Common Elements may be specifically designated in this Declaration, on the Map by the abbreviation “GCE,” or pursuant to the provisions of CCIOA.

1.37 **“General Contractor”**: Shall have the meaning given in **Section 13.1(f)**.

1.38 **“Improvement”**: Each and every improvement, change, alteration, or addition of any kind whatsoever to any portion of the Property, including, but not limited to, any excavation, grading, fill work, building, walkway, driveway, road, parking area, wall, fence, utility installation, drainage facility, stair, patio, courtyard, pole, sign, irrigation distribution system, or landscaping and any and all components of any of the foregoing (including, but not limited to, exterior paint, texture, color and finish scheme) and any and all modifications or alterations of or additions to any of the foregoing.

1.39 **“Indemnity Claims”**: All damages, claims, demands, liens (including, without limitation, mechanics’ and materialmen’s liens and claims), losses, costs and expenses (including, without limitation, reasonable attorneys’ fees, court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever.

1.40 **“Land”**: The real property legally described on the attached **Exhibit A**.

1.41 **“Limited Benefit Expense”**: Shall have the meaning given in **Section 9.5(b)**.

1.42 **“Limited Common Elements”**: The portions of the Common Elements allocated to the exclusive use of at least one, but less than all, of the Units, including without limitation the Designated Parking Spaces. A portion of the Limited Common Elements may be referred to as a “Limited Common Element.” Limited Common Elements may be specifically designated in this Declaration, on the Map by the abbreviation “LCE,” or pursuant to the provisions of CCIOA.

1.43 **“Map”**: The Planned Community Map for Camber Townhomes to be recorded in the Office of the County Recorder concurrently with this Declaration.

1.44 **“Member”**: A Person entitled to membership in the Association.

1.45 **“Molds”**: Molds, mildew, fungi, bacteria and microbiologic organisms.

1.46 **“Mortgage”**: A mortgage, a deed of trust or any other form of security instrument encumbering an Owner’s interest in a Unit.

1.47 **“Mortgagee”**: A beneficiary or holder of a Mortgage.

1.48 **“Mountain Conditions”**: Shall have the meaning given in **Section 14.1(d)**.

1.49 **“Non-Essential Services”**: Shall have the meaning given in **Section 9.2(a)(iv)**.

1.50 **“Notice”**: Shall have the meaning given in **Section 13.5(a)**.

1.51 **“Office of the County Recorder”**: The Office of the Clerk and Recorder for Summit County, Colorado.

1.52 **“Ordinances”**: The Town’s zoning ordinances and building codes, as well as any other federal, state or local governmental rules, regulations, or policies in effect now or in the future which are applicable to the Property and/or the Other Properties.

1.53 **“Other Properties”**: Shall have the meaning given in **Section 14.3**.

1.54 **“Owner”**: One (1) or more Persons who hold the record title to any Unit, except Persons holding an interest merely as security for the performance of an obligation in which case the equitable owner will be considered the Owner.

1.55 **“Party” or “Parties”**: Shall have the meaning given in **Section 13.5(a)**.

1.56 **“Party Wall”**: Each interior wall that is built as a part of the original construction of the Dwellings or Garages and placed on the boundary line between two (2) adjoining Units.

1.57 **“Permittee”**: A Person, other than an Owner, rightfully present on or in rightful possession of a Unit or the Common Elements, or a portion of a Unit or the Common Elements, including, without limitation, (i) a tenant of an Owner; or (ii) an agent, employee, customer, contractor, licensee, guest or invitee of an Owner, the Association, or a tenant of either of them.

1.58 **“Person”**: A natural person, a corporation, a partnership, a trustee, or any other legal entity.

- 1.59 **“Plans”**: Shall have the meaning given to such term in **Section 10.4(a)**.
- 1.60 **“Post Mediation Costs”**: Shall have the meaning given in **Section 13.5(d)(i)**.
- 1.61 **“Property”**: The fee simple interest in the Land and all Improvements located on the Land, including the Buildings.
- 1.62 **“Reimbursable Expense”**: Shall have the meaning given in **Section 9.5(c)**.
- 1.63 **“Respondent”**: Shall have the meaning given in **Section 13.5(a)**.
- 1.64 **“Responsible Governance Policies”**: The Responsible Governance Policies of Camber Townhomes Owners Association, Inc. incorporated by reference, as they may be amended from time to time.
- 1.65 **“Restoration Deficit”**: Shall have the meaning given in **Section 9.5(d)**.
- 1.66 **“Rules”**: Such reasonable rules, regulations or policies adopted by the Board governing the use and enjoyment of the Property, including the Common Elements, and including rules restricting use of the Common Elements to occupants of Dwellings and their guests, and rules limiting the number of occupants and guests who may use the Common Elements.
- 1.67 **“Settlement Demand”**: Shall have the meaning given in **Section 13.5(b)(v)**.
- 1.68 **“Settlement Offer”**: Shall have the meaning given in **Section 13.5(b)(v)**.
- 1.69 **“Special Assessment”**: Assessments levied under **Section 9.5**.
- 1.70 **“Termination of Mediation”**: Shall have the meaning given in **Section 13.5(b)(iv)**.
- 1.71 **“Termination of Negotiations”**: Shall have the meaning given in **Section 13.5(b)(ii)**.
- 1.72 **“Town”**: Town of Keystone, Colorado.
- 1.73 **“Unit”**: A portion of the Property, whether improved or unimproved, other than Common Elements and any property dedicated to the public, which may be independently owned and conveyed and which is intended to be developed, used, and occupied as a Dwelling or Garage. The term shall refer to the real property that is part of the Unit, including any Improvements and any Dwelling and Garage thereon, and the boundaries of each Unit shall be as shown on the Map.
- 1.74 **“Urban Impacts”**: Shall have the meaning given in **Section 14.1(a)**.
- 1.75 **“Voluntary Capital Expense”**: Shall have the meaning given in **Section 9.5(d)**.
- 1.76 **“Workforce Housing Units”**: The two (2) Units known as [Unit No. 2, Building A] and [Unit No. 2, Building B], which will be deed restricted to workforce housing and will be subject to a Restrictive Housing Covenant and Notice of Lien to be recorded in the Office of the County Recorder.

1.77 Exhibits. The Exhibits listed below are attached to and incorporated in this Declaration:

Exhibit A – Legal Description of the Land

Exhibit B-1 – Base Assessment Allocations

Exhibit B-2 – Base Assessment Allocations (If one (1) Workforce Housing Unit opts out of Non-Essential Services)

Exhibit B-3 – Base Assessment Allocations (If both Workforce Housing Units opt out of Non-Essential Services)

Exhibit C – Arbitration Rules

Exhibit D – Design Guidelines

Exhibit E – Other Recorded Easements and Licenses Affecting the Property

ARTICLE 2

CREATION OF THE PLANNED COMMUNITY; UNITS AND ALLOCATIONS

2.1 Creation of Planned Community. Declarant declares that, upon the recording of this Declaration and the Map in the Office of the County Recorder, the Property will be a “planned community” under CCIOA named “Camber Townhomes.”

2.2 Units and Common Elements.

(a) Generally. The Property initially consists of fourteen (14) separate Units and the Common Elements. Each Unit is depicted and the boundaries legally described on the Map, and the Unit’s identifying number is listed on the attached Exhibits B-1 – B-3 and also labeled on the Map. Each Unit shall be owned by an Owner. The Common Elements shall be owned by the Association. After recording of this Declaration and the Map, Declarant shall convey the Common Elements to the Association via bargain and sale deed. In accordance with Section 105(2) of CCIOA, and subject to the Workforce Housing Unit(s) being deducted for the purposes of calculating the allocations of the valuation of the Common Elements, if applicable, as set forth in **Section 9.3** and **Section 9.5(a)**, the valuation of the Common Elements shall be assessed proportionately to each Unit in accordance with each Unit’s allocation as set forth on Exhibits B-1 – B-3, as applicable.

(b) No Subdivision. The maximum number of Units that may be created, by subdivision or otherwise, is fourteen (14) Units. No Unit shall be split, subdivided or separated into smaller lots.

(c) Common Elements. The Common Elements shall consist of real property and Improvements on the Property designated on the Map as “GCE” or “LCE”, and shall include without limitation the following:

(i) Paved Areas. All paved areas within the Property shall be General Common Elements except to the extent they are located within a Unit or within any Designated Parking Spaces.

(ii) Landscaping. All exterior landscaping located on the Property shall be a General Common Element.

(iii) Lighting. Exterior lighting within the Property but not included within the boundaries of a Unit shall be General Common Elements.

(iv) Designated Parking Spaces. The parking space or spaces located immediately in front of each Unit, as depicted on the Map (the “**Designated Parking Spaces**”), shall be Limited Common Elements allocated to the immediately adjacent Unit. The allocation of the Designated Parking Spaces to each Unit is indicated on the Map with the label “[LCE-A1, LCE-A2, LCE-A3]” and so on, where the number in such label indicates the Unit to which each of the Designated Parking Spaces is labeled.

(v) Other. All other exterior portions of the Property which are located outside of the boundaries of the Units and the Designated Parking Spaces shall be General Common Elements.

2.3 Common Elements Limitations. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Elements, subject to:

(a) This Declaration, the Bylaws and any other applicable covenants, including, without limitation, any restrictions contained in this Declaration regarding the usage of the Limited Common Elements such as the Designated Parking Spaces;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt the Rules;

(d) The right of the Association to dedicate or transfer all or any part of the Common Elements to governmental entities and utility providers as may be reasonably necessary for the use and enjoyment of the Common Elements by the Owners in accordance with this Declaration;

(e) The right of any Owner to extend his or her right of use, access and enjoyment in and to the Common Elements to the family members, co-occupants, lessees, and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit, unless the Board adopts a resolution permitting Owners to reserve such rights and such Owner provides the Board with written notice of such reservation; and

(f) The absolute prohibition on any Owner or any Owner’s contractors, subcontractors, agents, employees, invitees, family members, co-occupants or lessees making any Improvement whatsoever to the Common Elements, including, without limitation, any staking, clearing, excavation, grading and other site work, alteration of existing Improvements (including painting), placement or posting of any object or thing (e.g. fences, signs, antennae, clotheslines, playground equipment, lighting, temporary structures, and landscaping or other vegetation), planting or removal of landscaping materials, or installation or removal of an irrigation system.

2.4 Description of Units. Every contract, deed, lease, Mortgage, or other instrument may legally describe a Unit by its identifying Unit number with reference to the Map and Declaration and shall be substantially in the following form:

Unit _____, Camber Townhomes, according to the Planned Community Map for Camber Townhomes recorded on _____, 20__, at Reception No. _____ in the office of the Clerk and Recorder of Summit County, Colorado, and described in the Declaration of Covenants, Conditions and Restrictions for Camber Townhomes recorded on _____, 20__, at Reception No. _____ in the office of the Clerk and Recorder of Summit County, Colorado.

Such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect the Unit and all of the rights, obligations, benefits and burdens associated with such Unit including the beneficial use of any Common Elements associated with such Unit. The reference to the Map and Declaration in any instrument shall be deemed to include any recorded supplements or amendments thereto.

2.5 Allocations. In all matters coming before the Association for which a vote of Owners is required, subject to the Workforce Housing Unit(s) being deducted for the purposes of calculating the allocations of Common Expenses, if applicable, as set forth in **Section 9.3** and **Section 9.5(a)**, each Owner shall be entitled to vote in the amount equal to its allocation of Common Expenses in accordance with **Exhibits B-1 – B-3**, as applicable.

2.6 Reservation of Special Declarant Rights. Declarant reserves the following special declarant rights:

(a) Marketing of Units. While Declarant owns or leases any Unit, Declarant may maintain sales offices, management offices and model Units in any Units owned or leased by Declarant. Declarant may change the locations of the offices and model Units from time to time. While Declarant owns or leases any Unit, Declarant may maintain signs on any Common Elements advertising the Units for sale or lease and directing prospective purchasers to the offices or model Units. After Declarant no longer owns or leases any Unit, Declarant has a period of 30 days to remove any property of Declarant located on any portion of the Common Elements used for office or model purposes.

(b) Easements. Declarant may use the Easements described in **Article 12** for so long as those Easements remain in effect.

(c) Appoint Board and Officers. Subject to the provisions of the Bylaws, during the Declarant Control Period Declarant may appoint and remove the directors to and from the Board and may appoint and remove the officers of the Association.

2.7 Assignment of Special Declarant Rights. Declarant may assign any or all of the special declarant rights reserved in **Section 2.6** in accordance with Section 304 of CCIOA.

2.8 No Development Rights Nothing in this Declaration, including, without limitation, **Section 15.2**, is intended to reserve any development rights (as such term is defined in CCIOA) for Declarant.

ARTICLE 3 THE ASSOCIATION AND THE BOARD

3.1 Formation of the Association. The Association will be formed no later than the date the first Unit is conveyed.

3.2 Function of Association. The Association shall be the entity responsible for the ownership, management, maintenance, operation and control of the Common Elements as provided for in this Declaration. The Association shall be the primary entity responsible for enforcement of this Declaration, the Design Guidelines and the Rules. The Association shall perform its functions in accordance with the Association Documents.

3.3 Membership in the Association. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in this Declaration and the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is a corporation, partnership or other legal entity may be exercised by any officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Association.

3.4 Powers. The Association will serve as the governing body for the Property and has the responsibilities set forth in the Association Documents. In addition, the Association may take any of the following actions but is not obligated to take such actions except as otherwise provided for in the Association Documents:

(a) Adopt and amend the Articles, the Bylaws, the Rules, and the Responsible Governance Policies; *provided, however*, that the Bylaws, the Rules, and the Responsible Governance Policies will not be inconsistent with this Declaration;

(b) Subject to the terms of this Declaration, adopt and amend budgets for revenues, expenditures and reserves, assess and collect any Assessments and any other amounts due from Owners or others to the Association;

(c) Hire and terminate managing agents and other employees, agents and independent contractors;

(d) Make contracts and incur liabilities;

(e) Borrow funds to cover Association expenditures and pledge Association assets as security therefor;

(f) Regulate the use, operation, maintenance, repair, replacement and modification of the Common Elements;

(g) Cause additional Improvements to be made as a part of the Common Elements;

(h) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property;

(i) Grant easements, leases, licenses, and concessions through or over the Common Elements;

(j) Impose and receive any payments, fees or charges for any services provided to Owners and for the use, rental or operation of the Common Elements, other than any Limited Common Elements described in § 202(1)(b) and § 202(1)(d) of CCIOA;

(k) Impose interest and late charges for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of any Association Documents;

(l) Impose reasonable charges for the preparation and recording of amendments to this Declaration or statements of unpaid Assessments;

(m) Provide for the indemnification of its officers and directors and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive Assessments so long as the Association will continue to have sufficient revenue to meet its maintenance obligations under this Declaration; and

(o) Exercise any other powers conferred by this Declaration or the Bylaws.

