

**AMENDED AND RESTATED  
DECLARATION  
FOR  
THIRD CHERRY CREEK TOWNHOUSE CORP.  
(originally known as Third Cherry Creek Townhouses)**

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**AMENDED AND RESTATED  
DECLARATION FOR THIRD CHERRY CREEK TOWNHOUSE CORP.  
(originally known as Third Cherry Creek Townhouses)**

This Amended and Restated Declaration is made effective upon recording.

**RECITALS:**

A. Declarant, Hallcraft Homes Co., a Colorado corporation, recorded that certain Condominium Declaration for Third Cherry Creek Townhouses on October 12, 1965 at Reception No. 048388, Book 9508, Page 145, in the Office of the Clerk and Recorder for the City and County of Denver, State of Colorado ("Original Declaration") subjecting the real estate described therein to the terms and conditions set forth in the Original Declaration;

B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration, as may be amended and supplemented, by virtue of this Amended and Restated Declaration for Third Cherry Creek ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto be superseded and replaced by this Declaration;

C. The Original Declaration provides for and allows for this Declaration in Article XVII, which provides as follows:

"This Declaration may be amended from time to time by the Association upon approval of 2/3 of the members of said company at a meeting duly called for said purpose;"

D. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

E. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

F. The purposes of the amendments in this Declaration are to remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

G. The purpose of the Association, as provided in the Declaration, is to preserve the value and desirability of the Community and the Units and to further the interests of the residents of the Community and Members of the Association; and

H. At least 2/3 of the Members of the Association present, in person or by proxy, at a duly called meeting of the Members for such purpose have approved this Declaration, or alternatively, a court order entered by the District Court for the City and County of Denver, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

Now, THEREFORE, the Original Declaration is replaced and amended and restated as follows:

#### ARTICLE 1 DEFINED TERMS

Section 1.1 Defined Terms. Each capitalized term in this Declaration or in the Map shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

- (a) "Act" or "CCIOA" shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et. seq., as it may be amended.
- (b) "Allocated Interests" shall mean the undivided interest in the Common Elements, the Common Expense liability and the votes allocated to each Unit in the Association.
- (c) "Assessment" shall include all Common Expense Assessments, insurance Assessments, utility Assessments, and any other expense levied to a Unit pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.
- (d) "Association" shall mean Third Cherry Creek Townhouse Corp., a Colorado nonprofit corporation, and its successors and assigns.
- (e) "Board" or "Board of Directors" or "Executive Board" shall mean the body designated in the Governing Documents to act on behalf of the Association.

(f) "Common Elements" shall mean the Property within this Community other than the Units, which portion of the Property may be designated on the Map and in this Declaration. Common Elements shall include Limited Common Elements. The Common Elements shall be owned, as tenants in common, by the Owners of the separate Units, each owner of a Unit having an undivided interest in the Common Elements.

(g) "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

(h) "Community" shall mean the Community of Third Cherry Creek Townhouse Corp., originally known as the Third Cherry Creek Townhouses, which Community is a Condominium Community as defined in the Act and which Community is also a Common Interest Community as defined in the Act.

(i) "Eligible Mortgage Holder" shall mean a holder of a first mortgage on a Unit that has submitted a written request for the Association to notify such holder of any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders, which request must contain its name, address, and the legal description and address of the Unit upon which it holds a security interest.

(j) "Governing Documents" shall mean this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as they may be amended from time to time.

(k) "Limited Common Elements" shall mean those portions of the Common Elements, if any, which are limited to and reserved for the exclusive use of one or more, but fewer than all of the Owners.

(l) "Map" shall mean the Condominium Map of Third Cherry Creek (and any supplements and amendments thereto) of the Community depicting and locating thereon the location of the buildings, the Units, the Common Elements, the floors and elevations, and all of the land and improvements thereon as the Map may be amended or supplemented from time to time, which Map is incorporated herein and made a part of this Declaration by reference.

(m) "Member" shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(n) "Owner" shall mean the owner of record who holds title to the Unit, whether one or more persons or entities to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(o) "Pet" shall mean and include cats, dogs, birds, reptiles or other household animals, as may be defined in or supplemented by the Rules and Regulations.

(p) "Property" shall mean the property described in the Original Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(q) "Rules and Regulations" shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community, and/or clarification of the Governing Documents, including any amendment to those instruments.

(r) "Unit" shall mean a physical portion of the Community, designated for separate ownership, shown as a Unit on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration.

## ARTICLE 2

### NAMES/DESCRIPTION OF PROPERTY

Section 2.1 Name and Type. The type of Common Interest Community is a condominium community. The name of the Community is "Third Cherry Creek Townhouse Corp." (formerly known as "Third Cherry Creek Townhouses). The name of the Association is also "Third Cherry Creek Townhouse Corp."

Section 2.2 Property. The Community is located in the City and County of Denver, State of Colorado. The Property subject to this Declaration is described in Exhibit A of this Declaration, the Original Declaration and in the Map and/or as is consistent with the common plan and scheme for the creation and operation of the Community. The Community may be subject to other easements or licenses granted pursuant to this Declaration, or granted by authority reserved in any recorded document or established in the Act.

