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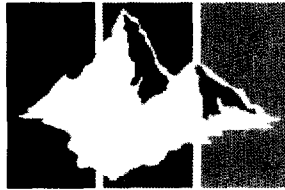


**TOWNHOME DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
SHADOWROCK TOWNHOMES**
(A Residential Townhome Community in Eagle County, Colorado)

This Declaration does not and is not intended to create a condominium within the meaning of the Colorado Common Interest Ownership Act, C.R.S. §38-33.33-101, et seq.

NOTE: NO PORTION OF THE PROPERTY DESCRIBED IN RECITAL A IS SUBJECT TO THE TERMS OF THIS DECLARATION UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PORTION OF THE PROPERTY IS RECORDED WITH THE OFFICE OF THE CLERK AND RECORDER FOR EAGLE COUNTY, COLORADO IN ACCORDANCE WITH SECTION 16.02 BELOW.

DECLARANT: BLUE RIDGE INVESTMENTS, L.P., a Texas limited partnership



Shadowrock

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Shadowrock

TOWNHOME DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
SHADOWROCK

This Townhome Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made by BLUE RIDGE INVESTMENTS, L.P., a Texas limited partnership (the "Declarant"), and is as follows:

RECITALS:

A. Declarant is the owner of the Blue Ridge Planned Unit Development, a Planned Unit Development located in Eagle County, Colorado, according to the Final Plat thereof, recorded on April 3, 2006 at Reception No. 200608134 in the Office of the Clerk and Recorder for Eagle County, Colorado (the "Property").

B. Declarant desires to create a Planned Community pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.33-101, *et seq.*, and as amended from time to time ("CCIOA") on the Property and carry out a uniform plan for the development, improvement, and sale of the Property, with Declarant to act as Declarant pursuant to this Declaration.

C. Portions of the Property may be made subject to this Declaration upon the recordation of one or more notices of applicability pursuant to *Section 16.02* below, and once such notices of applicability have been recorded pursuant to *Section 16.02*, the portions of the Property described therein will constitute the Development (as defined below) and will be governed by and fully subject to this Declaration.

No portion of the Property is subject to the terms and provisions of this Declaration until a Notice of Applicability (as defined in *Section 16.02*) is recorded in the Office of the Clerk and Recorder for Eagle County, Colorado. A Notice of Applicability may only be filed by the Declarant. If the Declarant is not the owner of any portion of the Property then being made subject to the terms and provisions of the Declaration, the owner of the Property must execute the Notice of Applicability evidencing its consent to its recordation.

D. By the filing of this Declaration, Declarant serves notice that upon the further filing of one or more notices of applicability pursuant to the requirements of *Section 16.02*

below, portions of the Property identified in such notice or notices will be subjected to the terms and provisions of this Declaration.

PROPERTY VERSUS DEVELOPMENT

"Property"-	Described in <i>Recital A</i> . This is the land that <u>may be made</u> subject to this Declaration, from time to time, by the filing of one or more Notices of Applicability.
"Development"-	This is the portion of the land described in <i>Recital A</i> that <u>has been made</u> subject to this Declaration through the filing of a Notice of Applicability.

NOW, THEREFORE, it is hereby declared: (i) that those portions of the Property as and when subjected to this Declaration pursuant to Section 16.02 below will be held sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each owner thereof; and (ii) that each contract or deed conveying those portions of the Property which are subjected to this Declaration pursuant to Section 16.02 will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Declaration uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Declaration, the text will control.

ARTICLE 1
DEFINITIONS

1.01 Definitions. In addition to any other terms defined elsewhere in this Declaration, the following words when used in this Declaration (unless the context shall otherwise prohibit) shall have the following respective meanings:

- (a) **"Allocated Interests"** means the common expense liability, and votes in the Association allocated and assigned to each Lot pursuant to the terms and provisions of this Declaration. On the date this Declaration is filed no portion of the Property is subject to this Declaration and, accordingly, no Allocated Interests are assigned to any portion thereof. As portions of the Property are annexed and made subject to the terms and provisions of this Declaration by the

filing of one or more notices of applicability in accordance with *Section 16.02* hereof, the Lots included in such annexed portion of the Property will be automatically assigned Allocated Interests in accordance with the formula set forth in *Section 8.12* of this Declaration and the notice of applicability will reflect such allocations. Since Declarant intends to annex portions of the Property and Lots in phases, the initial Lots added to this Declaration will be allocated a higher Allocated Interest than would otherwise be allocated to the Lots if all of the Property was made subject to this Declaration at a single point in time. However, as additional Lots are annexed into this Declaration, the Allocated Interests previously allocated to the Lots then subject to this Declaration will be reduced. The notice of applicability for each portion of the Property added to this Declaration will include the then current Allocated Interests assigned to all Lots after giving effect to the Lots then being made subject to the Declaration. A schedule of Allocated Interests which will apply to each Lot when all the Property is annexed into the terms and provisions of this Declaration, is attached hereto as Schedule 1.

- (b) "Architectural Control Committee" or "ACC" means the committee created pursuant to this Declaration to review and approve plans for the construction, placement, modification, alteration or remodeling of any Improvements on any Lot. As more particularly described in *Article 12* below, until expiration or termination of the Development and Sale Period, Declarant exercises architectural control over the Property and the Development and, as a result, the ACC may not be established, or if established, may only exercise certain rights assigned to the ACC by the Declarant.
- (c) "Articles" mean the Articles of Incorporation for the Association filed in the Office of the Secretary of State of Colorado, as the same may be amended from time to time.
- (d) "Assessment" or "Assessments" means all assessments imposed by the Association under this Declaration.
- (e) "Association" means the Shadowrock Townhome Association, Inc., a Colorado nonprofit corporation, which will be created by Declarant to exercise the authority and assume the powers specified in *Article 6* and elsewhere in this Declaration.
- (f) "Association Documents" means this Declaration, the Articles of Incorporation, the Bylaws, the Map, the Plat, any design guidelines, procedures, rules, regulations or policies adopted under such documents by the Association, and as amended from time to time.
- (g) "Board" means the Board of Directors, which is the governing body of the Association.

- (h) **"Bulk Rate Contract"** or **"Bulk Rate Contracts"** means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Rate Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick up services, propane service, natural gas service, lawn maintenance services and any other services of any kind or nature which are considered by the Board to be beneficial.
- (i) **"Bylaws"** means the Bylaws of the Association, which is the code of rules, other than the Articles of Incorporation, adopted pursuant to the Colorado Revised Nonprofit Act for the regulation or management of the affairs of the Association, including as amended from time to time.
- (j) **"Common Area"** means any property and facilities that the Association owns or in which it otherwise holds rights or obligations. Common Area includes any property that the Association holds under a lease, license, or any easement in favor of the Association.
- (k) **"Common Expenses"** means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including but not limited to: (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) expenses incurred for the benefit of more than one Owner; (iv) insurance premiums for the insurance obtained by the Association under *Article 13*; and (v) all expenses lawfully determined to be common expenses by the Board
- (l) **"Community Fee Covenant"** is that certain document to be recorded in the Office of the Clerk and Recorder for Eagle County, Colorado, which binds each Owner accepting an interest in or title to a Lot upon the terms, conditions and restrictions contained therein, regarding a community fee payable to the Blue Ridge Development Council upon the transfer any Lot within the Development.
- (m) **"Community Systems"** means any and all cable television, telecommunications, alarm/monitoring, internet, telephone or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials and installations and fixtures (including those based on, containing and serving future technological advances not now known), if installed by Declarant or pursuant to any grant of easement or authority by Declarant within the Property or the Development.
- (n) **"County"** means the County of Eagle, Colorado.

- (o) **"Declarant"** means Blue Ridge Investments, L.P., a Texas limited partnership, its successors or assigns; provided that any assignment(s) of the rights of Blue Ridge Investments, L.P., as Declarant, must be expressly set forth in writing and recorded in the Office of the Clerk and Recorder for Eagle County, Colorado.

The "Declarant" is the party who causes the Property to be developed for actual residential use. Declarant enjoys special privileges to help protect its investment in the Property and the Development. These special rights are described in this Declaration. Many of these rights do not terminate until either Declarant: (i) has sold all Lots which may be created out of the Property; or (ii) voluntarily terminates all or a portion of these rights by a written instrument recorded in the Office of the Clerk and Recorder for Eagle County, Colorado.

- (p) **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association, including the right to appoint and remove all members of the Board and the officers of the Association. The duration of the Declarant Control Period is from the date this Declaration is recorded until the earlier to occur of: (i) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; (ii) two (2) years after any right to add portions of the Property was last exercised Declarant; or (iii) one-hundred and twenty (120) days after the conveyance of seventy-five percent (75%) of all Lots that may be created out of the Property have been conveyed to Owners other than the Declarant.
- (q) **"Declaration"** means this Declaration and any other recorded instruments however denominated, that create the Shadowrock Townhome community, including any amendments to those instruments, and also including, but not limited to, the Map and any Plat.
- (r) **"Development"** means any portion of the Property made subject to the terms and conditions of this Declaration by the recording of a Notice of Applicability as set forth in *Section 16.02 herein*.
- (s) **"Development and Sale Period"** means the twenty (20) year period beginning on the date this Declaration is recorded, during which Declarant has certain rights as more particularly described in this Declaration, including rights related to development, construction, expansion, and marketing of the Property and the Development. The Development and Sale Period is for a term of years and does not require that Declarant own any portion of the Property. Declarant may terminate the Development and Sale Period by an instrument executed by Declarant and recorded in the Office of the Clerk and Recorder for Eagle County, Colorado.

- (t) **"District"** means Mid Valley Metropolitan District, which is that certain provider of potable water to the potable water system for the Development and the Property.
- (u) **"Ditch Company"** means the Robinson Ditch Company, in which Declarant owns shares representing water rights in the Robinson Ditch adjacent to the Property, and which delivers raw irrigation water to the Property and operates and maintains the Robinson Ditch.
- (v) **"Dwelling"** means the Improvement located on each Lot that is designed to be or appropriated for use as a single-family residence, together with any garage incorporated therein, whether or not the Dwelling is occupied for residential purposes.
- (w) **"First Mortgage"** means a Mortgage or deed of trust securing indebtedness and covering any Lot, the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.
- (x) **"First Mortgagee"** means any person or entity named as Mortgagee in any First Mortgage when the holder has notified the Association, in writing, of its name and address and that it holds a First Mortgage on a Lot. The notice must include the address of the Lot on which it has a First Mortgage. This notice shall include a request that the First Mortgagee be given the notices and other rights described in *Article 18*.
- (y) **"Improvement"** means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, poles, signs, antennae, exterior air conditioning equipment or fixtures, window panes, window screens, window treatments visible from the street or another Lot, exterior lighting fixtures, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.
- (z) **"Lot"** means any portion of the Development designated by Declarant or as shown as a subdivided lot on a Plat other than Common Area, and made subject to the terms and provisions of this Declaration in accordance with *Section 16.02* below.
- (aa) **"Manager"** has the meaning set forth in *Section 6.04(h)*.

- (bb) "**Map**" means the part of the Declaration that depicts all or any portion of the Shadowrock Townhome community in three dimensions, is executed by a person that is authorized to execute the Declaration, and is recorded with the Clerk and Recorder of Eagle County, and any supplements and amendments thereto. The Map and any amendments or supplements thereto are incorporated herein by reference as if set forth in their entirety. A Map and a Plat may be combined in one instrument. As portions of the Property are made subject to the terms and provisions of this Declaration, the notice of applicability will include the Map applicable to the Lots and/or Property described in such notice of applicability.
- (cc) "**Members**" means every person or entity that holds membership privileges in the Association.
- (dd) "**Membership Agreement**" means an agreement in the form specified by the Board for execution by each Member, evidencing such Member's acknowledgment of and agreement to be bound by the terms of this Declaration. As provided in *Section 6.02(a)* below, the Board may, but will have no obligation to, require each Member to execute a Membership Agreement.
- (ee) "**Mortgage**" or "**Mortgages**" means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot.
- (ff) "**Mortgagee**" or "**Mortgagees**" means the holder(s) of any Mortgage(s).
- (gg) "**Owner**" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot, but does not include the Mortgagee under a Mortgage prior to its acquisition of fee simple interest in such Lot pursuant to foreclosure of the lien of its Mortgage.
- (hh) "**Plat**" means that part of a Declaration that is a land survey plat as set forth in C.R.S. § 38-51-106, depicts all or any portion of the Shadowrock Townhome community in two dimensions, is executed by a person that is authorized to execute the Declaration, and is recorded with the Clerk and Recorder of Eagle County, including any supplements and amendments thereto. The Plat and any amendments or supplements thereto are incorporated herein by reference as if set forth in their entirety provided that the portion of the Property to which such Plat relates has been made subject to the terms and provisions of this Declaration. As portions of the Property are made subject to the terms and provisions of this Declaration, the notice of applicability will include the Plat applicable to the Lots and/or Property described in such notice of applicability. A Map and a Plat may be combined in one instrument.
- (ii) "**Property**" means all real property comprised of the Blue Ridge Planned Unit Development, a Planned Unit Development located in Eagle County, Colorado,

according to the Final Plat thereof, recorded on April 3, 2006 at Reception No. 200608134 in the Office of the Clerk and Recorder for Eagle County, Colorado. **NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS OF THIS DECLARATION UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PORTION OF THE PROPERTY IS FILED WITH THE OFFICE OF THE CLERK AND RECORDER FOR EAGLE COUNTY, COLORADO IN ACCORDANCE WITH SECTION 16.02 BELOW.**

- (jj) **"Resident"** means an occupant or tenant of a Lot, regardless of whether the person owns the Lot.
- (kk) **"Residential Use"** means use for dwelling or recreational purposes, but does not include use from which is derived commercial income or which provides service to the public, except as specifically provided in *Section 5.15*.
- (ll) **"Restrictions"** means the restrictions, covenants, and conditions contained in this Declaration, the Community Fee Covenant, the Water Use and Ditch Shares Covenant, the Bylaws, or in any Rules and Regulations promulgated by the Association pursuant to this Declaration, as adopted and amended from time to time. See *Table 1* for a summary of the Restrictions.
- (mm) **"Rules and Regulations"** means any instruments, however denominated, which are adopted by the Board for the regulation and management of the Shadowrock Townhome community, including any amendments to those instruments.
- (nn) **"Shadowrock Reviewer"** means Declarant, or its designee, until the expiration of the Declarant Control Period, at which time the rights of the Shadowrock Reviewer will automatically be transferred to the Architectural Control Committee appointed by the Board.
- (oo) **"Structure"** means a building containing two (2) or more Dwellings that: (i) is located on two (2) or more adjacent Lots; and (ii) has one (1) or more common walls separating the Dwellings comprising such building.
- (pp) **"Time Share"** means a time share estate, as defined in C.R.S. § 38-33-110(5), or as amended, a time share use, as defined in C.R.S. § 12-61-401(4), or as amended, or any use membership which does not constitute the transfer of an interest in real property.
- (qq) **"Water Use Covenant"** means that certain Water Use and Ditch Shares Covenant to be recorded in the Office of the Clerk and Recorder for Eagle County, Colorado which binds each Owner accepting an interest in or title to a Lot upon the terms, conditions and restrictions contained therein, regarding the prohibition of outside potable water use and compliance with the Rules and Regulations of the Metro District and the Ditch, Company.

TABLE 1: RESTRICTIONS	
Articles of Incorporation (filed with the Secretary of State)	Establish the Association as a not for profit corporation under Colorado law
Declaration (recorded with the Eagle County Clerk and Recorder)	Creates obligations that are binding upon the Association and all present and future owners within the Development.
Community Fee Covenant (recorded with the Eagle County Clerk and Recorder)	Creates obligations that are binding upon the Association and all present and future owners within the Development.
Water Use and Ditch Shares Covenant (recorded with the Eagle County Clerk and Recorder)	Creates obligations that are binding upon the Association and all present and future owners within the Development.
Bylaws (adopted by the Board of the Association)	Govern the Association's internal affairs, such as elections, meetings, etc.
Rules and Regulations (adopted by the Board of the Association)	Regulate the use of property, activities, and conduct within the Development.
Board Resolutions (adopted by the Board of the Association)	Establish rules, policies, and procedures for internal governance and activities of the Association.
Notice of Applicability (recorded with the Eagle County Clerk and Recorder)	Annexes portions of the Property or Lots into the terms and provisions of the Declaration. The Notice will include the Allocation of Interests and any Map or Plat applicable to the Property or Lots described in the notice.