3.5 Board of Directors. Except for those matters specifically requiring action or approval by the Members under the Association Documents, the affairs of the Association will be managed by the Board of Directors in accordance with the Association Documents. The Board of Directors shall be composed of three (3) Directors, who shall be elected in accordance with the terms of the Bylaws.

ARTICLE 4 RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Elements. In addition to its rights and obligations with portions of the Units as provided for in **Section 5.1**, the Association, subject to the rights of the Owners set forth in this Declaration, shall own, manage and control the Common Elements and all Improvements thereon and shall keep them in good, clean, attractive, and sanitary condition, order, and repair, in conformance with this Declaration and the Community-Wide Standard.

4.2 Shared Water and Sewer Lines. Each Building is served by one shared water service line and one shared sewer service line. The Association shall maintain the shared water and sewer

lines, regardless of where located, as part of the Common Elements in accordance with **Section 5.1**.

4.3 Personal Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property to the extent reasonably necessary to carry out the Association's obligations under this Declaration.

4.4 Enforcement. The Association may impose reasonable sanctions for violations of this Declaration, the Articles, the Bylaws, the Rules or the Responsible Governance Policies, in accordance with procedures set forth in the Bylaws or the Responsible Governance Policies, including reasonable monetary fines and suspension of the right to vote and to use the Common Elements. In addition, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than thirty (30) days delinquent in paying any Assessment or other charge due to the Association. The Association may levy Special Assessments to cover costs incurred in bringing a Unit into compliance in accordance with **Section 9.5** and may seek relief in any court for violations or to abate nuisances.

4.5 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.6 Security. The Association may maintain or support certain activities within the Common Elements designed and specifically limited to monitor vehicular access, provided, however, that the Association shall not be obligated to do so.

4.7 Designate Managing Agent. The Association may hire and terminate managing agents and other employees, agents and independent contractors and enter into contracts for professional management of the Property and the Association, and to carry out and perform all or any part of the functions, powers, duties and services which the Board may lawfully delegate.

NEITHER THE ASSOCIATION, ITS BOARD, ANY MANAGEMENT COMPANY OF THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF THE SECURITY OF ANY PERSON OR PROPERTY WITHIN THE UNITS, COMMON ELEMENTS OR PROPERTY. NEITHER THE ASSOCIATION, ANY MANAGEMENT COMPANY OF THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD, ANY MANAGEMENT COMPANY OF THE ASSOCIATION, DECLARANT, AND ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT ANY PATROLLING OF THE PROPERTIES, ANY

FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT WILL NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY PATROLLING OF THE PROPERTIES, FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT ANY PATROLLING OF THE PROPERTIES, FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

ALL OWNERS AND OCCUPANTS OF ANY UNIT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, ANY MANAGEMENT COMPANY OF THE ASSOCIATION, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO ANY PATROLLING OF THE PROPERTIES, ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

4.8 No Other Powers. The Association shall not carry out any duties except those which are specifically allocated to it in this Declaration. The Association shall not own any real or personal property except as specifically permitted or directed in this Declaration.

ARTICLE 5 MAINTENANCE

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Elements, including, without limitation, all landscaping, sidewalks, signage, fencing, irrigation systems, mailboxes, structures and Improvements on the Common Elements, any bike and pedestrian pathways situated upon the Common Elements, all paved areas on the Property not located within a Unit, the Designated Parking Spaces, the Property's internal driveway and drive aisles, any Improvements constructed by the Association, any walls and gates situated upon the Common Elements (except that the allocation of responsibility for the maintenance and repair of Party Walls is set forth in **Section 5.3**), the shared water and sewer service lines, meters and related facilities serving the Property and all utilities, drainage and other facilities and services serving the Common Elements or more than one Unit. The Association shall maintain all paved areas not located within a Unit, the Designated Parking Spaces, the internal driveway and all sidewalks which are on the Common Elements, as well as any Improvements constructed by the Association, free from snow and ice accumulation to the extent required by the Ordinances or as deemed appropriate by the Board, whichever standard is more strict. The Association shall ensure the prompt removal of all papers, debris, filth and refuse from the

Common Elements. Except as otherwise specifically provided in this Declaration, all costs for maintenance, repair and replacement performed by the Association shall be a Common Expense allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

5.2 Owner's Responsibility. Except as provided in **Section 5.1** and **Section 5.3**, each Owner shall, at his or her cost, maintain his or her Unit, Dwelling, Garage and all other Improvements located within the Unit, including, without limitation, all doors and windows, all roofs and gutters, the Balconies, lights and light fixtures, all utilities exclusively serving such Unit, and all other interior and exterior portions of such Owner's Unit. Each Owner shall promptly remove all snow and ice accumulation from any pavement located within such Owner's Unit that is not part of the Common Elements. Each Owner shall ensure the prompt removal of all papers, debris, filth and refuse from the exterior areas of such Owner's Unit to the extent necessary to keep such areas in a clean, neat and orderly condition.

5.3 Party Walls. The Adjoining Owners shall own that portion of any Party Wall lying within the boundaries of their respective Units and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the Party Wall lying within the boundaries of an adjoining Unit. Each Adjoining Owner shall be responsible for maintaining a property insurance policy on that portion of any Party Wall lying within the boundaries of such Adjoining Owner's Unit, as more particularly provided in **Section 6.3**, and, subject to the rights of First Mortgagees, shall be entitled to all insurance proceeds paid under such policy on account of any insured loss thereto.

Each Adjoining Owner shall be solely responsible for the non-structural repair and maintenance of the interior surfaces of the Party Wall located within such Adjoining Owner's Unit. The responsibility for the structural repair and maintenance of Party Walls and the reasonable cost thereof shall be shared equally by the applicable Adjoining Owners. If the negligence or willful act of an Adjoining Owner or an Adjoining Owner's Permittees shall cause damage to a Party Wall, then such Adjoining Owner shall bear the entire cost of repair or replacement of the Party Wall. In the event that any Party Wall should be injured or damaged by a cause other than the willful act or negligence of any Adjoining Owner or such Adjoining Owner's Permittees, the same shall be repaired or rebuilt at the equal cost of the applicable Adjoining Owners, provided that any sum received from insurance against such injury or damage shall first be applied to such repair or rebuilding. Any Adjoining Owner's right to contribution from another Adjoining Owner under this **Section 5.3** shall be appurtenant to the land and shall pass to such Adjoining Owner's successors-in-title but shall be subordinate to the rights of First Mortgagees. For the purpose of rebuilding or repairing a Party Wall, as may be reasonably required, each of the applicable Adjoining Owners is licensed by the other Adjoining Owners to enter on the other Adjoining Owner's Unit to do work necessary to exercise the rights provided in this **Section 5.3**, provided that the entering Adjoining Owner gives reasonable advance notice, uses reasonable efforts to minimize any disruption caused by such entry and repairs any damage caused by such entry. Any Owner causing work to be performed on a Party Wall shall ensure that the contractors performing such work maintain commercial general liability insurance and worker's compensation insurance. Any rebuilding or repairing of a Party Wall shall be on the same location and of the same size as

the original Party Wall and of the same or similar material of the same quality as that used in the original Party Wall.

No Owner shall alter or change a Party Wall in any manner, except as to interior decoration by each Adjoining Owner not affecting the structure or the fire separation components of the Party Wall, and the Party Walls shall always remain in the same location as originally constructed. The Association may from time to time inspect the interior or exterior of any Unit for the purpose of ascertaining whether there has been a violation of this **Section 5.3**. In the event of violation, the Association may notify the Owner in writing of such violation and request that it be remedied within ten (10) days of the delivery of the violation notice. In the event the violating Owner fails to remedy such violation within such period, the Association may enter the Unit and cause to be made whatever repairs are necessary to restore the Party Wall to its condition prior to the commission of the violation. The cost of said repair shall be charged to such Owner as a Special Assessment.

5.4 Standard of Performance. Maintenance, as used in this **Article 5**, shall include, without limitation, all reasonably necessary repair and replacement as well as such other duties as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants and Ordinances, as determined by the Board. Without limiting any other enforcement rights that may be available to the Association, if an Owner fails properly to perform Owner's maintenance responsibilities pursuant to this Declaration, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with **Section 9.5**. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry as provided in the Bylaws, except when entry is required due to an emergency situation.

ARTICLE 6

INSURANCE, CASUALTY LOSSES AND INDEMNITY

6.1 Association Insurance. The Association, acting through the Association's Board or the Association's duly authorized agent, shall obtain and maintain the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on an "special form" basis (or comparable coverage by whatever name denominated) for all insurable Improvements within the Common Elements.

(b) Commercial general liability insurance insuring the Association, its officers, directors, agents and employees, and the Members for any claims of bodily injury or property damage. If generally available at reasonable cost, such coverages (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(c) Worker's compensation insurance and employer's liability insurance if and to the extent required by law;

(d) Directors and officers liability insurance or equivalent Association liability insurance;

(e) Fidelity insurance covering losses resulting from dishonest or fraudulent acts committed by the directors, officers, any manager hired by the Association, trustees, employees or agents who manage the funds collected and held for the benefit of the Association. The policy will name the Association as the insured (or obligee) and include a provision requiring at least 30 days' written notice to the Association before any cancellation, material modification or non-renewal of the policy, and provide coverage in an amount equal to at least three months' Base Assessments against all Units, based on the Base Assessments most recently approved by the Board. If the Association engages a managing agent that handles funds of the Association, the managing agent must also maintain fidelity insurance satisfying the foregoing requirements and CCIOA and provide evidence of the coverage to the Board.

(f) Such additional insurance as the Board, in the Board's best business judgment, determines advisable.

6.2 Association Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one (1) or more qualified persons, at least one (1) of whom must be familiar with insurable replacement costs in the Town. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured and such Member's Mortgagee. The Association's liability insurance shall contain a waiver of subrogation by the insurer as to claims against the Association, including its directors, officers, employees and agents, Owners and members of their households and Declarant. The Association's property insurance shall permit a waiver of claims by the Association, and provide for a waiver of subrogation rights by the insurer as to claims against each Owner, its Permittees and the members of the Owner's household and Declarant.

6.3 Owner's Insurance; Damage to Units. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry bodily injury and property damage liability insurance for the benefit of the Owner and any additional insured it names, in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property; provided, however, that such liability insurance must have a combined single occurrence limit of not less than \$500,000.00. Each Owner shall also maintain property insurance for the full insurable replacement cost of the Owner's Unit, less a reasonable deductible. Each Owner's liability insurance shall contain a waiver of subrogation by the insurer as to claims against the Association and its directors, officers, employees and agents, owners and members of their households and Declarant. Each Owner's property insurance shall permit a waiver of claims by the Owner, its Permittees and the members of the Owner's household, and provide for a waiver of subrogation rights by the insurer as to claims, against the Association, its directors, officers, employees and agents, the other Owners, their Permittees and the members of such Owners' household and Declarant. Each Owner further covenants and agrees that in the event of damage to or destruction of the Unit or any structures on or comprising an Owner's Unit, Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction

or such other plans and specifications as are approved in accordance with **Article 10** of this Declaration. The Owner shall pay any costs for such restoration which are not covered by available insurance proceeds.

6.4 Damage to Common Elements.

(a) Immediately after damage or destruction to all or any part of the Common Elements, the Board or the Association's duly authorized agent shall file and adjust all insurance claims, both from Association insurance policies and Owner insurance policies, and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this **Section 6.4**, means repairing or restoring the Common Elements to substantially the condition in which the same existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building and zoning codes.

(b) Any damage to or destruction of the Common Elements shall be repaired or reconstructed unless the Owners representing at least seventy-five percent (75%) of the total votes cast at a meeting duly called for such purpose, and Declarant, as long as Declarant owns any of the Property, decide within sixty (60) days after the loss not to repair or reconstruct. Notwithstanding the foregoing, in no event shall any Unit be deprived of vehicular or pedestrian access in substantially the same manner and extent as existed prior to such damage or destruction.

(c) If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended for not more than sixty (60) additional days.

(d) If it is determined in the manner described above that the damage or destruction to the Common Elements shall not be repaired or reconstructed and no alternative Improvements are authorized, the affected Common Elements shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

6.5 Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction of the Common Elements, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

6.6 Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction of the Common Elements the Board may, without a vote of the Owners, levy a Special Assessment to cover the insufficiency.

6.7 Indemnity. Subject to **Section 6.8**, each Owner will be liable to and will protect, defend, indemnify and hold harmless the Association and the other Owners from and against any and all Indemnity Claims suffered or incurred by, or threatened or asserted against, the Association or any other Owner as a result of or in connection with (a) the willful misconduct, negligence or breach of this Declaration, the Bylaws, the Design Guidelines, the Rules or the Responsible Governance Policies by the indemnifying Owner or its Permittees; (b) any repair, restoration, replacement, alteration or other construction, demolition, installation or removal work on or about the Property contracted for, or performed by, the indemnifying Owner or its Permittees; or (c) the

operation, use, ownership or maintenance of the indemnifying Owner's Unit by the indemnifying Owner or its Permittees. Notwithstanding the foregoing, no Person will be entitled to indemnification from an Owner pursuant to this **Section 6.7** to the extent of any act or omission attributable to the negligence or willful misconduct of such Person. The indemnifying Owner will pay for all Indemnity Claims suffered or incurred by the Association for which the indemnifying Owner is responsible promptly upon receipt of a demand for payment from the Association. The amount of the Indemnity Claims will constitute Special Assessments against the indemnifying Owner's Unit. If the indemnifying Owner fails to make such payment within thirty (30) days after receipt of the Association's demand for it, the Association may take whatever lawful action it deems necessary to collect the payment including, without limitation, foreclosing its lien or instituting an action at law or in equity. Nothing in this Declaration relieves any Permittee from liability for its own acts or omissions. Nothing contained in this **Section 6.7** will be construed to provide for any indemnification which violates any Ordinances, voids any or all of the provisions of this **Section 6.7** or negates, abridges, eliminates or otherwise reduces any other indemnification or right which the Association or the Owners have by law.