Section 2.3 Utility, Map and Map Easements. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat or the Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.4 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Community, to enter upon any part of the Community in the performance of their duties. The Association shall also have an easement to enter a Unit in the event of an emergency, at the sole discretion of the Board.

Section 2.5 Easement for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist.



If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for the existence of such encroachment and for the maintenance of same. The easement shall extend for whatever period of time the encroachment exists. Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Unit. The actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally, vertically or laterally from the location of such Unit indicated on the Map.

Section 2.6 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and enjoyment in, to, and over the Common Elements and Limited Common Elements appurtenant to his or her Unit, and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- (a) the right of the Association to limit the number of guests of Owners;
- (b) the right of the Association to adopt Rules and Regulations governing the use of the Common Elements;
- (c) the right of the Association, upon approval of at least 2/3 of the total Association votes, to mortgage the Common Elements as security for that purpose, provided, that the rights of such mortgage shall be subordinate to the rights of the homeowners;
- (d) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Elements;
- (e) the right of the Association to transfer or convey ownership of the Common Element, or any portion thereof, subject to the prior approval of 2/3 of the total Association membership vote; provided that all Owners of Units to which any Limited Common Element is allocated shall approve of any transfer or conveyance of that Limited Common Element.
- (f) the right of the Association to suspend the voting rights and the right to use of any Common Elements and recreational facilities or amenities during any period of violation for which written notice has been provided; and
- (g) the right of the Association to close portions of the Common Elements for maintenance, repair, replacement, and improvement; and
- (h) the right of the Association to change use of, add or remove improvements to the Common Elements.

**Section 2.7 Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Elements and facilities to Owner's family, tenants, invitees, lessees, and guests, subject to Rules and Regulations. If the Owner delegates rights to use the Common Elements and facilities to tenants or contract purchasers who reside on the Property, the Owner shall not be entitled to use the Common Elements and facilities. The Board of Directors shall have the express right to limit Owners' ability to delegate their right to use the recreational amenities of the Community through Rules and Regulations and/or reasonable fees charged for such use.

### ARTICLE 3 THE ASSOCIATION

**Section 3.1 Membership.** Every person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. Each Unit shall be entitled to one vote. Fractional and cumulative voting are prohibited.

**Section 3.2 General Purposes and Powers of the Association.** The Association, through its Board of Directors, shall perform functions and manage the Community as provided in the Recitals section of this Declaration. All Owners and any purchaser of a Unit shall be deemed to have assented to and approved such designations and management. The Association shall have all power necessary or desirable to effectuate such purposes.

**Section 3.3 Authority of the Association.** The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Governing Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Governing Documents, and every other duty or obligation implied by the express provisions of the Governing Documents or necessary to reasonably satisfy any such duty or obligation.

Section 3.4 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The agreement shall be by written contract having a term of no more than three years and shall be subject to cancellation by the Association on 30 days notice, with or without cause, and without a cancellation fee. The managing agent shall not have the authority to make expenditures except upon prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated in writing by or on behalf of the Board.

Section 3.5 Allocated Interests. The ownership interest, Common Expense liability and votes in the Association allocated to each Unit are set as follows:

- (a) the percentage of ownership of the Common Elements, equally;
- (b) the percentage of liability for Common Expenses, equally; and
- (c) the number of votes in the Association, equally.

Section 3.6 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.7 Education and Training. As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting facilities use for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

#### ARTICLE 4 UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.1 Number of Units. The number of Units presently included in the Community is 251.

Section 4.2 Unit Boundaries.

(a) Boundaries. The following are designated as boundaries of each Unit, as defined below and as depicted on the Map:

(i) The unfinished interior surfaces of the perimeter walls. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, surface texture, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces are part of the Unit and all other portions of the perimeter floors, walls and ceilings are part of the Common Elements.

(ii) Unfinished interior surfaces of the lowermost floors;

(iii) Unfinished interior surfaces of the uppermost ceilings;

(iv) The windows and window frames, doors and door frames of the Unit.

Each Unit includes the spaces and improvements lying within the boundaries described above, including windows, window frames, doors and door frames, and as depicted on the Map.

Section 4.3 Limited Common Elements.

(a) The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(i) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit is a Limited Common Element to those Units and any portion serving only the Common Elements is a part of the Common Elements.

(ii) Any patios, patio covers, steps, stoops, exterior doors, windows, or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(iii) Parking spaces, carports and carport covers which have been assigned by deed and are allocated exclusively to a Unit or are designated on the Map as being allocated exclusively to a Unit.

(b) The Association may modify Limited Common Elements without a membership vote, but only with consent of the Owner to whose Unit the Limited Common Element is appurtenant. The Association may also, without a membership vote, assign or reassign Limited Common Elements not previously assigned with the consent of the affected Owner(s) and the Association, provided that any such assignment or reassignment shall be made in accordance with the Act.

