



**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
ROTH PARK CONDOMINIUMS**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
ROTH PARK CONDOMINIUMS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ROTH PARK CONDOMINIUMS is made and entered into by T & S DEVELOPMENT, LLC, a Colorado limited liability company ("Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property situated in the County of Adams, State of Colorado, which is described on Exhibit A, attached hereto and incorporated herein by this reference, as supplemented and amended from time to time (the "Community" as more fully defined below); and

WHEREAS, the Declarant desires to subject and place upon the Community certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein for the purpose of furthering a plan for the improvement, sale and condominium ownership of the Community; and

WHEREAS, a common interest community may be created pursuant to CCIOA (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

NOW, THEREFORE, Declarant hereby declares that all of the real property described on the attached Exhibit A shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

**ARTICLE 1. DEFINITIONS**

**Section 1.1.      *Agencies.***

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



**Section 1.2.        *Allocated Interests.***

"Allocated Interests" means the Assessment liability and votes in the Association allocated to each Unit, and also means the undivided interest in the Common Elements appurtenant to each Unit. The Allocated Interest of each Unit shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units within the Community from time to time. However, the Allocated Interest for each Unit is subject to change as provided in this Declaration, including a decrease in the Allocated Interests of each Unit upon the annexation of additional property to this Community as provided in Section 16.4 of this Declaration (Annexation; Withdrawal).

**Section 1.3.        *Annexable Area.***

"Annexable Area" means the property described on Exhibit D attached hereto and incorporated herein by this reference, plus such additional real estate from such locations as the Declarant may elect in its sole discretion in an amount not to exceed the maximum permitted by CCIOA.

**Section 1.4.        *Annexable Area Easement.***

"Annexable Area Easement" means a non-exclusive, perpetual easement and right-of-way: for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, sidewalks, accessways and similar Common Elements, now or hereafter constructed, erected, installed or located in or on the Community; and on, over, across and under the Common Elements for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities improvements that may now or hereafter serve the Annexable Area or any portion thereof.

**Section 1.5.        *Assessment.***

"Assessment" means annual Assessments and special Assessments, which are provided for in this Declaration. For purposes of Sections 4.1, 4.4.2, 4.9 through 4.17, inclusive, and 15.6 of this Declaration, "Assessment" means annual Assessments, special Assessments, and late charges, fines, fees, interest, costs, expenses, reasonable attorneys' fees, and any other charges which are provided for in this Declaration.

**Section 1.6.        *Association.***

"Association" means the Roth Park Condominium Association, Inc., its successors and assigns. The Association is a community association as provided in CCIOA.

**Section 1.7.        *Board of Directors or Board.***

"Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and the Bylaws of the Association to act on behalf of the Association. The Board of Directors may appoint one or more committees as it deems appropriate, from time to time, in carrying out any of its purposes; provided that each such committee shall be subordinate to the Board.



**Section 1.8. CCIOA.**

"CCIOA" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as amended.

**Section 1.9. Common Elements.**

"Common Elements" means the totality of:

1.9.1. The real property which is part of the Community; and

1.9.2. The Condominium Buildings (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, flues, hallways, roofs, stairs, stairways, and the mechanical installations of the Condominium Buildings consisting of the equipment and materials making up any services such as power, light, gas, hot and cold water, heating, air conditioning, and exterior security lighting, which exist for common uses (including the pipes, vents, ducts, flues, chutes, conduits, wires, and other similar utility installations used in connection therewith), except for the Individual Air Spaces; and

1.9.3. Any amenities and amenity areas, if any, sidewalks, walkways, paths, fences, grass, shrubbery, trees, driveways, roads, streets, alleys, access ways, parking areas (other than garages which are part of the Units), landscaping, irrigation systems, and gardens, if any, now or hereafter located in the Community; and

1.9.4. All apparatus, installations and equipment of the Condominium Buildings existing for common use of one, some or all of the Owners; and

1.9.5. In general, all other parts of the Community including, without limitation, the Common Elements depicted on the Condominium Map and any items designated by Declarant as Common Elements under other provisions of this Declaration, including General Common Elements and Limited Common Elements, and all other parts of the Community necessary or convenient to its existence, maintenance or safety, or normally in common use.

**Section 1.10. Community.**

"Community" means the real property and Improvements described on the attached Exhibit A, as supplemented and amended from time to time, with respect to which a Person, by virtue of such Person's ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in this Declaration. The Community is a condominium under CCIOA. The name of the Community is "Roth Park Condominiums".

**Section 1.11. Condominium Building.**

"Condominium Building" means any building (including all fixtures and Improvements therein contained) located in the Community and within which one or more Individual Air Spaces are located.



**Section 1.12.      *Condominium Map.***

"Condominium Map" means the condominium map(s) of the Community and Improvements thereon that are subject to this Declaration and which is designated as the Condominium Map of Roth Park Condominiums, recorded or to be recorded in the office of the Clerk and Recorder of Adams County, Colorado. More than one Condominium Map or supplement thereto may be recorded and, if so, then the term "Condominium Map" collectively means all of such condominium maps and supplements thereto. The Condominium Map shall depict all or a portion of the Community in three dimensions, and shall be executed by a Person who is authorized by CCIOA to execute a declaration relating to this Community. Further, the Condominium Map shall include a certificate executed by a licensed or registered engineer, land surveyor, or architect stating that all Improvements shown on the Condominium Map have been substantially completed, all structural components of all buildings that contain or comprise any Units in the Community are substantially completed, and stating that the Condominium Map contains all the information required by Section 38-33.3-209 of CCIOA.