6.8 Waiver of Claims. The Association will make no claim against any Owner, its Permittees, the members of the Owner's household or Declarant, for any loss, damage, injury or liability, no Owner will make any claim against the Association, its directors, officers, employees or agents, or any other Owner, its Permittees or member of such Owner's household or Declarant for any property loss or damage to property, and all such claims are hereby waived, to the extent that the loss, damage, injury or liability is covered by any insurance policy that is required under this Declaration (a) to be maintained by or for the benefit of the waiving Person and (b) to provide for a waiver of subrogation rights by the insurer. Such waiver will also apply to all claims to the extent that such loss, damage, injury or liability would have been covered by property insurance required under this Declaration had the waiving party maintained such property insurance. For purposes of this **Section 6.8**, the deductible or self-insured retention amount under any property insurance policy required to be, or in fact, maintained by a waiving Person is deemed to be covered by the policy so that, in addition to waiving claims for amounts in excess of the deductible or self-insured retention (up to the covered limits, or deemed covered limits, of the policy), the waiving Person waives all claims for amounts within the deductible or self-insured retention.

ARTICLE 7 NO PARTITION

The Common Elements shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees. The Association shall have no right to sell, convey, transfer, assign, mortgage, hypothecate or encumber the Common Elements or any portion thereof except to the extent allowed by CCIOA. This provision shall not prohibit the Board from acquiring and disposing of tangible personal property which may or may not be subject to this Declaration.

ARTICLE 8 CONDEMNATION

8.1 Common Elements. If any part of the Common Elements is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, each Owner

shall be entitled to notice thereof. The Board may convey Common Elements under threat of condemnation only if approved in writing by (i) Owners representing at least sixty-seven percent (67%) of the total votes cast at a meeting duly called for such purpose and (ii) Declarant, as long as Declarant owns any of the Property. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Elements on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Elements to the extent practicable, unless within sixty (60) days after such taking Declarant, so long as Declarant owns any of the Property, and Owners representing at least sixty-seven percent (67%) of the total votes cast at a meeting duly called for such purpose shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of **Sections 6.4, 6.5 and 6.6** regarding funds for the repair of damage or destruction shall apply to such construction.

(b) If the taking does not involve any Improvements on the Common Elements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

8.2 Units. Each Owner further covenants and agrees that in the event of a taking or conveyance under threat of condemnation of its Unit or any structures on or comprising an Owner's Unit, such Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with **Article 10** of this Declaration. Alternatively, the Owner of the Unit shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive landscaped condition consistent with the Community-Wide Standard and in a manner that does not negatively impact the structural integrity of any Party Wall adjoining such Owner's Unit and leaves the exterior face of any such Party Wall in a watertight, secure and attractive condition which matches the other exterior areas of the adjoining Unit in as close of a manner as may be possible. The award made for such taking shall be payable to the Owner of the Unit, subject to the terms of any Mortgage encumbering the Unit. The Owner shall pay any costs for such restoration which are not covered by available condemnation proceeds.

ARTICLE 9 ASSESSMENTS

9.1 Creation of Assessments. The Association may levy assessments against each Unit for Association expenses as the Board may specifically authorize from time-to-time. There shall be two (2) types of assessments for Association expenses:

- (i) Base Assessments to fund Common Expenses for the general benefit of all Units; and
- (ii) Special Assessments as described in **Section 9.5**.

Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property is deemed to covenant and agree to pay these Assessments. All Assessments

(except as otherwise provided herein, together with interest from the due date of such Assessment at a rate determined by the Association (not to exceed the highest rate allowed by Colorado law), reasonable late charges as determined by Board resolution, costs, including lien fees and administrative costs, monetary penalties, and attorneys' fees, shall be a charge and continuing lien upon each Unit against which the Assessment is levied until paid, as more particularly provided in **Section 9.6**. Each such Assessment, together with interest, late charges, costs, including lien fees and administrative costs, monetary penalties, and attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the Assessment arose. Upon a transfer of title to a Unit, the grantee shall not be personally liable for any Assessments and other charges due at the time of conveyance unless expressly assumed by the grantee. Any unpaid portion of an assessment is part of the Common Expenses and collectible from all Owners liable for Common Expenses, including a new Owner or a Mortgagee acquiring a Unit through foreclosure of a Mortgage.

9.2 Budget.

(a) Preparation of Budget. The Board will cause a proposed budget for the Association to be prepared and adopted annually, within 90 days following the beginning of each Fiscal Year of the Association (except that, for the first Fiscal Year of the Association, the Board may adopt the estimated budget prepared by Declarant). The proposed budget will include all of the following:

(i) The estimated revenue and expenses of the Association for the subject Fiscal Year, in reasonable detail as to the various categories of revenue and expense;

(ii) The current cash balance in the Association's reserve fund for the major repair or replacement of Common Elements, the Association's equipment, furniture and other personal property and for contingencies (including, without limitation, the amount of the deductible under the Association's property insurance policy), which fund will be established, maintained and invested by the Board in its reasonable judgment and subject to the requirements of CCIOA § 303(2.5) (provided that the establishment of such reserve fund and the deposit of Association funds into such reserve fund shall require, in each case, the unanimous vote of the Board);

(iii) An estimate of the amount of working capital that will be necessary to cover the cost of expenses, unforeseen expenditures or to purchase additional equipment and services;

(iv) An estimate of the amount required to be spent during the subject Fiscal Year from the Association's reserve fund for the major repair or replacement of Common Elements or the Association's equipment, furniture or other personal property;

(v) A statement of the amount required to be added to the Association's reserve fund during the subject Fiscal Year to cover anticipated withdrawals and adequately address contingencies and anticipated needs in future Fiscal Years; and

(vi) An estimate of the Base Assessments and/or Special Assessments allocated to non-essential services provided by the Association, if any, including, without

limitation, maintenance of the exterior of the Units, upkeep of luxury amenities, costs related to short-term rental management, and additional landscaping and common area improvements above and beyond the requirements of the Town (collectively, “**Non-Essential Services**”).

(b) Ratification of Budget. Within 90 days after the Board adopts any proposed budget for the Association, but in any event prior to the start of the Fiscal Year for which the budget has been prepared, the Board will mail, by ordinary first-class mail, or otherwise deliver a summary of the proposed budget, to the Owners and will set a date for a meeting of the Owners to consider ratification of the proposed budget. Such meeting will occur within a reasonable time after mailing or other delivery of the summary. The Board will give notice to the Owners of such meeting as provided for in the Bylaws. At such meeting each year, the Owners of the Workforce Housing Units shall have the option to opt out of paying the Base Assessments and/or Special Assessments allocated to Non-Essential Services for such year, if any. In the event an Owner of a Workforce Housing Unit elects to opt out of paying the Base Assessments and/or Special Assessments allocated to Non-Essential Services, if any, (i) such Owner shall have no right to the use and enjoyment of such Non-Essential Services, and (ii) such Owner shall continue to be obligated to perform all other obligations under this Declaration, including, without limitation, maintaining its Unit. The budget proposed by the Board does not require approval of the Owners and will be deemed approved by the Owners in the absence of a veto by the Owners at such noticed meeting by a majority of all Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners will continue in effect until such time as a subsequent budget proposed by the Board is not vetoed by the Owners. For the first Fiscal Year of the Association, the Board may adopt Declarant’s estimated budget for the Association and assess Base Assessments pursuant to **Section 9.2(a)** of this Declaration based on it if the Board submits such budget to the Owners for ratification in accordance with this **Section 9.2(b)** within 90 days after adopting it.

9.3 Computation of Base Assessment. Each Unit is subject to its allocation of the Base Assessments in accordance with the allocations set forth on **Exhibits B-1 – B-3**, as applicable, and as adjusted in accordance with the provisions of **Section 2.5**. In the event an Owner of a Workforce Housing Unit elects to opt out of paying the Base Assessments allocated to Non-Essential Services, if any, as set forth in **Section 9.2(b)**, such Workforce Housing Unit(s) shall be deducted for the purposes of calculating the allocations of Base Assessments as set forth on **Exhibit B-2** or **B-3**, as applicable. The Base Assessments will commence no later than 60 days after the conveyance of the first Unit by Declarant to a purchaser that is not affiliated with Declarant. Base Assessments will be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) Budget and Payment. The Board will assess Base Assessments against each Unit based on the budget adopted by the Board and not vetoed by the Owners pursuant to **Section 9.2(b)**. Subject to the Owners of the Workforce Housing Units option to opt out of paying the Base Assessments allocated to Non-Essential Services, if any, as set forth in **Section 9.2(b)**, each Owner is obligated to pay the Association the Base Assessments made against such Owner’s Unit, and the payment will be due in equal monthly installments on or before the first day of each month of each Fiscal Year or in another reasonable manner designated by the Board. The Board’s failure to fix the Base Assessments prior to the commencement of any Fiscal Year will not be deemed a waiver or modification of any of the provisions of this Declaration or a release of any

Owner from its obligation to pay the Base Assessments or any installment of them for that Fiscal Year, and the Base Assessments fixed for the preceding Fiscal Year will continue until the Board fixes the new Base Assessments and the monthly installments for such new Base Assessments shall be appropriately adjusted based on the number of months remaining in the Fiscal Year for which such new Base Assessments apply.

(b) Adjustment. If, during any Fiscal Year, the Board determines that the estimated expenses or revenues of the Association, as set forth in the budget upon which the Base Assessments were based, are in error for any reason (including, without limitation, nonpayment by an Owner of its Base Assessments), then, to the extent the Board estimates that payments of Base Assessments during the balance of the Fiscal Year will be inadequate or more than required to meet the Association's obligations intended to be covered by such Base Assessments, the Board may amend the budget and increase or decrease the Base Assessments for the balance of such Fiscal Year by giving not less than 30 days' prior notice to both of the Owners.

(c) Reconciliation. As soon as reasonably practicable after the end of each Fiscal Year, the Board will reconcile the actual costs and expenses incurred by the Association during that Fiscal Year against the Base Assessments that the Association received and intended to cover the costs and expenses. To the extent that an Owner has paid more than its proper share of the costs and expenses, the Board may either: (i) refund the overpayment to the Owner; (ii) credit the overpayment against the Owner's Base Assessments for the next Fiscal Year; or (iii) deposit the overpayment into the Association's reserve fund if overpayments were received from the Owners in proportion to each Owner's allocation of Common Expenses as set forth on **Exhibits B-1 – B-3**, as applicable, subject to the Workforce Housing Unit(s) being deducted for the purposes of calculating the allocations of Common Expenses, if applicable, as set forth in **Section 9.3**. To the extent an Owner has underpaid its share of the costs and expenses, the Board may either: (A) demand in writing that the Owner pay the amount of the underpayment of Base Assessments to the Association within a time period specified by the Board, but not less than 30 days after the Board gives its demand to the Owner; or (B) include the underpayment in the Owner's Base Assessments for the next Fiscal Year.

9.4 Reserve Budget and Working Capital. The Board shall prepare, on an annual basis, a reserve budget regarding the Common Elements as provided in the Bylaws. The Board shall include in Base Assessments capital contributions in amounts sufficient to meet the projected needs for reserves. Initial Owner contributions for the Association's working capital shall be made and expended as provided in the Bylaws.

9.5 Special Assessments. The Association may levy special assessments from time-to-time ("**Special Assessments**") to cover in whole or in part the cost of any construction, restoration, unexpected repair or replacement of a capital improvement or for carrying out the other responsibilities of the Association in accordance with this Declaration. Each Special Assessment will be allocated among the Units in accordance with the provisions of **Sections 9.5(a) through (e)**. Each Owner will pay all Special Assessments assessed against the Owner's Unit. Special Assessments will be paid at the time(s) and in the manner (for example, by lump sum payment or in installments) reasonably determined by the Board. The Board may require that Special Assessments be paid before the subject services or materials are provided. In the event that any Special Assessments will be allocated to Non-Essential Services, the Association shall notify the

Owners of the Workforce Housing Units, and such Owners shall have the option to opt out of paying the Special Assessments allocated to Non-Essential Services, if any, and in such event, (i) such Owner shall have no right to the use and enjoyment of such Non-Essential Services, and (ii) such Owner shall continue to be obligated to perform all other obligations under this Declaration, including, without limitation, maintaining its Unit.

(a) General Benefit Expenses. Subject to the Owners of the Workforce Housing Units option to opt out of paying the Special Assessments allocated to Non-Essential Services, if any, as set forth in **Section 9.2(b)** and **Section 9.5**, if the Association incurs any costs or expenses that benefit all of the Units (“**General Benefit Expenses**”), then the Board, in its discretion, will assess the General Benefit Expenses as a Special Assessment against each Unit in amount equal to the General Benefit Expense times such Unit’s allocation of the Common Expenses provided on **Exhibits B-1 – B-3**, as applicable. In the event an Owner of a Workforce Housing Unit elects to opt out of paying the Special Assessments allocated to Non-Essential Services, if any, as set forth in **Section 9.2(b)**, such Workforce Housing Unit(s) shall be deducted for the purposes of calculating the allocations of Common Expenses as set forth on **Exhibit B-2** or **B-3**, as applicable. The Board may assess Special Assessments for General Benefit Expenses without the approval of the Owners.

(b) Limited Benefit Expenses. Subject to the Owners of the Workforce Housing Units option to opt out of paying the Special Assessments allocated to Non-Essential Services, if any, as set forth in **Section 9.2(b)** and **Section 9.5**, if the Association incurs any cost or expense that benefits one or more, but less than all Units (such as, for example, the costs of repairing any portion of a Unit or Units which the Association insure pursuant to **Article 6**) (a “**Limited Benefit Expense**”), then the Board, in its reasonable discretion, will assess the Limited Benefit Expense as a Special Assessment solely against the Unit or Units benefited. The Board may assess Special Assessments for Limited Benefit Expenses without the approval of the Owners.

(c) Reimbursable Expenses. If the Association incurs any costs or expenses as a result of or in connection with (i) the cost of separately metered utilities, if any; (ii) an increase in any insurance premium for which an Owner is responsible pursuant to **Section 6.3**; (iii) subject to **Section 6.8**, the willful misconduct or negligence or violation of any law or any of the Association Documents by an Owner or its Permittees; (iv) bringing an Owner or the Owner’s Unit into compliance with the provisions of this Declaration or any other document governing the Property; or (v) the cost of causing a proposed agreement for termination to be circulated in accordance with **Section 17.1**, then, in each such event, the Board will assess the costs and expenses (“**Reimbursable Expenses**”) as a Special Assessment against the Unit. The Board may assess Special Assessments for Reimbursable Expenses without the approval of the Owners.