ARTICLE 2
GENERAL STATEMENTS AND DISCLOSURES

2.01 Name. The name of the townhome community created pursuant to this Declaration is Shadowrock Townhomes located in Eagle County, Colorado. Shadowrock Townhomes is a Planned Community as defined pursuant to C.R.S. § 38-33.3-103(22).

2.02 Association. The name of the association governing Shadowrock Townhomes is Shadowrock Townhome Association, Inc. (the "**Association**") which Declarant has or will cause to be incorporated under the laws of the State of Colorado as a nonprofit corporation with the purpose of exercising the functions as herein set forth.

2.03 Number of Lots. The Declarant reserves the right to create up to one hundred (100) Townhome Lots on which may be built Dwellings. Declarant intends to annex portions of the Property and Lots in phases by the filing of Notices of Applicability in accordance with *Section 16.02* below. The Notice of Applicability for each phase will include a Map and Plat describing each Lot and the Property and the Allocated Interests applicable to each Lot. The approved Site Plan, reflecting the location of each Townhome Lot and Common Area as if all of the Property has been made subject to this Declaration and all Lots have been legally subdivided, is attached hereto as Exhibit "A". **The Site Plan reflects Declarant's intent regarding the configuration of the Lots and Common Area and has been approved by the applicable regulatory authorities. However, Declarant reserves the right to modify the Site**

Plan from time to time. The Site Plan and configuration of Lots and Common Area shown thereon, must not be construed as a representation, and Declarant hereby disclaims any representation, that all the Lots and Common Area will be made subject to the terms and provisions of this Declaration or that such Lots or Common Area will be added in the configuration shown on the Site Plan. It is Declarant's current intent to add all Lots and Common Areas shown on the Site Plan to the terms and provisions of this Declaration over time, but Declarant reserves the right to modify the Site Plan or determine whether all or a portion of the Property will be added to the term and provisions of this Declaration.

2.04 Creation and Description of Lots. As portions of the Property are added to the terms and provisions of this Declaration, such portions of the Property will be subdivided into fee simple estates as Lots. Each Lot, and the appurtenant use of the Common Area, shall comprise one Lot, shall be inseparable and may be transferred, leased, devised or encumbered only as one Lot. Any attempted transfer of the appurtenant use of the Common Area shall be void unless the Lot to which that interest is allocated is also transferred. Any contract of sale, deed, lease, Mortgage, will or other instrument may legally describe a Lot as follows:

Lot ___, Shadowrock Townhomes, according to the Map thereof, recorded on TBD at Reception No. TBD, and the Declaration recorded on TBD, at Reception No. TBD, County of Eagle, State of Colorado more commonly known as ___ Juniper Trail, El Jebel, Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Lot. Each such description shall be construed to include a non-exclusive easement for ingress and egress to an Owner's Lot and use of all of the Common Area appurtenant to such Lot. The reference to the Map and Declaration in any instrument shall be deemed to include any supplements to the Map or Declaration without specific reference thereto.

2.05 Ownership Title. A Lot may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado, with the exception that at no time shall a Lot be conveyed as a Time Share, or held and owned by more than one person if the intended use of such Lot is as a Time Share, which shall not be a permitted use pursuant to this Declaration.

2.06 Separate Taxation. Each Lot shall be deemed to be a separate parcel or real property and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including ad valorem levies and special assessments. No part of the Property other than Lots shall be deemed a parcel. Accordingly, the Common Area shall not be assessed separately but shall be assessed with the Lots as provided pursuant to C.R.S. § 38-33.3-105(2) and C.R.S. § 39-1-103(10) and any lien for taxes assessed to any Lot shall be confined to such Lot. No forfeiture or sale of any Lot for delinquent taxes, assessments or other governmental charges shall divest or in any other way affect the title to any other Lots or Common Area.

2.07 Map. The Map shall depict the Lots and the Common Area as the Property is subdivided and platted through the subdivision process required by Eagle County, Colorado. A Notice of Applicability filed pursuant to *Section 16.02* will include a Map for the Lots and Common Areas described in such notice. The Map shall depict and show at least the following: the legal description of the land and a survey thereof; the location of the subdivided Lots; the floor and elevation plans; the location of each Dwelling within each Lot, both horizontally and vertically; the thickness of the common walls between or separating the Dwellings on each Lot, the location of any structural components or supporting elements of each Dwelling if interconnected to adjacent Dwellings and Lots; and, the Lot designations and the Dwelling number, and the subdivided areas constituting the Common Area. The Map and each Supplemental or Amended Map shall contain the certificate of a registered professional engineer or licensed architect, or both, certifying that the Map substantially depicts those matters required to be depicted on the Map, and that such Map was prepared subsequent to substantial completion of the improvements. In interpreting the Map, the existing physical boundaries of each separate Lot and Dwelling as constructed shall be conclusively presumed to be its boundaries.

2.08 Water and Mineral Rights. Neither the Association nor any Member of the Association, excepting Declarant, currently own any water rights appurtenant to the Property and Project. In addition, neither the Association nor any Member of the Association, excepting Declarant, currently own any mineral rights of any kind underlying any of the Property or the Project. However, some or all of the Property may be made subject to that certain Water Use Covenant to be recorded in the Office of the Clerk and Recorder for Eagle, County, Colorado, upon the filing of one or more Notices of Applicability pursuant to *Section 16.02* of the Declaration. Pursuant to such Water Use Covenant, Declarant shall dedicate a sufficient number of ditch shares it owns in the Ditch Company, representing water rights in the adjacent Robinson Ditch, to the Association for operation of a raw water irrigation system. The Water Use Covenant further prohibits Owners from any outside use of potable water, provided by the District, from any potable water system on the Property.

ARTICLE 3

PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

3.01 General. In addition to other easements, rights and restrictions established by the Restrictions, the Development is subject to the easements, rights and restrictions contained in this Article.

3.02 Owner's Easement of Enjoyment. Every Owner is granted a right and easement of enjoyment over the Common Area and to use of improvements therein, subject to other rights and easements contained in the Restrictions. An Owner who does not occupy a Dwelling delegates this right of enjoyment to the Residents of his Dwelling, and is not entitled to use the Common Area.

3.03 Owner's Maintenance Easement. Each Owner is hereby granted an easement over and across any adjoining Dwelling and Lot and the Common Area to the extent reasonably necessary to maintain or reconstruct such Owner's Dwelling, subject to the consent of the Owner of the adjoining Lot and Dwelling and the Board in accordance with this *Section 3.03*, or the consent of the Board in the case of Common Area, and provided that the Owner's use of the easement granted hereunder does not damage or materially interfere with the use of the adjoining Lot and/or Dwelling or Common Area. Requests for entry into an adjoining Lot must be made to the Owner of such Lot in advance. The consent of the adjoining Lot Owner will not be unreasonably withheld; however, the adjoining Lot Owner may require that access to its Lot be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. Access to the Common Area for the purpose of maintaining or reconstructing any Dwelling must be made in advance to the Board. The consent of the Board will not be unreasonably withheld; however, the Board may require that access to the Common Area be limited to Monday through Friday, between the hours of 8 a.m. until 6 p.m., and then only in conjunction with actual maintenance or reconstruction activities. In addition, the Board may require that the Owner abide by additional reasonable rules with respect to use and protection of the Common Area during any such maintenance or reconstruction. If an Owner damages an adjoining Dwelling or Common Area in exercising the easement granted hereunder, the Owner will be required to restore the Dwelling or Common Area to the condition which existed prior to any such damage, at such Owner's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Owner is notified in writing of the damage by the Association or the Owner of the damaged Dwelling.

Furthermore, no Owner shall perform any work to any portion of his Dwelling or Lot if the work requires access to, over or through the Common Area or other Lots and/or Dwellings without the prior consent of the Board of Directors except in case of an emergency. All such work may only be performed by a person who shall deliver to the Board of Directors prior to commencement of such work, in form satisfactory to the Board of Directors:

- (a) Releases of the Board of Directors and the Association for all claims that such person may assert in connection with such work;
- (b) Indemnification of the Board of Directors and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, Common Area, or other Lots and Dwellings;
- (c) Certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board of Directors; and
- (d) All other information and assurances which the Board of Directors may reasonably require.

3.04 Owner's Ingress/Egress Easement. Each Owner is hereby granted a perpetual easement over the Development, including the Lots (but excluding any portion of the Lot enclosed by a private fence creating a private yard space for the Lot Owner), as may be reasonably required, for vehicular and pedestrian ingress to and egress from his Dwelling.

3.05 Owner's Encroachment Easement. Every Owner is granted an easement for the existence and continuance of any encroachment by his Dwelling on any adjoining Lot, Dwelling or Common Area now existing or which may come into existence hereafter, as a result of construction, repair, shifting, settlement, or movement of any portion of a building, or as a result of condemnation or eminent domain proceedings, so that the encroachment may remain undisturbed so long as the improvement stands.

3.06 Easement of Cooperative Support. Each Owner is granted an easement of cooperative support over each adjoining Lot and Dwelling as needed for the common benefit of the Development, or for the benefit of Dwellings in a Structure, or Dwellings that share any aspect of the Development that requires cooperation. By accepting an interest in or title to a Lot, each Owner: (i) acknowledges the necessity for cooperation in a townhome; (ii) agrees to try to be responsive and civil in communications pertaining to the Development and to the Association; (iii) agrees to provide access to his Dwelling and Lot when needed by the Association to fulfill its duties; and (iv) agrees to try refraining from actions that interfere with the Association's maintenance and operation of the Development.

3.07 Association's Access, Maintenance and Landscape Easement. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access, maintenance and entry over, across, under, and through the Development, including without limitation, each Lot and each Dwelling and all improvements thereon for the following purposes:

- (a) To perform inspections and/or maintenance that is permitted or required of the Association by the Restrictions or by applicable law;
- (b) To perform maintenance that is permitted or required of the Owner by the Restrictions or by applicable law, if the Owner fails or refuses to perform such maintenance;
- (c) To perform maintenance and repair, and to regulate use of all private streets located within the Development;
- (d) To enforce the Restrictions, including without limitation, the architectural standards and use restrictions;
- (e) To exercise self-help remedies permitted by the Restrictions or by applicable law;
- (f) To respond to emergencies;

- (g) To have the exclusive right to maintain landscaping and make, erect or install non-structural improvements (such as fences, irrigation systems, lighting systems, walking or biking paths, and the like) in or on those portions of each Owner's Lot (but excluding any portion of such Lot enclosed by a private fence creating a private yard space for the Lot Owner);
- (h) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Development; and
- (i) To perform any and all functions or duties of the Association as permitted or required by the Restrictions or by applicable law.

3.08 Utility Easement. The Association and Declarant (during the Development and Sale Period) may grant permits, licenses, and easements over the Common Areas and Lots for utilities, and other purposes reasonably necessary for the proper operation of the project. Declarant (during the Development and Sale Period) and the Association may grant easements over and across the Lots and Common Areas to the extent necessary or required to provide utilities to Dwellings and/or Lots; provided, however, that such easements will not unreasonably interfere with the use of any Dwelling for residential purposes. A company or entity, public or private, furnishing utility service to the Development, is granted an easement over the Development for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Development; provided, however, this easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

NOTICE

PLEASE READ CAREFULLY THE FOLLOWING PROVISIONS ENTITLED "SECURITY" AND "INJURY TO PERSON OR PROPERTY". THE PROVISIONS LIMIT THE RESPONSIBILITY OF DECLARANT AND THE ASSOCIATION FOR CERTAIN CONDITIONS AND ACTIVITIES.

3.09 Security. The Association may, but is not obligated to, maintain or support certain activities within the Development designed, either directly or indirectly, to improve safety in or on the Development. Each Owner and Resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Development. Each Owner and Resident acknowledges and accepts as his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and Resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or Resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglary, and/or intrusion systems recommended or

installed, or any security measures undertaken within the Development. Each Owner and Resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of any failure to provide adequate security or the ineffectiveness of security measures undertaken.

3.10 Injury to Person or Property. Neither the Association nor Declarant, or their respective directors, officers, committees, agents, and employees have a duty or obligation to any Owner, Resident or his guests: (a) to supervise minor children or any other person; (b) to fence or otherwise enclose any Lot or Common Areas; or (c) to provide security or protection to any Owner, Resident, or their guests, employees, contractors, and invitees from harm or loss. By accepting title to a Lot, each Owner agrees that the limitations set forth in this section are reasonable and constitute the exercise of ordinary care by the Association and Declarant. Each Owner agrees to indemnify and hold harmless the Association and Declarant, and Declarant's agents from any claim of damages, to person or property arising out of an accident or injury in or about the Development to the extent and only to the extent caused by the acts or omissions of such Owner, his tenant, his guests, employees, contractors, or invitees to the extent such claim is not covered by insurance obtained by the Association at the time of such accident or injury.

3.11 Easement to Inspect and Right To Correct. For a period of ten (10) years after the expiration of the Development and Sale Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder, and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Development, including the Dwellings, and a perpetual nonexclusive easement of access throughout the Development to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Development, including without limitation, each Lot and all Improvements thereon for the purposes contained in this Section.

ARTICLE 4

CERTAIN PROPERTY FEATURES

4.01 General. This Article discloses selective features of the Development that may not be obvious to potential Owners and Residents. Because features may change over time, no disclosure in this Article should be relied upon without independent confirmation.

4.02 Contract Services Disclosure. In connection with construction of the Development or Property, the Dwellings may have been wired or fitted for one or more services to be provided by vendors to the individual Lot Owners on a contract basis. Such services may include intrusion monitoring and cable television. In exchange for such installations, Declarant may have contracted on behalf of the Owners for a period of service to all Dwellings. In that event, whether or not an Owner chooses to use the service, the Owner is required to pay the Lot's share of the contract for the contract period. The Association may serve as the conduit for the service fees and payments, which may be considered Individual Assessments. However, the Association is not the service provider and has no responsibility or liability for the availability or quality of the service, or for the maintenance, repair, or replacement of the wires, conduits, equipment, or other fittings relating to the contract service.

4.03 Cable TV. On the date of this Declaration, neither the Declarant nor the Association has granted a blanket easement across the Property or the Development to a cable television franchise. The Development is being or has been constructed with conduit for cable television lines. An Owner who contracts for cable television services must require his vendor to use the cable conduit installed by Declarant on the Property, which may not be removed or relocated by the vendor without the Board's prior written approval. Without prior notice to any person, the Association may remove any cable line or additional conduit found elsewhere on the grounds or the exterior surfaces of the buildings that do not have the Board's prior written approval.

4.04 Fire Sprinkler Disclosure. The buildings of the Development are constructed with a fire sprinkler system for each Dwelling. This means that water lines and sprinkler heads may be in the ceilings above rooms in the Dwelling. This disclosure is given because damage to, or a malfunction of, a water line or sprinkler head may harm or destroy real and persona property.

- (a) **Owner's Duty.** Each Owner is solely responsible for all of the following:
- (i) Determining the location and proper care of the sprinkler equipment, water lines and sprinkler heads in the Dwelling;
 - (ii) Preserving the integrity and functionality of the portion of the fire sprinkler system in their Dwelling;
 - (iii) Instructing each Resident, invitees and contractors about the care and protection of the sprinkler system, including any applicable rules adopted by the Board; and
 - (iv) Any damage to their Dwelling, an adjoining Dwelling, Common Area, and/or any personal property (such as furnishings and clothing) caused by the functioning or malfunctioning of any component of the sprinkler system in or serving their Dwelling.

(b) Association's Duty.

- (i) Installing, monitoring and maintaining a dedicated phone line in each Dwelling to monitor the fire sprinkler riser required to be constructed in each Dwelling as part of the fire sprinkler system; and
- (ii) Scheduling and holding all required annual inspections and maintaining all required certifications of compliance for the fire sprinkler system.

**THE ASSOCIATION DOES NOT INSPECT OR FIX WATER LINES
AND SPRINKLER HEADS IN A DWELLING.**

Components of a fire sprinkler system may be located in the attic portion of the Dwelling, which warrants additional attention and information. For example, on the date of this Declaration, it is recommended that sprinkler heads and water lines be well insulated, which makes them harder to see by someone who is visiting or using the attic. If the attic is also the location of HVAC equipment or other equipment that requires periodic servicing or repair, to ensure protection of the water lines and sprinkler heads, the Owner is advised to closely supervise all persons using the attic.