**Section 4.4 Mechanic's Liens.** No labor performed and/or materials furnished for use and incorporated into any Unit or Limited Common Element with the consent or at the request of the Owner thereof, his agent, contractor, or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Unit. The Association may pay any sums necessary to eliminate any lien filed against Units not benefitting from the labor and/or materials furnished and the Common Elements on behalf of the other Owners and all sums paid shall be an Individual Assessment against the Owner or Owners for whom the labor and/or materials were furnished.

## ARTICLE 5

### MAINTENANCE RESPONSIBILITIES

**Section 5.1 Association Maintenance.** The Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities.

(a) The Association shall maintain and keep in good repair as a Common Expense the following:

(i) all Common Elements, including any Limited Common Elements, but excluding all improvements made to Limited Common Elements by the Owners and except as provided in Section 5.2; provided, however, the cost of maintenance and repair of Limited Common Elements may be assessed against the Unit Owner to whom the Limited Common Element is assigned under this Declaration;

(ii) periodic painting, staining and/or cleaning of exterior surfaces of the condominium building(s) and the front entry doors and door frames of Units (excluding any metal storm/security doors), on a schedule to be determined by the Association;

(iii) maintenance, repair, and replacement of the exterior window wells in the front of Units, and plastic bubble covers for the same

- (iv) all light fixtures and bulbs located on Common Elements or on gates or fences in the Community, except for and excluding those located within a patio or on a front porch, which shall be the responsibility of the Owner;
- (v) patio covers installed by the Association;
- (vi) fences around the perimeter of the Community, excluding any fence between Units;
- (vii) all carport interiors and exteriors;
- (viii) all chimney caps, the cost of which may be assessed against the Owner of the Unit to which the chimney and fireplace flue are attached;
- (ix) all main sewer lines and water pipes up to the point such pipes and lines enter the Unit;
- (x) all landscaping that has not been installed by an Owner;
- (xi) trash removal; and
- (xii) snow clearing on the Common Elements and Limited Common Elements, excluding any area under a carport and excluding the patio appurtenant to a Unit, which shall be the obligation of the Owner.

(b) Maintenance of Common Elements by Owner. Subject to the maintenance responsibilities herein provided, any maintenance, repair, or improvement performed on or to the Common Elements by an Owner or occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Owner or occupant, and the Owner or occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance, repair, or improvement. Any maintenance, repair, or improvement to Common Elements performed by an Owner must be approved by the Association prior to commencement of such maintenance, repair, or improvement.

(c) Association Discretion. The Association may, in its sole discretion, assume the obligation for maintenance or repair of additional property, either real or personal that lies within or outside the Community. The Association shall have the right to assume such obligation even if the obligation currently lies with Owners or other entities, provided however, the Association shall provide Owners with 15 days prior written notice of any such change. The Association, in its sole discretion, shall determine the time and manner in which any maintenance, whether required or assumed, shall be performed as well as the color or type of materials used.

(d) Damage to Unit by Association. The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(e) Liability of Association.

(i) The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any device, pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except:

(1) for injuries or damages arising after the Owner of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements or device, pipe, drain, conduit, appliance or equipment for which the Association has a maintenance responsibility; and

(2) only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.

(ii) The Association shall not be liable to the Owner of any Unit or such Owner's occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

(iii) The Association shall not be liable to any Owner, or any Owner's occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

(iv) No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

**Section 5.2 Owner's Maintenance Responsibility.** Except as otherwise provided in Section 5.1 above, each Owner shall have the obligation to maintain, repair

and replace all portions of the Owner's Unit and the Limited Common Elements appurtenant thereto. Such maintenance shall include, but not be limited to the following:

(a) all glass surfaces, windows, window screens, window frames, window wells (except for the exterior window wells in front of the Units and plastic bubble covers for the same), casings and locks (provided, however, no changes that affect the exterior appearance of the windows may be made unless prior written approval is obtained from the Board);

(b) all doors, doorways, door frames, screens, hardware and locks and door chimes that are part of the entry system of the Unit (except for periodic painting and/or staining of the exterior front entry door of the Unit);

(c) any subflooring of a Unit;

(d) structural joists;

(e) any fireplace serving the Unit, including the chimney box and flue but excluding the chimney cap;

(f) any mailbox or mail receptacle serving the Unit;

(g) any bushes, trees and other landscaping located on or within enclosed patios;

(h) any patio or yard and any enclosure thereof, and any improvements within such areas, including but not limited to, patio steps and patio window wells and patio window grates or covers;

(i) any fences between Units;

(j) any portion of the heating and air conditioning system, including the air conditioning compressor and the fan coil serving the Unit regardless of location;

(k) any pipes, lines, ducts, conduits or other apparatus which serve only the Unit, from the point where the utilities enter the Unit (including all electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits);

(l) all utility meters, breaker boxes or other apparatus serving only the Unit located within the boundaries of the Unit or located inside the patio;

(m) all communications, television, telephone and electrical lines, receptacles and boxes serving any Unit whether located within or without the boundaries of the Unit; provided further, each Owner of each Unit shall be responsible for notifying the appropriate service provider for such items of any and all necessary replacement or repairs as needed;