**Section 1.13.      *Declarant.***

"Declarant" means T & S Development, LLC, a Colorado limited liability company or any other Person(s) acting in concert to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds).

**Section 1.14.      *Declaration.***

"Declaration" means this Declaration of Covenants, Conditions and Restrictions of Roth Park Condominiums and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, the Condominium Map(s).

**Section 1.15.      *Design Review Committee or Committee.***

"Design Review Committee" or "Committee" means the committee appointed by the Declarant or by the Association to review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

**Section 1.16.      *Development Rights.***

"Development Rights" means the following rights or combination of rights hereby reserved by the Declarant, as provided in this Declaration:

- 1.16.1. add real estate to this Community;
- 1.16.2. create Units and/or Common Elements;
- 1.16.3. withdraw property from this Community; and
- 1.16.4. subdivide any Unit.



The Declarant may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any such Development Rights. The Declarant's rights to exercise Development Rights shall terminate automatically as provided in Section 1.28 of this Declaration (Special Declarant Rights).

**Section 1.17. *First Security Interest.***

"First Security Interest" means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

**Section 1.18. *General Common Elements.***

"General Common Elements" means all of the Common Elements except the Limited Common Elements.

**Section 1.19. *Improvements.***

"Improvements" means all structures now or hereafter located in the Community, exterior improvements to any such structures, and any other exterior improvements made to a Unit or the Common Elements, and any appurtenances thereto or components thereof, of every type or kind, including all landscaping features. The foregoing shall include, without limitation, buildings, outbuildings (including storage sheds), painting or other finish materials on any visible structures, additions and/or expansions, parking facilities, driveways, swimming pools, tennis courts, stairs, walkways, patios/decks and patio/deck covers, awnings, hot tubs, jacuzzis and/or saunas, antennas, satellite dishes, exterior light fixtures, poles, athletic equipment (including basketball backboards and hoops), whether fixed or movable, play yards (including swing sets and jungle gyms), exterior tanks, solar collectors, fences (including dog runs), screening walls, retaining walls, sprinkler systems, fountains, ponds, hedges, windbreaks, gardens, trees, shrubs, flowers, vegetables, sod, other plantings, rock gravel, bark, mulch and other landscaping components, signs, exterior decorations, mailboxes, and exterior air conditioning, cooling heating and water softening equipment, if any.

**Section 1.20. *Individual Air Space.***

"Individual Air Space" means the air space contained within the enclosed rooms occupying part of a floor or floors in a Condominium Building, and bounded by the unfinished interior surfaces of the perimeter walls (or the adjoining walls, if two or more Individual Air Spaces adjoin each other), unfinished interior surfaces of floors (or the lowermost floors, if it is an Individual Air Space containing more than one level), unfinished interior surfaces of ceilings (or the uppermost ceilings, if it is an Individual Air Space containing more than one level), and the unfinished interior surfaces of windows and window frames, doors and door frames of a Condominium Building, and which is separately identified on the Condominium Map; provided that, if the adjoining wall, ceiling or floor between any two or more Individual Air Spaces is completely or partially removed so as to provide free access between such Individual Air Spaces, the area of each Individual Air Space shall be determined as if such wall, ceiling or floor were in existence, and each such Individual Air Space shall continue to be a separate Unit for purposes of this Declaration.



**Section 1.21.      *Limited Common Elements.***

"Limited Common Elements" means those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner(s) of a particular Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include the following, if the same now or hereafter exist: the utility, heating, air conditioning and domestic hot water equipment, audio, visual or telecommunication lines, cables and appurtenances, if any, associated with or providing service to any Unit; window wells, if any, attached to a Unit; porches, balconies, patios and decks, if any, as well as any fence(s) surrounding the same, if any, attached or appurtenant to any Unit; garages, if any, designated as Limited Common Elements on the Condominium Map; and other areas or Improvements, if any, designated as Limited Common Elements on the Condominium Map. The Limited Common Elements shall be used in connection with the applicable Individual Air Space(s) to the exclusion of the use thereof by the other Owners, except by invitation. No reference to any Limited Common Elements need be made in any instrument of conveyance, encumbrance or other instrument. The Limited Common Elements allocated to Units as provided in this Section may not be reallocated without the consent of the Owners whose Units are affected and any Security Interest Holders of such Units. Further, any reallocation of Limited Common Elements between or among Units must be done in compliance with CCIOA.

**Section 1.22.      *Member.***

"Member" means all Owners of a Unit collectively or, following termination of the Community, of all former Owners entitled to distributions of proceeds under CCIOA, or their heirs, personal representatives, successors or assigns. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. Each Unit shall have one (1) membership and there is only one (1) Member per Unit, even if multiple Owners own the Unit.

**Section 1.23.      *Owner.***

"Owner" means each fee simple title holder of a Unit, including without limitation, the Declarant other Person who owns a Unit, but does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the owner of any Unit created by the Declaration until that Unit is conveyed to another Person who may or may not be a Declarant under this Article. There may be multiple Owners for a Unit.