(d) Restoration Deficit. If, following any damage, destruction or condemnation or taking of the Common Elements, or any portion of them, or any portion of a Unit for which the Association is required to carry insurance, the total costs of performing any restoration of the Common Elements required by this Declaration or CCIOA exceeds the amount of the insurance proceeds, condemnation award or other funds available for the cost of restoration (such as funds in the Association’s reserve fund), then the Board may assess Special Assessments to cover the deficit (a “**Restoration Deficit**”). To the extent the cost of restoration relates to the General Common Elements, and subject to the Workforce Housing Unit(s) being deducted for the purposes

of calculating the allocations of Common Expenses, if applicable, as set forth in **Section 9.5(a)**, the Board will assess against each Unit, in the amount of its allocation of Common Expenses in accordance with **Exhibits B-1 – B-3**, as applicable, the Special Assessments for a Restoration Deficit and, to the extent the cost of restoration relates to a Limited Common Element or a portion of a Unit for which the Association is required to carry insurance, the Board will assess a Special Assessment for a Restoration Deficit against such Unit or the Unit to which the use of the Limited Common Element is allocated. The Board may assess Special Assessments for a Restoration Deficit without the approval of the Owners.

(e) **Voluntary Capital Expenses.** The Board may make Special Assessments (and the allocation thereof amongst the Units) for the purpose of paying Voluntary Capital Expenses. “**Voluntary Capital Expenses**” may include any costs and expenses of any capital improvement to the Common Elements, including all design, construction and associated financing costs, except for: (i) costs incurred in order to reduce Common Expenses (which costs will be included in Common Expenses); (ii) costs required to be incurred to cause the Property to comply with applicable law (which costs will be included in Common Expenses); and (iii) costs that constitute all or any part of a Restoration Deficit. Any Special Assessment for Voluntary Capital Expenses must detail the proposed improvements to be made and which Unit or Units will be subject to the Special Assessment. If only less than all of the Units will benefit from such Voluntary Capital Expense, then only the affected Unit or Units will be subject to such Special Assessment. Any Special Assessment for Voluntary Capital Expenses must be approved by 100% of the votes in the Association that are allocated to the Unit or Units that will be subject to such Special Assessment for Voluntary Capital Expenses.

9.6 **Lien for Assessments.** All assessments authorized in this **Article 9** shall constitute a lien which may be enforced against each Unit in accordance with Section 316 of CCIOA, the provisions of which are hereby incorporated into this Declaration. Such liens shall have the priority set forth in Section 316 of CCIOA.

9.7 **Payment of Assessments.** Each Owner will pay all Base Assessments and Special Assessments (collectively, “**Assessments**”) assessed against such Owner’s Unit by the Board in accordance with the terms of this Declaration and the Responsible Governance Policies. Subject to the Owners of the Workforce Housing Units option to opt out of paying the Base Assessments and/or Special Assessments allocated to Non-Essential Services, if any, as set forth in **Section 9.2(b)** and **Section 9.5**, all Assessments are payable in full without offset for any reason whatsoever. Each Owner’s obligation to pay Assessments is entirely independent of any obligation of the Association to the Owner or of Declarant or any other Owner to that Owner. Any Assessment or installment of an Assessment not paid within the period specified in this Declaration and the Responsible Governance Policies after it becomes due is delinquent. Upon an Owner becoming delinquent, the Association may recover all of the following (collectively, the “**Delinquency Costs**”): (a) interest from the date due at the rate established from time to time by the Board (but not to exceed the lesser of 15% per year or the maximum rate under applicable law); (b) late charges and other monetary penalties imposed by the Association pursuant to any Association Documents and CCIOA; and (c) all collection and enforcement costs, including reasonable attorneys’ fees, incurred by the Association and in accordance with CCIOA. Subject to the right to cure provided in Section 6.1 of the Responsible Governance Policies, in addition to any and all charges and interest imposed under the Association Documents, the Association may impose a late

charge on a monthly basis, in the amount specified in the Responsible Governance Policies, for each Owner who fails to timely pay his/her monthly installment of any Assessment within 15 days of the due date. The Board may accelerate and call due all unpaid installments of the Assessments on any delinquent account. Such acceleration shall result in the entire unpaid Assessment being due to the Association immediately. In the event notice of acceleration is given to a delinquent Owner, such Owner shall also be charged any costs of enforcement incurred by the Association in giving notice of such acceleration.

9.8 Enforcement of Assessments. The amount of any delinquent Assessments (including any installments the due dates of which are accelerated by the Board pursuant to **Section 9.7** above and the Responsible Governance Policies) and associated Delinquency Costs may be enforced against the Owner liable for them in any of the following ways (to the extent permitted by law or regulation):

(a) Suit. The Association may bring a suit or suits at law to enforce the Owner's obligation to pay a delinquent Assessment (including any installments the due dates of which are accelerated by the Board pursuant to **Section 9.7** above and Article 4 of the Responsible Governance Policies) and associated Delinquency Costs. Each action will be brought in the name of the Association. Any judgment rendered in the action in favor of the Association will include a sum for reasonable attorneys' fees and costs incurred by the Association in bringing the action against the defaulting Owner. Upon full satisfaction of the judgment, the Association, by one of its officers, will execute and deliver to the judgment debtor an appropriate satisfaction of the judgment.

(b) Lien and Foreclosure. Each Assessment (including any installments whose due dates are accelerated by the Board pursuant to **Section 9.7** above and Article 4 of the Responsible Governance Policies) and associated Delinquency Costs constitute a lien, under Section 316 of CCIOA, on the Units or Unit against which it is assessed from the date due. If an Assessment is delinquent, if the Association gives a notice concerning the delinquency, and if the delinquent Assessment is not paid in full by the due date specified in the notice, the Association may foreclose the lien securing the Assessment, any installments whose due dates are accelerated by the Board pursuant to **Section 9.7** above and Article 4 of the Responsible Governance Policies, and any associated Delinquency Costs in accordance with the laws of the State of Colorado, subject, however, to the protection afforded First Mortgagees pursuant to **Section 16.2**. For clarity, no Aggrieved Owner electing to exercise any rights under this Declaration or otherwise provided by any of the Association Documents or applicable law shall have any right to assert or claim any lien on the Unit of a defaulting Owner unless and until the Aggrieved Owner exercising such self-help rights is recognized under applicable law as a judgment creditor of the defaulting Owner entitled to a lien against the real property assets of the defaulting Owner. If the Board files an action to foreclose on a lien for unpaid Assessments against a delinquent Owner, it must formally resolve by a recorded vote to authorize the filing of the legal action. Pursuant to Section 316(11) of CCIOA, this duty may not be delegated to any manager, attorney, or any other person. Before the Board files such action, the amount secured by the lien must be equal to or exceed six months of Base Assessments.

(c) Eligible Directors. The directors elected by an Owner who is not delinquent or in default with respect to the payment of Assessments that are due and payable shall have the

authority to cause the Association, acting through the Association's officers or a manager, if any, to exercise the Association's remedies under this **Section 9.8** with respect to a defaulting Owner or the defaulting Owner's Unit.

9.9 Disputes and Records. Any Owner or such Owner's authorized representative may inspect and audit the books and records of the Association during business hours upon reasonable prior notice. If an Owner disputes the amount of any Assessment against its Unit and is unable to resolve the issue through an inspection of the Association's books and records, the Owner will pay in a timely manner the full amount of the disputed Assessment until, if ever, it is finally determined that the amount is incorrect (in which case the Association will promptly refund any overpayment). If the Owner fails to pay the disputed Assessment while the dispute is pending, the Association may immediately pursue any of its remedies for the failure (including, without limitation, suit against the Owner and foreclosure of its lien against the Owner's Unit) and the pendency of the dispute resolution proceeding is not a bar or defense to any actions by the Association.

9.10 Owners Not Exempt from Liability. Subject to the Owners of the Workforce Housing Units option to opt out of paying the Base Assessments and/or Special Assessments allocated to Non-Essential Services, if any, as set forth in **Section 9.2(b)** and **Section 9.5**, no Owner is exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Elements, by abandonment of its Unit, or otherwise.

ARTICLE 10

ARCHITECTURAL AND DESIGN STANDARDS

10.1 General. No exterior improvements (including, but not limited to, staking, clearing, excavation, grading and other site work), exterior alteration of existing Improvements (including painting), placement or posting of any object or thing on the exterior of any Unit (e.g. fences, signs, antennae, clotheslines, playground equipment, lighting, temporary structures, and artificial vegetation) shall take place except in compliance with this **Article 10** and the Design Guidelines and upon approval of the Board under **Section 10.2**.

Any Owner may remodel, paint or redecorate the interior of structures, including the Dwelling and Garage, on the Owner's Unit without approval. However, modifications to the interior of porches, patios, and other exterior portions of a Unit visible from outside the structures on the Unit shall be subject to this **Article 10** and approval as set forth below. No approval shall be required to repaint or refinish the exterior of a structure in accordance with the originally approved color and materials scheme or to rebuild in accordance with Declarant's original construction or other plans and specifications previously approved in accordance with **Section 10.2**.

Notwithstanding anything to the contrary in this Declaration, this **Article 10** shall not apply to the activities of Declarant or to Improvements made by or on behalf of the Association.

This **Article 10** may not be amended without Declarant's written consent so long as Declarant owns any of the Property.

10.2 Architectural and Design Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this **Article 10**

shall be handled by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

10.3 Guidelines and Procedures. The Design Guidelines are attached to this Declaration as **Exhibit D**. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures constructed by Declarant or previously approved once the approved construction or modification has commenced. The Board shall make the Design Guidelines available to Owners and builders who seek to engage in development or construction within the Property and all such Persons shall conduct their activities in accordance with such Design Guidelines. Notwithstanding anything contained herein to the contrary, the Design Guidelines shall not apply to any construction or modifications made by Declarant.

10.4 Submission of Plans and Specifications.

(a) Unless excepted by **Section 10.1**, no construction or improvements shall be commenced, erected, placed or maintained on any Unit, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications (“**Plans**”) showing site layout, structural design, exterior elevations, exterior materials and colors, signs, drainage, lighting, utility facilities layout, and screening therefor shall have been submitted to and approved in writing by the Board. The Design Guidelines shall set forth the procedure for submission of the Plans.

(b) In reviewing each submission, the Board may consider visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation and harmony of external design with surrounding structures and environment.

The Board shall, within the period specified in the Design Guidelines, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by the Board to be inconsistent or not in conformity with this Declaration or the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party. In the event the Board fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval and suggestions for curing the objections of the Board of the Plans, approval shall be deemed to have been denied.

(c) If construction does not commence on a project for which Plans have been approved within one hundred twenty (120) days of such approval, such approval may be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Board for reconsideration. If construction is not completed on a project for which plans have been approved within the period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this **Article 10**.

10.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

10.6 Variance. The Board may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations require, or (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance.

10.7 Limitation of Liability. Review and approval of any application pursuant to this **Article 10** is made on the basis of aesthetic considerations only and the Board shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board, any Board committee, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

10.8 Enforcement. Any construction, alteration, or other work done in violation of this **Article 10** shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the Board and restore the Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the Unit, remove the violation, and restore the Unit to substantially the same condition as previously existed. All costs, together with the interest at the rate provided in the Bylaws, may be assessed against the benefited Unit and collected as a Special Assessment.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this **Article 10** and the Design Guidelines may be excluded by the Board from the Property, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, nor its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this **Article 10** and the decisions of the Board.

10.9 Owner Requirements. Any Owner performing any Alteration will comply with the following additional provisions:

- (a) Such Owner will obtain all necessary permits and governmental authorizations for the Alteration;
- (b) Such Owner will comply with the Rules when constructing the Alteration;
- (c) The Alteration and the construction of it will comply with all Ordinances and recorded covenants;
- (d) Prior to commencing any construction, such Owner will provide the Board with evidence sufficient to demonstrate that the insurance required to be maintained by such Owner pursuant to **Section 6.3** is in full force and effect and that the contractor performing the work maintains worker's compensation insurance in the amount required by law and contractor's liability and other insurance with the limits the Board reasonably requires;
- (e) Such Owner will cause the Alteration to be constructed and completed diligently, in a good and workmanlike manner, and free and clear of all mechanics' and materialmen's liens and other claims or liens; provided, however, that if any mechanics' lien claim is recorded against the Property because of or relating to the Alteration, such Owner will have the lien released (by payment, bonding or other available process) within thirty (30) days after recordation of the claim;
- (f) During the construction process, such Owner will, to the extent consistent with good construction practice, keep the area affected in a safe, neat and clean condition;
- (g) Such Owner will minimize any impact from the construction process on other Units or the Common Elements and the Board, in its discretion, may require such Owner to post a bond or other security in an amount reasonably determined by the Board in order to protect the Common Elements during the pendency of and immediately after the Alteration work;
- (h) Such Owner will perform the Alteration work, or cause the work to be performed, in a manner that maintains harmonious labor relations and does not interfere unreasonably with or delay the work of any other contractors then working anywhere on the Property;
- (i) Such Owner will reimburse the Association for all costs incurred by the Association in connection with the Alteration, such as the increase in costs of trash removal due to the performance of the Alteration work; and
- (j) Such Owner will pay or cause to be paid all costs of design and construction of the Alteration and upon completion of any Alteration.

ARTICLE 11 USE RESTRICTIONS

11.1 Maintenance. Each owner of a Unit shall keep that Unit clean and free of trash, rubbish, debris, weeds, dead or decaying vegetation, and other unsightly material.

11.2 Repair of Improvements. No Improvements on any Unit shall be permitted to fall into disrepair, and each Improvement shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. Subject to the terms of **Section 5.3**, if any Improvement is damaged or destroyed, such Improvement shall be immediately repaired or rebuilt or shall be demolished and removed and the Unit maintained in a clean and neat manner.

11.3 Construction Activities. Normal and reasonable construction activities and parking in connection with an Improvement on a Unit shall not be considered a nuisance or otherwise prohibited by this Declaration. Contractors, agents, or suppliers shall not, in the course of construction, use any roads designated as off-limits for construction vehicles. All construction refuse shall be contained on the Unit where the construction is in progress in an appropriate refuse container. All construction work shall be carried forward diligently from commencement until completion so that the Unit shall not remain in a partly finished condition any longer than reasonably necessary for the completion of the construction work.

11.4 Compliance with Laws. All uses, activities and Improvements on any Unit shall conform to and be done in compliance with all Ordinances.

11.5 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit except for machinery or equipment which is usual and customary in connection with the construction (but only during the period of construction), use, or maintenance of any Improvements authorized by the Board, or by the Association for the operation and maintenance of the Property or the performance of its duties under this Declaration, or for the operation of machinery or equipment by Declarant which is usual or customary in connection with activities conducted on a Unit in connection with the exercise of special declarant rights (provided that such activities do not otherwise violate the provisions of this Declaration).

11.6 Signs No signs whatsoever (including but not limited to, commercial, political and similar signs) shall be erected or maintained on any Unit except signs of reasonable size and color which are:

- (a) Signs required by legal proceedings;
- (b) One (1) identification sign for each individual residence;
- (c) Signs allowable for new construction only (including, but not limited to, construction job identification signs, builders' signs, subdivision identification) as are in conformance with governmental requirements;
- (d) "For Sale" or "For Rent" signs;

(e) Signs maintained by Declarant in connection with its initial and ongoing sales and/or rental activities; or

(f) Other signs and items permitted by Section 106.5 of CCIOA.