- (n) any Association approved additions or alterations made by the Owner to the Units or Limited Common Elements;
- (o) any party wall between Units, as more fully described in Article 6 of this Declaration;
- (p) any exterior light fixtures and bulbs, except the exterior fence light and bulb;
- (q) any external water faucets located on or in the patio area or on the front of a Unit;
- (r) all gas pipes on the building exterior appurtenant to a Unit; provided further, each Owner of each Unit shall be responsible for notifying the appropriate service provider for such items of any and all necessary replacement or repairs as needed;
- (s) any blockages or problems in the sewer service line from the Unit to the main sewer line caused by the Unit Owner; and
- (t) the hot water heater and all appliances located within the Unit.

The Association, upon written resolution of the Board, shall have the authority to require all Owners to do any act or perform any work involving portions of the Community which are the Owner's maintenance responsibility, which will, in the Association's sole discretion, conserve common utilities.

**Section 5.3 Owner Responsibilities.** Each Owner shall have the responsibility to:

- (a) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other persons in Units;
- (b) promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;
- (c) pay for the cost of repairing, replacing, or cleaning up any item which is the responsibility of the Unit Owner under this Declaration for which the Owner fails or refuses to perform or complete (which the Association shall have the right, but not the obligation, to do);
- (d) pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is a result of the willful or negligent

act(s) of the Unit Owner, his or her family, tenants or guests. The cost thereof shall be added to and become part of the Unit Owner's next chargeable Assessment; and

**Section 5.4 Mold.** Each Owner shall be required to take necessary measures to retard and prevent mold from accumulating in the Unit, and the Common Elements, including but not limited to appropriate climate control, removal of visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces and cleaning of the same. No Owner shall block or cover all heating, ventilation or air conditioning ducts within a Unit. Owners shall immediately notify the Board in writing of the following: (a) any evidence of water leaks, water infiltration or excessive moisture in a Unit; (b) any evidence of mold that cannot be removed by the Owner with a common household cleaner; (c) any failure or malfunction in heating, ventilation, air conditioning or water heater; (d) any inoperable doors, windows, heating, ventilation or air conditioning ducts. The receipt of notice by the Association shall not create any additional Association maintenance responsibility other than those set forth in this Declaration. Owners shall be responsible for any damage to his or her Unit and personal property, to any other Unit or the Common Elements, as well as any injury to the Owner or occupants resulting from the Owner's failure to comply with this section. Owners shall be responsible for all costs and expenses incurred by the Board to remove mold and/or damage within his or her Unit, to any other Unit or to the Common Elements if the Owner fails to meet the requirements of this Section.

**Section 5.5 Failure to Maintain.** If the Association determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, except in the case of an emergency, the Association shall give the Owner written notice of the Owner's failure or refusal, and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Association.

Unless the Association determines that an emergency repair must be made, the Owner shall have 10 days within which to complete maintenance or repair. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as provided in this Section; then the Association may provide any such maintenance, repair, or replacement at the sole cost of the Owner and expense, and such costs shall be added to and become a part of the Assessment to which such Owner is subject, shall become and be a lien against the Unit, and shall be collected as provided for in this Declaration for the collection of Assessments.

If the Board determines that the need for maintenance or repair is a Common Expense and is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Unit, shall become a lien against the Unit, and shall be collected as provided in this Declaration for the collection of Assessments.

Section 5.6 Maintenance and Insurance Chart. As a Common Expense, the Association may periodically cause to be prepared a chart summarizing the repair, replacement, maintenance and insurance obligations of Owners and the Association, as outlined in this Declaration. Such repair, replacement, maintenance and insurance chart, if prepared, shall be provided to all Owners.

## ARTICLE 6

### COVENANT FOR ASSESSMENTS

Section 6.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments: Each Unit Owner, by acceptance of a deed for a Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments, insurance Assessments, utility Assessments, and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Unit Owner of such Unit at the time when the Assessment or other charges became or fell due. The annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Unit Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Common Expense Assessments shall be assessed against all Units in accordance with the formula for liability for the Common Expenses as set forth in this Declaration. Common Expense Assessments are currently allocated among the Unit Owners equally.

Section 6.2 Basis of Assessments. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

Section 6.3 Annual Assessment. Common Expense Assessments shall be allocated equally and shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Unit Owners from their obligation to pay.

Section 6.4 Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Elements, including fixtures and personal property related thereto, or for any other purpose deemed necessary and appropriate by the Board of Directors. If an emergency repair or replacement or other purpose is deemed necessary by the Board of Directors, and a Special Assessment must be charged, such Special Assessment must have the approval of a majority of the members of the Board of Directors before proceeding with the emergency repair or replacement. If the repair or replacement or other reason is deemed a non-emergency by the Board of Directors, and a Special Assessment must be charged, such Special Assessment must be approved by a majority of the Members of the Association present and voting, in person or by proxy, at a duly constituted meeting of the Association called for such purpose. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials

Section 6.5 Supplemental Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

(a) those amounts expended by the Association for the benefit of any individual Unit or any occupant thereof, including but not limited to: Unit insurance; improvement, repair, replacement and maintenance specific to a Unit; improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;

(b) any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of an Owner (or his agents, guests, licensees, invitees or lessees);

(c) All fines and costs assessed against an Owner pursuant to the Governing Documents; and

(d) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Unit and are reasonably determined to be allocable to a particular Unit.