**Section 1.24.      *75% Control Period.***

"75% Control Period" means a length of time expiring seven (7) years after initial recording of this Declaration. However, the 75% Control Period shall terminate earlier, upon the first of the following events to occur, if any, if any of the following occur within the time period that is specified in the first sentence of this Section: sixty (60) days after conveyance of seventy-five percent (75%) of the Units that May Be Included to Owners other than a Declarant; two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business; or two (2) years after the right to add new Units to the Declaration was last exercised.



**Section 1.25.      *Person.***

"Person" means a natural person, a corporation, a limited liability company, a partnership, an association, a trust, or any other entity or any combination thereof.

**Section 1.26.      *Security Interest.***

"Security Interest" means an interest in real estate or personal property in the Community, or any portion thereof, created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.11 of this Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 of this Declaration (General Provisions of Insurance Policies), "Security Interest" shall also mean and refer to any executory land sales contract wherein the administrator of Veterans Affairs, an officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said administrator or has been assigned by the administrator and is owned by the administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of Adams County, Colorado, show the administrator as having the record title to the Unit.

**Section 1.27.      *Security Interest Holder.***

"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.11 of this Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 of this Declaration (General Provisions of Insurance Policies), the administrator of Veterans Affairs, an officer of the United States of America, and his assigns under any executory land sales contract wherein the said administrator is identified as the seller, whether such contract is recorded or not, and whether such contract is owned by the said administrator or has been assigned by the administrator and is owned by the administrator's assignee, or a remote assignee, and the land records in the office of the Clerk and Recorder of Adams County, Colorado, show the said administrator as having the record title to the Unit), or any successor to the interest of any such Person under such Security Interest.

**Section 1.28.      *Special Declarant Rights.***

"Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Rights; to maintain sales offices, construction offices, management offices, signs advertising the Community, and models; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to merge or consolidate a Community of the same form of ownership; or to appoint or remove any officer of the Association or any member of the Board of Directors during any 75% Control Period. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the



property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically at such time as Declarant no longer owns any portion of the property described on the attached Exhibits A and D.

**Section 1.29. Unit.**

"Unit" means an Individual Air Space, together with all fixtures and Improvements therein contained, and together with the undivided interest in the Common Elements appurtenant to the Individual Air Space (which shall be the Allocated Interest of such Unit). The Units that are initially subject to the Declaration are listed on the attached Exhibit B. However, each of the Units listed on the attached Exhibit B, and which may hereafter be annexed to this Declaration, shall become a "Unit" under this Declaration only at such time as a Condominium Map is recorded in Adams County, Colorado, with respect to such Unit.

**Section 1.30. Units that May Be Created.**

"Units that May Be Created" means One Hundred Thirty-Five (135) Units, which shall be the maximum number of Units that may be subject to this Declaration, including those Units that may be included if all of the Annexable Area is annexed to this Declaration. However, the aforesaid number of Units that May Be Created is not a representation or a guarantee as to the actual number of Units that will ultimately be included in or constructed as part of the Community.

**ARTICLE 2. MEMBERSHIP AND VOTING RIGHTS**

**Section 2.1. Membership.**

The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. Each Unit shall have one (1) membership and there is only one (1) Member per Unit, even if multiple Owners own the Unit.

**Section 2.2. Voting Rights.**

Each Member shall be entitled to one (1) vote for each Unit owned, except that no votes allocated to a Unit owned by the Association may be cast. The maximum number of votes that may be cast in connection with any matter shall be equal to the total number of Units then existing within the Association.

**ARTICLE 3. ASSOCIATION**

**Section 3.1. Association.**

The Association has been or will be formed as a Colorado non-profit corporation under the Colorado Revised Nonprofit Corporation Act. The Association shall have the duties, powers and rights created by law, as well as those set forth in this Declaration and in its Articles of Incorporation and Bylaws.



**Section 3.2.        *Board of Directors.***

The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Articles of Incorporation and Bylaws. Subject to Section 3.4 (Election of Part of the Board of Directors During the 75% Control Period) hereof, the Board of Directors shall be elected by the Members. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents or employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

**Section 3.3.        *Authority of Board of Directors.***

Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee, without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, or by law.

**Section 3.4.        *Election of Part of the Board of Directors During the 75% Control Period.***

Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that May Be Created to Owners other than a Declarant, at least one (1) director and not less than twenty-five percent (25%) of the directors must be elected by Members other than the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that May Be Created to Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by the Declarant, provided that the Declarant reserves the right to appoint a majority of the Board.

**Section 3.5.        *Authority of Declarant During 75% Control Period.***

Except as otherwise provided in this Article, during the 75% Control Period, the Declarant or Persons appointed by the Declarant may appoint and remove all officers and members of the Board of Directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the 75% Control Period; but, in that event, the Declarant may require, for the duration of the 75% Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

**Section 3.6.        *Election of Board of Directors upon Termination of 75% Control Period.***

After termination of the 75% Control Period, the Members shall elect the Board of Directors, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers.