11.7 Trucks, Trailers, Campers and Boats. No mobile home, travel trailer, recreational vehicle, tent trailer, trailer, camper, detached camper shell, boat, boat trailer, motor vehicle classed by manufacturer rating as exceeding one ton, or other similar equipment or vehicle shall be parked, maintained, constructed, reconstructed, or repaired on the Property except within a Garage. Notwithstanding the foregoing, any items referred to in this paragraph may be temporarily parked in an Owner's Designated Parking Space for not more than seventy-two (72) consecutive hours at a time and recreational vehicles commonly known as "Class B" vehicles, "Sprinter vans" or "camper vans" may be parked within an Owner's Designated Parking Space for longer than seventy-two (72) consecutive hours provided that they are maintained in good condition and repair, are operable and no persons reside in such vehicles.

11.8 Vehicles and Parking. Each Designated Parking Space may be used by the Owner to which such Designated Parking Space is allocated, and such Owner's Permittees, for motor vehicle parking only. Each parked vehicle must fit entirely within the Designated Parking Space. No Designated Parking Space may be used in such a manner that precludes its use for motor vehicle parking, no abandoned, inoperable or unlicensed motor vehicle may be parked in a Designated Parking Space and no motor vehicle maintenance or repairs may be performed in a Designated Parking Space except for minor routine repairs and maintenance such as, for example, washing, repairing flat tires or repairing windshields of motor vehicles. Owners and their Permittees may have to temporarily remove their vehicles from Designated Parking Spaces so that the Association may perform maintenance and repairs within the Common Elements. No Owner may lease, rent or license any Designated Parking Space to anyone other than another Owner or his or her Permittees. BY TAKING TITLE TO A UNIT, EACH OWNER, FOR ITSELF AND ITS PERMITTEES, ASSUMES ALL RISK OF DAMAGE TO OR THEFT OF ANY VEHICLE PARKED BY SUCH OWNER OR PERMITTEE WITHIN THE PROPERTY OR ANY PERSONAL PROPERTY LOCATED WITHIN A VEHICLE.

11.9 Overhead Encroachments. No tree, shrub or planting of any kind on any Unit shall be allowed to overhang or otherwise to encroach upon any other Unit without the written consent of the Owner of the other Unit. No tree, shrub or planting of any kind on any Unit shall be allowed to overhang or otherwise to encroach upon the Common Elements from ground level to a height of fifteen (15) feet.

11.10 No Obstructions to Drainage. No Improvements shall be permitted which would interfere with the proper drainage of the land nor shall any Improvement be permitted within any area designated on a recorded document as a "drainage easement".

11.11 Nuisances and Offensive Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit. No odors, loud music or loud noises shall be permitted to arise or emit from any lot. No use or activity shall be undertaken or permitted on any Unit which constitutes an annoyance to surrounding Owners or occupants or a public or private nuisance or which would render any Unit (or activity thereon) unsanitary,

unsightly, unsafe, offensive or detrimental to any other Units in the vicinity of the Unit or to the Owners or occupants of such other Units. Without limiting the generality of any of the foregoing provisions, no horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Unit, except patio speakers which may be installed but never permitted to emit noise to arise from any Unit in a manner which constitutes an annoyance or nuisance to surrounding Owners or occupants.

11.12 Trash Containers. Except as expressly provided in this **Section 11.12**, no garbage, trash or recycling materials shall be placed or kept on the exterior of any Unit. To the extent any Owner keeps individual garbage, trash, or recycling bins, such containers shall be bear proof and shall be stored in Garages only for the shortest time reasonably necessary to effect regular disposition, as may be further regulated by the Design Guidelines and Rules. No rubbish, trash, garbage or debris of any kind shall be burned within the Property. No outdoor incinerators shall be kept or maintained on any Unit. All removal of trash and recycling from Units shall be the responsibility of the Owner of the applicable Unit.

11.13 Grills. Except for electric grills which shall be permitted, the use of any type of grill for outdoor cooking is prohibited (e.g., charcoal grills, wood-burning grills, gas grills, etc.).

11.14 Diseases and Insects. No Owner shall permit anything, or condition to exist upon any Unit, which shall induce, breed or harbor infectious plant diseases or noxious insects.

11.15 Temporary Occupancy. No trailer, vehicle, mobile home, basement of any incomplete building, tent, shack, garage, barn or temporary building or structure of any kind shall be used at any time for a residence, either temporary or permanent.

11.16 Animals. No animal, other than dogs or cats and other common household pets, shall be maintained on any Unit. Except with the written approval of the Board, not more than three (3) animals shall be permitted on any Unit and then only if they are kept, bred or raised solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be visible from neighboring property or cause a nuisance to any surrounding Owner or occupant.

11.17 Antennas, Flag Poles. Except to the extent required by FCC Over-the-Air Reception Devices (OTARD) regulations or other applicable law, no antenna, satellite dish, or other device for the transmission or reception of television, radio or any other form of electromagnetic signal shall be erected, used or maintained on any Unit unless appropriately screened from view and in accordance with the Design Guidelines. Subject to the provisions of Section 106.5 of CCIOA, no flag poles shall be erected, used or maintained on any Unit.

11.18 Mineral Exploration. No Unit shall be used in any manner to explore for or to remove any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

11.19 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Unit unless they are appropriately concealed by an enclosure.

11.20 Nonresidential Use. Except as expressly provided in this **Section 11.20**, no gainful Business, occupation, profession, Trade or other nonresidential use shall be conducted on any Unit, and no person shall enter upon such a Unit for the purpose of engaging in such uses or for the purpose of receiving products or services arising out of such usage. This **Section 11.20** is not intended to prohibit home occupations permitted by the Ordinances, so long as such use does not involve regular visits to the Property by any customers or prospective customers, does not materially increase the use of the Common Elements, and is not advertised or identified by signage on the Property.

11.21 Residential Use. Except as expressly provided above in **Section 11.20**, all Units shall be used, improved and devoted exclusively to residential use by the number of persons as may be permitted by the Ordinances from time to time. Notwithstanding the foregoing, no Owner shall lease its Unit(s) for a rental period of less than six months, except in connection with short-term rentals conducted in accordance with applicable law. Each Owner shall comply with any Rules imposed by the Association related to leasing and occupancy. Any lease of a Unit within the Property must be in writing and must expressly be made subject to this Declaration. Every lease must provide that any breach of this Declaration by the tenant will also be a breach of the lease. Within 10 days after execution of any lease of its Unit, the Owner shall provide the Board or the Association's managing agent with (i) a copy of the fully executed lease; (ii) the current address and telephone number of the Owner; and (iii) a statement by the Owner that the tenant has received a copy of this Declaration, any material amendments to this Declaration, the Bylaws, the current Rules, and the Responsible Governance Policies, and that the tenant has been advised that he or she may have obligations under those documents as a Permittee. The Board may adopt additional reasonable Rules regarding the leasing of Units. Renting a Unit in compliance with Ordinances and all Association Documents does not constitute commercial use under this **Section 11.21**.

ARTICLE 12 EASEMENTS

12.1 Easements of Encroachment. Declarant reserves for each Owner easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Elements and between adjacent Units due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner.

12.2 Easements for Utilities.

(a) Declarant reserves for the Association an easement for the purpose of access and maintenance upon, across, over, and under all of the Property to the extent reasonably necessary to install, maintain, replace and repair (i) all utilities reasonably necessary for the use of the Common Elements, including, but not limited to, water, sewer, meter boxes, telephone, gas, and electricity and (ii) the shared water and sewer facilities which serve the Property, including without limitation, the water meters and irrigations system serving the Property. Declarant or the

Association may assign these rights to any local utility supplier, cable company or other company providing a service or utility to the Property subject to the limitations herein.

(b) This easement shall not entitle the holders to construct or install any new systems, facilities, or utilities under or through any structure located on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(c) Declarant specifically grants to the local utility suppliers easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters, boxes and related equipment. However, the exercise of this easement shall not extend to permitting entry into the Dwelling on any Unit, nor shall any utilities be installed or relocated on the Property, except as permitted by **Section 12.2(d)** or as approved by the Board.

(d) Each Unit shall have an easement upon, over, across and under the Property to the extent reasonably necessary to maintain, replace and repair all utilities, meters and air conditioning compressors in the locations installed by Declarant or existing on the Property as of the date that this Declaration is recorded in the Office of the County Recorder.

12.3 Easements for Cross-Drainage. Every Unit and the Common Elements shall be burdened with easements for natural drainage of storm water and snowmelt runoff from other portions of the Property. No Person shall alter the drainage on any Unit or other portion of the Property in any manner without the consent of the Owners of the affected property and the Board.

12.4 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to use the Common Elements as may be reasonably necessary or incident to any development and sale of the Units or Improvements on the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Property by the Owners.

12.5 Right of Entry. Authorized agents of the Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Unit, for emergency, security, and safety reasons. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after at least 48 hours' notice to the affected Owner. This easement includes the right to enter any Unit to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

12.6 Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Unit to (a) perform its maintenance responsibilities under **Article 5**, and (b) make inspections to ensure compliance with this Declaration, the Bylaws, the Design Guidelines, the Responsible Governance Policies, and the

Rules. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after at least 48 hours' notice to the Owner. This Easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage caused thereby shall be repaired by the Association at its expense.

12.7 Abatement Rights. The Association may also enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, the Design Guidelines, the Rules, or the Responsible Governance Policies. All costs incurred, including attorneys' fees, shall be assessed against the violator as a Special Assessment.

12.8 Emergency Access. Emergency responders such as police officers, fire personnel and paramedics shall have an easement over the exterior areas of the Property as reasonably necessary to carry out their official duties.

12.9 Access. Each Unit shall have an easement upon, over and across all paved exterior Common Elements to the extent reasonably necessary for pedestrian, bicycle and vehicular ingress and egress to and from such Unit and its Garage and any Designated Parking Spaces allocated to such Unit.

12.10 Other Recorded Easements and Licenses Affecting the Property. The recorded easements and licenses identified on **Exhibit E**, which were created prior to the date of this Declaration, and the easements created by the Map affect the Property.

ARTICLE 13 CONSTRUCTION DEFECTS, DISPUTES DISPUTE RESOLUTION AND LITIGATION

13.1 Construction Defects; Testing**Error! Bookmark not defined..**

(a) Notwithstanding anything to the contrary in CCIOA, the Association shall have no right or standing to undertake or authorize any testing or investigations of any kind or initiate or pursue any Claim related to any design or construction defects within any area of the Property other than the Common Elements, as the Common Elements are defined in the original recorded versions of this Declaration and the Map. Each Owner shall have the sole and exclusive authority and responsibility to undertake and authorize testing and investigations and initiate and pursue any Claims for any construction defects located in such Owner's Unit, as such Units are defined in the original recorded versions of this Declaration and the Map.

(b) Each Owner is entitled to be kept informed by the Board with respect to its activities and actions regarding alleged construction defects within the Property, including any instances in which any component of the Common Elements or the Owner's Unit is alleged not to conform in all material respects with the applicable building codes, manufacturer's specifications or the requirements of the construction and related drawings and specifications for the Property.

(c) The Association will not undertake or authorize any testing, including, without limitation, investigative testing, destructive testing or invasive testing of any kind for defects in construction of any Common Element without first determining, based upon the

presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Board will rely on the opinions and/or the conclusions of a qualified expert (e.g., a structural engineer); even in the event such evidence or conditions exist, the Association will not be obligated to authorize or undertake such testing.

(d) In determining whether to authorize such testing, the Board will be governed by the following considerations:

(i) Whether the Association's position is strong enough to justify taking any other or further action;

(ii) Whether, although a technical violation may exist or may have occurred, it is of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's resources; and

(iii) Whether it is in the Association's best interests, based upon hardship, expense, inconvenience or other reasonable criteria, to pursue the matter further.

(e) Notwithstanding the foregoing, under no circumstances will the Association authorize such testing as is contemplated under this **Section 13.1** unless the nature of the suspected defect is such that:

(i) It poses a significant risk to life, health, safety or personal property;
and

(ii) It materially threatens or affects the structural integrity, functionality, or performance of the Property (or a portion thereof) for its intended use.

(f) In the event the Board undertakes or authorizes testing for construction defects, then prior to any testing taking place, the Board shall notify in writing Declarant, [●] (the "**General Contractor**"), and Arapahoe Architects, P.C., a Colorado corporation (the "**Architect**"), and those parties shall be entitled to notice of the alleged defect, access to the area of the alleged defect, and an opportunity to inspect the area. Declarant, the General Contractor, the Architect and others thought to responsible for the design and/or construction as specified by Declarant will also be entitled to be present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all alleged defects found.

(g) After complying with this **Section 13.1**, the Board will have the right, but not the obligation, to proceed with a Claim as provided for in **Section 13.4**, provided the requisite approvals are obtained pursuant to **Section 13.2**. In determining whether to proceed with such a Claim, the Board will be governed by the same standards as set forth in **Section 13.5** below.

13.2 Consensus for Association Litigation. Except as provided in this **Section 13.2**, the Association will not commence a judicial, administrative or arbitration proceeding regarding any matter, including, without limitation, any proceeding required under **Section 13.5** below, without: (a) the written approval of Owners, and not by way of proxy voting, to which at least sixty-seven percent (67%) of the votes in the Association are allocated; and (b) the affirmative vote of Declarant so long as Declarant owns any Unit. This **Section 13.2** will not apply, however, to: (i)

actions brought by the Association to enforce the terms of this Declaration, the Bylaws, the Rules or the Responsible Governance Policies (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it. In addition to the foregoing requirements, with respect to any judicial, administrative or arbitration proceeding that arises out of an alleged defect of any Common Element or Unit, the following provisions shall apply:

(a) Declarant and others responsible for the design and/or construction, including the General Contractor and the Architect, will have the right to be heard by the Owners and to access and inspect any portion of the Common Elements or the Units, including any improvement as to which a defect is alleged.