**Section 6.6 Effect of Non-Payment of Assessments.** Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 15 days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis from the due date, and the Association may assess a reasonable late charge thereon as determined by the Board of Directors. Failure to make payment within 60 days of the due date thereof shall cause the total amount of such Unit Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board and the Association may cause water service to any Unit to be terminated until such time as all arrearages have been paid. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefore. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and a Unit Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Unit Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

**Section 6.7 Assignment of Rents.** If a Unit is rented out by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. If the Assessments owed by the Owner of a rented Unit are more than 30 days delinquent, the Association may collect, and the occupant or lessee shall pay to the Association, the rent for any Unit owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Board's request. The Association shall send notice to the Owner by any reasonable means at least 10 days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Association's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the

Unit rental or a waiver of the Owner's obligations as provided in the Declaration. The Association shall not exercise this power where a receiver has been appointed with respect to a Unit or Owner; nor in derogation of the exercise of any rights to rents by a the holder of a first lien security interest of a Unit. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Colorado statutes, and the costs and attorney fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Unit in the same manner as any other Assessment under this Declaration.

**Section 6.8 Lien Priority.** The lien of the Association under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Unit shall not affect the lien for said Assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

**Section 6.9 Borrowing.** The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments, but only upon the affirmative vote of a majority of the Owners present and voting, in person or by proxy, at a duly constituted meeting called for that purpose.

## ARTICLE 7 COVENANTS AND RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

All Property within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances or is inconsistent with applicable law. Any such modification or waiver must be in writing.

**Section 7.1 Use/Occupancy.** All Units within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation, and permitted by this Declaration, subject to any Rules and Regulations adopted by the Association. Units shall not be used for any purpose other than a residential dwelling except as set forth in this Section. Home occupations shall be allowed so long the home occupations are incidental and secondary to the use of the Unit and does not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration. External advertising of any kind is prohibited. In no instance shall a home occupation be visible externally. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) the use or rental of any Unit for a hotel, motel, or bed and breakfast.

**Section 7.2 Leasing and Occupancy.** Any Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Owner may deem advisable, subject to the restrictions of this Declaration, subject to restrictions of record and subject to the following:

(a) "Leasing" or "Renting" for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person other than the Owner. For the purposes of this Declaration, occupancy by a roommate of a resident owner who occupies the Unit as such Owner's primary residence shall not constitute leasing.

(b) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Rules and Regulations of the Association.

(c) Each Owner who leases his or her Unit shall provide the Association, upon request, a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

(d) Each Owner is strongly encouraged to conduct full background checks including credit and criminal reports for each lease applicant.

(e) All occupancies, leases and rental agreements of Units shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute a default of the occupancy lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(f) All occupancies of Units shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration, the Bylaws of the association, the Articles of Incorporation or the Rules and Regulations of the Association. If the Association requests that the Owner evict the Owner's tenant based on the terms of the Declaration, and the Owner fails to commence such action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Unit.

(g) Leases shall be for the entire square footage of the entire Unit.

(h) All Owners who reside at a place other than the Unit shall provide to the Association an address and phone number(s) where the Owner can be reached in the case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(i) The Association shall have the authority to adopt rules and regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

**Section 7.3 Use of Patios.** Nothing shall be hung from or placed outside the Unit or the patio enclosure unless allowed in the Rules and Regulations.

**Section 7.4 Restrictions on Animals and Pets.** Pets may be kept in a Unit, if the Pet is not a nuisance to other Owners or occupants. The Association shall have the authority to adopt Rules and Regulations restricting size, weight, type of Pets and other restrictions regarding Pets. No Pit Bulls will be allowed in the Community at any time. No Owner or resident shall maintain or keep any Pet which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. If a Pet is deemed a nuisance by the Association, the Owner or person having control of the Pet shall be given a written notice to correct the problem and if not corrected, that Owner will be required to remove the Pet from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. Pets may not be kept for any commercial purposes. Animals are not permitted in the clubhouse or pool area. When on other Common Elements, Pets must be on a leash and under the control of the owner of the Pet. Feces left by Pets upon the Common Elements or Limited Common Elements, must be removed promptly by the owner of the Pet or the person responsible for the Pet. Owners shall hold the Association harmless from any claim resulting from any action of their Pets.



**Section 7.5 Antennae.** All antennas must conform with all federal statutes and regulations and with the Rules and Regulations of the Association.

**Section 7.6 Nuisances.** No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Unit Owner or which may unreasonably interfere with the peaceful enjoyment or possession of the proper use of a Unit or Common Element, or any portion of the Community by Unit Owners.