### **Section 3.7.        *Budget.***

Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by eighty percent (80%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last approved by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

### **Section 3.8.        *Association Books and Records.***

The Association shall make available to Owners, prospective purchasers, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, design guidelines, books, records and financial statements of the Association, except that: the Board of Directors may at any time(s), prior or subsequent to a request for inspection, determine that items are confidential and should not be made available; and the Owners or other parties conducting such inspections shall pay all costs associated therewith. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

### **Section 3.9.        *Information Regarding Security Interests on Units.***

Each Owner shall, within twenty (20) days of encumbering such Owner's Unit with a Security Interest, and at other times upon request of the Association, provide the Association with the name and address of such Security Interest Holder, a copy of the instrument(s) creating the Security Interest(s), and the loan number(s) (or other identifying number) of such Security Interest(s). Within twenty (20) days after any change in the name or address of the Security Interest Holder on an Owner's Unit, and at other times upon request of the Association, such Owner shall provide the aforesaid information to the Association with respect to each Security Interest held by such Security Interest Holder.

### **Section 3.10.      *Rules and Regulations.***

Rules and regulations concerning and governing the Units, Common Elements, and/or this Community and/or rights-of-way and/or any parking space(s) provided for the Community, may be adopted, amended, repealed and enforced from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof. The foregoing shall include, without limitation, the right of the Board of Directors, at any time(s) from time to time, to assign, revoke the assignment of and make re- or new assignments of, one or more parking space(s) for use by the Owner(s) of one or more Units, and the designation of parking space(s) for use by such Owners' family members, tenants, guests and/or invitees. Any rules and regulations



that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration.

**Section 3.11. Cooperation with Other Community Association(s) and/or any District(s).**

The Association shall have the right and authority at any time, from time to time: to enter into agreements and otherwise cooperate with any other community association(s) and/or any district(s); to share the costs and/or responsibility for any maintenance, repair, replacement, or other matters; to perform maintenance, repair or replacement for any Person(s) in consideration of payment or reimbursement therefor; to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association, any other community association(s) and/or any district(s); to collect assessments, other charges, or other amounts which may be due to such entity and to permit any such entity to collect Assessments, other charges or other amounts which may be due to the Association; or to otherwise cooperate with any other community association(s) and/or any district(s), in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association, any other community association(s) and/or any district(s), as the Board of Directors may determine in its discretion from time to time.

**Section 3.12. Management Agreements and Other Contracts.**

Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice; provided however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the 75% Control Period shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one or more First Security Interests, and HUD or VA require their approval of such contract.

**Section 3.13. Merger.**

The Declarant hereby reserves the right to merge the Association with one or more other community associations without the approval of any Owner or any other Person. This right shall terminate automatically as provided in Section 1.28 of this Declaration (Special Declarant Rights).

**ARTICLE 4. ASSESSMENTS**

**Section 4.1. Personal Obligation for Assessments.**

Each Owner of a Unit, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual Assessments, special Assessments, and other amounts, all as provided in this Declaration; with such amounts to be established and collected as hereinafter provided. The



obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all Assessments, fees, charges and other amounts attributable to their Unit during their ownership of such Unit. Each amount shall be the personal obligation of the Person who was the Owner of such Unit at the time when the amount became due. The personal obligation for delinquent amounts shall not pass to such Owner's successors in title unless expressly assumed by them.

**Section 4.2. *Purpose of Assessments.***

The Assessments levied by the Association shall be used for maintenance, repair and replacement of the Common Elements, as provided in this Declaration, to promote the recreation, health, safety and welfare of the residents of the Units, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration the Articles of Incorporation or Bylaws of the Association, any other document(s), or by law. Notwithstanding the foregoing, however, Assessments levied during the 75% Control Period may not be used for the purpose of constructing capital Improvements.

**Section 4.3. *Initial Annual Assessment.***

Until the effective date of an Association budget that is adopted by the Board of Directors and not vetoed by the Owners, as provided above, the amount of the annual Assessment against each Unit shall not exceed One Hundred Forty and No/100 Dollars (\$140.00) per Unit per month, exclusive of any amounts due to any other community association(s), any district(s) and/or any other Person or entity.

**Section 4.4. *Rate of Annual and Special Assessments.***

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

4.4.2. During the 75% Control Period, the Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute advances against Assessments then or thereafter due from the Declarant; provided, however, that any such advances which have not been credited against Assessments due from the Declarant as of termination of the 75% Control Period shall then be repaid by the Association to the Declarant, without interest, to the extent that the Association has funds in excess of its working capital funds, reserve funds that the Association reasonably anticipates needing, and operating expenses to date for the calendar year in which the 75% Control Period terminates; and provided further, however, that any of such advances which are not repaid to the Declarant shall continue to constitute advances against Assessments then or thereafter due from the Declarant until conveyance by the Declarant of all of the property described on the attached Exhibits A and D. If the Declarant



elects in its discretion to pay or advance any amount as provided in this Section, Declarant shall not, under any circumstances, be obligated to continue payment or funding of any amount(s) in the future.