(b) Except as otherwise expressly set forth in this Declaration, the Association must comply with the requirements of Section 303.5 of CCIOA, prior to initiating any judicial, administrative or arbitration proceeding pertaining to alleged construction defects. In addition to such requirements, at least 60 days prior to seeking the approval of Owners to proceed with the judicial, administrative or arbitration proceeding and with respect to alleged construction defects, in furtherance of the requirements of **Section 13.5**, the Board shall send written notice to each Owner disclosing all of the following information, which notice shall be signed by the President of the Association, describing the nature of the legal action, which identifies the alleged defects with reasonable specificity, the relief sought, a good-faith estimate of the benefits and risks involved, and any other pertinent information. In addition to any specific disclosures required under Section 303.5 of CCIOA, such notice must also include the following information:

(i) the amount of expenses and fees the Association anticipates will be incurred, directly and indirectly, in prosecuting the action;

(ii) the anticipated amount of attorneys' fees, consultant fees, expert witness fees and court costs, whether incurred by the Association directly or for which it may be liable if it is not the prevailing party in the action or if it does not proceed with the action;

(iii) the estimated impact on the value of the Property and each Unit, whether or not it is the subject of the action, both during the action and after its resolution;

(iv) the estimated impact on the marketability of the Property and each Unit, whether or not it is the subject of the action, including any impact on the ability to refinance the Unit during and after the action;

(v) the manner in which the Association proposes to fund the cost of the action, including any proposed special assessments or the use of any reserves, whether it is the prevailing party in the action or not, and whether it determines to abandon the action prior to conclusion;

(vi) the anticipated duration of the action and the likelihood of success;
and

(vii) whether Declarant, General Contractor or the Architect, or any other party responsible for the design and/or construction, has offered to make any repairs or give a cash settlement and, if so, the details of such offer.

13.3 Alternative Method for Resolving Disputes. Declarant; the Association, its officers, directors, and committee members; any Owner; all Persons subject to this Declaration; and any Person not otherwise subject to this Declaration who agrees to submit to this **Section 13.3** including the General Contractor and the Architect (each such entity being referred to as a “**Bound Party**”) agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in **Section 13.4** of this Declaration (each, a “**Claim**”), to the procedures set forth in **Section 13.5** of this Declaration.

13.4 Claims. Unless specifically exempted below, all Claims arising out of or relating to (a) the interpretation, application or enforcement of this Declaration, (b) the rights, obligations and duties of any Bound Party under this Declaration, and (c) any alleged defect in the design, engineering or construction of the Unit or the Common Element, will be subject to the provisions of **Section 13.5** of this Declaration. Notwithstanding the above, unless all parties thereto otherwise agree, the following are not Claims and will not be subject to the provisions of **Section 13.5** of this Declaration:

(a) Any suit by the Association against any Bound Party to enforce the provisions of **Article 9** of this Declaration (Assessments);

(b) Any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to act under and enforce the provisions of **Article 5**, **Article 10**, and **Article 11**;

(c) Any suit between or among Owners, to the extent such suit asserts a Claim which would constitute a cause of action independent of this Declaration; and

(d) Any action by a Bound Party to enforce the provisions of this **Article 13**.

Notwithstanding the foregoing, with the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in **Section 13.3**.

13.5 Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim (“**Claimant**”) against any other Bound Party (“**Respondent**”) (Claimant and Respondent are hereinafter referred to individually, as a “**Party**,” or, collectively, as the “**Parties**”) will notify each Respondent in writing (the “**Notice**”), stating plainly and concisely (i) the nature of the Claim, including the Persons involved and Respondent’s role in the Claim; (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim. The Notice must be accompanied by copies of all maintenance records relating to the portions of the Property that are the subject of the Claim. Failure to maintain maintenance records or the absence of maintenance

records will create a rebuttable presumption that no maintenance was performed. The Notice will not be effective unless it includes such maintenance records or a statement that none exist.

(b) Negotiation and Mediation.

(i) The Parties will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation, except to the extent that the Association is a party.

(ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) (“**Termination of Negotiations**”), Claimant will have 30 additional days to submit the Claim to mediation with the Judicial Arbitrator Group, Inc., 1601 Blake Street, Suite 500, Denver, Colorado 80202, unless the Parties agree to utilize a different mediator or mediation service. The cost of the mediation will be divided equally among the parties to the mediation.

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

(iv) Any settlement of the Claim through mediation will be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator will issue a notice of termination of the mediation proceedings (“**Termination of Mediation**”). The Termination of Mediation notice will set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Within 10 days of the Termination of Mediation, Claimant will make a final written settlement demand (“**Settlement Demand**”) to Respondent, and Respondent will make a final written settlement offer (“**Settlement Offer**”) to Claimant. If Claimant fails to make a Settlement Demand, Claimant’s original Notice will constitute the Settlement Demand. If Respondent fails to make a Settlement Offer, Respondent will be deemed to have made a “zero” or “take nothing” Settlement Offer.

(vi) Unless mutually waived in writing by all parties, strict compliance with the negotiation and mediation requirements of this **Section 13.5** is a condition precedent to the Claimant’s right to proceed to final and binding arbitration under **Section 13.5(c)** below.

(c) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, Claimant will have 15 additional days to

submit the Claim to arbitration with Judicial Arbiter Group, 1601 Blake Street, Suite 500, Denver, Colorado 80202, unless the Parties agree to utilize a different mediator or mediation service. The arbitration shall be with a single arbitrator and the arbitrator shall not be the same person who was the mediator. The single arbitrator shall be selected in the same manner as the third arbitrator is selected in this paragraph below. The arbitration will be conducted in accordance with the procedures set forth in the attached **Exhibit C**. In the event any claim related to any alleged defect in the design, engineering or construction of a Unit or a Common Element exceeds \$1 million, exclusive of interest and attorneys' fees, the dispute shall be heard and determined by three arbitrators. One arbitrator shall be selected by the Association, a second arbitrator shall be selected by Declarant and those two arbitrators shall select the third arbitrator. To the extent reasonably available, arbitrators shall be either construction attorneys or construction or engineering professionals. If not timely submitted to arbitration or if Claimant fails to appear for the arbitration proceeding, the Claim will be deemed abandoned, and Respondent will be released and discharged from any and all liability to Claimant arising out of such Claim; provided, however, that nothing herein will release or discharge Respondent from any liability to Persons other than Claimant.

(ii) This **Section 13.5(c)** is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Colorado. In no event may the demand for arbitration of a Claim be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations or statute of repose. The arbitration award (the "**Award**") will be final and binding with no right to appeal, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(d) Allocation of Costs of Resolving Claims.

(i) Except as provided for below, each Party, including, without limitation, any Owner and the Association, will share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("**Post Mediation Costs**"). Under no circumstances will either Party be entitled to recover its attorneys' fees from the other party (except as specifically provided under Section 123 of CCIOA). BY ACQUIRING A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND WILL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS' FEES (EXCEPT AS SPECIFICALLY PROVIDED UNDER SECTION 123 OF CCIOA) IN CONNECTION WITH THE ARBITRATION OF A DISPUTE UNDER THIS **SECTION 13.5(d)**.

(ii) Any Award which is equal to or more favorable to the Claimant than the Claimant's Settlement Demand will add the Claimant's Post Mediation Costs to the Award, such costs to be borne by the non-prevailing party. Any Award which is equal to or less favorable to the Claimant than any prevailing party's Settlement Offer will award the prevailing party its Post Mediation Costs. With respect to any Award which is less favorable to the Claimant than Claimant's Settlement Demand yet more favorable to

Claimant than the relevant party's Settlement Offer, each party will bear its own Post Mediation Costs.

(e) Limitation on Damages. No Party, including, without limitation, any Owner and the Association, will be entitled to receive any award of damages in connection with the arbitration of a Claim other than such Party's actual damages, and Declarant, the Association and any Owner will be deemed to have waived their right to receive any damages in a dispute other than actual damages, which waived damages include, without limitation, attorneys' fees (except as specifically provided under Section 123 of CCIOA), special damages, consequential damages, and punitive or exemplary damages. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME, BY ACQUIRING A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND WILL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY DISPUTE UNDER **SECTION 13.5**, THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION DEFECTS (INCLUDING SOILS RELATED ISSUES), MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

(f) Multiple Party Claims. Multiple Party Claims not consolidated or administered as a class action pursuant to the following sentence shall be arbitrated individually. Only with the written request of all Parties involved, but not otherwise, the arbitrator may consolidate in a single arbitration proceeding any multiple Party Claims that are substantially identical.

(g) Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with **Section 13.5(b)** above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in this **Section 13.5**. In such event, the Party taking action to enforce an agreement or Award will be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs to the extent specifically provided under Section 123 of CCIOA.

(h) Waiver of Jury Trial. BY AGREEING TO ARBITRATE CLAIMS, ALL BOUND PARTIES GIVE UP ANY RIGHT THAT PARTY MAY HAVE TO A JURY TRIAL, AS WELL AS OTHER RIGHTS THAT THE BOUND PARTY WOULD HAVE IN A COURT THAT ARE NOT AVAILABLE OR ARE MORE LIMITED IN ARBITRATION, SUCH AS THE RIGHT TO APPEAL. IF FOR ANY REASON, THE REQUIREMENT TO SUBMIT A CLAIM TO

ARBITRATION PURSUANT TO THIS Article 13 IS HELD BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, THEN TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY SUCH ACTION WILL BE HEARD AND DECIDED BY A JUDGE AND NOT A JURY, AND THE OWNERS AND THE ASSOCIATION WAIVE ANY RIGHT TO A TRIAL BY JURY IN SUCH MATTER.

(i) Other Rights. If any provisions of this Article 13 conflict with any applicable laws of the State of Colorado that provide non-waivable legal rights, including without limitation, the Homeowner Protection Act of 2007, the Colorado Construction Defect Action Reform Act, or the Colorado Consumer Protection Act, the non-waivable terms of such law shall control. If any provisions of this Article 13 are interpreted by any court or arbitrator to be void or invalid under Section 13-21-111.5, C.R.S., such provision shall be interpreted so as to give maximum effect of such provision's intent, as limited by Section 13-21-111.5, C.R.S.

13.6 Legal Proceedings. Subject to the provisions of **Sections 13.1 through 13.5** of this Declaration, the Association will have the right, but not the obligation, to institute legal proceedings to enforce all rights under this Declaration, the Bylaws, the Rules and the Responsible Governance Policies. The decision to institute legal proceedings by seeking the approvals required pursuant to **Section 13.2** of this Declaration will be in the sole discretion of the Board and will be governed by the considerations detailed in this **Article 13**. FAILURE TO COMMENCE AND DILIGENTLY PROSECUTE MEDIATION OR ARBITRATION OF ANY CLAIM IN ACCORDANCE WITH THIS **Article 13** SHALL CONSTITUTE A FULL AND FINAL WAIVER OF ANY SUCH CLAIM. ANY LIMITATIONS ON DAMAGES AND ALL WAIVERS OF LIABILITY AND RIGHTS TO AWARDS OF DAMAGES SET FORTH IN ANY SECTION OF THIS DECLARATION WITH RESPECT TO OWNERS, INCLUDING, WITHOUT LIMITATION, **SECTIONS 10.7, 13.5 AND 14.4**, WILL APPLY WITH EQUAL FORCE AND EFFECT WITH RESPECT TO THE ASSOCIATION IN ANY LEGAL PROCEEDINGS INSTITUTED BY THE ASSOCIATION UNDER THIS **Article 13**. THE PROVISIONS OF **SECTIONS 13.1 THROUGH 13.5** WILL BE BINDING UPON THE OWNERS AND THE ASSOCIATION TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME.

13.7 Intended Third Party Beneficiaries; Amendment of this Article. Declarant, General Contractor and the Architect are intended third party beneficiaries of this **Article 13** and are entitled to enforce its terms. This **Article 13** shall not be amended unless such amendment is approved by Owners of Units to which at least sixty seven percent (67%) of the total votes in the Association are allocated, plus the affirmative vote of each of Declarant, General Contractor and Architect.

ARTICLE 14

OWNER'S ACKNOWLEDGMENTS AND WAIVERS

14.1 Owner's Acknowledgments. Each Owner, by acquiring an interest in the Property, is hereby advised of, and Declarant hereby discloses, the following matters affecting the Property:

(a) The Property is located in an urban setting that may subject the Property and each Owner to unpredictable amounts of visible, audible and odorous impacts (collectively,

the “**Urban Impacts**”). Without limiting the generality of the foregoing, each Owner, by acquiring an interest in the Property, acknowledges that: (i) noise, air pollution, and odors may impact the Property as a result of commercial and retail uses located adjacent to or near the Property, and that there are no warranties from Declarant regarding sound attenuation with respect to such uses; (ii) the Property is located adjacent to or near retail, restaurant, office, industrial and other commercial locations and parks and major streets and public transportation stops with attendant traffic, street noise and air pollution, including businesses and restaurants with illuminated signs and/or drive-through traffic; (iii) the Property may be located adjacent to or near other real property subject to existing or remediated environmental conditions; and (iv) adjacent or nearby current or future uses may block light and views (whether partially or entirely) from the Property.

(b) The Property is located in an area that is subject to or near ongoing construction activities (collectively, the “**Construction Activities**”). The Construction Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Construction Activities may include, without limitation: (i) construction traffic (including, without limitation, construction vehicles, equipment and vehicles used or owned by Declarant, its affiliates, adjacent landowners, and the employees, agents and contractors of any of them); and (ii) construction activities (including, without limitation, grading, excavation, clearing, site work, relocation of roadways and public utilities and construction of improvements) relating to the Property or nearby properties.

(c) A variety of commercial activities (the “**Commercial Activities**”) are and may be conducted within, nearby and adjacent to the Unit and the Property. The Commercial Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Commercial Activities may include, without limitation, (i) operation of office and retail establishments, (ii) activities relating to operating restaurants and bars, which may include preparation and sale of food and beverages, both alcoholic and non-alcoholic and which may include outdoor seating and outdoor speakers, illuminated signs, and drive-through traffic; (iii) commercial deliveries; (iv) concerts, performance, sporting or other special events, whether inside or outside, whether amplified or not, which may include amplified live or recorded music or other noises; (v) festivals, public gatherings, shows and other displays, fireworks displays, (vi) parking activities, including without limitation, valet parking operations and public parking operations, and traffic related thereto; (vii) exterior lighting as necessary for the above activities, both temporary and permanent, and (viii) operation of illuminated and non-illuminated signage.

(d) The Property is located in a mountain setting that may subject the Property and each Owner to unpredictable conditions, risks, impacts and disturbances (collectively, the “**Mountain Conditions**”). The Mountain Conditions may include, without limitation, (i) forest fires; (ii) landslides; (iii) floods; and (iv) severe weather conditions.

(e) Each Owner, by acquiring an interest in the Property, acknowledges that the Urban Impacts and Construction Activities, and the impacts and disturbances generated by the Urban Impacts and Construction Activities, may occur in and around the Property, and may occur during daytime and nighttime and may be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to time. Each Owner, by acquiring an interest in the Property, forever waives and releases any actions or claims the Owner and its successors and

assigns may have against Declarant and its successors and assigns and each of their respective parents, subsidiaries, affiliates, officers, directors, members, investors, contractors, agents and employees which in any way arise out of the existence, occurrence, or the temporary or permanent interruption, discontinuance or modification of the Urban Impacts and Construction Activities and such impacts and disturbances.