**Section 7.7 Compliance With Other Laws.** No improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

**Section 7.8 Parking, Storage, and Repairs.**

(a) **Parking upon the Common Elements and Limited Common Elements** shall be regulated by the Association as set forth in the Rules and Regulations of the Association.

(b) Each Owner or resident has the exclusive use of the parking area directly behind his or her Unit, both covered and uncovered, equaling the width of the Unit's patio, as more clearly set forth in the Rules and Regulations.

**Section 7.9 Use of Common Elements.** Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association.

**Section 7.10 Compliance with Insurance Requirements.** Except as may be approved in writing by the Association, nothing shall be stored or done in the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

**Section 7.11 Restriction on Signs and Advertising Devices.** No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere in the Community except as provided for in the Rules and Regulations. Political signs may be displayed without Board approval as dictated by state law, and in accordance with the Association's Rules and Regulations.

**Section 7.12 Fence Line Limit.** Nothing shall extend above the fence line surrounding the patio except for approved items stated in the Association's Rules and Regulations, or those items approved by the Association.

**Section 7.13 Restrictions on Structural Alterations and Alterations to Limited Common Elements.** No structural alterations to any Unit, alterations to bearing walls or to any Limited Common Elements (including but not limited to, enclosing a patio) shall be done by any Owner, without the prior written approval of the Association. No structures, including outbuildings, antennas (except as otherwise permitted under this Declaration), flag poles, fences, walls, exterior lighting, landscaping, or any other improvements shall be constructed, erected, relocated, removed or installed in the Community, nor shall any alteration or change to the exterior of the improvements, the exterior of a Unit, or to any structure or any attachment to the exterior of a Unit (including paint, awnings, patios, decks, or shutters) be commenced unless complete plans and specifications shall have been first submitted to and approved in writing by the Board of Directors. The Board may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), as well as such other materials and information as may be required by the Board.

**Section 7.14 Map Restrictions.** The restrictions, if any, included on the Map for the Property are incorporated herein by this reference.

**Section 7.15 Rules and Regulations.** In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time-to-time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

**Section 7.16 Compliance with Governing Documents.** Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

**Section 7.17 Use of the Words Third Cherry Creek Townhouse Corp.** No resident shall use the words Third Cherry Creek Townhouse Corp. or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

## ARTICLE 8 RIGHT OF FIRST REFUSAL

**Section 8.1 Notice by Owner.** Any Owner who decides to sell his or her Unit shall, upon receiving a signed contract, give written notice to the Board of Directors of the terms and conditions of the proposed transaction and other information which the Board may reasonably require. Within two business days of the receipt of this notice, the Board of Directors will cause the notice to be duplicated and posted at the clubhouse or other central location as determined by the Board. Any notice given in accordance with this Article will be effective whether or not it is actually received or viewed.

**Section 8.2 Offer to Other Owners.** If, within 15 days after service of such notice by the Owner, any member or group of members of the Association submits to the Association an identical firm and binding offer to purchase, the Owner shall accept the offer of the Member or group of Members of the Association in preference to the original offer described in the notice. In the event more than one Member or group of Members of the Association submits an identical firm and binding offer to the Association within the 15 day period, the Owner may at his/her discretion, accept any one of the offers.

**Section 8.3 Failure to Accept Offer.** If in the 15 day period no identical offer from a Member or group of Members of the Association is submitted, the Association shall, on the 15th day, upon the request of the Owner, prepare an affidavit stating that the Owner has complied with the provisions of the Right of First Refusal section of this Declaration. The affidavit shall contain the information that the Association has been duly notified, that a particular Unit has been offered for sale, that the proper notice to sell has been served by the Owner, the 15 day period has passed, and that neither the Association nor any Member or group of Members of the Association submitted an identical firm and binding offer within the time allowed. The affidavit shall be deemed conclusive evidence of the facts therein recited. If neither the Association nor any Member or group of Members of the Association submits an identical firm and binding offer within the 15 day period, the selling Owner may, at the expiration of the 15 days, and at any time within 60 days after the expiration, accept the offer described in the original notice

**Section 8.4 Violation.** Any purported sale of a Unit in violation of this Article will be voidable within 30 days of the later of any document evidencing the sale being at the election of the Association. The Association may take any other action against the parties to the transaction which is permitted by law.

**Section 8.5 Exceptions.** The provisions of this Article will not apply (a) with respect to any sale by an Owner of his or her Unit to the spouse, children, parents or siblings of the Owner, or to a partner or principal in the Owner's corporate entity, who has been a partner or principal for at least one year prior to the conveyance, or (b) to the acquisition of a Unit by an authorized mortgagee who acquires title to the Unit by mortgage, foreclosure or deed in lieu of foreclosure, or to the acquisition of a Unit by a purchaser at any judicial sale. Any Owner will be free to convey or transfer his Unit by gift, to devise his Unit by will or to pass the same by intestacy, without compliance with any of the provisions of this Article.