**Section 4.5. *Date of Commencement of Annual Assessments.***

The annual Assessments shall commence at such time as the Board of Directors may determine in its discretion. After any annual Assessment has been made by the Association, annual Assessments shall not exceed the amount set forth in Section 4.3 of this Declaration (Initial Annual Assessment) until a budget is adopted by the Board of Directors and not vetoed by the Owners as provided in this Declaration. A budget shall be so adopted by the Board of Directors no less frequently than annually. The annual Assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors may determine in its discretion from time to time; provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last payment due.

**Section 4.6. *Special Assessments.***

In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of sixty-seven percent (67%) of a quorum of Association votes, as provided in Section 4.7 hereof, at a meeting duly called for this purpose, 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 a capital improvement upon the Common Elements or any portion of real property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or replacement of any damaged or destroyed Improvements, or for the funding of any deficit incurred, or anticipated to be incurred, by the Association. Any such special Assessment shall be set against each Unit in accordance with the Allocated Interests therefor. A meeting of the Members called for the purpose of considering the establishment of a special Assessment shall be held in conformance with Section 4.7 of this Declaration (Notice and Quorum for Any Special Assessments). Notwithstanding the foregoing, special Assessments levied during the 75% Control Period may not be used for the purpose of constructing capital Improvements.

**Section 4.7. *Notice and Quorum for any Special Assessments.***

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 of this Declaration (Special Assessments) shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all of the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.



**Section 4.8.        *Assessments for Services to Less than All of the Units.***

The Association may, at any time from time to time, provide services that benefit less than all of the Units, and the Owners of such Units shall pay the Association for such services as, when and in such manner as may be determined by the Board of Directors in its discretion from time to time, which amounts shall be Assessments and shall include overhead expenses of the Association, but shall be in addition to the annual Assessments and special Assessments. Services which may be provided by the Association pursuant to this Section include, without limitation: (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of Improvements or property that is not provided for in this Declaration to be maintained by the Association; (b) the provision of any services or functions to or for such Unit(s); (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for Owners.

**Section 4.9.        *Lien for Assessments.***

4.9.1. The Association has a statutory lien on a Unit for any Assessment levied against that Unit and/or its Owner(s). The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

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

**Section 4.10.      *Priority of Association Lien.***

4.10.1. A lien under this Article is prior to all other liens and encumbrances on a Unit except:

4.10.1.1. Liens and encumbrances recorded before the recordation of the Declaration;

4.10.1.2. A First Security Interest on the Unit which has priority over all other Security Interests on the Unit and which was recorded or perfected before the date on which the assessment sought to be enforced became delinquent; and

4.10.1.3. Liens for real estate taxes and other governmental assessments or charges against the Unit.



4.10.2. A lien under this Section is also prior to the First Security Interests described in the preceding subsection 4.10.1.2 to the extent, if any, provided in CCIOA.

4.10.3. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other amounts made by the Association.

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

**Section 4.11. *Certificate of Status of Assessments.***

The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within a reasonable time after written request and is binding on the Association, the Board of Directors, and every Owner. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

**Section 4.12. *Application of Payments to the Association; Effect of Non-Payment of Assessments; and Remedies of the Association.***

4.12.1. Application of payments received by the Association from Owners for payment of amounts due to the Association by such Owners, shall be applied first to the payment of attorneys fees, fines, late charges and any other amounts (other than assessments) due to the Association (in the order listed), if any; second to the payment of accrued interest at the rate specified in subsection 4.12.2 below, if any; and third to the payment of assessments due to the Association.

4.12.2. Any Assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Board of Directors, and the Board of Directors may assess thereon a monthly late charge in such amount as may be set by the Board of Directors in its discretion from time to time. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Unit. If a judgment or decree is obtained, including without limitation in a foreclosure action, such judgment or decree shall include interest and a reasonable attorney's fees, together with the costs of the action, interest, and may include late charges, as provided above. No Owner may be exempt from liability for payment of the Assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Assessments are made or because of its dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure.



**Section 4.13.      *Surplus Funds.***

Any surplus funds of the Association remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be retained by the Association and need not be paid to the Owners or credited to them.

**Section 4.14.      *Working Capital Fund.***

The Association or Declarant shall require the Owners (other than Declarant) of each Unit to make a non-refundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the annual Assessment at the time of closing (regardless of whether or not annual Assessments have commenced as provided in Section 4.5 of this Declaration (Date of Commencement of Annual Assessments)). Said contribution shall be collected and transferred to the Association at the time of closing of each sale by Declarant of each Unit (except any sales to Declarant) and shall be for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of Assessments as the same become due.

**Section 4.15.      *Other Charges.***

The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amount(s) as the Board of Directors may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person(s): copying of Association or other documents; return checks; telefaxes; long distance telephone calls; charges or fees upon transfer of ownership of a Unit; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments.

**Section 4.16.      *Charges for Misconduct.***

If any Association expense is caused by the misconduct of any Person as determined by the Board of Directors in its discretion, the Board of Directors may assess that Association expense exclusively against the Owner who is legally responsible for such Person and against such Owner's Unit.