14.2 No View Easement. Notwithstanding anything contained in this Declaration to the contrary, each Owner, by acquiring an interest in the Property, acknowledges and agrees that there is no easement or other right, express or implied, for the benefit of any Owner or its Unit for light, view or air included in or created by this Declaration or as a result of ownership of the Unit. Likewise, each Owner, by acquiring an interest in the Property, acknowledges and agrees that any view, sight lines, or openings for light or air available from the Unit, or anywhere else on the Property, may be blocked or altered in whole or in part in the future by virtue of natural or unnatural causes, including but not limited to future construction or expansion of commercial or residential buildings or facilities, natural or artificial growth, loss or other alteration of vegetation or the surrounding landscape. EACH OWNER, BY ACQUIRING AN INTEREST IN THE PROPERTY, HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING EASEMENTS OR OTHER RIGHTS, WHETHER EXPRESS OR IMPLIED, FOR LIGHT, AIR, OR VIEW IN SUCH OWNER'S UNIT OR ANY OTHER PORTION OF THE PROPERTY. EACH OWNER, BY ACQUIRING AN INTEREST IN THE PROPERTY, HEREBY ACCEPTS SUCH DISCLAIMER, AND AGREES THAT DECLARANT AND ITS AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT OR ITS AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, RELATED TO ANY LOSS OF LIGHT, AIR, OR VIEW THAT MAY AFFECT THE UNIT OR THE PROPERTY.

14.3 Other Properties. Each Owner, by acquiring an interest in the Property, acknowledges that other properties are located adjacent to and in the general vicinity of the Property (the "**Other Properties**") and that the Other Properties may be developed pursuant to the land uses permitted by the Ordinances. Neither Declarant nor Declarant's employees, agents, officers, directors and affiliates make any representations concerning the planned uses of the Other Properties. Each Owner, by acquiring an interest in the Property, further acknowledges that the zoning for the Property and the Other Properties is established and governed by the Ordinances. Any amendment of those Ordinances requires approval of the Town. By acquiring an interest in the Property, each Owner acknowledges that it has not relied upon any statements or representations regarding the Property or the Other Properties, including, without limitation, any representations made by Declarant or any agents or employees of Declarant or any real estate agency or any agent, except for those statements and representations expressly set forth in this Declaration and the Ordinances.

14.4 Inspection by Others; Waiver of Post Inspection Liability. It is hereby expressly understood and agreed by Declarant and by any Owner upon acquiring an interest in the Property that Declarant relies upon governmental inspectors and other qualified subcontractors and tradesmen to inspect the construction of the Units and the Common Elements in order to verify compliance with construction plans and with any and all building code requirements applicable to residential construction. Declarant and each Owner further expressly understand and agree that, with respect to the Units and the Common Elements, upon compliance with the inspections

required by the local building department and the issuance of a certificate of occupancy by the responsible governmental agency, Declarant will be deemed to have used its best efforts to construct such Units and Common Elements in substantial compliance with the construction plans and all applicable building code requirements. EXCEPT AS OTHERWISE MAY BE PROVIDED IN A PURCHASE AND SALE OR OTHER WRITTEN AGREEMENT BETWEEN DECLARANT AND AN OWNER, EACH OWNER, BY ACQUIRING AN INTEREST IN THE PROPERTY, HEREBY KNOWINGLY AND WILLINGLY WAIVES AS AGAINST DECLARANT AND ITS DIRECTORS, OFFICERS, MEMBERS, PRINCIPALS AND AFFILIATES ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION, AND ALL LIABILITY, LOSSES, DAMAGES, COSTS OR EXPENSES THAT HAVE BEEN OR MAY BE INCURRED IN ASSOCIATION THEREWITH, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXEMPLARY DAMAGES, WHICH ARISE FROM OR ARE RELATED TO ANY NONCOMPLIANCE OF THE UNITS OR THE COMMON ELEMENTS WITH CONSTRUCTION PLANS OR BUILDING CODE REQUIREMENTS, WHICH NONCOMPLIANCE IS NEITHER SUBSTANTIAL NOR MATERIAL IN NATURE AND WHICH NONCOMPLIANCE IS DISCOVERED AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH UNITS OR COMMON ELEMENTS; AND ANY SUCH NONCOMPLIANCE WILL BE DEEMED UNINTENTIONAL WITH RESPECT TO DECLARANT. TO THE EXTENT THAT ANY SUBSTANTIAL OR MATERIAL NONCOMPLIANCE WITH APPLICABLE BUILDING CODES OR WITH THE CONSTRUCTION PLANS IS DISCOVERED WITH REGARD TO ANY UNIT OR THE COMMON ELEMENTS, THE PROVISIONS OF **Article 13** WILL GOVERN SUCH MATTER. THE PROVISIONS OF THIS **SECTION 14.4** WILL BE BINDING UPON THE OWNERS AND THE ASSOCIATION TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AS MAY BE IN EFFECT FROM TIME TO TIME.

14.5 Mold Disclosure. Molds are present in soil, air and elsewhere in the environment. Molds can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to Molds. Due to various reasons, including the varying sensitivities of different individuals to various types of Molds and other contaminants, as of the date of this Declaration there currently exist no state or federal standards regarding acceptable levels of exposure to Molds. According to the Consumer Product Safety Commission and the American Lung Association, some diseases or illnesses have been linked with biological pollutants in the indoor environment, including some forms of Molds. However, it is believed that many of these conditions may also have causes unrelated to the indoor environment. Therefore, as of the date of this Declaration it is unknown how many potential health problems relate primarily or exclusively to indoor air quality or Molds. By acquiring an interest in the Property, each Owner acknowledges and agrees that Declarant is not qualified and has not undertaken to evaluate all aspects of this very complex issue. EACH OWNER ACKNOWLEDGES THAT DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING, THE PAST, CURRENT OR FUTURE, PRESENCE OR ABSENCE OF MOLDS IN OR IN THE VICINITY OF ITS UNIT, ANY COMMON AREA OR IN ANY OTHER PORTION OF THE PROPERTY. Declarant recommends that each Owner, at the Owner's expense, conduct its own investigation and consult with such experts as such Owner deems appropriate regarding the occurrence and effects of Molds, the potential sensitivity or special risk individuals who will occupy or use the Owner's Unit may

have with respect to Molds, and methods to reduce or limit Molds within the Unit. The provisions of this **Section 14.5** will be binding upon the Owners to the fullest extent permitted by applicable law, as may be in effect from time to time.

14.6 Radon Disclosure. Each Owner, by acquiring an interest in the Property, acknowledges that Declarant has advised Owner that the Colorado Department of Health and the Environment, the United States Environmental Protection Agency, and other agencies and parties have historically detected elevated levels of naturally occurring radon gas in residential structures throughout the State of Colorado, which has not been an uncommon occurrence, and such occurrences of, and long-term exposure to, elevated levels of radon gas may be harmful to human health and may also adversely affect the value of the Property. DECLARANT HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING RADON GAS OR THE POSSIBILITY OF RADON GAS ENTERING THE UNITS OR ANY OTHER PORTION OF THE PROPERTY. EACH OWNER, BY ACQUIRING AN INTEREST IN THE PROPERTY, HEREBY ACCEPTS SUCH DISCLAIMER, AND AGREES THAT DECLARANT AND ITS SUCCESSORS AND ASSIGNS AND EACH OF THEIR RESPECTIVE PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, MEMBERS, INVESTORS, CONTRACTORS, AGENTS AND EMPLOYEES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST ALL SUCH PARTIES RELATED TO ANY OCCURRENCES OF RADON GAS THAT MAY AFFECT THE PROPERTY, INCLUDING ANY LIABILITY OR LOSS ARISING FROM ANY PERSONAL INJURY, PROPERTY DAMAGE OR LOSSES, OR DEATH ARISING FROM OR ASSOCIATED WITH ANY OCCURRENCE OR PRESENCE OF RADON GAS, WHETHER AND WHENEVER KNOWN OR UNKNOWN, OR SUSPECTED OR UNSUSPECTED, ALL TO THE FULLEST EXTENT PERMITTED BY LAW. Each Owner specifically agrees that the prevention of radon gas accumulation in the Owner's Unit will be the exclusive responsibility of such Owner.

ARTICLE 15 AMENDMENTS

15.1 Amendments Generally. This Declaration may be amended only by an instrument approved by Owners to which at least sixty seven percent (67%) of the total votes in the Association are allocated.

15.2 Exceptions for Certain Amendments. Notwithstanding **Section 15.1**, the following amendments to this Declaration shall be made as follows:

- (a) **Article 13** may only be amended in accordance with **Section 13.7**.
- (b) Declarant, without the vote or consent of the Board or the Owners, may amend this Declaration and the Map to correct clerical, typographical or technical errors.
- (c) Any amendment to this Declaration that changes a specific clause or provision prescribing a certain percentage of votes or approvals for action to be taken under that clause or provision, such as **Section 16.1**, requires the votes or approvals of least that percentage (as prescribed in that clause or provision).

(d) No amendment to this Declaration may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

(e) This **Article 15** shall be subject to the requirements of **Section 16.3**.

15.3 Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Office of the County Recorder unless a later effective date is specified therein. Any challenge to an amendment must be made within one (1) year of its recordation or such amendment shall be conclusively presumed to have been validly adopted.

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

ARTICLE 16 RIGHTS OF MORTGAGEES

16.1 Notices to Mortgagees, Right to Cure. Any Mortgagee may notify the Association in writing that such Mortgagee requests copies of any written notices sent by the Association to the Owner whose Unit is encumbered by such Mortgagee's Mortgage concerning any default by such Owner of its obligations under this Declaration. Any Mortgagee who has filed such a notice with the Association will be entitled to receive a copy of any such notice from the Association to such Owner, which copy will be given concurrently with the Association's notice to the defaulting Owner. Such a Mortgagee will have the right to cure any monetary default by such Owner within the same period of time given to the Owner. In addition, any Mortgagee that by written notice to the Association requests: (a) a copy of any amendment to this Declaration, (b) notice of any condemnation or casualty loss that affects the Unit securing its Mortgage and (c) notice of any proposed action subject to **Section 16.3**, will be entitled to such amendment or notices from the Association.

16.2 First Mortgage Foreclosure. The lien of any Mortgagee's interest in a Mortgage is subject to the Association's lien for, and any First Mortgagee acquiring a Unit through foreclosure of a Mortgagee's interest in a Mortgage is liable for, any unpaid Assessments (i) which are delinquent at the time the First Mortgage is recorded in the Office of the Clerk and Recorder; or (ii) which become due after the First Mortgage is recorded in the Office of the Clerk and Recorder to the extent of an amount equal to Assessments based on the budget that is approved from time to time pursuant to **Section 9.2** that would have become due during the six-month period immediately before the Association or any Person holding a lien senior to any part of the Association's lien commences an action or a nonjudicial foreclosure either to enforce or extinguish the lien.

16.3 Mortgagee Consent. Notwithstanding any other provision of this Declaration to the contrary, the vote or written consent of an Owner in favor of an action specified in **Sections 16.3(a)** through **16.3(i)** below will be counted as a "NO" vote, regardless of whether the Owner votes in favor of a particular item unless the First Mortgagee of such Owner's Unit has consented thereto

in writing, which notice and consent shall be in accordance with Section 217(1)(b) of CCIOA. The action restricted by this **Section 16.3** is any vote to amend this Declaration to:

- (a) Change the Base Assessment allocations;
- (b) Terminate this Declaration;
- (c) Change the interest of an Owner in the allocation or distribution of insurance proceeds or condemnation awards;
- (d) Amend **Article 7**;
- (e) Change the provisions of any part of this **Article 16**;
- (f) Create any new rights solely in favor of Declarant;
- (g) Change or relocate the boundaries of any Unit;
- (h) Reallocate any rights to use any of the Common Elements; or
- (i) Change any voting percentages required to take any action, as set forth in this Declaration.

ARTICLE 17 MISCELLANEOUS

17.1 Term; Method of Termination. This Declaration shall be effective upon the date of recordation and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is recorded in the Office of the County Recorder. From and after the expiration of said fifty (50) year period, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless this Declaration and Property is terminated in accordance with Section 218 of CCIOA.

17.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions of this Declaration, it being the intent of this Declaration that any invalid provision be modified to the minimum extent necessary to make it or its application valid and enforceable.

17.3 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

17.4 Use of the Phrase “Camber Townhomes”. While Declarant owns any Unit, no Person shall use the phrase “Camber Townhomes” or any derivative, or any other term which Declarant may select as the name of the Property or any component thereof, in any printed or promotional material without Declarant’s prior written consent. However, Owners may use the phrase “Camber Townhomes” in printed or promotional matters solely to specify that particular

property is located within the Property and the Association shall be entitled to use the phrase “Camber Townhomes” in its name.

17.5 References to Covenants in Deeds; Binding Effect. Deeds to and instruments affecting any Unit of any part of the Property may contain the provisions of this Declaration by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall run with and burden the Property and each portion thereof and be binding upon each Owner and occupant and all other parties having any right, title or interest in, or otherwise coming upon, using, or enjoying the Property, their heirs, personal representatives, executors, administrators, successors and assigns.

17.6 Gender and Number. Wherever the context of this Declaration so requires, the words used in the masculine gender shall include the feminine and neuter genders; words in the singular shall include the plural; and words in the plural shall include the singular.

17.7 Captions and Titles. All captions, titles or headings of the Articles and Sections of this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration to be effective the ____ day of _____, 202[●].