4.05 Notice Regarding Irrigation Facilities and Berms. Each Owner is hereby advised, in accordance with County requirements, that the Property and Development will include certain irrigation facilities, including a pond, piping and berms. Each Owner acknowledges that the Association will maintain the irrigation facilities and berms in accordance with the requirements of the County and applicable law, subject to the right of the County to perform required maintenance if the Association fails to properly do so. The cost and expense of such maintenance performed by the County on Property made subject to this Declaration will be a common expense. Each Owner acknowledges that the operation and maintenance of the Ditch providing the raw irrigation water to the irrigation facilities shall be conducted by the Ditch Company. The cost and any expense assessed to the Association for maintenance and operation of the Ditch by the Ditch Company allocable to Property made subject to this Declaration will be a common expense.

4.06 Streets within the Property. Streets adjacent to the Property are public streets to be maintained by applicable governmental authorities. Streets within the Property, with the specific exception of Shadowrock Drive as depicted on the Plat, are private and maintained by the Association. Shadowrock Drive shall be a public street.

- (a) Private Streets. Streets within the Development are maintained and administered by the Association. Portions of these streets may be located on a Lot, but this Declaration reserves an easement in favor of each Owner for ingress and egress over and across such streets and also reserves an easement over and across these streets in favor of the Association for maintenance. The Association, acting through the Board has the express authority to adopt, amend, repeal, and

enforce the rules, regulations and procedures for use of private streets, including but not limited to:

- (i) Identification of vehicles used by Owners and Residents and their guests;
- (ii) Designation of parking or no-parking areas;
- (iii) Limitations or prohibitions on curbside parking;
- (iv) Removal or prohibition of vehicles that violate applicable rules and regulations; and
- (v) Fines for violations of applicable rules and regulations.

ARTICLE 5
GENERAL AND USE AND CONSTRUCTION RESTRICTIONS

5.01 General. All Lots within the Development will be owned, held, encumbered, leased, used, occupied and enjoyed subject to: (i) the applicable conditions, restrictions, reservations, and easements contained in this Declaration; and (ii) any rules and regulations adopted by the Board.

Ordinances and requirements imposed by local governmental or other regulatory authorities are applicable to all Lots within Development. Compliance with this Declaration is not a substitute for compliance with such ordinances and regulations. Please be advised that the Declaration does not purport to list or describe each restriction which may be applicable to a Lot located within the Development. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot.

NOTICE

This Declaration and the Rules and Regulations adopted by the Board are subject to change from time to time. By owning or occupying a Lot, you agree to remain in compliance with this Declaration and the Rules and Regulations, as they may change from time to time.

5.02 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials relating to the Property (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and configuration of Lots and Common Areas reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property may include uses which are not shown on the Conceptual Plans. The Declarant makes no representation or warranty concerning any feature or information included on the Conceptual Plans and it is expressly agreed and understood that

no Owner will be entitled to rely upon the Conceptual Plans in making the decision to purchase any Lot or Improvements.

5.03 Rules and Regulations. In addition to the restrictions contained in this Article, each Lot is owned and occupied subject to the right of the Board to establish rules, and penalties for infractions thereof, governing:

- (a) Use of Common Area;
- (b) Hazardous, illegal, or annoying materials or activities on the Development;
- (c) The use of Development-wide services provided through the Association;
- (d) The use of any potable water systems and raw water irrigation systems on the Property;
- (e) The consumption of utilities billed to the Association;
- (f) The use, maintenance, and appearance of anything visible from the street, Common Area, or other Lots;
- (g) The occupancy and leasing of Dwellings;
- (h) Animals;
- (i) Vehicles;
- (j) Disposition of trash and control of vermin, termites, and pests; and
- (k) Anything that interferes with maintenance of the Development, operation of the Association, administration of the Restrictions, or the quality of life for Owners and Residents.

5.04 Subdividing. No Lot may be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Shadowrock Reviewer; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the Shadowrock Reviewer.

5.05 Mining and Drilling. No portion of the Development maybe used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted by Declarant in conjunction with the construction of Improvements and/or the

development of the Property. Furthermore, this provision will not be interpreted to prevent the drilling of water wells approved in advance by the Shadowrock Reviewer which are required to provide water to all or any portion of the Property. All water wells must be approved in advance by any applicable regulatory authority.

5.06 Animals - Household Pets. No animal, bird, fish, reptile, or insect of any kind, may be kept, maintained, raised, or bred anywhere on the Development for food or for any commercial purpose. Customary domesticated household pets may be kept subject to the rules adopted from time to time by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Development. If the rules fail to establish animal occupancy quotas, no more than two (2) dogs, or two (2) cats, or one (1) dog and one (1) cat, may be maintained on each Lot. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board. The Board may require or effect the removal of any animal determined to be in violation of the rules.

5.07 Specific Uses. Except for ingress and egress, the yards, sidewalks, and driveways on the Development may not be used for any purpose that has not been authorized in writing by the Board or the Shadowrock Reviewer.

5.08 Annoyance. No Lot may be used in any way that: (i) may reasonably be considered annoying to neighbors; (ii) may be calculated to reduce the desirability of the Development as a residential neighborhood; (iii) may endanger the health or safety of Residents of other Lots; (iv) may result in the cancellation of insurance on any portion of the Development; (v) violates any law; or (vi) creates noise or odor pollution. The Board has the sole authority to determine what constitutes an annoyance.

5.09 Driveways. Sidewalks, driveways, and other passageways may not be used for any purpose that interferes with their ongoing use as routes of vehicular or pedestrian access.

5.10 Fire Safety. No person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment of the Development, including the sprinkler heads (if any) and water lines in and above the ceilings of the Dwellings, or interfere with the maintenance and/or testing of same by persons authorized by the Association or by public officials.

5.11 Garages. The original garage area of a Dwelling may not be enclosed or used for any purpose that would prohibit the parking of operable vehicles therein, without the Shadowrock Reviewer's written authorization. The automatic garage door opener is to be maintained by the Owner. Unless Owner is present and utilizing the garage, garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

5.12 Landscaping. No person may perform landscaping, planting, or gardening, anywhere upon the Development without the Shadowrock Reviewer's prior written authorization.

5.13 Noise and Odor. An Owner or Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Owners or Residents of neighboring Lots. Rules adopted from time to time by the Board may limit, discourage, or prohibit noise-producing activities and items on the Lots and on the Common Area. The Dwellings are not soundproofed. Noise transmission between Dwellings will occur.

NOT SOUNDPROOFED
The Dwellings are not soundproofed.
Noise transmission between adjoining Dwellings will occur.

5.14 Occupancy. The Board may adopt rules regarding the occupancy of Dwellings and Lots. If the rules fail to establish occupancy standards, no more than two (2) persons per bedroom may occupy a Dwelling and Lot, subject to the exception for familial status. The Association's occupancy standard for Residents who qualify for familial status protection under the fair housing laws may not be more restrictive than the minimum (*i.e., the fewest people per Dwelling*) permitted by the U.S. Department of Housing and Urban Development. A person may not occupy a Dwelling if the person constitutes a direct threat to the health or safety of other persons, or if the person's occupancy would result in substantial physical damage to the property of others.

5.15 Residential Use. The use of a Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit an Owner or Resident from using the Lot and Dwelling for personal business or professional pursuits provided that: (i) the uses are incidental to the use of the Lot for residential purposes; (ii) the uses conform to applicable governmental ordinances; (iii) there is no external evidence of the uses; (iv) the uses do not entail visits to the Lot by employees or the public; and (v) the uses do not interfere with Owners' or Residents' use and enjoyment of neighboring Lots. Other than the air conditioned part of a Dwelling, no thing or structure on the Development may be occupied as residence at any time by any person. This provision applies, without limitation, to the garage.

5.16 Structural Integrity. No person may directly or indirectly impair the structural soundness or integrity of a Structure or Dwelling, or do any work or modification that will impair an easement or real property right.

5.17 Antenna. Except as expressly provided below, no exterior radio or television antenna or aerial or satellite dish or disc, nor any solar energy system, shall be erected, maintained, or placed on a Structure or Dwelling without the prior written approval of the Shadowrock Reviewer.

- (a) Dishes Over One Meter Prohibited. A satellite dish antenna which is over one meter in diameter is prohibited within the Development.
- (b) Notification. An Owner or Resident who wishes to install a satellite dish one meter or less in diameter (a "Permitted Antenna") must submit a written notice to the Shadowrock Reviewer, which notice must include the Owner's or Resident's installation plans for the satellite dish.
- (c) One Dish Limitation. Only one (1) satellite dish per Dwelling is permitted. In the event an acceptable quality signal for video programming or wireless communications cannot be received from one satellite dish, the Owner or Resident must provide written notification to the Shadowrock Reviewer. Upon notification, the Owner or Resident will be permitted to install an additional antenna if a single satellite is not sufficient for the reception of an acceptable quality signal and the use of an additional antenna results in the reception of an acceptable quality signal.
- (d) Permitted Installation Locations. An Owner or Resident may erect a satellite dish antenna (after written notification has been provided to the Shadowrock Reviewer) if the Owner or Resident has an exclusive use area in which to install the antenna. An "exclusive use area" is an area in which only the Owner or Resident may enter and use to the exclusion of all other Owners and Residents. Unless otherwise approved by the Shadowrock Reviewer, the permitted Antenna must be entirely within the exclusive use area of the Owner's Lot. **Any portion of an Owner's Lot or Dwelling subject to an easement in favor of another Owner or the Association IS NOT AN EXCLUSIVE USE AREA.** A Permitted Antenna or the use of a Permitted Antenna may not interfere with satellite or broadcast reception to other Dwellings, or otherwise be a nuisance to Residents of other Dwellings or to the Association. A Permitted Antenna exists at the sole risk of the Owner and/or occupant of the Dwelling. The Shadowrock Reviewer will have the right to require that a Permitted Antenna be painted in a color approved in advance by the Shadowrock Reviewer. The Association does not insure the Permitted Antenna and is not liable to the Owner or any other person for any loss or damage to the Permitted Antenna from any cause. The Owner will defend and indemnify the Association, its directors, officers, and Members, individually and collectively, against losses due to any and all claims for damages or lawsuits, by anyone, arising from his Permitted Antenna. The Shadowrock Reviewer may determine what constitutes a nuisance to the Association. The Shadowrock Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of a Permitted Antenna.
- (e) Cable Conduit. The Development is designed with a conduit for use with cable television lines. Each Owner may use the conduit for its intended purpose and

for no other purpose. The draping of cable wires on the exteriors of buildings or the installation of additional conduits are prohibited without the Board's prior written consent.

Satellite dishes one meter or less in diameter, e.g., DirecTV or Dish satellite dishes, are permitted; **HOWEVER**, you are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the Board from time to time. Please contact the Board or the Shadowrock Reviewer for the current rules regarding installation and placement of Permitted Antennas.

5.18 Signs. Except as expressly permitted pursuant to C.R.S. § 38-33.3-106.5, no sign of any kind, including signs advertising Lots for sale, for rent or for lease, may be erected, placed, or permitted to remain on the Development or to be visible from windows in the Dwellings. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message. The Shadowrock Reviewer may, but is not required to, authorize a sign, and such authorization may specify the location, nature, dimensions, number, and time period of a sign. This prohibition against signs also applies to any object visible from a street or driveway which the Shadowrock Reviewer deems to be unsightly or inappropriate. The Association may effect the immediate removal of any sign or object that violates this Section or which the Shadowrock Reviewer deems inconsistent with Development standards without liability for trespass or any other liability connected with the removal.

5.19 Window Treatments. The Development is designed to have a uniform window appearance for all Dwellings. Therefore, the color and condition of all window panes, window screens, and window treatments must conform to the building standard. All window treatments within the Dwellings, that are visible from the street or another Lot, must be maintained in good condition and must not detract from the appearance of the Development. The Shadowrock Reviewer may require an Owner to change or remove a window treatment, window film, window screen, or window decoration that the Shadowrock Reviewer determines to be inappropriate, unattractive, or inconsistent with the Development's uniform window standard. The Shadowrock Reviewer may prohibit the use of certain colors or materials for window treatments.

5.20 On Street Parking; Use of Common Area. Except as otherwise designated by the Declarant or the Board, no vehicle may be parked on any road or street within the Development for more than twenty-four (24) hours unless in the event of an emergency. "Emergency" for purposes of the foregoing sentence shall mean an event which jeopardizes life or property. "Parked" as used herein shall be defined as a vehicle left unattended by a licensed operator for more than thirty (30) consecutive minutes. No abandoned or inoperable vehicle of any kind shall be stored or parked on any of the Common Area. An "abandoned" or "inoperable" vehicle shall be defined as any vehicle which is not capable of being driven under its own propulsion or does not have current registration. Only upon express written approval of the

Board, no activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer or boat, may be performed or conducted on the Common Area.

5.21 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile homes may be parked or placed on any portion of the Development or used as a residence, either temporary or permanent, at any time. No boats, trailers, snowmobiles, campers, oversized vehicles or equipment shall be stored or parked anywhere within the Development, unless such items may be stored in an Owner's garage with the garage doors shut. The Board shall have the right to remove or store a vehicle or equipment in violation of this section after notice and opportunity for hearing, the expense of which shall be levied against the Owner of the vehicle or equipment as provided in *Article 8* herein.

5.22 Liability of Owners for Damage to Common Area. No Owner or Resident may in any way alter, modify, obstruct, add to, store items in or on or otherwise perform any work upon the Common Area without the prior written approval of the Board. Each Owner and/or Resident will be liable to the Association for any and all damages to: (i) the Common Area and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damages were caused by the neglect, misuse or negligence of such Owner, or the Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner or Resident. The full cost of all repairs of such damage will be an assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided for in *Section 9.01* of this Declaration.

5.23 Fences. The design, construction materials, height and location of all other fences must otherwise be approved by the Shadowrock Reviewer.

5.24 Drainage. There may be no interference with the established drainage patterns over any of the Development, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Shadowrock Reviewer.

5.25 Clotheslines; Window Air Conditioners. No clotheslines shall be permitted within the Development, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the residence, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of residences, or any part thereof, nor relocated or extended, without the prior written consent of the Shadowrock Reviewer. Window air conditioners are prohibited.

5.26 Outside Potable Water Use Prohibited. Each Lot shall be provided with raw water via a pressurized water main from the raw irrigation system which is to be used for any outside use. Although one potable water hose bib may be installed in the garage of each Dwelling, any outside use by an Owner or Resident of potable water is strictly prohibited. In addition, each Owner must comply with all Rules and Regulations promulgated and as

amended by either the District or the Ditch Company in regard to potable water use and raw irrigation water use, respectively.

5.27 Other Regulatory Requirements. In the event any of the rules, regulations, requirements, laws, or restrictions of the County, the District or the Ditch Company are more restrictive than the covenants, conditions, and restrictions contained in this Declaration, all Owners shall abide by and comply with the rules, regulations, requirements, laws, and restrictions of the County, the District and the Ditch Company, in addition to the covenants, conditions, and restriction of this Declaration. In no event shall the terms and provisions of the Declaration supersede or take the place of any rule, regulation, requirement, law, or restriction of the County, the District or the Ditch Company.

5.28 Rentals. Owners of Dwellings shall have the right to lease such Dwellings in accordance with and subject to any rules, regulations and penalties for infractions thereof, established by the Board, to govern leasing of Dwellings for residential purposes ("Leasing Restrictions"). Until the expiration of the Declarant Control Period, no lease may be entered into for a term less than thirty (30) days. All leases shall be in writing, and the Board and the Declarant, during the Declarant Control Period, will have the authority to review and approve all leases in advance, which approval shall not be unreasonably withheld or delayed provided such leases comply with the Leasing Restrictions and the proposed tenants under such leases have agreed to be bound by and comply with the Rules and Regulations of the Association (and in the case of renewals, that such tenants have been in compliance with the Rules and Regulations of the Association during the prior lease period). Each lease must provide, or be deemed to provide, that the Board shall have the right to terminate the lease upon default by the tenant in observing any provisions of the Leasing Restrictions. The Board shall have the right to require all tenants to deposit in escrow with the Association (in addition to any other deposits which may be required by the Owner so long as such additional deposit is not prohibited by law) an amount not to exceed one month's rental fee paid. Said deposit may be used by the Association to repair any damage to the Development resulting from acts or omission by the tenants (as determined in the sole discretion of the Board); provided such deposit shall be held and, to the extent unused, returned by the Association in accordance with applicable laws. Regardless of whether or not expressed in the applicable lease, all Owners shall be jointly and severally liable with the tenants of such Dwelling to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for any injury or damage to properly caused by the negligence of the tenant of such Dwelling or for the acts or omissions of the tenant(s) of such Dwelling which constitute a violation of, or non-compliance with, the provisions of the Leasing Restrictions. All leases shall comply with and be subject to the provisions of the Leasing Restrictions and the provisions of same shall be deemed expressly incorporated into any lease of a Dwelling. This Section shall also apply to assignments and renewals of leases. No lease approved by the Board shall be amended or modified without the Board's approval. In making its determination as to whether to approve a lease of a Dwelling, the Board shall not discriminate on the grounds of race, gender, religion, national origin, familial status or physical or mental handicap; provided, however, nothing herein shall be construed to require the Association to furnish an alternate tenant to the Owner

in the event the Board disapproves a lease. Upon entering into an agreement for the lease of a Dwelling, an Owner other than Declarant shall provide written notice to the Board, or its designee, of the lease agreement and furnish the name or names of the prospective tenant or renewing tenant. The Board may require that the Owner deliver to the tenant, a copy of the Leasing Restrictions and obtain a written instrument executed by the tenant acknowledging receipt of the Leasing Restrictions which receipt will be provided to the Board. The Board shall have the right to charge an Owner a reasonable fee (not to exceed \$250.00) as determined by the Board for the processing of leases of Dwellings.