**ARTICLE 5. DESIGN REVIEW COMMITTEE**

**Section 5.1.      *Composition of Committee; Authority of Representative.***

5.1.1. The Design Review Committee shall consist of three (3) or more persons. Until automatic termination of the Special Declarant Rights as provided in Section 1.28 of this Declaration (Special Declarant Rights), the Declarant has the right to appoint the Design Review Committee; subsequent to such date, the Design Review Committee shall be appointed by the Board of Directors. The power to "appoint" the Design Review



Committee, as provided herein, shall include without limitation the power to: constitute the initial membership of the Design Review Committee; appoint member(s) to the Design Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Design Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointor. The terms of all then-current members of the Committee who were appointed by the Declarant shall automatically terminate at such time as the Declarant's power to appoint members of the Committee expires. The members of the Design Review Committee shall not be "officers" of the Association as a result of service on the Committee and thus, as a result of such service, shall not have any of the rights or duties attributable to officers of the Association.

5.1.2. The Committee may at any time, from time to time, appoint a representative to act on its behalf. If the Committee does so, then the actions of such representative shall be the actions of the Committee, subject to the right of appeal as provided below. However, if such a representative is appointed by the Committee, then the Committee shall have full power over such representative, including without limitation the power to at any time withdraw from such representative any of such representative's authority to act on behalf of the Committee and the power to at any time remove or replace such representative.

**Section 5.2. *Review and Approval by Committee; Reimbursement for Expenses; Requirement for Approval by Governmental Entities.***

Except as provided in Section 5.7 (Variance) and Section 5.11 of this Declaration (Declarant's Exemption), no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Unit unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee), shall have been first submitted to and approved by the Design Review Committee.

5.2.1. The Design Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residence, landscaping and structures.

5.2.2. In its review of such plans, specifications and other materials and information, the Design Review Committee may require that the applicant(s) reimburse the Committee for the actual expenses incurred in the review and approval process. Such amounts, if any, shall be levied in addition to the Assessment against the Unit for which the request for Design Review Committee approval was made, but shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection of such Assessments, as more fully provided in this Declaration.

5.2.3. In addition to the approvals provided for in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require



the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the City of Federal Heights, Colorado, if required, shall be a precondition to commencement of any construction or alteration of, addition to or change in any Improvement.

**Section 5.3.       *Procedures.***

The Design Review Committee shall decide each request for approval within thirty (30) days after the complete submission of the plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Design Review Committee fails to decide any request within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then the request for approval shall be deemed to have been denied by the Committee.

**Section 5.4.       *Vote.***

A majority vote of the Design Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control.

**Section 5.5.       *Prosecution of Work After Approval.***

After approval of any proposed Improvement by the Design Review Committee, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval of the application, or such lesser time as may be provided on the application for approval, or to complete the Improvement in complete conformance with terms and conditions of the approval, shall constitute noncompliance with the requirements for approval of Improvements by the Design Review Committee and a violation of this Article; provided, however, the Design Review Committee may, in its discretion, grant extensions of time for completion of any proposed Improvement(s).

**Section 5.6.       *Inspection of Work.***

The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted by the Committee. However, unless the Committee expressly states, in a written document, that an Improvement is being or has been completed in conformance with the Design Review Committee approval therefor, no such conformance shall be implied from any inspection of the Improvement either during the work or after completion thereof.

**Section 5.7.       *Variance.***

The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 10 of this Declaration (Restrictions),



in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

**Section 5.8.        *Waivers; No Precedent.***

The approval or consent of the Design Review Committee, or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee or any representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter. The granting or denial of a variance or adjustment by the Design Review Committee, or any representative thereof, shall not be deemed to constitute a waiver of any right to grant or deny any other or future variance or adjustment by the Committee or any representative thereof, as to any other request for variance or adjustment or other matters whatsoever. Nor shall any such variance or adjustment be deemed to constitute a precedent as to any other matter.

**Section 5.9.        *Records.***

The Design Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon for such period of time as may be determined by the Board from time to time and, subject to Section 3.8 of this Declaration (Association Books and Records), such records shall be available to Members for inspection at reasonable hours of the business day.

**Section 5.10.      *Liability.***

Neither the Design Review Committee nor any members thereof, shall be liable in equity or damages to any Person submitting requests for approval or to any Owner or other Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within their jurisdiction hereunder. In reviewing any matter, the Design Review Committee shall not be responsible for the safety, whether structural or otherwise, of the Improvement(s) submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor any other matters, and any approval of an Improvement by the Design Review Committee shall not be deemed an approval of any of the same. No Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by the Design Review Committee.

**Section 5.11.      *Declarant's Exemption.***

Notwithstanding anything herein to the contrary, until automatic termination of the Special Declarant Rights as provided in Section 1.28 of this Declaration (Special Declarant Rights), the Declarant shall be exempt from the provisions of this Article, except for the requirements to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 5.2.3 hereof).



## **ARTICLE 6. INSURANCE**

### **Section 6.1.        *Insurance.***

The Association shall maintain insurance in connection with the Common Elements. The Association shall maintain insurance as required by applicable law or applicable regulation, including CCIOA. Such insurance shall include, without limitation, property damage insurance, commercial general liability insurance and fidelity coverage. In addition, the Association may maintain insurance on such other property and/or against such other risks as the Board of Directors may elect from time to time, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association, workers' compensation insurance, and such other insurance on such other property and/or against such other risks as the Board of Directors may elect in its discretion from time to time.