DECLARANT:

624 MONTEZUMA RD., LLC,
a Colorado limited liability company

By: _____
Title: Authorized Representative

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the Authorized Representative of 624 Montezuma Rd., LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

The Land referred to herein is located in the County of Summit, State of Colorado, and described as follows:

[•]

EXHIBIT B-1

BASE ASSESSMENT ALLOCATIONS

BUILDING	UNIT NO.	BEDROOMS	ALLOCATION
A	1	3	7.50%
A	2	2	5.00%
A	3	3	7.50%
A	4	3	7.50%
B	1	3	7.50%
B	2	2	5.00%
B	3	3	7.50%
B	4	3	7.50%
C	1	3	7.50%
C	2	3	7.50%
C	3	3	7.50%
D	1	3	7.50%
D	2	3	7.50%
D	3	3	7.50%
-	TOTAL		100.00%

EXHIBIT B-2

BASE ASSESSMENT ALLOCATIONS

(IF ONE (1) WORKFORCE HOUSING UNIT OPTS OUT OF NON-ESSENTIAL SERVICES)

BUILDING	UNIT NO.	BEDROOMS	ALLOCATION
A	1	3	7.894%
A	2	2	0%
A	3	3	7.894%
A	4	3	7.894%
B	1	3	7.894%
B	2	2	5.272%
B	3	3	7.894%
B	4	3	7.894%
C	1	3	7.894%
C	2	3	7.894%
C	3	3	7.894%
D	1	3	7.894%
D	2	3	7.894%
D	3	3	7.894%
-	TOTAL		100.00%

OR

BUILDING	UNIT NO.	BEDROOMS	ALLOCATION
A	1	3	7.894%
A	2	2	5.272%
A	3	3	7.894%
A	4	3	7.894%
B	1	3	7.894%
B	2	2	0%
B	3	3	7.894%
B	4	3	7.894%
C	1	3	7.894%
C	2	3	7.894%
C	3	3	7.894%
D	1	3	7.894%
D	2	3	7.894%
D	3	3	7.894%
-	TOTAL		100.00%

EXHIBIT B-3

BASE ASSESSMENT ALLOCATIONS
(IF BOTH WORKFORCE HOUSING UNITS OPT OUT OF NON-ESSENTIAL SERVICES)

BUILDING	UNIT NO.	BEDROOMS	ALLOCATION
A	1	3	8.33333333%
A	2	2	0%
A	3	3	8.33333333%
A	4	3	8.33333333%
B	1	3	8.33333333%
B	2	2	0%
B	3	3	8.33333333%
B	4	3	8.33333333%
C	1	3	8.33333333%
C	2	3	8.33333333%
C	3	3	8.33333333%
D	1	3	8.33333333%
D	2	3	8.33333333%
D	3	3	8.33333333%
-	TOTAL		100.00%

EXHIBIT C

ARBITRATION RULES

Claimant will submit a Claim to arbitration under these Arbitration Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("**Arbitration Notice**").

1. Any arbitration conducted under these Rules and in connection with any Claim arising out of or relating to the interpretation, application, or enforcement of the Declaration, or relating to the design or construction of the Common Elements, will conform with and be subject to the rules and procedures adopted and routinely applied by the American Arbitration Association ("**AAA**") except to the extent inconsistent with the Declaration.
2. The Parties will select either one arbitrator or three arbitrators (in either case, the "**Panel**") as specified in **Section 13.5(c)** of the Declaration and as further described as follows ("**Party Appointed Arbitrators**"): all Claimants will agree upon one Party Appointed Arbitrator, and all Respondents will agree upon one Party Appointed Arbitrator. The Party Appointed Arbitrators will, by agreement, select one Additional arbitrator ("**Additional**"). In cases where one arbitrator is required under **Section 13.5(c)** of the Declaration, the Additional shall be the one arbitrator.
3. If the Panel is not selected under Rule 2 within forty five (45) days from the date of the Arbitration Notice, any Party may notify the nearest chapter of The Community Associations Institute for any dispute arising under the Declaration, the Bylaws, the Design Guidelines or the Rules, or AAA for any dispute relating to the design or construction of any portion of the Property, which will appoint one Additional ("**Appointed Additional**") and will notify the Appointed Additional and all Parties in writing of such appointment. The Appointed Additional will thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees will have no further duties involving the arbitration proceedings.
4. No Person may serve as an Additional in any arbitration in which that Person has any financial or personal interest in the result of the arbitration. Any Person designated as an Additional or Appointed Additional will immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("**Bias Disclosure**"). If any Party objects to the service of any Additional or Appointed Additional after receipt of that Additional's Bias Disclosure, such Additional or Appointed Additional will be replaced in the same manner in which that Additional or Appointed Additional was selected.
5. The Appointed Additional or Additional, as the case may be ("**Arbitrator**") will fix the date, time and place for the hearing. The place of the hearing will be at a place mutually agreed to by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator will take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but will hear Claimant's case and decide accordingly.
7. All Persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator will determine any relevant legal issues, including whether all indispensable Parties are Bound Parties or whether the Claim is barred by the statute of limitations.
8. The hearing will be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.
9. Notwithstanding the foregoing, multiple Party disputes or Claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually. Only with the written request of all Parties involved, but not otherwise, the Arbitrator may: (a) consolidate in a single arbitration proceeding any multiple Party Claims that are substantially identical; and (b) arbitrate multiple Claims as a class action in accordance with the rules and procedures adopted by AAA.
10. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance will be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and will immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional will be replaced by another independent licensed professional selected by the Arbitrator.
11. Discovery shall be conducted in accordance with the rules and procedures adopted by AAA, however, no Party will deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and will produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator will be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence will not be necessary. The Arbitrator will be authorized, but not required, to administer oaths to witnesses.
12. The Arbitrator will declare the hearings closed when satisfied the record is complete.
13. There will be no post hearing briefs.

14. The Award will be rendered immediately following the close of the hearing, if possible, and no later than fourteen (14) days from the close of the hearing, unless otherwise agreed by the Parties. The Award will be in writing, will be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it will be in summary form.
15. Except with respect to awards of attorneys' fees and expenses only to the extent specifically provided under Section 123 of CCIOA, no Party will be entitled to receive any award of damages in connection with the arbitration of a Dispute other than such Party's actual damages. All Parties to an arbitration conducted under these Rules will be deemed to have waived their right to receive any damages other than actual damages, including, without limitation, special damages, consequential damages, and punitive or exemplary damages. The provisions of this paragraph 15 will be binding upon all Parties to the fullest extent permitted by applicable law, as may be in effect from time to time.

Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

EXHIBIT D

DESIGN GUIDELINES

A. Guideline Objectives.

These Design Guidelines are a guide for the Owners who are members of the Camber Townhomes Owners Association, Inc. (“**Association**”). In order to maintain the architectural character and integrity of the planned community which is governed by the Association (the “**Community**”) as well as to preserve the value of the Units, the Board of Directors of the Association (the “**Board**”) has enacted the following guidelines, which shall apply to the Owners’ construction activities within the Community. **Article 10** of the Declaration of Covenants, Conditions and Restrictions for Camber Townhomes recorded by 624 Montezuma Rd., LLC, a Colorado liability company (as “**Declarant**”), in the Public Records of Summit County, Colorado (as the same may be amended from time to time, the “**Declaration**”), provides the authority to enact and enforce these design guidelines (“**Design Guidelines**”). Strict observance and adherence to these Design Guidelines is required. However, in the event of any conflict between these Design Guidelines and the Declaration, the Declaration shall prevail. All capitalized terms used but not defined herein shall be defined as set forth in the Declaration.

B. Architectural Review Application Process.

Except as provided in the Declaration, no improvements (including, but not limited to, staking, clearing, excavation, grading and other site work), exterior alteration of existing Improvements (including painting), placement or posting of any object or thing on the exterior of any Unit (e.g. fences, signs, antennae, clotheslines, playground equipment, lighting, temporary structures, and artificial vegetation), planting or removal of landscaping materials, or installation or removal of an irrigation system shall take place except with the written consent of the Board. To initiate the process for approval, the Owner shall complete and submit an application for approval on the form and containing such information as may be prescribed by the Board (“**Application**”). No Applications will be reviewed by the Board until they are deemed complete by the Board. The Board will review the completed Application at their next meeting (Owners are welcome to attend to further explain their improvements) and respond to the Owner within thirty (30) days of submission of the complete Application. The Board may need to consult architects, engineers or other consultants and do on-site inspections in connection with reviewing and administering any Application. All costs incurred by the Board in reviewing and administering an application shall be the responsibility of the Owner and such costs may be enforced by the Association against the Owner as a Special Assessment in accordance with the Declaration. Where appropriate and at the discretion of the Board, the Owner may be required to submit supplemental information and execute indemnification and hold harmless agreements.

Applications should be submitted at least sixty (60) days prior to the Owner’s desired commencement of work. The Board’s response shall advise the Owner submitting the Application, in writing, of (i) the approval of the Application, or (ii) the segments or features of the Application which the Board deems inconsistent or not in conformity with the Design Guidelines, the reasons for such finding, and suggestions for the curing of such objections. In the event the Board fails to advise the submitting Owner by written notice within such thirty (30) day period of either the

approval or disapproval and suggestions for curing the objections of the Board, approval shall be deemed to have been denied.

Any Owner which has had a portion of its application denied by the Board shall either not pursue the denied portion of the Application or resubmit the Application as to the denied portion incorporating the suggested cures of the Association. The Association will review and respond to any completed revised Applications within fifteen (15) days of receipt. In the event the Board fails to advise the submitting Owner by written notice within such fifteen (15) day period of either the approval or disapproval of the revised Application and suggestions for curing the objections of the Board, approval of the revised portion of the Application shall be deemed to have been denied.

The Board's review of the Application and approval of any Application shall be for its sole benefit and shall not create or imply any obligation on the part of the Board to review the same for the Owner's benefit, whether with respect to quality, design, compliance with law or any other matter. Accordingly, notwithstanding any review of an Application by the Board or any of its architects, engineers or other consultants, and notwithstanding any advice or assistance that may be rendered to the Owner by the Board or any such consultant, the Board shall not be liable for any error or omission in the Application or have any other liability relating thereto. Without limiting the foregoing, the submitting Owner shall be responsible for ensuring that all elements of the design of the Application comply with law and are otherwise suitable for the Owner's use of its Unit.

Failure to obtain necessary approval in writing from the Board is a violation of Association policies in accordance with the Declaration and may require modification or removal of the Improvements at the Owner's expense, and could result in fines and/or damages being assessed should the Association or another Owner be harmed by the Improvements. The Board reserves the right to hire an inspector at the expense of the Owner to preview or review the project. If construction is not completed on a project for which an Application has been approved within the period set forth in the approval, such approval shall be deemed withdrawn and such incomplete construction shall be deemed to be in violation of these Design Guidelines and subject to the fines and/or damages described herein.

C. Architectural Material Construction Standards.

1. All work must be performed in a manner consistent with the general Community construction and appearance of the Community. All work considered being of an unsightly finished nature or of lesser quality than the prevailing Community standards must be reworked to an acceptable appearance at the sole discretion of the Association.

2. When construction work requires the use of an adjoining Unit or Units, the applicant must obtain written permission from the adjoining property Owner(s). A copy of that permission must be submitted with the Application.

3. If desired by the Board, any architectural changes approved by the Board and installed by any Owner are the sole and future responsibilities of the Owner and future Owners in terms of upkeep and replacement costs.

D. Disruption of the Community Common Area.

Any Common Element which is damaged or disrupted due to the installation, construction or maintenance of an individual Owner's Improvements will be restored by the Association to its original condition at the expense of the responsible Owner.

E. County/Town Building Permits or other Governmental/Quasi-governmental Approvals.

Approval by the Board for any improvements or alterations does not waive the necessity of obtaining required building permits or other governmental or quasi-governmental approvals. Obtaining building permits or other governmental or quasi-governmental permits does not waive the need for Board approval. Rulings and information on county building permit requirements should be obtained from the Town of Keystone Building Department.

F. Reporting Violations.

The Association does not actively seek out violations of these Design Guidelines. Instead, it relies upon the Owners to comply with and support the guidelines contained within the Declaration and these Design Guidelines. When an Owner or its Permittee becomes aware of a possible violation it should be reported to the Association. In all cases the Association will require a written or verbal notice of the alleged violation from the affected Owner(s).

G. Guidelines.

1. Fireplaces

- a. The installation of fireplaces will be determined on a case by case basis and require written Board approval.
- b. Only gas (no wood burning) fireplaces may be installed.
- c. All required inspections and permits are to be submitted to the Board after installation of the fireplace.

2. Windows and Doors

- a. Replacement windows and doors shall be of a style and quality consistent with the original construction of the Units.
- b. Prompt repair and replacement of damaged or missing windows and doors and window and door screens are the responsibility of the Owner.
- c. Wrought iron or security bars of any type that are installed on the exterior of windows and doors require the approval of the Board.
- d. Awnings, blinds, shutters, sunshades or other exterior coverings of any type over windows, doors or other openings on the exterior of the Units require Board approval.

3. Fences

- a. Replacement fencing shall be of a style and quality that is the same as the original construction of the fence.

- b. Prompt maintenance, repair and replacement of damaged fences are the responsibility of the applicable Owner.
- 4. Landscaping
 - a. Common Element landscaping is to be maintained by the Association only.
 - b. Owners are not to add to or alter the Common Element landscaping.
- 5. Lighting
 - a. Replacement exterior lighting and light fixtures on Units shall be of a style and quality that is the same as the original construction of the Units.
 - b. Proposed new exterior lighting and light fixtures are to be compatible with existing fixtures in size, shape, color and illumination and must be approved by the Board.
 - c. Prompt repair and replacement of damaged or missing exterior lighting and light fixtures are the responsibility of the applicable Owner.
- 6. Painting/Staining and Caulking Exterior
 - a. Except as provided in the Declaration, all exterior maintenance of the Dwellings shall be performed by the Owner.
 - b. Any painting or staining of any of the Common Elements is prohibited.
- 7. Patio Covers and Deck Surfacing
 - a. Any structural change of a deck or patio area requires Board approval, including the installation of patio and deck covers and trellises of any kind.
 - b. Board approval is needed to cover a patio or deck with new surfacing.
- 8. Grills: Except for electric grills which shall be permitted, the use of any type of grill for outdoor cooking is prohibited (e.g., charcoal grills, wood-burning grills, gas grills, etc.).
- 9. Satellite Equipment and Antennas
 - a. Board approval is required for all satellite installations.
 - b. Owners may install satellite dishes of one (1) meter (39.37") or less and wireless cable antennas one (1) meter or less in diameter or diagonal measurement on their Unit. Written notice of the proposed size and location of the dish or antenna shall be given to the Board prior to installation. No dish, antenna or related wiring may be installed on or in any portion of the Common Elements.
 - c. This regulation was written from the FCC Fact sheet and their corresponding rulings on placement of antennas. It can be found at: <http://www.fcc.gov/mb/facts/otard.html> or may be obtained directly from the FCC. The rule cited as 47 C.F.R. Section 1.4000 was put in effect October 12, 1996. It prohibits restrictions that impair the installation, maintenance, or use of antennas used to receive video programming. This ruling covers dishes that are less than 39.37 inches in diameter, MMDS (wireless cable), and antennas designed to receive local television signals. This ruling also covers antennas used to receive and send internet signals but the ruling does not include AM/FM, Ham, CB and DARS signals. The rule prohibits most restrictions that (1) unreasonably delay or prevent

installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; (3) preclude reception of an acceptable quality signal.

10. Storage sheds: The installation of storage sheds is prohibited.

EXHIBIT E

**OTHER RECORDED EASEMENTS AND
LICENSES AFFECTING THE PROPERTY**

[To insert.]