NOTICE

By owning or occupying a Lot, you acknowledge and agree that the ability to lease your Dwelling is subject to the Leasing Restrictions determined by the Board, which may include Rules and Regulations governing leasing to regulate time, type or use, or any other policies and procedures regarding leasing consistent with the terms of this Section 5.27. Such Leasing Restrictions are subject to change from time to time.

5.29 Construction Activities. This Declaration may not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Development. No Improvement constructed by Declarant need be approved in advance by the Shadowrock Reviewer. No such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Shadowrock Reviewer in its sole good faith judgment, the Shadowrock Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Development, then the Shadowrock Reviewer may contract for or cause such debris to be removed, and the Owner of the Lot will be liable for all expenses incurred in connection therewith.

5.30 Mechanic's Liens.

- (a) No labor performed or materials furnished and incorporated in a Lot or a Dwelling thereon with the consent or at the request of the Owner or his agent or his contractor or subcontractor shall be the basis for recording of a lien against the Lot of any other Owner not expressly consenting to or requesting the same, or against the Common Area. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Lot of any other Owner or against the Common Area for construction performed or for labor, materials, services or

other products incorporated in the Owner's Lot or Dwelling thereon at such Owner's request. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be recorded against the Common Area or against any other Owner's Lot or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall, at his own cost and expense, cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within thirty (30) days after the date of recording thereof. The provisions herein contained are subject to the rights of the Managing Agent or Board as is set forth in this Declaration.

- (b) Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien may be effected against an individual Lot.

5.31 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Declaration. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

5.32 Compliance with Restrictions. Each Owner shall maintain his Lot and any and all Improvements thereon in a safe, clean and sanitary manner and condition and in good order and repair. Each Owner, Resident, and their family, occupants of a residence, tenants, and the guests, invitees, and licensees of the preceding must comply strictly with the provisions of the Restrictions, the Declaration and Bylaws as the same may be amended from time to time. Failure to comply with any of the Restrictions will constitute a violation of the Restrictions and may result in a fine against the Owner or Resident in accordance with *Section 7.02(b)* of this Declaration, and will give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by Declarant, the Manager, the Board on behalf of the Association, the Shadowrock Reviewer or by an aggrieved Owner. Without limiting any rights or powers of the Association, the Board may (but will not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Restrictions, and the Owner whose violation has been so remedied will be personally liable to the Association for all costs and expenses of effecting (or attempting to effect) such remedy. The Association shall have the right (but not the obligation) to enter upon a Lot to maintain such Lot or Improvements located thereon after giving the Owner at least fifteen (15) days written notice to cure any maintenance problems or deficiencies. In the event that the Association exercises its right of entry for maintenance purposes, the Association shall have the right to assess the particular Owner for the cost of such maintenance. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the

maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot will be secured by the liens reserved in this Declaration for Assessments and may be collected by any means provided in this Declaration for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). Each such Owner will indemnify and hold harmless the Association and its officers, directors, committee members, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this *Section 5.31* (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

If you fail to comply with the Restrictions, including this Declaration and any Rules and Regulations adopted by the Association, you can be fined or a claim may be pursued against you in court.

ARTICLE 6 ASSOCIATION MEMBERSHIP, VOTING RIGHTS, AND PURPOSES

6.01 Organization. The Association will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Colorado nonprofit corporation. Neither the Articles nor Bylaws will for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

6.02 Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot.

**If you acquire a Lot, you automatically become a member of the Association.
Membership is Mandatory!**

- (a) If required by the Board, each Owner, other than Declarant, must execute a Membership Agreement and deliver the same to the Association prior to or concurrently with the recording of a deed conveying fee title to a Lot to such Owner. Each Owner must notify the immediate transferee of his Lot of such transferee's obligation to execute and deliver a Membership Agreement, but the failure to notify a transferee will not relieve such transferee of his obligations under this *Section 6.02(a)*. The failure to execute a Membership Agreement will not prevent any person from being a Member or Owner under the terms of the

Articles, Bylaws or Restrictions, or excuse any Member from the payment of Assessments. If a Membership Agreement is required by the Board, an Owner who has not executed and delivered a Membership Agreement will automatically forfeit his right to vote as a Member and additionally forfeit his right to the use and enjoyment of the Common Area. Such Owner will not be entitled to restoration of his voting privileges and rights in the Common Area until execution and delivery of a Membership Agreement by such Owner. However, the Board may, at the Board's sole discretion, provide that a Member will be entitled to the full privileges of membership in the Association, notwithstanding the failure to execute a Membership Agreement. In the event Members are entitled to a key, membership card or other token evidencing or facilitating the right to use any Improvements erected or placed on the Common Area, the Board may require any Member who has not executed a Membership Agreement to return the same to the Board immediately.

- (b) Within thirty (30) days after acquiring legal title to a Lot, each Owner must provide the Association with: (1) a copy of the recorded deed by which the Owner has acquired title to the Lot; (2) the Owner's address, phone number, and driver's license number, if any; (3) any Mortgagee's name and address; and (4) the name and phone number of any Resident other than the Owner.

You may be required to execute a Membership Agreement before using the Common Area. Your obligation to pay assessments to the Association and comply with Restrictions will not be affected by your failure to execute a Membership Agreement. Also, you must provide certain information to the Association upon acquiring a Lot.

6.03 Voting Rights. The right to cast votes and the number of votes which may be cast for election of members to the Board and on all other matters to be voted on by the Members will be calculated as set forth below. **Notwithstanding any provision to the contrary in this Declaration, as provided in Section 6.03(b) below, until expiration or termination of the Declarant Control Period, Declarant will be entitled to appoint and remove all members of the Board.**

- (a) The Owner of each Lot will have one (1) vote for each Lot so owned.
- (b) When more than one person or entity owns a portion of the fee simple interest in any Lot, all such persons or entities will be Members. The vote or votes (or fraction thereof) for such Lot will be exercised by the person so designated in writing to the Secretary of the Association by the Owner of such Lot (or in the Membership Agreement relating to such Lot if required by the Board), and in no event will the vote for such Lot exceed the total votes to which such Lot is otherwise entitled under this Section 6.03.

- (c) The right of any Owner to vote may be suspended by the Association, acting through the Board, for any period during which any Assessment against such Owner's Lot(s) remain past due, for any period during which such Owner or such Owners' Lot(s) are in violation of this Declaration, and, as provided in *Section 6.02(b)* above, for any period during which such Owner has failed to execute and deliver a Membership Agreement.

6.04 Powers. The Association will have the powers of a Colorado nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by the laws of Colorado or this Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

- (a) Rules and Bylaws. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, such rules, regulations, and Bylaws not in conflict with this Declaration, as it deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or the Association.

When you acquire a Lot, you will be required to comply with the terms of this Declaration and any Rules and Regulations adopted by the Board.

- (b) Insurance. To obtain and maintain in effect, policies of insurance required by this Declaration and that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.
- (c) Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Restrictions available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.
- (d) Assessments. To levy and collect assessments, as provided in *Article 8* below.
- (e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner or Resident, upon any Lot and into any Improvement thereon for the purpose of enforcing the Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Restrictions. The expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon or therein will be a personal obligation of the Owner of the Lot so entered, will be deemed a special Assessment against such Lot, will be secured by a lien upon such Lot, and will be enforced in the same manner and to the same extent as provided in *Article 8* hereof for Assessments. The Association

will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Restrictions; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing a lawsuit against Declarant, or their successors or assigns. The Association may not alter or demolish any Improvements on any Lot other than Common Area in enforcing this Declaration before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) has been obtained. **EACH SUCH OWNER AND RESIDENT WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 6.04(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

- (f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or Mortgages, out of, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating or maintaining the following:
 - (i) Parks, parkways or other recreational facilities or structures;
 - (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
 - (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
 - (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or

- (v) Any similar improvements or facilities.

Nothing set forth above, however, will be construed to permit use or occupancy of any Improvement or other facility in a way that would violate applicable use and occupancy restrictions imposed by the Restrictions or by any governmental authority.

- (h) Manager. To retain and pay for the services of a person or firm (the “**Manager**”), which may include Declarant or any affiliate of Declarant, to manage and operate the Association, including its property, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager.
- (i) The Board may delegate the performance of certain functions to the Manager. To assist the Board in determining whether to delegate a function, a Guide to Association’s Major Management & Governance Functions is attached to this Declaration as Exhibit “B”. The Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Guide, however, may not be construed to create legal duties for the Association and its officers, directors, members, employees, and agents that are not justified by the needs of the Association. Rather, the Guide is intended as a tool or an initial checklist for the Board to use periodically when considering a delegation of its functions. As a list of functions that owners associations commonly delegate to a manager, the Guide should not be considered as a complete list of the Board’s duties, responsibilities, or functions. Notwithstanding any delegation of its functions, the Board is ultimately responsible to the Members for governance of the Association.
- (ii) Each contract entered into between the Association and the Manager will be terminable by the Association without cause upon ninety (90) days written notice to the Manager. To the extent permitted by law, the Board may delegate any other duties, powers and functions to the Manager. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD AND COMMITTEE MEMBERS FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**
- (i) Property Services. To pay for water, sewer, garbage removal, snow and ice removal, street lights, landscaping, gardening and all other utilities, services, repair and maintenance for the Development, Common Area, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, and lakes.

- (j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to applicable law (including the Colorado Corporations and Associations Act, C.R.S. § 7-90-101, *et seq.* and the Colorado Revised Nonprofit Corporations Act, C.R.S. § 7-121-101, *et seq.*) or under the terms of the Restrictions or as determined by the Board.
- (k) Construction on Common Area. To construct new Improvements or additions to any property owned, leased, or licensed by the Association, subject to the approval of the Board.
- (l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain any Common Area or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members.
- (m) Property Ownership. To acquire, own and dispose of all manner of real and personal property, including habitat, whether by grant, lease, easement, gift or otherwise.
- (n) Membership Privileges. To establish rules and regulations governing and limiting the use of the Common Area and any Improvements thereon.

6.05 Acceptance of Common Area. The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Development, or the Development and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Such property will be accepted by the Association and thereafter will be maintained as Common Area by the Association for the benefit of the Development and/or the general public subject to any restrictions set forth in the deed or other instrument transferring or assigning such property to the Association. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment to the extent conveyed in error or needed to make minor adjustments in property lines.

6.06 Responsible Governance. To promote responsible governance, the Association shall, to the extent not addressed or adopted pursuant to this Declaration:

- (a) Maintain accurate and complete accounting records.

- (b) Adopt policies, procedures, and rules and regulations concerning: (1) collection of unpaid assessments; (2) handling of conflicts of interest involving Board Members; (3) conduct of meetings, which may refer to applicable provisions of the Colorado Revised Nonprofit Act or other recognized rules and principles; (4) enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines; (5) inspection and copying of Association records by Owners; (6) investment of reserve funds; (7) procedures for the adoption and amendment of policies, procedures, and rules; and (8) procedures for addressing disputes arising between the Association and Owners.
- (c) The Board may authorize and account for as a common expense reimbursement of Board Members for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of community associations. The course content of such educational meetings and seminars shall be specific to Colorado and shall make reference to applicable sections of the Colorado Common Interest Ownership Act.
- (d) The Association shall provide, or cause to be provided, education to the Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association and the Board under Colorado law. The criteria for compliance with this Section shall be determined by the Board.

6.07 Indemnification. To the fullest extent permitted by applicable law but without duplication (and subject to) any rights or benefits arising under the Articles or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened pending or completed action, lawsuit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him in connection with such action, lawsuit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he (1) acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

6.08 Insurance. The Board may purchase and cause to be maintained, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against

him or incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability or otherwise.

6.09 Control by Declarant. Notwithstanding anything to the contrary, Declarant, or its successors or assigns, will have the absolute right to appoint members of the Board and their successors (any appointment of a successor will be a deemed removal of the Board Member being replaced by such appointment) until expiration or termination of the Declarant Control Period. Declarant, at its option, may assign or delegate, in whole or in part, its rights and powers to the Association, the Board or any other entity provided such designation is in writing.

6.10 Bulk Rate Contracts. Without limitation on the generality of the Association powers set out in *Section 6.04* hereinabove, the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments against such Owner's Lot. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot, which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such twelve (12) day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or the Resident of such Owner's Lot) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the occupant of such Owner's Lot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

6.11 Community Systems. The Association is specifically authorized to provide, or to enter into contracts with other Persons to provide, central telecommunication receiving and distribution systems (e.g. cable television, high speed data/internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment,

hardware, and software, to serve the Development ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. Declarant and the Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

6.12 Declarant's Right to Contribute to Revenues of the Association. Declarant shall have the right, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to Declarant, at the discretion of Declarant. If treated as a loan, the contribution shall accrue interest, compounded monthly, from the date it is made until the date of its repayment, at the short term Applicable Federal Rate ("AFR"), as published by the Internal Revenue Service, and adjusted each month to reflect the AFR for such month.

6.13 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development and Sale Period, the Board and each Owner other than the Declarant is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. The Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development and Sale Period.

6.14 Administration of Common Area. The administration of the Common Area by the Association shall be in accordance with the provisions of Colorado law and the Restrictions, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any governmental or quasi-governmental agency having regulatory jurisdiction over the Common Area or by any title insurance company selected by Declarant to insure title to any portion of the Common Area.

6.15 Notices and Disclaimers as to Security Systems. Declarant, the Association AND their successors or assigns may enter into contracts for the provision of security services through any Community Systems. DECLARANT, THE ASSOCIATION, AND THEIR SUCCESSORS OR ASSIGNS DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT

INTRUSIONS NOTIFY AUTHORITIES OF FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR OCCUPANT OF PROPERTY RECEIVING SECURITY SERVICES THROUGH THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND ANY SUCCESSOR OR ASSIGN ARE NOT INSURERS OF THE OWNER OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE LOT AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the party of a security service provider to perform any of its obligations with respect to security services and, therefore, every owner or occupant of property receiving security services through the Community Systems agrees that Declarant, the Association, and any successor or assign assumes no liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of (a) any failure of the Owner's security system, (b) any defective or damaged equipment, device, line or circuit, (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees, or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every Owner and Resident obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees and family members that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of the Declarant, its affiliated entity, the Association, their successors or assigns for loss, damage, injury or death shall be limited to a sum not exceeding Two Hundred Fifty U.S. Dollars (\$250.00), which limitation applies irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Declarant, its affiliated entity, the Association, their successor or assign of any of same. Further, in no event will Declarant, its affiliated entity, the Association, their successors or assigns be liable for consequential damages, wrongful death, personal injury or commercial loss.

6.16 Disclosure of Information.

- (a) Within ninety (90) days after assuming control from the Declarant pursuant to C.R.S. § 38-33.3-303(5), the Association shall make the following information available to Owners upon reasonable notice as provided below: (1) the name of the Association; (2) the name of the Association's Manager or Management Company, if any; (3) a valid physical address and telephone number for both the Association and the Manager or Management Company, if any; (4) the name of the common interest community; (5) the initial date of recording of the Declaration; and (5) the reception number or book and page for the main

document that constitutes the Declaration. In addition, if the Association's address, designated agent, or Manager or Management Company changes, the Association shall make updated information available within ninety (90) days after the change:

- (b) Within ninety (90) days after assuming control from the Declarant pursuant to C.R.S. § 38-33.3-303(5), and within ninety (90) days after the end of each fiscal year thereafter, the Association shall make the following information available to Owners upon reasonable notice as provided below: (1) the date on which the Association's fiscal year commences; (2) the Association's operating budget for the current fiscal year; (3) a list, by Dwelling plan type, of the Association's current assessments, including both regular and special assessments; (4) the Association's annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure; (5) the results of its most recent available financial audit or review; (6) a list of all Association insurance policies, including, but not limited to, property, general liability, director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed; (7) all of the Association's Bylaws, Articles and Rules, Regulations and Restrictions; (8) The minutes of the Board and Member meetings for the fiscal year immediately preceding the current annual disclosure; and (9) the Association's responsible governance policies adopted under C.R.S. § 38-33.3-209.5.
- (c) Disclosure shall be accomplished by one of the following means: (1) posting on an internet web page with accompanying notice of the web address via first-class mail or e-mail; or (2) the maintenance of a literature table or binder at the Association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a common expense liability.