**Section 8.6 Certificate of Termination of Right of First Refusal.** A recordable certificate, executed and acknowledged by the President or Secretary of the Association, or their designee, on behalf of the Association and the Owners, stating that the provisions of this Article have been met by an Offeror and that no Offeree has accepted the offer, or that the Offeree's rights have been duly waived by the Association and/or the Offerees, or that the transfer is exempt from this Article, will be binding upon the Association and the Owners in favor of all persons who rely on the certificate in good faith. A certificate will

be furnished to an Owner, who requests such a certificate and who has complied with the provisions of the Article.

## ARTICLE 9 INSURANCE/CONDEMNATION

Section 9.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

Section 9.2 Hazard Insurance on the Units and Common Elements. The Association shall obtain insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements located on the Common Elements, and the other property of the Association in such amounts as it deems adequate to protect the Property. The Association shall provide insurance on the Units and Common Elements in the Community. However, such insurance shall not include drywall, finished surfaces, fixtures, windows, utilities, or any other component lying within the drywalls of the perimeter walls, floors, and ceilings. The insurance obtained by the Association on the Units is not required to include improvements and betterments installed by Owners, personal property of the Owners, or liability for incidents occurring within the Units or through the Owners' personal actions. All policies shall contain a standard non-contributory mortgage clause in favor of each first mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such first mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of Denver County. The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Community by the Board of Directors, including, but not limited to ordinance or law coverage, demolition cost coverage and increased cost of construction.

All insurance purchased by the Association pursuant to this Section shall run to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Unit Owners, and their respective mortgagees, and all other persons entitled to occupy any Unit, as their interests may appear. The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs. Each Owner shall have the right to obtain additional coverage at his or her own expense.

**Section 9.3 Liability Insurance.** The Association shall obtain a policy of public liability and property damage liability insurance covering the Common Elements, in such limits as the Board may determine from time to time, but not in any amount less than a combined single limit of \$1,000,000.00. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall name the Association as the insured.

**Section 9.4 Fidelity Insurance.** The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

**Section 9.5 Worker's Compensation and Employer's Liability Insurance.** The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

**Section 9.6 Directors' and Officers' Personal Liability Insurance.** The Association shall obtain directors' and officers' personal liability insurance to protect the directors, officers, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting on behalf of the Association.

**Section 9.7 Other Insurance.** The Association may obtain insurance against such other risks, as it shall deem appropriate with respect to the Association responsibilities and duties.

**Section 9.8 Miscellaneous Terms Governing Insurance Carried by the Association.** The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Unit Owner and shall provide that such policies may not be canceled or modified without at least 30 days prior written notice to all of the Unit Owners, holders of first lien security interests and the Association.

(b) All Association policies of hazard insurance shall contain ordinance or law coverage, demolition cost coverage, increased cost of construction coverage and inflation guard insurance.

(c) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all Eligible Mortgage Holders at least 10 days prior to the expiration of the then-current policies.

(d) All liability insurance shall include the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Unit Owners as insureds.

(e) In no event shall any casualty insurance policy contain a co-insurance clause.

(f) Unit Owners may carry and are advised to carry other insurance on the Unit components not covered by the Association's insurance policy, including but not limited to: drywall, finished surfaces, fixtures, windows, utilities and any other components or improvements and personal property in their Unit lying within the drywalls of the perimeter walls, floors, and ceilings, for their benefit and at their expenses. In this regard, the Association's insurance coverage, as specified hereunder, does not obviate the need for Unit Owners to obtain insurance for their own benefit.

**Section 9.9 Insurance Premium.** Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

**Section 9.10 Managing Agent Insurance.** The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association. The Association may indemnify its managing agent, except for that agent's intentional acts or omissions or negligence outside the scope of their duties and obligations to the Association, or outside of direction from or of the Association.

**Section 9.11 Annual Insurance Review.** The Board shall review the insurance carried by and on behalf of the Association at least annually.

**Section 9.12 Adjustments by the Association.** Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of first lien security interests as their interests may appear. Proceeds must be distributed first for the repair or restoration of the damaged property. The Unit Owners and holders of first lien security interest are not entitled to receive payment of any portion of the proceeds. The Association may determine how a surplus of proceeds, if any, shall be utilized.

**Section 9.13 Responsibility for Payment of Deductible Amount.** Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Elements unless the damage is the liability of an Owner, his family, guests, or invitees, as set forth in this Declaration, in which case the Association shall seek reimbursement of the deductible amount as an Assessment in compliance with and under the terms of this Declaration.

(b) Any loss falling within the deductible portion of the Association policies to property for which Owners have repair and maintenance responsibility shall be paid or absorbed by the Owners of the Units involved in the same proportion as each Owner's claim bears to the total amount of insurance proceeds paid for the occurrence unless the Association was negligent.

(c) Any Owner who receives the proceeds of any Association insurance shall be responsible for the payment of the deductible in proportion to the percentage of insurance proceeds received. Such deductible shall be due within 10 days of notification and shall be considered a Common Expense Assessment allocated directly to the Unit and shall be collected as provided in this Declaration.