### **Section 6.2.        *General Provisions of Insurance Policies.***

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

### **Section 6.3.        *Deductibles.***

The Association may adopt and establish written non-discriminatory policies and procedures relating to deductibles. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, may be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the Persons sharing in a joint duty of repair and maintenance, and/or may be partly or wholly borne by the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question in such amount(s) as the



Board of Directors deems appropriate, and the Association may collect such amount(s) from said Owner(s) in the same manner as any Assessment.

**Section 6.4. Insurance to be Maintained by Owners.**

An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Individual Air Space, shall be the responsibility of the Owner of such Individual Air Space, and the Association, its Board of Directors and any managing agent shall have no responsibility therefor. Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided that no liability of the carriers issuing insurance obtained by the Association shall be affected or diminished by reason of any such insurance carried by any Owner. Owners shall also be responsible for obtaining any policies of title insurance required in connection with any sale of a Unit other than the purchase by the initial Owner(s) from the Declarant.

**ARTICLE 7. DAMAGE OR DESTRUCTION**

**Section 7.1. Damage or Destruction.**

7.1.1. Any portion of the Community which is covered by a policy of insurance which is required to be carried by the Association under this Declaration and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

7.1.1.1. The Community is terminated; or

7.1.1.2. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

7.1.1.3. Members casting sixty-seven percent (67%) of the Association votes, in person or by proxy, including every Member whose Unit will not be rebuilt, vote not to rebuild; or

7.1.1.4. Prior to the conveyance of any Unit to a Person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

7.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other Persons will be distributees, the insurance proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or



lienholders, as their interests may appear, in proportion to the Allocated Interests of all the Units. If the Members vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

**Section 7.2.        *Use or Distribution of Insurance Proceeds.***

In the event of damage or destruction to all or a portion of the Common Elements, due to fire or other adversity or disaster, the insurance proceeds, if sufficient to repair or replace the damaged areas, shall be applied by the Association to such repair and/or replacement. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and/or replace the damaged or destroyed area(s), the Association shall levy a special Assessment in the aggregate amount of such insufficiency pursuant to 4.6 of this Declaration (Special Assessments), but without approval of the Members, and shall proceed to make such repairs or replacements. No distributions of insurance proceeds shall be made unless made jointly payable to the Owners and any Security Interest Holders of their respective Units. The Assessment provided for herein shall be a debt of each Owner and a lien on such Owner's Unit and the Improvements thereon, and may be enforced and collected in the same manner as any Assessment provided for in this Declaration.

**Section 7.3.        *Damage or Destruction of Units.***

If due to casualty, or for any other reason, an Individual Air Space shall be destroyed or damaged, then the Owner thereof shall, within a reasonable time thereafter, not to exceed one hundred twenty (120) days after repair or replacement of the Common Elements, including without limitation the walls and roof of the Unit, commence and diligently pursue repair and replacement of the Individual Air Space, using any available personal insurance proceeds and personal funds of such Owner, unless the Common Elements are not repaired and/or replaced as hereinabove provided.

**ARTICLE 8. MAINTENANCE**

**Section 8.1.        *Management and Maintenance Duties.***

Subject to the rights of, and obligations, requirements and limitations on Owners as set forth in this Declaration:

8.1.1. The Association shall be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Elements (including the Limited Common Elements except as provided below), and any property owned by the Association, including facilities, furnishings and equipment related thereto, and the Association shall keep the same (except Limited Common Elements as provided below) in good, clean, attractive and sanitary condition, order and repair. Without limiting the generality of the foregoing, the Association shall: periodically paint the front doors of residences; maintain, repair and/or replace the roofs and exteriors of the Condominium Buildings; maintain, repair and replace landscaping and private streets in the Community; provide for regular trash removal; and provide for snow removal (as and when deemed



appropriate by the Board of Directors in its discretion from time to time) from the sidewalks, parking areas and driveways in the Community. The Association shall not be responsible for the maintenance, repair and/or replacement of window glass or other glass surfaces, window screens, light bulbs, electrical fixtures, electrical facilities (such as electric eyes), decks, and yards (if and to the extent designated or referenced on the Condominium Map as a Limited Common Element).

8.1.2. Further, the Association shall be responsible for maintenance, repair and replacement of all electrical laterals from the transformer to the Individual Air Space.

8.1.3. The Association may contract for regular trash removal service to be provided, which (if provided) shall be paid by the Owners as part of the Assessments. Any Owner desiring non-regular or extraordinary trash removal shall make his or her own arrangements for the same and pay for the same in addition to the Assessments.

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

8.1.5. Except as otherwise provided in this Declaration, the Owner of each Unit shall be solely responsible for maintaining, repairing and replacing his Unit and the Improvements therein or appurtenant thereto. Further, each Owner shall be responsible for exclusive maintenance, repair and replacement of all fixtures, equipment and utilities installed or located within such Owner's Individual Air Space, all windows and other glass surfaces, window screens and doors to the Unit (except painting of exterior doors), all light bulbs, electrical fixtures and electrical facilities, and all other equipment providing exclusive service thereto or therefor and any service lines from such equipment to the Unit (including, without limitation, all utility, heating, plumbing, air conditioning and domestic hot water equipment and appurtenances but not including landscaping irrigation systems), regardless of whether such fixtures, equipment and utilities are owned by said Owner or are Common Elements. Each Owner shall also keep the Limited Common Elements, or portions thereof, designated for use solely in connection with his Unit, in a good, clean, sanitary and attractive condition, order and repair.