ARTICLE 7

ENFORCING THE RESTRICTIONS

7.01 Notice and Hearing. Before levying a fine for violation of the Restrictions (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by applicable law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine – unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation,

as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearing, provided they are consistent with the requirements of applicable law.

7.02 Remedies. The remedies provided in this Article for breach of the Restrictions are cumulative and not exclusive. In addition to other rights and remedies provided by the Restrictions and by law, the Association has the following rights to enforce the Restrictions:

- (a) **Nuisance.** The result of every act or omission that violates any provision of the Restrictions is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.
- (b) **Fine.** The Association may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Lot if the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate a provision of the Restrictions. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Restrictions.
- (c) **Suspension.** The Association may suspend the right of Owners and Residents to use Common Area (except rights of ingress and egress) for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Restrictions. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Restrictions.
- (d) **Self-Help.** The Association has the right to enter a Lot and/or Dwelling to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Restrictions. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction on a Lot without judicial proceedings.
- (e) **Legal Proceedings.** Failure to comply with the Restrictions will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

7.03 Board Discretion. The Board may use its sole discretion in determining whether to pursue a violation of the Restrictions, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances: (i) the Association's position is not sufficiently strong to justify taking any or further action; (ii) the provision being enforced is or may be construed as inconsistent with applicable law; (iii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

7.04 No Waiver. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Restrictions. Failure by the Association or by any Owner to enforce a provision of the Restrictions is not a waiver of the right to do so thereafter.

7.05 Recovery of Costs. The costs of curing or abating a violation are the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Restrictions, or in any legal proceeding (whether or not a lawsuit is brought) for damages or for the enforcement of the Restrictions or the restraint of violations of the Restrictions, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

ARTICLE 8 **ASSESSMENTS**

8.01 Purpose of Assessments. The Association will use Assessments for the general purposes of preserving and enhancing the Development, and for the benefit of Owners and Residents, including but not limited to maintenance of real and personal property, management, and operation of the Association, and any expense reasonably related to the purposes for which the Development was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

8.02 Personal Obligation. An Owner is obligated to pay Assessments levied by the Board against the Owner or the Owner's Lot. Payments are made to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt himself from his Assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Owner's Lot.

8.03 Types of Assessments. There are five (5) types of Assessments: Regular, Special, Utility, Individual, and Deficiency Assessments.

8.04 Regular Assessments. Regular Assessments are used for common expenses related to the recurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- (a) Maintenance, repair, and replacement, as necessary, for the Dwellings and Improvements in accordance with *Section 11.01* below, and improvements, equipment, signage, and property owned by the Association;
- (b) Annual maintenance examination and report, as required by *Article 11*;
- (c) Utilities billed to the Association;
- (d) Services obtained by the Association and available to all Dwellings.
- (e) Taxes on property owned by the Association and the Association's income taxes;
- (f) Management, legal, accounting, auditing, and professional fees for services to the Association;
- (g) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association;
- (h) Insurance premiums and deductibles; and
- (i) Contributions to the reserve funds.

Any other expense which the Association is required by law or the Restrictions to pay, or which, in the opinion of the Board, is necessary or proper for the operation and maintenance of the Development or for enforcement of the Restrictions.

8.05 Annual Budget-Regular. The Board will prepare and approve an annual budget with the estimated expenses to be incurred by the Association for each fiscal year. The budget will take into account the estimated income and common expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or a summary of the budget available to the Owner of each Lot, although failure to receive a budget or budget summary will not affect an Owner's liability for Assessments. The Board will provide copies of the budget to Owners who make written request and pay a reasonable copy charge.

8.06 Basis of Regular Assessments. Regular Assessments will be based on the annual budget, minus estimated income from sources other than Regular Assessments. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year,

or delays in doing so, Owners will continue to pay the Regular Assessment as last determined. The allocation of such assessments shall be governed by the provisions contained herein.

8.07 Supplemental Increases. If, during the course of a year, the Board determines that Regular Assessments are insufficient to cover the estimated common expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency.

8.08 Special Assessments. In addition to Regular Assessments, the Board may levy one or more Special Assessments against all Lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special Assessments may be used for the same purposes as Regular Assessments. Special Assessments do not require the approval of the Owners, except that Special Assessments for the following purposes must be approved by at least a majority of the votes in the Association: (i) acquisition of real property; and (ii) construction of additional Improvements within the Development (excluding the repair or replacement of existing Improvements). Special Assessments are allocated equally among all Lots.

8.09 Utility Assessments. This Section applies to utilities serving the individual Dwellings or Lots and consumed by the Residents that are billed to the Association by the utility provider, and which may or may not be submetered by or through the Association. In addition to Regular Assessments and Special Assessments, the Board may levy a Utility Assessment against each Lot. If the Lots are submetered for consumption of a utility, the Utility Assessment will be based on the submeter reading. If the Lots are not submetered, the Board may allocate the Association's utility charges among the Lots by any conventional method for similar types of properties. The levy of a Utility Assessment may include a share of the utilities for the Common Areas, as well as administrative and processing fees, and an allocation of any other charges that are typically incurred in connection with utility or submetering services. The Board may, from time to time, change the method allocation, provided the same type of method or combination of methods is used for all Lots.

8.10 Individual Assessments. In addition to Regular, Special, and Utility Assessments, the Board may levy an individual Assessment against an Owner and the Owner's Lot. Individual Assessments may include, but are not limited to: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Lot into compliance with the Restrictions; (iii) fines for violations of the Restrictions; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and project Restrictions; (vi) insurance deductibles; (vii) sub-metered utilities serving the Lot; (viii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Residents of the Owner's Lot; (ix) common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; (x) fees or charges levied against the Association on a per-Lot basis; and (xi) "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefit received.

8.11 Deficiency Assessments. The Board may levy a Deficiency Assessment against all Lots for the purpose of defraying, in whole or in part, the cost of repair or restoration of any portions of the Improvements the Association is required to insure if insurance proceeds or condemnation awards prove insufficient.

8.12 Allocated Interests. The Allocated Interest of each Owner shall mean the undivided interest in the Common Expense liability allocated to each Lot. Subject to the Board's right to assess assessments as provided in this Section, this figure is determined by the percentage equivalent to a fraction, the numerator of which shall be the finished square footage area of each Dwelling and the denominator of which shall be the total of the finished square footage area of all Dwellings within the Development. On the date this Declaration is filed no portion of the Property is subject to this Declaration and, accordingly, no Allocated Interests are assigned to any portion thereof. As portions of the Property are annexed and made subject to the terms and provisions of this Declaration by the filing of one or more Notices of Applicability in accordance with *Section 16.02* hereof, the Lots included in such annexed portion of the Property will be automatically assigned Allocated Interests in accordance with the formula set forth in this *Section 8.12* and the Notice of Applicability will reflect such allocations. Since Declarant intends to annex portions of the Property and Lots in phases, the initial Lots added to this Declaration will be allocated a higher Allocated Interest than would otherwise be allocated to the Lots if all of the Property was made subject to this Declaration at a single point in time. However, as additional Lots are annexed into this Declaration, the Allocated Interests previously allocated to the Lots then subject to this Declaration will be reduced. The Notice of Applicability for each portion of the Property added to this Declaration will include the then current Allocated Interests assigned to all Lots after giving effect to the Lots then being made subject to the Declaration. A schedule of Allocated Interests which will apply to each Lot when all of the Property is annexed into the terms and provisions of this Declaration is attached hereto as Schedule 1.

8.13 Working Capital Fund. Upon the transfer of a Lot (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in an amount equal to two (2) months of Regular Assessments will be paid to the Association for the Association's working capital fund. Upon termination of the Development and Sale Period (and only at such time), the Board will be permitted to modify any working capital fund assessment payable on the transfer of a Lot. Each working capital contribution will be collected upon the conveyance of the Lot from one Owner (including Declarant) to another (expressly including any re-conveyances of the Lot upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Contributions to the fund are not advance payments of Regular Assessments and are not refundable.

8.14 Reserve Fund Contribution. Upon the transfer of a Lot from one Owner to a subsequent Owner (but excluding transfers from Declarant to the initial Owner), a fee equal to one (1) month of Regular Assessments will be paid to the Association for the Association's replacement reserve funds. Upon termination of the Development and Sale Period (and only at such time), the Board will be permitted to modify any reserve fund assessment payable on the transfer of a Lot. Each reserve fund contribution will be collected upon the conveyance of the Lot from one Owner (including Declarant) to another (expressly including any re-conveyances of the Lot upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the reserve fund contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Contributions to the fund are not advance payments of Regular Assessments and are not refundable.

8.15 Due Date. Regular Assessments are due on the first (1st) calendar day of each month or on such other date as the Board may designate in its sole and absolute discretion, and are delinquent if not received by the Association on or before such date. Special, Individual and Deficiency Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within thirty (30) days after notice of the Special, Individual or Deficiency Assessment is given.

8.16 Reserve Funds. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association will budget for reserves and may fund reserves out of Regular Assessments.

- (a) **Operations Reserves.** The Association may maintain operations reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, including deductibles on insurance policies maintained by the Association.
- (b) **Replacement & Repair Reserves.** The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of Improvements insured by the Association pursuant to this Declaration

8.17 Declarant's Right to Inspect and Correct Accounts. For a period of five (5) years after termination of the Development and Sale Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct and adjust the Association financial records and accounts. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Restrictions or applicable State law. This Section may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent.

8.18 Association's Right to Borrow Money. The Association is granted the right to borrow money, subject to the consent of Owners representing at least a majority of the votes in the Association and the ability of the Association to repay the borrowed funds from Assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage or pledge any of its real or personal property, and the right to assign its right to future income as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

8.19 Limitations of Interest. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Colorado. Notwithstanding anything to the contrary in the Restrictions or any other document or agreement executed or made in connection with the Association's collection of Assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Special and Regular Assessments, or reimbursed to the Owner if those Assessments are paid in full.

8.20 Exempt Property. The following area within the Development will be exempt from the Assessments provided for in this Article:

- (a) All area dedicated and accepted by public authority, by the recordation of an appropriate document in the Office of the Clerk and Recorder for Eagle County, Colorado; and
- (b) The Common Area.

ARTICLE 9 **ASSESSMENT LIEN**

9.01 Assessment Lien. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Assessments to the Association. Each Assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for Assessments attributable to a period prior to the date he purchased his Lot. An express lien on each Lot is hereby granted and conveyed by Declarant to the Association to secure the payment of Assessments.

9.02 Superiority of Assessment Lien. The Assessment lien is superior to all other liens and encumbrances on a Lot, except only for: (i) real property taxes and assessments levied by governmental and taxing authorities; (ii) a recorded deed of trust lien securing a loan for acquisition of the original Lot and Improvements constructed thereon; (iii) a deed of trust or vendor's lien recorded before this Declaration; or (iv) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became

due. The Assessment lien is superior to any recorded assignment of the right to insurance proceeds on the Lot, unless the assignment is part of a superior deed of trust lien. Notwithstanding the foregoing, the Association's lien for delinquent Assessments will be prior to a First Mortgage to the extent of an amount equal to the Assessments which would have come due, in the absence of acceleration, during the six (6) months immediately preceding institution of an action to enforce the lien. The provisions of this Section do not affect the priority of mechanics' or materialmen's liens or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provisions of C.R.S. §§ 38-41-201 or 15-11-201. The Association's lien on a Lot for any assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States.

9.03 Effect of Mortgagee's Foreclosure. Except to the extent as stated in *Section 9.02* above, foreclosure of a superior lien extinguishes the Association's claim against the Lot for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a common expense.

**If you fail to pay Assessments to the Association, you may lose title to your home
if the Association forecloses its assessment lien against your Lot.**

9.04 Notice and Release of Notice. The Association's lien for Assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Office of the Clerk and Recorder for Eagle County, Colorado. If a notice of lien is recorded, the costs and expenses thereof shall be added to the Assessment for the Lot against which it is filed and collected as part and parcel thereof. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner.

9.05 Power of Sale. By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of non-judicial sale in connection with the Association's assessment lien. The Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

9.06 Foreclosure of Lien. The Association's lien may be foreclosed by the same procedure by which a mortgage on real estate is foreclosed. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the

notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the assessment installments for the Lot during the period of any foreclosure. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey same.

9.07 Receivership. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from that Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments.

9.08 Payment by Mortgagee. Any Mortgagee holding a lien on a Lot may pay any unpaid amount payable with respect to such Lot, together with any and all costs and expenses incurred with respect to the lien and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of the Mortgage.

9.09 Escrow Agreement with Mortgagee. On behalf of the Association, the Board may enter into an escrow agreement with any Mortgagee to combine an Owner's assessments with the Owner's mortgage payments to be paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the Federal Housing Administration, Department of Housing and Urban Development, Veterans' Administration, or other government agency or any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans.

9.10 Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Lot shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Lot over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

ARTICLE 10

EFFECT OF NONPAYMENT OF ASSESSMENTS

An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent Assessments. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's Manager, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its

failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association may have pursuant to the Restrictions or applicable law.

10.01 Interest. Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) per annum or the maximum permitted by law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum.

10.02 Late Fees. Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

10.03 Collection Expenses. The Owner of a Lot against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys' fees and processing fees charged by the Manager.

10.04 Acceleration. If an Owner defaults in paying an Assessment that is payable in installments, the Association may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

10.05 Suspension of Vote. Subject to the below-described limitations, if an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right to vote appurtenant to the Lot during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments. When the Association suspends an Owner's right to vote, the suspended Owner may nevertheless participate as a Member of the Association for the following activities: (i) be counted towards a quorum; (ii) attend meetings of the Association; (iii) participate in discussion at Association meetings; (iv) be counted as a petitioner for a special meeting of the Association; and (v) vote to remove a Director and for the replacement of the removed Director. If the number of suspended Members exceeds twenty percent (20%) of the total Members (Co-Owners of a Lot constituting one member), all Members are eligible to vote. These limitations are imposed to prevent a Board from disenfranchising a large segment of the membership and to preserve the membership's right to remove and replace Directors.

10.06 Assignment of Rents. Every Owner hereby grants to the Association a continuing assignment of rents to secure the payment of assessments to the Association. If a Lot's account become delinquent during a period in which the Lot is leased, the Association may direct the tenant to deliver rent to the Association for application to the delinquent account, provided the Association gives the Owner notice of the delinquency, a reasonable opportunity to cure the debt, and notice of the Owner's right to a hearing before the Board. The Association must account for all monies received from a tenant and must remit to the Owner any rents received in excess of the past-due amount. A tenant's delivery of rent to the Association under the

authority hereby granted is not a breach of the tenant's lease with the Owner and does not subject the tenant to penalties from the Owner.

10.07 Money Judgment. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

10.08 Notice to Mortgagee. The Association may notify and communicate with any holder of a lien against a Lot regarding the Owner's default in payment of Assessments.

10.09 Application of Payments. The Association may adopt and amend policies regarding the application of payments. After the Association notifies the Owner of a delinquency, any payment received by the Association may be applied in the following order: Individual Assessments, Deficiency Assessments, Special Assessments, Utility Assessments, and (lastly) Regular Assessments. The Association may refuse to accept partial payment, *i.e.*, less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Association's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Lot Owner's account.

ARTICLE 11

MAINTENANCE AND REPAIR OBLIGATIONS

11.01 Association Maintains. The Association maintains, repairs and replaces, as a common expense:

- (a) The exterior of each Dwelling and Structure, including the roof, foundation, exterior building surfaces, *e.g.*, masonry, but excluding the windows, doors, garage doors, lighting serving a particular Dwelling, and any Improvement not otherwise installed on the exterior of a Dwelling by the Declarant or the Association;
- (b) All driveways, sidewalks, and roadways located on a Lot or the Common Area; and
- (c) All landscaping and irrigation located on a Lot (but excluding any portion of such Lot enclosed by a private fence creating a private yard space for the Lot Owner) and any landscaping not installed by the Declarant or the Association.