**Section 9.14 Duty to Repair.** Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Unit Owner.

**Section 9.15 Condemnation and Hazard Insurance Allocations and Distributions.** In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Unit Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

**Section 9.16 Insurance Assessments.** If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association, or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners.

**Section 9.17 Payment of Claims to Delinquent Owners.** Notwithstanding anything to the contrary in this Declaration, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of Assessments owed to the Association under this Declaration, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

**ARTICLE 10**  
**SPECIAL RIGHTS OF HOLDERS OF**  
**FIRST LIEN SECURITY INTERESTS**

**Section 10.1 General Provisions.** The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien security interests recorded within the Community. To the extent applicable, necessary or proper, the provisions of this Article apply to this Declaration and to the Articles and Bylaws of the Association. Eligible insurers and guarantors of a first lien security interest shall have the same rights as an Eligible Mortgage Holder.

**Section 10.2 Special Rights.** Eligible Mortgage Holders shall be entitled to: (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within 60 days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited financial statement; (d) receive written notice of all meetings of the Members of the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) 30 days written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) 30 days written notice prior to the effective date of termination of professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Community or by an Eligible Mortgage Holder; and (j) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or to the Unit on which the Eligible Mortgage Holder holds a security interest, if the cost of reconstruction exceeds \$20,000.00 and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.



**Section 10.3 Special Approvals.** Unless at least 51% of the Eligible Mortgage Holders of first lien security interests (based on one vote for each mortgage owned) of Units in the Association and requisite Unit Owners have given their written approval, neither the Association nor any Member shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such Property by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements; (d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed; (f) take action to terminate the legal status of the Community after substantial destruction or condemnation occurs; (g) amend any material provision of this Declaration; and (h) establish self-management by the Association when professional management has previously been required by the legal documents for the Community or by an Eligible Mortgage Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Mortgage Holder of a first lien security interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within 30 days, it shall be deemed to have approved such request.

**Section 10.4 Right to Pay Taxes and Insurance Premiums.** Any holder of a first lien security interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units.

## ARTICLE 11 GENERAL PROVISIONS

### Section 11.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, at the Board's discretion, the fine may first be assessed against the violator; provided, however, if the fine is assessed against the violator and is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board and the opportunity for a hearing have been provided);

(ii) suspending the right to vote;

(iii) exercising self-help (including, but not limited to, the Association performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Unit and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass;

(v) without liability to any person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, unless prohibited by law.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Unit.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association not to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

**Section 11.2 Attorney Fees.** If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to pay any Assessment as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner or an Owner's family member, guest, tenant, invitee or licensee, shall be charged as an Assessment and shall constitute a lien against the Unit.

**Section 11.3 Severability.** Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

**Section 11.4 Term of Declaration.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

**Section 11.5 Amendment of Declaration by Unit Owners.** Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of 51% of the total Association vote. Any such amendments shall be certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Notice of any meeting at which a proposed amendment will

be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

**Section 11.6 Amendment of Declaration by the Association.** The Association shall have the authority to amend, revise, remove, repeal or add any provision to this Declaration, without Owner or mortgagee approval, in order to conform with any applicable state, city or federal law, and/or to bring the Declaration into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

**Section 11.7 Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

**Section 11.8 Interpretation.** The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

**Section 11.9 Singular Includes the Plural.** Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

**Section 11.10 Conflict of Provisions.** In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

**Section 11.11 Challenge to this Declaration.** All challenges to the validity of this Declaration must be made within one year after the date of recording of this Declaration.

In Witness Whereof, the undersigned, being the president and the secretary of Third Cherry Creek Townhouse Corp., hereby certify that the Association has obtained written approval of this Amended and Restated Declaration from 2/3 of all Members at a duly called meeting for such purpose, as evidenced by written instruments filed with the records of the Association, or alternatively, has obtained court approval of this Declaration pursuant to the provisions of the Act, Section 217(7).

THIRD CHERRY CREEK TOWNHOUSE CORP.,  
a Colorado nonprofit corporation

By: Charles R. Wainwright  
President

ATTEST:

By: Mary K. Smith  
Secretary

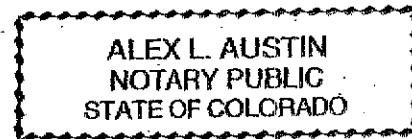
STATE OF COLORADO )  
COUNTY OF Arapahoe ) ss.

The foregoing Declaration was acknowledged before me on this 18th day of August, 2009, by Charles Russell Wainwright as President of Third Cherry Creek Townhouse Corp., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires:

10/31/2012  
Alex L. Austin  
Notary Public



My Commission Expires 10/31/2012

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing Declaration was acknowledged before me on this 18<sup>th</sup> day of August, 2009, by marybeth roschall as Secretary of Third Cherry Creek Townhouse Corp., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires:

10/31/2012

[Signature]  
Notary Public

ALEX L. AUSTIN  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires 10/31/2012

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

**Cherry Creek Townhouses (Third Filing)  
City and County of Denver,  
State of Colorado**