## **Section 8.2.        *Maintenance, Repair and Replacement Obligations.***

Any Improvement which has been changed, altered or modified by or for an Owner or occupant of a Unit shall be maintained, repaired and replaced by such Owner to the extent of the change, alteration or modification. If the Improvement is newly constructed, erected, placed, planted, applied or installed by an Owner or occupant of a Unit, then the entirety of such Improvement shall be maintained, repaired and replaced by, the Owner of such Unit. However, the Board of Directors may at any time, by resolution, elect to have the Association provide such



maintenance, repair or replacement; provided that any such resolution shall be subject to being repealed, revoked, modified, changed or altered, at any time, from time to time, by the Board.

**Section 8.3.      *Association's Right to Repair, Maintain and Replace.***

In the event any Owner shall fail to perform his maintenance, repair and replacement obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Board of Directors, enter upon said Unit subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or replacement. The cost of such maintenance, repair and replacement shall be the personal obligation of the Owner of the Unit on which such work is performed so that such amounts shall be paid by such Owner, and enforceable by the Association, as Assessments.

**Section 8.4.      *Acts or Omissions***

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of the Common Elements, any other property, a Unit, or any Improvements located thereon, is caused by the willful or negligent act or omission of any Owner, any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, replacement or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or replacement shall be paid by such Owner, and enforceable by the Association, as Assessments. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner.

**ARTICLE 9. EASEMENTS**

**Section 9.1.      *Other Easements.***

In addition to any other easements that may be granted or reserved in elsewhere in this Declaration, the following Sections in this Article describe easements to which the Community is or may be subject.

**Section 9.2.      *Access Easement.***

Each Unit shall be subject to an easement: in favor of the Association and the Owners, including the agents, employees and contractors thereof, for performing maintenance, repair, replacement and/or reconstruction, or other services as provided in this Declaration, including without limitation, maintenance, repair, replacement and/or reconstruction pursuant to Article 8 of this Declaration (Maintenance); and in favor of the Association, its agents and employees, for and incidental to enforcement of any term or provision of this Declaration, the Articles of Incorporation, Bylaws, design guidelines or rules and regulations of the Association. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or



any Unit, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair or avoidance. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Unit; except that no such notice shall be required in connection with any exterior, non-intrusive entry; and except that in emergency situations entry upon a Unit may be made at any time provided that the Owner(s) or occupant(s) of each affected Unit shall be warned of impending emergency entry as early as is reasonably possible. The interior of any residence shall not be subject to the easements provided for in this Section.

**Section 9.3.        *Maintenance, Repair and Replacement Easement.***

Each Owner hereby grants to the Association and the other Owners, and to their agents, employees and contractors, a right and easement on, over, across and through such Owner's Unit for maintenance, repair and replacement as provided in this Declaration; provided that such easement may only be exercised during reasonable hours after reasonable notice to the Owners or occupants of any affected Unit, except that in emergency situations entry upon a Unit may be made at any time provided that the Owner or occupants of each affected Unit shall be warned of impending emergency entry as early as is reasonably possible. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Unit, the Owner responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair or avoidance.

**Section 9.4.        *Easement for Encroachments.***

To the extent that any Unit or Common Element, encroaches on any other Unit or Common Element, a valid easement for the encroachment exists.

**Section 9.5.        *Drainage Easement.***

An easement is hereby reserved by the Declarant and granted to the Association, their respective directors, officers, agents, employees, successors and assigns, to enter upon, across, over, in and under the Common Elements for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Community so as to maintain or improve the drainage of water in or from the Community.

**Section 9.6.        *Utilities.***

Declarant hereby reserves a blanket easement upon, across, over and under the Common Elements for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any



part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority shall automatically terminate at such time as the Special Declarant Rights terminate as provided in Section 1.28 of this Declaration (Special Declarant Rights), at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

**Section 9.7. *Easement for Unannexed Property.***

The Declarant hereby reserves an Annexable Area Easement for the use and benefit of the Annexable Area. By virtue of this Annexable Area Easement, the Declarant generally intends to provide for pedestrian and vehicular access and for utilities services, to those portion(s) of the Annexable Area which have not been included in or have been withdrawn from the Community, from time to time, as provided in Section 16.4 of this Declaration (Annexation; Withdrawal). Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as both of the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration pursuant to Section 16.4 of this Declaration (Annexation; Withdrawal); and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

**Section 9.8. *Emergency Easement.***

A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Common Elements in the proper performance of their duties.

**ARTICLE 10. RESTRICTIONS**

**Section 10.1. *General Plan; Restrictions Imposed.***

It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Community. The Community is subject to the recorded easements, licenses and other matters listed on Exhibit C attached hereto and incorporated herein by this reference. In addition, the Declarant declares that all of the Units shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

**Section 10.2. *Exterior Changes.***

Except for those Improvements erected, constructed or installed by Declarant in its completion of the Community, no exterior additions to, alterations or decoration of any Condominium Building or Units shall be commenced, erected, placed or maintained, except as provided in this Declaration.