11.02 Annual Inspection of Common Area. From the period commencing at the expiration of the Development and Sale Period until ten (10) years thereafter, at least annually, the Association must examine the condition of all Improvements required to be maintained and insured by the Association in accordance with this Declaration to evaluate the quality, frequency, and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be

performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer, or professional contractors such as landscapers and brick masons. Within fifteen (15) days after performing the inspection, the expert should submit to the Board a written report with findings and recommendations. The Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair, and replacement in light of the expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. An expert's report is a record of the Association that is available to Owners for inspection and copying. To assist the Board in its examination of the condition of Improvements, a Guide to Association's Examination of Improvements is attached to this Declaration as Exhibit "C".

11.03 Owner Responsibility. Every Owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Development:

- (a) To maintain, repair, and replace his Dwelling and all Improvements located on the Owner's Lot, except for components expressly assigned and allocated to the Association by this Declaration;
- (b) The routine cleaning of any balcony, porch, or deck area of his Dwelling, and the maintenance of any yard space within a Privacy Fence, keeping same in a neat, clean, odorless, orderly, and attractive condition;
- (c) To maintain, repair, and replace all portions of the Development for which he is responsible under this Declaration or by agreement with the Association;
- (d) To not do any work or to fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or real property right thereto; and
- (e) To be responsible for his own willful or negligent acts and those of his or his Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement of any component of the Development for which the Association has maintenance or insurance responsibility.

11.04 Disputes. If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by delegating responsibility to the individual Owners. Improvement maintenance responsibilities that are allocated to the Association are intended to be interpreted narrowly to limit and confine the scope of Association responsibility. It is the intent of this Article that all components and areas not expressly delegated to the Association are the responsibility of the individual Owners.

11.05 Sheetrock. Notwithstanding anything to the contrary in the Restrictions, the Association is not responsible for the repair and replacement of sheetrock in any Dwelling, or for any surface treatments on the sheetrock, regardless of the source of damage and the availability of insurance.

11.06 Mold. In the era in which this Declaration is written, the public and the insurance industry have a heightened awareness of and sensitivity to anything pertaining to mold. This Section addresses that environment. For more information about mold and mold prevention, an Owner should consult a reliable source, such as the U.S. Environmental Protection Agency.

- (a) **Owner's Duties.** To reduce the risks associated with concentrations of mold, Owners should be proactive in preventing circumstances conducive to mold, identifying mold, and eliminating mold. Towards that end, each Owner is responsible for:
- (i) Regularly inspecting their Dwelling for evidence of water leaks or penetrations or other conditions which may lead to mold growth;
 - (ii) Repairing promptly any water leaks, breaks, or malfunctions of any kind in their Dwelling that may cause damage to another Dwelling or the Common Area;
 - (iii) Regularly inspecting their Dwelling for visible surface mold and promptly removing same using appropriate procedures; and
 - (iv) Reporting promptly to the Association any water leak, penetration, break, or malfunction in any portion of their Dwelling or any Improvements for which the Association may have maintenance responsibility.
- (b) **Insurance.** Many insurance policies do not cover damages related to mold. The Association may not maintain insurance coverage applicable to mold damage with respect to any Dwelling. Accordingly, an Owner who wants insurance coverage with respect to mold and mold-related damages is advised to purchase such insurance coverage as part of his homeowner's insurance policy.

11.07 Concrete. Minor cracks in poured concrete, including foundations, garage floors, sidewalks, driveways and porches, are inevitable as a result of the natural movement of soil (expansion and contraction), shrinkage during the curing of the concrete, and settling of the building. Such minor cracking in poured concrete may not warrant repair. The Association's duty to maintain and repair foundations and other concrete or cementuous components of the building does not extend to minor or cosmetic cracking. Generally, the Association is responsible for repair of the following conditions: (i) leakage or seepage through walls or floors; (ii) cracks in concrete, masonry walls, or masonry veneer that exceed one-quarter inch in width; (iii) improper drainage of water from stoops; and (iv) pitting, scaling, or spalling of concrete work. Concrete subflooring on second and third floors of a Dwelling is typically a non-

reinforced "lightweight" concrete topping which may develop extensive cracks and disintegration as a result of normal wear and tear and the movement of the structures on which the lightweight concrete is applied. The Association is not responsible for any aspect of the lightweight concrete in any Dwelling, regardless of the source of damage.

FACT: CONCRETE CRACKS

11.08 Balconies and Decks. Except for routine cleaning, which is the Owner's responsibility pursuant to *Section 11.03* and except as otherwise provided herein, the Association is responsible for the maintenance, repair, and replacement of balconies and decks (if any) which are part of a Dwelling. If the outside components of the Dwelling are most easily accessed through the Dwelling, the Owner will cooperate in providing access to the outside components for the Association's agents and contractors. If requested by the Association, the Owner will remove all personal property from the outside components of his Dwelling to facilitate the required maintenance, repair, or replacement. The Owner is liable to the Association for any additional expense incurred by the Association due to an Owner's failure or refusal to cooperate with reasonable requests for access or removal. This Section may not be construed to prevent an Owner at the Owner's sole expense, without right of reimbursement from the Association, from maintaining, repairing, and replacing components of their Dwelling's balcony or deck (if any), subject to the Association's architectural control. If the Shadowrock Reviewer approves any alteration or modification to a balcony or deck which, in the sole discretion of the Board, alters the material obligations of the Association to maintain, repair and/or replace such altered or modified deck or balcony, Owner shall, at the Owner's sole expense, undertake the maintenance, repair and replacement obligations under this Section, and may be required to procure insurance or additional insurance for such approved alteration or modification.

11.09 Warranty Claims. If the Owner is the beneficiary of a warranty against defects of any Improvements insured or maintained by the Association, the Owner irrevocably appoints the Association, acting through the Board, as his attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to such Improvements.

11.10 Owner's Default in Maintenance. If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and his Lot. In case of an emergency, however, the Board's responsibility to give the

Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

11.11 Common Walls.

- (a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwellings and placed on the dividing line between two (2) Dwellings constitutes a common wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law of the State of Colorado regarding common walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any common wall other than non-structural alterations to the interior surfaces of such walls (i.e., the surfaces of such walls facing the interior of a Dwelling); provided, however, that under no circumstance or event will an Owner install or attach in or on a common wall any speaker, alarm, or any other device, item, component, or system designated for the creation or emission of sound.
- (b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a common wall shall be shared by the Owners who use the wall in proportion to the interior surface area of the wall within their Dwelling.
- (c) Destruction of Fire or Other Casualty. If a common wall is destroyed or damaged by fire or other casualty, any Owner of the Dwelling served by the common wall may restore the common wall to its condition prior to the damage or destruction. Each additional Owner of a Dwelling served by such common wall will contribute to the cost of restoration in proportion to the interior surface area of the wall within their Dwelling without prejudice, however, to the right of any Owner to seek a larger contribution from an Owner due to such Owner's negligent or willful acts.
- (d) Right to Contribute Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to such Owner's Lot.
- (e) Dispute Resolution. In the event any dispute arising concerning a common wall under the provisions of this Article, such dispute will be resolved in accordance with *Article 17* of this Declaration.

ARTICLE 12 ARCHITECTURAL REVIEW

12.01 Purpose. Because the Lots are part of a single, unified community, this Declaration creates rights to regulate every aspect of the exterior of the Development, including the exterior design, use, and appearance of the Lots and Common Areas, in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to

promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent Improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, inappropriate or peculiar in comparison to the then existing Improvements. A third purpose is to respond to changes in technology, style and taste. This Declaration creates the right to regulate the appearance of every aspect of proposed or existing Improvements, including replacements or modifications of original construction or installation. Until expiration of the Development and Sale Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control pursuant to this *Article 12*.

12.02 Shadowrock Reviewer. The purposes of this Article shall be undertaken by the Shadowrock Reviewer. Until expiration of the Development and Sale Period, the Shadowrock Reviewer shall mean Declarant or its designee. Upon expiration of the Development and Sale Period, the rights of the Shadowrock Reviewer will automatically be transferred to the Architectural Control Committee appointed by the Board.

12.03 Architectural Control by Declarant.

- (a) Declarant as Shadowrock Reviewer. During the Development and Sale Period, the Shadowrock Reviewer shall mean Declarant or its designee, and neither the Association or the Board, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Declarant may designate one or more persons from time to time to act on its behalf as Shadowrock Reviewer in reviewing and responding to applications pursuant to this Article.
- (b) Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the Improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market Lots in its Development or in Declarant's other developments. Accordingly, each Owner agrees that during the Development and Sale Period, no Improvements will be started or progressed without the prior written approval of the Shadowrock Reviewer, which approval may be granted or withheld at the Shadowrock Reviewer's sole discretion. In reviewing and acting on an application for approval, the Shadowrock Reviewer may act solely in its self-interest and owes no duty to any other person or any organization.
- (c) Delegation by Declarant. During the Development and Sale Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights as Shadowrock Reviewer under this Article to an Architectural Control Committee appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be members of the

Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (a) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (b) veto any decision which Declarant, in its sole discretion, determines to be inappropriate or inadvisable for any reason.

UNTIL THE EXPIRATION OF THE DEVELOPMENT AND SALE PERIOD, ONLY THE DECLARANT HAS THE AUTHORITY TO MAKE DECISIONS REGARDING ARCHITECTURAL CONTROL IN THE ASSOCIATION - INCLUDING ALL TASTE, DESIGN AND STANDARDS!

12.04 Architectural Control by Association.

- (a) Association as Shadowrock Reviewer. Upon Declarant's delegation, in writing, of all or a portion of its reserved rights as Shadowrock Reviewer to the Board, or upon the expiration or termination of the Development and Sale Period, the Association, acting through an Architectural Control Committee (the "ACC") will assume jurisdiction over architectural control and will have the powers of the Shadowrock Reviewer hereunder.
- (b) ACC. The ACC will consist of at least three (3) but not more than seven (7) persons appointed by the Board. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC will be construed to mean the Board. Members of the ACC need not be Owners or Residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.
- (c) Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws. Approval of a modification or Improvement may not be deemed to constitute a waiver of the right to withhold approval of similar proposals, plans or specifications that are subsequently submitted.

12.05 Prohibition of Construction, Alteration and Improvement. Without the Shadowrock Reviewer's prior written approval, a person may not commence or continue any construction, alteration, painting, addition, improvement, installation, modification, redecoration, or reconstruction of or to the Development, or do anything that affects the appearance, use, or structural integrity of the Development.

**YOU CANNOT CHANGE THE EXTERIOR OF YOUR DWELLING OR ANY
STRUCTURE UNLESS YOU HAVE THE SIGNED CONSENT OF THE
SHADOWROCK REVIEWER.**

12.06 No Deemed or Verbal Approval. Approval by the Shadowrock Reviewer may not be deemed, construed, or implied from an action, a lack of action, or a verbal statement by a representative of or designee of Declarant, an Association director or officer, a member or chair of the Board-appointed ACC, the Association's manager, or any other representative of the Association. To be valid, approval of the Shadowrock Reviewer must be: (i) in writing; (ii) on a form or letterhead issued by the Association; (iii) signed and dated by the Association president or another officer designated by the Board for that purpose; (iv) specific to a Lot; and (v) accompanied by detailed plans and specifications showing the proposed change. If the Shadowrock Reviewer fails to respond in writing – negatively, affirmatively, or requesting information – within sixty (60) days after the Shadowrock Reviewer's actual receipt of the Owner's application, **the application is deemed denied. Under no circumstance may approval of the Shadowrock Reviewer be deemed, implied or presumed.** If the Shadowrock Reviewer approves a change, the Owner or the Shadowrock Reviewer may require that the architectural approval be recorded. The approval of an architectural change automatically terminates if work on the approved Improvement(s) has not started by the commencement date stated in the Shadowrock Reviewer's approval or, if no commencement date is stated, within ninety (90) days after the date of approval.

12.07 Application to Shadowrock Reviewer. To request approval by the Shadowrock Reviewer, an Owner must make a written application and submit two (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Shadowrock Reviewer may return one set of plans and specifications to the applicant marked with the Shadowrock Reviewer's response, such as "Approved," "Denied," or "Submit Additional Information." The Shadowrock Reviewer will retain the other set of plans and specifications, together with the application, for the Association's files. The Shadowrock Reviewer has the right, but not the duty, to evaluate every aspect of construction and property use that may alter or adversely affect the general value of appearance of the Development.

12.08 Owner's Duties. If the Shadowrock Reviewer approves an Owner's application, the Owner may proceed with the improvement, provided:

- (a) The Owner must adhere strictly to the plans and specifications which accompanied his application;
- (b) The Owner must initiate and complete the improvement in a timely manner; and
- (c) If the approved application is for work that requires a building permit from the County, the Owner must obtain the appropriate permit. The Shadowrock Reviewer's approval of plans and specifications does not mean that they comply with the County's requirements. Alternatively, approval by the County does not ensure Board approval.

12.09 Control for Variances. This Section of the Declaration may not be amended without the approval of Owners of at least sixty-seven percent (67%) of the votes in the Association. If the Shadowrock Reviewer is considering approval of an application that seeks a variance or which, in the Shadowrock Reviewer's opinion, would constitute a variance of the Development's established standards, the Shadowrock Reviewer must notify an Owner of each Lot of the nature of the proposed variance at least twenty (20) days before the Shadowrock Reviewer approves the application. The Shadowrock Reviewer may approve the variance unless Owners of at least a majority of the Lots disapprove the proposed variance by petition or at a meeting of the Association.

12.10 Prohibited Acts. The types of acts affecting the exterior of the Development that may not be commenced without the Shadowrock Reviewer's written approval include, but are not limited to the following:

- (a) Installation of ornamental iron or burglar bars, storm window or door, awnings, shutters, exterior lighting, balcony or deck cover, chimney, or skylight;
- (b) Installation of equipment that may create a noise annoyance, such as noise-producing security devices, exterior pumps, and speakers;
- (c) Installation of walls, screens, fences, gates, or carports; and
- (d) Enclosure of balconies, decks, or garages.

Installation of impermeable decking or other improvement that may interfere with established drainage patterns.

ARTICLE 13 INSURANCE AND INDEMNITY

13.01 General Provisions. The broad purpose of this Article is to require that the Development be insured with the types and amounts of coverage that are customary for similar types of properties and that are acceptable to mortgage lenders, guarantors, or insurers that finance the purchase or improvement of Lots. Because the insurance requirements of mortgage

underwriters are subject to change, as are State-promulgated insurance regulations and policies, this Articles tries to balance the need for certain minimum insurance requirements with the desire to adapt to a periodically changing insurance environment. The Board will make every reasonable effort to comply with the requirements of this Article.

13.02 Unavailability. The Association, and its directors, officers, and managers, will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if the failure is due to the unavailability of a particular coverage from reputable insurance companies, or if the coverage is available only at demonstrably unreasonable cost.

13.03 No Coverage. Even if the Association and the Owner have adequate amounts of recommended and required coverages, the Development may experience a loss that is not covered by insurance. In that event, the Association is responsible for restoring the Common Areas and the Improvements maintained by the Association as a common expense, and the Owner is responsible for restoring his Dwelling at his sole expense. This provision does not apply to the deductible portion of a policy.

13.04 Requirements. The cost of insurance coverages and bonds maintained by the Association is a common expense. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Colorado. The Association must be the named insured on all policies obtained by the Association. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns." The loss payee clause should show the Association as trustee for each Owner and Mortgagee. In addition, each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association. Policies of property and general liability insurance maintained by the Association must provide that the insurer waives its rights to subrogation under the policy against an Owner. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance. An insurer or its agent that has issued an insurance policy for the insurance described in this *Article 13* shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee.

13.05 Insurance Proceeds: Association as Trustee. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Any loss covered by the property insurance policy described in *Section 13.08* must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for

the Owners and Mortgagees as their interests may appear. Subject to the provisions of C.R.S. § 38.33.3-313, as amended, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the common interest community created by this Declaration is terminated.

13.06 Notice of Cancellation, Modification or Unavailability. Unless otherwise provided by statute, all policies required to be carried under this *Section 13* shall provide that the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. If the insurance described in *Sections 13.08 and 13.09* below is unavailable, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

13.07 Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, and the amount thereof may not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the coverage limits required by this Declaration or an underwriting lender. In the event of an insured loss, the deductible is treated as a common expense of the Association in the same manner as the insurance premium. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of an Owner or Resident or their invitee, then the Board may levy an Individual Assessment against the Owner and his Lot for the amount of the deductible that is attributable to the act or omission, provided the Owner is given notice and an opportunity to be heard in accordance with the Notice and hearing Section of this Declaration.

13.08 Property Insurance. The Association will obtain blanket all-risk insurance if reasonably available, for: (i) the Improvements required to be maintained by the Association in accordance with *Section 11.01*; (ii) Improvements located within Common Areas; and (iii) property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies. If blanket all-risk insurance is not reasonably available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. The total amount of insurance must not be less than the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations and other items normally excluded from property policies.

13.09 Liability Insurance. The Association will maintain a commercial general liability insurance policy over the Common Areas and on any Improvements required to be maintained by the Association in accordance with *Section 11.01* for bodily injury and property damage resulting from the operation, maintenance, or use. The Declarant shall be included as an

additional insured in such Declarant's capacity as a Lot Owner and Board Member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Areas. The insurance shall cover claims of one or more insured parties against other insured parties.

13.10 Worker's Compensation. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of State law or if the Board so chooses.

13.11 Fidelity Coverage. The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services. The policy should be for an amount that exceeds the greater of: (i) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (ii) an amount equal to three (3) months of Regular Assessments on all Lots; but in any event, coverage shall not be less in aggregate than two months' current assessments plus reserves, as calculated from the current budget of the Association. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverages.

13.12 Directors and Officers Liability. The Association may maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

13.13 Other Policies. The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association.

13.14 Owners' Responsibilities for Insurance. Each Owner will obtain and maintain fire and extended coverage on all Improvements located on an Owner's Lot, excepting only those Improvements insured by the Association in accordance with *Section 13.08*, in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each Owner will obtain and maintain general liability insurance on his Lot and all Improvements located thereon. Each Owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an Owner fails to maintain required insurance, or to provide the Association with proof of same, the Board may obtain insurance on behalf of the Owner who will be obligated for the cost as an Individual Assessment. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. Each Owner and Resident is solely responsible for insuring his personal property, including furnishings, vehicles, and stored items.

13.15 Association Does Not Insure. Unless otherwise required by *Section 13.08*, the Association does not insure any Improvements on an Owner's Lot or an Owner or Resident's personal property. Each Owner and Resident is solely responsible for insuring his personal property in his Dwelling and on the Development, including furnishings, vehicles, and stored items, and improvements or betterments constructed within a Dwelling. The Association strongly recommends that each Owner and Resident purchase and maintain insurance on his personal belongings.

ARTICLE 14
RECONSTRUCTION OR REPAIR AFTER LOSS

14.01 Restoration Funds. For purposes of this Article, "**Restoration Funds**" include insurance proceeds, condemnation awards, Deficiency Assessments, Individual Assessments, and other funds received on account of or arising out of injury or damage to the Development. All funds paid to the Association for purposes of repair or restoration will be deposited in a financial institution in which accounts are insured by a federal agency. Withdrawal of Restoration Funds requires the signatures of at least two (2) Board Members or that of an agent duly authorized by the Board.

- (a) **Sufficient Proceeds.** If Restoration Funds obtained from insurance proceeds or condemnation awards are sufficient to repair or restore the damaged or destroyed Development, the Association, as trustee for the Owners, will promptly apply the funds to the repair or restoration.
- (b) **Insufficient Proceeds.** If Restoration Funds are not sufficient to pay the estimated or actual costs of restoration as determined by the Board, the Board may levy a Deficiency Assessment against the Owners to fund the difference.
- (c) **Surplus Funds.** If the Association has a surplus of Restoration Funds after payment of all costs of repair and restoration, the surplus will be applied as follows: (1) if Deficiency Assessments were a source of Restoration Funds, the surplus will be paid to Owners in proportion to their contributions resulting from the Deficiency Assessment levied against them; provided that no Owner may receive a sum greater than that actually contributed by him, and further provided that any Delinquent Assessments owed by the Owner to the Association will first be deducted from the surplus; and (2) any surplus remaining after the disbursement described in the foregoing paragraph will be common funds of the Association to be used as directed by the Board.

14.02 Costs and Plans.

- (a) **Cost Estimates.** Promptly after the loss, the Board will obtain reliable and detailed estimates of the cost of restoring the damaged Development. Costs may include premiums for bonds and fees for the services of professionals, as the Board deems necessary, to assist in estimating and supervising the repair.

- (b) Plans and Specifications. Common Areas will be repaired and restored substantially as they existed immediately prior to the damage or destruction. Improvements insured by the Association will be repaired and restored substantially in accordance with original construction plans and specifications. Alternate plans and specifications for repair and restoration of either Common Areas or Improvements insured by the Association must be approved by sixty-seven percent (67%) of the total votes of the Association.

14.03 Owner's Duty to Repair.

- (a) Uninsured Loss. Within sixty (60) days after the date of damage, the Owner will begin repair or reconstruction of any portion of his Dwelling not covered by the Association's insurance policy, subject to the right of the Association to supervise, approve, or disapprove repair or restoration during the course thereof.
- (b) Insured Loss. If the loss to a Dwelling is covered by the Association's insurance policy, the Owner will begin repair or restoration of damage on receipt of the insurance proceeds or any portion thereof from the Association, subject to the rights of the Association to supervise, approve, or disapprove the repair or restoration during the course thereof.
- (c) Failure to Repair. If an Owner fails to repair or restore damage as required by this Section, the Association may effect the necessary repairs and levy an Individual Assessment against the Owner and Lot for the cost thereof, after giving an Owner reasonable notice of the Association's intent to do so.

14.04 Owner's Liability for Insurance Deductible. If repair or restoration of Common Area or any Improvement is required as a result of an insured loss, the Board may levy an Individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the cost of the repair or reconstruction in the absence of insurance.

ARTICLE 15
TERMINATION AND CONDEMNATION

15.01 Association as Trustee. Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Development in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Development. As trustee, the Association will have full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration, including, without limitation: (i) the right to receive, administer, and distribute funds, awards, and insurance proceeds; (ii) to effect the sale of the Development as permitted by this Declaration; and (iii) to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

15.02 Termination. In the event of substantially total damage, destruction or public condemnation of the Development, an agreement by the Owners to terminate the Declaration must be approved by seventy percent (70%) of the total votes of the Association. In the event of public condemnation of the entire Development, an amendment to terminate may be executed by the Board without a vote of Owners. In all other circumstances, an agreement by the Owners to terminate the Declaration must be approved by eighty percent (80%) of the total votes of the Association. Owner approval in favor of termination must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of Owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. The termination agreement must be recorded in the Office of the Clerk and Recorder for Eagle County, Colorado. No termination shall be valid unless a copy of the termination agreement is sent by certified mail or hand delivered to the Board of County Commissioners for Eagle County, Colorado. Subject to the provisions of the termination agreement, the termination shall be effectuated according to the provisions of C.R.S. § 83-33.3-218.

15.03 Eminent Domain. In the event it becomes necessary for any public authority to acquire all or any part of the Common Area for any public purpose during the period this Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated equally among all Lots and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot.

ARTICLE 16

DEVELOPMENT RIGHTS

16.01 Development by Declarant. It is contemplated that the Property will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant hereby reserves the right to: (i) add all or a portion of the Property to the terms and provisions of this Declaration in accordance with the procedures set forth in *Section 16.02*; (ii) create Lots and Common Area on portions of the Property made subject to this Declaration; and (iii) subdivide any portion of the Development and convert any Lot into Common Area. These rights may be exercised with respect to any portions of the Property at any time during the Development and Sale Period. As each area is developed and added to the terms and provisions of this Declaration, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. To exercise any development rights reserved in this Declaration or pursuant to this *Section 16.01*, Declarant shall comply with the provisions of C.R.S. § 38-33.3-210.

16.02 Notice of Applicability. Upon recording in the Office of the Clerk and Recorder for Eagle County, Colorado, this Declaration serves to provide notice that at any time, and from

time to time, all or any portion of the Property may be made subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. This Declaration will apply to and burden a portion or portions of the Property upon the recording of a Notice of Applicability describing such Property by a legally sufficient description and expressly providing that such Property will be considered a part of the Development and will be subject to the terms, covenants conditions, restrictions and obligations of this Declaration. To be effective, a Notice of Applicability must be executed by the Declarant and the record title owner of the Property being made subject to this Declaration if such Property is not owned by the Declarant. To make the terms and provisions of this Declaration applicable to a portion of the Property, Declarant will be required only to cause a Notice of Applicability to be recorded containing the following provisions:

- (a) A reference to this Declaration, which reference will state the recordation information for this Declaration;
- (b) A statement that all of the provisions of this Declaration will apply to such portion of the Property;
- (c) A legal description of such portion of the Property;
- (d) A Map and Plat (which may be combined), as applicable and required, describing all or a portion of the Property;
- (e) An assignment of the Lot number attributable to each Lot within the Property added to the terms and provisions of this Declaration;
- (f) A reallocation of Allocated Interests to each Lot then subject to the Declaration after giving effect to the Lots described in the Notice; and
- (g) A description of any Common Area.

To the extent required by applicable law, a Notice of Applicability will constitute an amendment to this Declaration and may be executed unilaterally by the Declarant provided that Declarant is the owner of the Property described in the Notice of Applicability. If all or a portion of the Property described in the Notice of Applicability is not owned by the Declarant, the only the owner of such portion and the Property and the Declarant must execute the Notice of Applicability.

16.03 Declarant Marketing Rights. Notwithstanding any provision of this Declaration to the contrary, at all times, Declarant will have the right and privilege: (i) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, marketing and sales mobile homes or trailers, other sales devices and banners for the purpose of aiding the sale of Lots in the Property and the Development; (ii) to maintain Improvements upon Lots as sales, model, management, business and construction offices; and (iii) to maintain and locate construction trailers and construction tools and equipment within the Property and the Development. The

construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this *Section 16.02* until two (2) years after expiration or termination of the Development and Sale Period.

16.04 Assignment of Declarant's Rights. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

ARTICLE 17 **DISPUTE RESOLUTION**

17.01 Introduction and Definitions. The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all Claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

- (a) "**Claim**" means any claim, grievance, or dispute between Parties involving the Property, except Exempt Claims as defined below, and including without limitation:
 - (i) Claims arising out of or relating to the interpretation, application, or enforcement of the Restrictions;
 - (ii) Claims relating to the rights and/or duties of Declarant as Declarant under the Restrictions; and
 - (iii) Claims relating to the design, construction, or maintenance of the Property.
- (b) "**Claimant**" means any Party having a Claim against any other Party.
- (c) "**Exempt Claims**" means the following claims or actions, which are exempt from this Article:
 - (i) The Association's claim for Assessments, and any action by the Association to collect Assessments;
 - (ii) An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as

the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration;

- (iii) Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration;
 - (iv) A legal proceeding to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article;
 - (v) A dispute that is subject to alternate dispute resolution – such as mediation or arbitration – by the terms of a public law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Article, unless the Parties agree to have the dispute governed by this Article.
- (d) **“Respondent”** means any Party against which a Claim has been asserted by a Claimant.

17.02 Mandatory Procedures. Claimant may not initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article. As provided in *Section 17.07* below, a Claim asserted against the Declarant will be resolved by binding arbitration unless Declarant specifically waives arbitration in writing; otherwise, the terms and provisions to this Article apply to Claims asserted against Declarant.

17.03 Notice. Claimant must notify Respondent in writing of the Claim (the **“Notice”**), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (ii) the basis of the Claim (*i.e.*, the provision of the Restrictions or other authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section.

17.04 Negotiation. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

17.05 Mediation. If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the thirty (30) day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

17.06 Termination of Mediation. If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file a lawsuit, initiate arbitration, or commence administrative proceedings on the Claim, as appropriate and as permitted by this Article.

17.07 Binding Arbitration-Declarant Claims. All Claims in which Declarant is the Respondent must be settled by binding arbitration unless binding arbitration is specifically waived in writing by the Declarant. Declarant may, by summary proceedings (*e.g.*, a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 17.07*.

- (a) **Governing Rules.** If a Claim asserted against the Declarant has not been resolved after Mediation as required by *Section 17.05*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 17.07* and the rules and procedures of the American Arbitration Association ("AAA") or its successor or an equivalent approved by the Declarant. In the event of any inconsistency between this *Section 17.07* and any such applicable rules, this *Section 17.07* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction.
- (b) **Exceptions to Arbitration; Preservation of Remedies.** No provision of, nor the exercise of any rights under, this *Section 17.07* will limit the right of Claimant or Declarant, and Claimant and the Declarant will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of

provisional or ancillary remedies or exercise of self-help remedies shall neither constitute a waiver of the right of any Party, including the Claimant, to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

- (c) Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 17.07*.
- (d) Arbitrator. Unless the parties to the arbitration agree in writing to the contrary, all arbitration proceedings shall be arbitrated by at least one arbitrator, which shall be appointed in accordance with the rules and procedures of AAA.
- (e) Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 17.07*; provided, however, that in no event shall the arbitrator award damages which exceed the damages for construction defects a Claimant would be entitled to under C.R.S. § 13-20-806 governing construction defect actions.. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings in which the amount in controversy exceeds \$50,000.00, in the aggregate, the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings in which the amount in controversy exceeds \$50,000.00, in the aggregate, the Parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on an incorrect or erroneous ruling of law by appeal to an appropriate court having jurisdiction; provided, however, that any such application for vacation or modification of an award based on an incorrect ruling of law must be filed in a court having jurisdiction over the Claim within fifteen (15) days from the date the award is rendered. The arbitrator's findings of fact shall be binding on all Parties and shall not be subject to further review except as otherwise allowed by applicable law.
- (f) Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within 180 days of the filing of the Claim for arbitration by notice from either Party to the other. Arbitration proceedings hereunder shall be conducted in Eagle County, Colorado. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Colorado Rules of Civil Procedure and applicable law. The arbitrator shall have the power to award recovery of all costs and fees (including attorney's fees, administrative fees, and arbitrator's fees) to the prevailing Party. Each Party agrees to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the Parties or by applicable law or

regulation. In no event shall any Party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other Parties to the Claim.

17.08 Allocation of Costs. Except as otherwise provided in this Article, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

17.09 General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

17.10 Approval & Settlement. The initiation of litigation or binding arbitration as required by this Article, or the initiation of any judicial or administrative proceeding by the Association is subject to the following conditions in addition to and notwithstanding the above alternate dispute resolution procedures. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Section.

- (a) Owner Approval. The Association may not initiate any judicial, or administrative proceeding without the prior approval of Owners of at least a majority of the Lots, except that no such approval is required: (i) to enforce provisions of this Declaration, including collection of assessments; (ii) to challenge condemnation proceedings; (iii) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (iv) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (v) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consent of Owners in order to preserve the status quo.
- (b) Lawsuit against Declarant. Also, the Association may not initiate any judicial, arbitration, or administrative proceeding against Declarant without the approval of Owners representing at least eighty percent (80%) of the Lots.
- (c) Required Disclosure in Construction Defect Actions. In the event that the Board approves pursuing an action to assert defects in the construction of five (5) or more Dwellings, the Board is required to substantially comply with the following requirements:

- (i) Prior to submitting the action for Owner approval, and in any event, prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the Board shall mail or deliver written notice of the commencement or anticipated commencement of such action to each Owner at the last known address described in the Association's records.
 - (ii) The notice shall state the nature of the action and the relief sought and the expenses and fees that the Board anticipates will be incurred in prosecuting the action.
 - (iii) Nothing in this *Section 17.10* herein shall be construed to: (a) require the disclosure in the notice or the disclosure to an Owner of attorney-client communications or other privileged communications; (b) permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; (c) limit or impair the authority of the Board to contract for legal services, or (d) limit or impair the ability to enforce such a contract for legal services.
- (d) Funding Litigation. Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a Special Assessment, the Association must levy a Special Assessment to fund the estimated costs of litigation or arbitration prior to initiating a judicial, arbitration, or administrative proceeding. The Association may not use its annual operating income or reserve funds or savings to fund litigation or arbitration, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation and arbitration reserve fund.
- (e) Settlement. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreement and waiver or release of claims.

17.11 Restrictions on Amendment. Notwithstanding any provision in this Declaration to the contrary, no provision of this *Article 17* may be amended without the approval of Owners of at least seventy-five (75%) percent of the Lots and the Declarant, unless the amendment is solely for the purpose of complying with applicable law.

ARTICLE 18
MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots within the Development. The provisions of this Article apply to the Declaration and the Bylaws of the Association.

18.01 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates (thereby becoming an "**Eligible Mortgage Holder**"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or
- (b) Any delinquency in the payment of assessments or charges owed for a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Restrictions relating to such Lot or the Owner or occupant which is not cured within sixty (60) days; or
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

18.02 Examination of Books. The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

18.03 Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien mortgages under applicable law will relate only to the individual Lots and not to any other portion of the Development.

ARTICLE 19
GENERAL PROVISIONS

19.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Declaration will run with and bind the Development, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded in the Office of the Clerk and Recorder for Eagle County, Colorado, and continuing through and including January 1, 2056, after which time this Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved in a resolution adopted by Members entitled to cast at least seventy percent (70%) of

the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the recording of a certified copy of such resolution in the Office of the Clerk and Recorder for Eagle County, Colorado. Notwithstanding any provision in this *Section 19.01* to the contrary, if any provision of this Declaration would be unlawful, void, or voidable by reason of any Colorado law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

19.02 Amendment. Unless expressly stated otherwise, this Declaration, including plats and maps, may be amended for any reason by the recording in the Office of the Clerk and Recorder of Eagle County, Colorado, of an instrument executed and acknowledged by: (i) Declarant acting alone and unilaterally (unless Declarant has relinquished such right by written instrument recorded in the Office of the Clerk and Recorder for Eagle County, Colorado); or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (unless Declarant has relinquished such right by written instrument recorded in the Office of the Clerk and Recorder for Eagle County, Colorado) and Members entitled to cast at least sixty seven percent (67%) of the number of votes entitled to be cast by members of the Association. Specifically, and not in any manner limiting Declarant's right to unilaterally amend for any reason, Declarant may unilaterally amend this Declaration: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on Lots; or (d) to comply with any requirements promulgated by a local, state or governmental agency, including, for example, the Department of Housing and Urban Development. Notwithstanding the foregoing provision, after expiration of the Development and Sale Period, any amendment affecting the insurance required to be maintained by the Association under this Declaration, or any amendment reducing the maintenance responsibility of the Association under this Declaration (including any rights granted to the Association necessary or required to discharge or pay for such maintenance or repair), must be approved by one hundred percent (100%) of the number of votes entitled to be cast by members of the Association, unless such amendment could be unilaterally prosecuted by the Declarant in accordance with the prior sentence, whereupon, the amendment must be approved by a majority of the number of votes entitled to be cast by members of the Association.

19.03 Enforcement. The Association or Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Declaration will not

constitute a waiver of the right to enforce such right, provision, covenants or condition in the future.

19.04 Higher Authority. The terms and provisions of this Declaration are subordinate to federal and state law, and local ordinances. Generally, the terms and provisions of this Declaration are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

NOTICE

Users of this Declaration should periodically review statutes and court rulings that may modify or nullify the terms and provisions of the Restrictions or their enforcement, or which may create rights or duties not contemplated therein.

19.05 Severability. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Declaration, or, to the extent permitted by applicable law, the validity of such provision as applied to any other person or entity.

19.06 Conflicts. If there is any conflict between the provisions of this Declaration, the Articles, the Bylaws, or any Rules and Regulations adopted pursuant to the terms of such Restrictions, the provisions of this Declaration will govern.

19.07 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

19.08 Acceptance by Grantees. Each grantee of Declarant of a Lot or other real property interest in the Development, by the acceptance of a deed of conveyance, or each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Declaration or to whom this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Development, and will bind any person having at any time any interest or estate in the Development, and will inure to the benefit of each Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

19.09 No Partition. Except as may be permitted in this Declaration or amendments thereto, neither physical partition of the Common Area or any part will be permitted, nor will any person acquiring any interest in the Development or any part seek any such judicial partition. This Section 19.09 will not be construed to prohibit the Board from acquiring and

disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Declaration.

19.10 Notices. Any notice permitted or required to be given to any person by this Declaration will be in writing and may be delivered either personally or by mail. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

19.11 View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space within the Property will be preserved without impairment. Declarant and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area) will have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

19.12 Safety and Security. Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property or the Development, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

19.13 Declarant as Attorney in Fact and Proxy. To secure and facilitate Declarant's exercise of the rights reserved by Declarant in this Declaration, each Owner, by accepting a deed to a Lot and each Mortgagee, by accepting the benefits of a Mortgage against a Lot, and any other person, by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and person's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant in this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or person, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency, and death of an Owner, Mortgagee, and/or person and shall be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party. In addition, each Owner, by accepting a deed to a Lot, and each Mortgagee, by accepting the benefits of a Mortgage against a Lot and any person, by accepting the benefits of a mortgage, deed of trust, mechanic's lien contract,

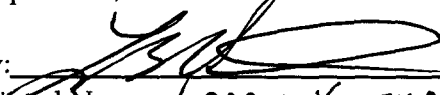
mechanic's lien claim, vendor's lien, and/or any other security interest against any Lot, shall thereby appoint Declarant the proxy of such Owner, Mortgagee, or person, with full power of substitution in the premises, to do and perform each and every act permitted or required pursuant to this Declaration, and which may otherwise be reasonably necessary in connection therewith, including without limitation, to cast a vote for such Owner, Mortgagee, or Person at any meeting of the Members for the purpose of approving or consenting to any amendment to this Declaration in order to effect and perfect any such act permitted or required pursuant to this Declaration and to execute and record amendments on their behalf to such effect; and the power hereby reposed in Declarant, as the attorney-in-fact for each such Owner, Mortgagee, or person includes, without limitation, the authority to execute a proxy as the act and deed of any Owner, Mortgagee, or Person and, upon termination or revocation of any Owner's proxy as permitted by the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-101, *et seq.* the authority to execute successive proxies as the act and deed of any Owner, Mortgagee, or person authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. All such proxies shall be non-revocable for the maximum lawful time and upon the expiration of non-revocable period, new proxies shall again be executed for the maximum non-revocable time until Declarant's right to require such successive proxies expires.

EXECUTED to be effective on the date this instrument is recorded in the Office of the Clerk and Recorder for Eagle, Colorado.

DECLARANT:

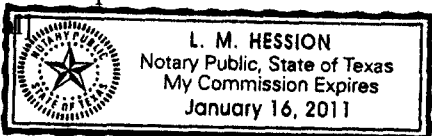
BLUE RIDGE INVESTMENTS, L.P., a Texas limited partnership

By: GP Blue Ridge Investments, Inc., a Texas corporation, its General Partner

By: 
Printed Name: LARRY VINEYARD
Title: VICE PRESIDENT

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me this 23rd day of April, 2007 by LARRY VINEYARD, VICE PRESIDENT of GP Blue Ridge Investments, Inc., a Texas corporation, general partner of Blue Ridge Investments, Ltd., on behalf of said corporation and partnership.

[se 



Notary Public, State of Texas

EXHIBIT "A"

APPROVED SITE PLAN

EXHIBIT "B"

GUIDE TO ASSOCIATION'S MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS

This Guide lists several of the major management and governance functions of a typical residential development with a mandatory owners association. The Association's Board of Directors may, from time to time, use this Guide to consider what functions, if any, to delegate to one or more managers, managing agents, employees, or volunteers. Because laws and practices change over time, the Association and/or the Board should not use this Guide without taking account of applicable changes in law and practices.

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	Performed by Assoc. officers or directors	Delegated to Assoc. employee or agent
<p><u>FINANCIAL MANAGEMENT</u></p> <p>To adopt annual budget and levy assessments, per Declaration.</p> <p>Prepare annual operating budget, periodic operating statements, and year-end statement.</p> <p>Identify components of the property the Association is required to maintain. Estimate remaining useful life of each component. Estimate costs and schedule of major repairs and replacements, and develop replacement reserve schedule for 5, 10, and 20-year periods. Annually update same.</p> <p>Collect assessments and maintain Association accounts.</p> <p>Pay Association's expenses and taxes.</p> <p>Obtain annual audit and income tax filing.</p> <p>Maintain fidelity bond on whoever handles Association funds.</p> <p>Report annually to members on financial status of Association.</p>		
<p><u>PHYSICAL MANAGEMENT</u></p> <p>Inspect, maintain, repair, and replace, as needed, all components of the property for which the HOA has</p>		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	Performed by Assoc. officers or directors	Delegated to Assoc. employee or agent
<p>maintenance responsibility.</p> <p>Contract for services, as needed to operate or maintain the property.</p> <p>Prepare specifications and call for bids for major projects.</p> <p>Coordinate and supervise work on the property, as warranted.</p>		
<p><u>ADMINISTRATIVE MANAGEMENT</u></p> <p>Receive and respond to correspondence from owners, and assist in resolving owners' problems related to the Association.</p> <p>Conduct hearings with owners to resolve disputes or to enforce the governing documents.</p> <p>Obtain and supervise personnel and/or contracts needed to fulfill Association's functions.</p> <p>Schedule Association meetings and give owners timely notice of same.</p> <p>Schedule board meetings and give directors timely notice of same.</p> <p>Enforce the governing documents.</p> <p>Maintain insurance and bonds as required by the governing documents or state law, or as customary for similar types of property in the same geographic area.</p> <p>Maintain Association books, records, and files.</p> <p>Maintain Association's corporate charter and registered agent & address.</p>		

MAJOR MANAGEMENT & GOVERNANCE FUNCTIONS	Performed by Assoc. officers or directors	Delegated to Assoc. employee or agent
<p><u>OVERALL FUNCTIONS</u></p> <p>Promote harmonious relationships within the community. Protect and enhance property values in the community. Encourage compliance with governing documents and applicable laws and ordinances.</p> <p>Act as liaison between the community of owners and governmental, taxing, or regulatory bodies.</p> <p>Protect the Association and the property from loss and damage by lawsuit or otherwise.</p>		

EXHIBIT "C"

GUIDE TO THE ASSOCIATION'S EXAMINATION OF IMPROVEMENTS

This Guide provides information to assist the Board in conducting an annual examination of all Improvements required to be maintained by the Association for the purpose maintaining replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of such Improvements. The annual examination is required by *Section 10.02* of the Declaration and is a necessary prerequisite to establishing sufficient reserves as required by *Section 7.13* of the Declaration. Additional information on conducting the examination may be obtained from the Community Associations Institute and their publication, *The National Reserve Study Standards of the Community Associations Institute*. See www.caionline.org. In addition, the Community Associations Institute provides certification for qualified preparers of reserve studies, known as a "Reserve Professionals Designation" (R.S.). Neither this Declaration nor current law requires that the Board engage an individual holding a Reserve Professional Designation for the purpose of conducting the annual examination of the Improvements required to be maintained by the Association. Because laws and practices change over time, the Board should not use this Guide without taking into account applicable changes in law and practice.

Developing a Plan

In developing a plan, the age and condition of Improvements maintained by the Association must be considered. The possibility that new types of material, equipment, or maintenance processes associated with the repair and/or maintenance of Improvements should also be taken into account. The individual or company who prepares the examination calculates a suggested annual funding amount and, in doing so, may consider such factors as which components are included, estimated replacement costs of the components, useful lives of the components, inflation, and interest on reserve account balances or other earnings rates. Annual contributions to the replacement fund from annual assessments are based on this examination or reserve study. A reserve study generally includes the following:

- Identification and analysis of each major component of Improvements maintained by the Association
- Estimates of the remaining useful lives of the components
- Estimates of the costs of replacements or repairs
- A cash flow projection showing anticipated changes in expenditures and contributions over a time period generally ranging between 20 and 30 years
- The "Funding Goal" which is generally one of the following:

- Component Full Funding: Attaining, over a period of time, and maintaining, once the initial goal is achieved, a cumulative reserve account cash balance necessary to discharge anticipated expenditures at or near 100 percent; or
- Threshold Funding: Maintaining the reserve account cash balance above a specified dollar or percent funded amount.

Note that Threshold Funding will increase the likelihood that special assessments will be required to fund major repairs and replacements. For example, one study has shown that a Threshold Funding goal of 40% to 50% results in an 11.2% chance that the Association will be unable to fund repairs and replacement projects in the next funding year. See "Measuring the Adequacy of Reserves", *Common Ground*, July/August 1997. The same study found that Component Full Funding reduces this likelihood to between .09% and 1.4%.

Finding Improvement Component Replacement Information

Improvement component replacement information may be obtained from contractors, suppliers, technical specialists (IT, cable, fiber optics, etc), a "Reserve Study" specialist or from using tables in technical manuals on useful lives of various components. As provided in *Section 10.02* of the Declaration, the Board must reevaluate its funding level each year based upon changes to the Improvements as well as changes to replacement costs and component conditions. The specific components of Improvements include, but are not limited to, roofing, electrical systems, plumbing, information technology equipment, floor coverings, air conditioning systems, heating and hot water equipment, roads, recreational facilities, and furniture and equipment owned or maintained by the Association. Components covered by maintenance contracts may be excluded if the contracts include maintenance and replacement of the components. The Board must also include within their overall budget a deferred maintenance account for those components requiring periodic maintenance which does not occur annually. Typically, the deferred maintenance account would include such components as painting, staining, and caulking.

SCHEDULE 1

**PROJECTION OF ALLOCATED INTERESTS IF ALL PROPERTY ADDED TO THE
DECLARATION**

A=±2,781 SQ FT*

B= ±1,870 SQ FT*

C= ±2,975 SQ FT*

D= ±2,399 SQ FT*

*Square footage is approximate and includes air conditioned/heated dwelling space and attached garage(s).

Lot No.	Plan Type	Percentage of Common	
		Element Ownership Per Lot	Share of Common Expenses Per Lot
102	C	1.1148	1.1148
104	D	.8990	.8990
106	C	1.1148	1.1148
110	C	1.1148	1.1148
111	A	1.0421	1.0421
112	D	.8990	.8990
113	A	1.0421	1.0421
114	C	1.1148	1.1148
115	B	.7007	.7007
117	A	1.0421	1.0421
120	C	1.1148	1.1148
121	A	1.0421	1.0421
122	D	.8990	.8990
123	B	.7007	.7007
124	D	.8990	.8990
125	A	1.0421	1.0421
126	C	1.1148	1.1148
127	B	.7007	.7007
130	C	1.1148	1.1148
131	A	1.0421	1.0421
132	D	.8990	.8990
133	A	1.0421	1.0421
134	C	1.1148	1.1148
135	B	.7007	.7007
136	D	.8990	.8990
137	A	1.0421	1.0421
140	C	1.1148	1.1148
141	A	1.0421	1.0421
142	D	.8990	.8990
143	B	.7007	.7007
144	C	1.1148	1.1148
145	A	1.0421	1.0421
150	C	1.1148	1.1148
151	A	1.0421	1.0421

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SHADOWROCK TOWNHOMES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

152	D	.8990	.8990
153	B	.7007	.7007
154	C	1.1148	1.1148
155	A	1.0421	1.0421
156	D	.8990	.8990
158	C	1.1148	1.1148
160	C	1.1148	1.1148
161	A	1.0421	1.0421
162	D	.8990	.8990
163	A	1.0421	1.0421
164	C	1.1148	1.1148
165	B	.7007	.7007
167	A	1.0421	1.0421
168	C	1.1148	1.1148
201	D	.8990	.8990
203	C	1.1148	1.1148
205	D	.8990	.8990
207	C	1.1148	1.1148
209	D	.8990	.8990
211	D	.8990	.8990
213	C	1.1148	1.1148
215	D	.8990	.8990
217	C	1.1148	1.1148
219	C	1.1148	1.1148
220	C	1.1148	1.1148
222	C	1.1148	1.1148
224	D	.8990	.8990
226	C	1.1148	1.1148
230	C	1.1148	1.1148
232	C	1.1148	1.1148
234	D	.8990	.8990
236	C	1.1148	1.1148
240	C	1.1148	1.1148
241	A	1.0421	1.0421
242	C	1.1148	1.1148
243	B	.7007	.7007
244	D	.8990	.8990
245	A	1.0421	1.0421
246	C	1.1148	1.1148
247	A	1.0421	1.0421
250	C	1.1148	1.1148
251	A	1.0421	1.0421
252	C	1.1148	1.1148
253	B	.7007	.7007
254	D	.8990	.8990
255	A	1.0421	1.0421
256	C	1.1148	1.1148
257	A	1.0421	1.0421

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SHADOWROCK TOWNHOMES
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

260	D	.8990	.8990
261	A	1.0421	1.0421
262	C	1.1148	1.1148
263	B	.7007	.7007
264	D	.8990	.8990
265	A	1.0421	1.0421
266	C	1.1148	1.1148
267	A	1.0421	1.0421
268	C	1.1148	1.1148
270	D	.8990	.8990
271	A	1.0421	1.0421
272	C	1.1148	1.1148
273	A	1.0421	1.0421
274	D	.8990	.8990
275	B	.7007	.7007
276	C	1.1148	1.1148
277	A	1.0421	1.0421
278	C	1.1148	1.1148